

## **4.0 RESPONSES TO COMMENTS**

Unless otherwise noted, bibliographic information for literature cited in this section can be found in Section 11 of the Plan and Sections 10.11 and 10.12 of the EIR/EIS.

### **MAJOR ISSUE RESPONSES:**

#### **Major Issue Response 1: Use of Best Available Science**

Comments received on the February 2007 Recirculated Draft MSHCP and Recirculated Draft EIR/Supplemental Final EIS from individuals and organizations asserted the Plan is not based on best available science. This assertion addresses several proposed elements of the MSHCP. To facilitate review, this Major Issue response to comments is divided into topic subheadings based on the focus of comments: biological data used for Plan preparation, species distribution models and data issues related to individual Covered Species, reliability of data and biologists (including Acceptable Biologists) who provide the data, and the Independent Science Advisors (ISA) report.

The MSHCP was developed using the best scientific data available, in accordance with federal and state standards for information used pursuant to FESA and the NCCP Act of 2002.<sup>1</sup> The Wildlife Agencies are required to use the best scientific information available at the time when evaluating an HCP/NCCP. For CDFG, the NCCP Act requires, “The use of the best available science to make assessments about the impacts of take, the reliability of mitigation strategies, and the appropriateness of monitoring techniques.” For the USFWS, Section 7(a)(2) of the FESA requires the agency to use the “best scientific and commercial data available” in fulfilling the requirements of consultation to determine whether an agency action, such as Permit issuance, is likely to jeopardize the continued existence of any species listed as threatened or endangered under the Act or result in adverse modification of critical habitat.

Several commenters suggest that the occurrence of a particular species on a specific parcel should be the basis of reserve design. Such an approach would be contrary to the fundamental principles of conservation biology which are the basis for reserve design in the MSHCP. General principles of conservation biology are captured by the reserve design tenets described in the NCCP General Process Guidelines and NCCP Act of 2002.

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<sup>1</sup> Fish & Game Code, §2800 et seq.

### Basis for Reserve Design

These reserve design tenets provide a framework for the conservation planning process. They can be summarized as follows: (1) Conserve and manage natural landscapes to maintain the ecological integrity of large habitat blocks, ecosystem function, and biological diversity; (2) Establish multiple reserves for conservation of Covered Species in the plan area and Linkages between them and adjacent habitat areas outside of the Plan Area; (3) Conserve Habitat areas that are large enough to support sustainable populations of Covered Species; (4) Conserve Habitat diversity, incorporating a range of environmental gradients (such as slope, elevation, aspect) to provide for shifting species distributions over time; (5) Provide for movement and interchange of organisms between Habitat areas to maintain ecological integrity; and (6) Protect reserves from encroachment and invasion by non-native species. The theoretical and empirical underpinnings of the NCCP reserve design tenets can be found in the conservation biology literature, of which key concepts are summarized here and in Section 3.0 of Appendix I of the Plan.

Although many factors can be incorporated into reserve design and selection, diversity, rarity, naturalness, size, and representativeness are the most widely used.<sup>2</sup> Other considerations include island biogeography design principles of MacArthur and Wilson<sup>3</sup>: (1) area effect—the larger the preserve, the greater the species richness (i.e., species area relationship) and the greater the chances of long-term viability of populations (more individuals); (2) isolation or distance effect—the less the distance between reserve units, the greater the opportunity for gene flow, colonization, and rescue effect (e.g., also see Brown and Kodric-Brown 1977<sup>4</sup>); (3) species equilibrium—the number of species that an area can support is determined by a balance between colonization and extinction; and (4) Edge Effect—the larger the ratio of reserve area to reserve perimeter, the smaller the “Edge Effect.”

An “edge effect” is defined as a change in the “conditions or species composition within an otherwise uniform habitat as one approaches a boundary with a different habitat (Ricklefs 1993<sup>5</sup>).” Edge effects at the boundary between natural lands and human-occupied lands (“urban

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<sup>2</sup> Margules, C.R. and A.O. Nicholls. 1988. “Selecting networks of reserves to maximize biological diversity.” *Biological Conservation* 43:63-76.

<sup>3</sup> MacArthur, R.H. and E.O. Wilson. 1967. *The Theory of Island Biogeography*. Princeton University Press. Princeton, New Jersey.

<sup>4</sup> Brown, J.H. and A. Brown-Kodric. 1977. “Turnover rates in insular biogeography: Effect of immigration on extinction.” *Ecology* 58:445-449.

<sup>5</sup> Ricklefs, R.E. 1993. *The Economy of Nature*. Third Edition. W. H. Freeman and Company. New York, NY.

edge effects”) arise due to human-related intrusions such as lighting, noise, invasive species, exotic predators (dogs, cats, and opossums), hunting, trapping, off-road activities, dumping, and other forms of recreation and disturbance. Although some species are in some ways unaffected by edges (e.g., reproductive output of the rufous-crowned sparrow,<sup>6</sup> distribution of arthropod species<sup>7</sup>) or even show preferences for edges (e.g., indigo buntings and northern cardinals<sup>8</sup>), human-induced edge effects are generally unfavorable to native species.

Another important feature of reserve design is the spatial arrangement of wildlife movement corridors, including Biological Corridors and Linkages between Core Areas. At this point it is useful to contrast Biological Corridors and Linkages. Biological Corridors are often linear and facilitate efficient movement by providing adequate cover and lack of physical obstacles for movement.<sup>9</sup> These corridors do not provide “Live-in” Habitat for species. Linkages, in contrast, are areas providing permanent resident “Live-in” Habitat as well as movement Habitat for a particular species. The Linkage contains resources that meet the life history requirements for the species the Linkage is intended to serve. The concept of landscape Linkages is an established one in conservation biology. Landscape linkages are capable of sustaining a full range of community ecosystem processes, thus enabling seed dispersal and animal movement over a period of generations. Each habitat connection may be defined as a corridor or a Linkage for each species. Therefore, although areas in the MSHCP designated as Linkages may in fact function only as movement corridors for some species, for simplicity, connections between blocks of Habitat are referred to generally as Linkages in this document.

Connectedness through landscape Linkages and Biological Corridors is important because Habitat fragmentation and isolation lead to extinction of local populations and are the most serious threats to biological diversity. Bolger et al. (1997)<sup>10</sup> found fewer rodent species in fragments isolated for longer periods of time and by greater distances. Lower arthropod diversity

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<sup>6</sup> Morrison, S.A. and D.T. Bolger. 2002. “Lack of an urban edge effect on reproduction in a fragmentation-sensitive sparrow.” *Ecological Applications* 12(2):398-411.

<sup>7</sup> Bolger, D.T., A.V. Suarez, K.R. Crooks, S.A. Morrison, and T.J. Case. 2000. “Arthropods in urban habitat fragments in southern California: Area, age, and edge effects.” *Ecological Applications* 10(4):1230-1248.

<sup>8</sup> Woodward, A.A., A.D. Fink, and F.R. Thompson, III. 2001. “Edge effects and ecological traps: effects on shrubland birds in Missouri.” *Journal of Wildlife Management* 65(4):668-675.

<sup>9</sup> Beier, P. and S. Loe. 1992. “A checklist for evaluating impacts to wildlife movement corridors.” *Wildlife Society Bulletin* 20:434-440.

<sup>10</sup> Bolger, D.T., A.C. Alberts, R.M. Sauvajot, P. Potenza, C. McCalvin, D. Tran, S. Mazzoni, M. E. Soule. 1997. “Response of rodents to habitat fragmentation in coastal southern California.” *Ecological Applications* 7(2):552-563.

was also observed by Bolger et al. (2000)<sup>11</sup> in older and smaller Habitat fragments. The probability of extinction becomes greater as immigration and emigration are impeded by conversion of natural Habitat between occupied or potential Habitat areas to inhospitable land covers. Linkages, therefore, serve to ameliorate Habitat fragmentation and isolation by permitting the following: (1) the travel, migration, and meeting of mates for wide-ranging animals; (2) plant propagation; (3) interchange of genetic material; (4) movement of populations in response to environmental changes and disasters; and (5) colonization of available Habitat by individuals.<sup>12</sup>

Empirical evidence exists to support the utility of Linkages and corridors. In a study by Beier (1995),<sup>13</sup> radio-tagged mountain lions never crossed into urban areas; individuals used defined movement corridors for dispersal and for traveling between areas comprising their home ranges. Beier and Noss's (1998) review<sup>14</sup> of 32 empirical studies pertaining to the utility of wildlife corridors supported the idea that corridors are "valuable conservation tools." Price et al. (1994)<sup>15</sup> also encourage the consideration of connectedness, particularly for endangered species such as the Stephens' kangaroo rat. Habitat connections are particularly important to the persistence of metapopulations which comprise this species' populations.

#### Biological Data used for Plan Preparation

To meet the HCP and NCCP requirements for best available science, the development of the Plan involved consultation with species experts, reference to current ecological and conservation biology theory, and use of the best ecological and biological information available. As described in Section 3 of the MSHCP, the Plan used existing biological data and new data gathered during Plan development. Data were gathered from a wide variety of sources, including scientific experts; federal, state, and local agencies; peer-reviewed journals; professional organizations; and the general public. To the extent it was available, the information used in the development of the MSHCP was peer-reviewed, providing a consistent, reliable, and sound basis for decision-

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<sup>11</sup> Bolger, D.T., A.V. Suarez, K.R. Crooks, S.A. Morrison, and T.J. Case. 2000. "Arthropods in urban habitat fragments in southern California: Area, age, and edge effects." *Ecological Applications* 10(4):1230-1248.

<sup>12</sup> Beier, P. and S. Loe. 1992. "A checklist for evaluating impacts to wildlife movement corridors." *Wildlife Society Bulletin* 20:434-440.

<sup>13</sup> Beier, P. 1995. "Dispersal of juvenile cougars in fragmented habitat." *Journal of Wildlife Management* 59:228-237.

<sup>14</sup> Beier, P. and R.F. Noss. 1998. "Do habitat corridors provide connectivity?" *Conservation Biology* 12(6):1241-1252.

<sup>15</sup> Price, M. V., P. A. Kelly, and R. L. Goldingay. 1994. "Distances moved by Stephens' kangaroo rat (*Dipodomys stephensi* Merriam) and implications for conservation." *Journal of Mammology* 75(4):929-939.

making. The Plan also used the best land management practices, information, and appropriate tools (e.g., modeling, population viability analysis) available.

The overall approach to process the best available data used in the Plan is based on inclusion of all known existing information, incorporation of new data as it became available, and consultation with independent experts and science advisors throughout the Plan development process. The assembly and review of available data was an iterative process. Throughout Plan development, data used to describe species occurrence, map natural communities, develop species distribution models, design the reserve system, develop the Management and Monitoring Programs, and prepare the Conservation and Take analyses were updated as new information became available. Section 3.3 of the Plan and Section 3.10 of Appendix I to the Plan describe the sources of biological data. The baseline month and year for the data used in the Plan is November 2006, when data were updated in the GIS database maintained by CVAG for the Plan. Biological data, however, were continuously updated incorporating new data as they became available. In addition, independent biologists with expertise on one or more species were consulted throughout the process, even in the final stages of preparation of the Plan, to ensure the accuracy and completeness of the data used. In cases where published literature, unpublished reports, or other written information were not available, personal communications from selected individuals were used. These personal communications were only used after the individual reviewed the statement(s) that referenced their information and signed a statement verifying the accuracy of the personal communication.

The MSHCP is consistent with the recommendations in the HCP Handbook Addendum<sup>16</sup> to strengthen the scientific basis of an HCP which “...encourages applicants to use scientific advisory committees during the development and implementation of an HCP, ...[a]n applicant ...may seek independent scientific review of specific sections of an HCP and its operative conservation strategy to ensure the use of the best scientific information for HCP development.” The MSHCP had significant input during the planning process from a scientific advisory committee, described in Section 3.1.1 of the Plan, composed primarily of local scientists. In addition, during the planning process, experts were brought in to provide review and recommendations for various elements of the conservation plan at a series of workshops. These workshops included reserve design criteria at the beginning of the process; gap analysis; ecological, monitoring and adaptive management; reserve design and conservation planning; various species distribution models; and essential habitat for bighorn sheep. The workshop details and dates are given in Section 3.1 of Appendix I of the MSHCP. Consistent with both

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<sup>16</sup> U.S. Fish and Wildlife Service. 2000. Availability of a Final Addendum to the Handbook for Habitat Conservation Planning and Incidental Take Permitting Process; Notice. Federal Register: June 1, 2000 65(106):35242-57.

NCCP and HCP standards, an Independent Science Advisor's Review was completed in 2001; this review is addressed in more detail below.

Data Issues for Individual Covered Species: Baseline Data and Species Distribution Models

As described in MSHCP Sections 3.1.3, 3.1.4, and 3.3, the Plan incorporated best available science in the use of data on species distribution, species model development, and the reserve design process. Initially all available biological data were gathered to provide input to the conservation planning process. As part of this effort, individuals with expertise on a given species were consulted to obtain their observations of a given species, to review draft versions of the species models, and to provide input on the species accounts. All of the biologists consulted in this process and the species about which they provided input have been identified in Table A3-3 in Appendix I of the Final Recirculated MSHCP. Specific information provided in this process about a given species is described below in the discussion of individual species.

The characterization of biological data for the Plan as inaccurate and outdated is incorrect. Species distribution information was initially gathered from available literature, including gray literature (unpublished reports and documents). To obtain more accurate and up-to-date information on the distribution and relative abundance of species in various locations throughout the Plan Area, surveys were conducted beginning in 1995. These surveys were completed by agency biologists and other members of the Planning Team, including Scientific Advisory Committee (SAC) members, assisted in some cases by volunteers. When necessary, biologists with specific expertise were hired by CVAG to completed focused surveys for a given species. Table A3-5 in Appendix I of the Plan lists all the surveys, the subject and date of the surveys, and the biologists involved in those surveys. Frequently, the surveys were accomplished by teams of biologists from the SAC, including Wildlife Agency biologists. In a number of cases, these surveys focused on species about which little was known. The results of the surveys were incorporated into the GIS database and used in development of the species distribution models.

In 2002, CVAG contracted with the University of California, Riverside (UCR) Center for Conservation Biology to develop and test preliminary protocols for the biological monitoring element of the MSHCP. The work done by UCR included surveys for many of the proposed Covered Species. These surveys were initiated in the spring of 2002 and are continuing through 2008. The Coachella Valley Biological Monitoring Project will continue in the 2007/2008 season with funding from CDFG. The results of these surveys provided some information on the distribution, relative abundance, habitat affinities, and identified stressors for these species. The surveys are listed in MSHCP Table 8-8; updates to incorporate surveys completed in 2006/2007 have been added to Table 8-8 in the Final Recirculated MSHCP. The preliminary monitoring work by UCR has provided additional data which are being used to add to the species distribution information, assess potential threats, and to evaluate the impacts of Take and conservation levels. These data were used in the development of the Management and

Monitoring Programs as well. The results of the surveys by UCR were incorporated where applicable in the conservation strategies in Section 9 of the Plan for Covered Species; updates to incorporate results from 2006 have been added to Section 9 for relevant species. Future monitoring efforts will be consistent with the Scientific Principles described in Section 8.3.2 of the Plan. They will provide reliable estimates with accompanying confidence intervals for population parameters (e.g., abundance, patch occupancy rates). These parameters will be comparable between years because they will incorporate measures of the probability of detection.

There are limitations on the available data for a large regional plan (more than 1 million acres), including the MSHCP. While every effort was made to address specific information needs for Covered Species, access to private lands, funding limitations, and available resources did not allow for comprehensive surveys throughout the entire Plan Area covering more than 1 million acres. As previously noted, surveys were focused on specific information needs that would enhance knowledge about a given species, its occurrence in a given area, Habitat parameters, and potential threats or impacts. However, access to private lands was limited. Prior to initiation of any survey, contact was made with the landowners to obtain permission to access their property. Landowner permission was not granted in all cases so that surveys could not be completed in some key areas. In these cases, best available data often included consultation with species experts for their evaluation of habitat areas that were off-limits due to access constraints.

The issue of the adequacy of biological data is addressed in the HCP Handbook and more specifically in the HCP Addendum.<sup>17</sup> Issue 4 in the Final Addendum to the HCP Handbook addressed questions about biological uncertainty in decisions to issue Incidental Take Permits. It addressed concerns that “there is not enough known about the species to lock in long-term conservation actions provided by HCPs and the assurances given with these permits.” “The Service(s) believe that covered species, both listed and unlisted, will be afforded more protection because of the conservation measures gained through an HCP process.” The Addendum also provides for an adaptive management strategy as a means to address uncertainty “[i]f we lack critical information regarding the biological needs of a species proposed to be covered under an HCP, we will not issue a permit until such information is obtained or an acceptable adaptive management strategy is incorporated into the HCP to address the uncertainty.” The latter is the case with the MSHCP. Specific Conservation Goals and Objectives require a management and biological monitoring program for the 75 years of the Permit. This approach is characterized in Section 9.1.2 of the Plan where it calls for: (1) implementation of a Monitoring Program that identifies trends in species... protected under the Plan, and (2) implementation of a Management Program that includes species-specific actions to secure and enhance Habitat quality and provide

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<sup>17</sup> Ibid.

for long-term population viability, incorporating adaptive management. For each Covered Species and natural community, Section 9 of the Plan includes Goals and Objectives for implementation of biological monitoring and Adaptive Management actions to ensure conservation of Habitat quality and the Covered Species (e.g., Section 9.2.1.1 on Mecca aster, Goal 3).

To meet the requirements set forth in the HCP Handbook and Addendum, the MSHCP includes a plan to gather additional information on species distribution, Habitat affiliations, and population size early in the implementation process. The Monitoring Program begins with a baseline phase during the first 5 years of Plan implementation. As described in Section 8.3.3 of the Plan, one of the primary objectives of the baseline phase will be to conduct baseline surveys on Covered Species and conserved natural communities. Key monitoring objectives described in Section 8.4 of the MSHCP focus on gathering baseline information on the species. These objectives include estimates of distribution, population size, survivorship, age structure, and other variables as well as further evaluation of the conceptual ecological models to identify and assess threats for Covered Species. For example, see Section 8.4.2.3.3 of the MSHCP on species-level monitoring objectives for alluvial fan and wash affiliated species. This approach has been endorsed by the American Institute of Biological Sciences<sup>18</sup> and Harding et al.,<sup>19</sup> who state, “the lack of quantitative data in many HCPs points to the need for a strong monitoring program that links ongoing data collections with specific biological goals of the conservation plan.” The Monitoring and Adaptive Management Programs are addressed in Major Issue Response 7.

#### Development of Species Distribution Models

Several comments address the adequacy of the species distribution models and question whether the Covered Species actually occur in Conservation Areas. Some of these commenters expressed the opinion that the species distribution models are purely Habitat-based and do not reflect current location data. Some commenters question the reliability of the reserve design, the Take estimates, and the analysis of impacts. Concern about the potential for missing an entire population of a Covered Species without any knowledge of its destruction was also expressed.

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<sup>18</sup> Kareiva P, S. Andelman, D. Doak, B. Elder, M. Groom, J. Hoekstra, L. Hood, F. James, J. Lamoreux, G. LeBuhn and others. 1999. *Using Science in Habitat Conservation Plans*. National Center for Ecological Analysis and Synthesis, Santa Barbara, California, and the American Institute of Biological Sciences, Washington, D.C.

<sup>19</sup> Harding EK, E.E. Crone, B.D. Elder, J.M. Hoekstra, A.J. McKerrow, J.D. Perrine, J. Regetz, L.J. Rissler, A.G. Stanley, E.L. Walters and others. 2001. “The Scientific Foundations of Habitat Conservation Plans: A Quantitative Assessment.” *Conservation Biology* 15(2):488–500.



For the purposes of regional planning, the species distribution models represent the best available data, even with the limitations of these models described in Section 3.6 of Appendix I of the Plan. Some confusion was apparent from commenters who interpreted that the models were Habitat-based only. All of the models started with an analysis of the known locations for a given species, based on information from on-the-ground surveys for the species. Determinations about suitable Habitat were based on these known locations and the Habitat parameters associated with them. Section 3.6.2 of the Plan describes the Habitat parameters used in the development of the species distribution models. The development of the species distribution models was an iterative process that involved updates and changes to the models as new information became available. Independent experts were also consulted to review and improve the models. Specific information on the experts consulted and their input with regard to the models has been added where appropriate in Section 9 and/or Section 3.6 of Appendix I of the Plan. Data from the UCR Biological Monitoring Project were also incorporated in the Plan and where available were used to refine the Preferred Alternative. Since 2003, data gathered by UCR field biologists have been used to evaluate and refine the species distribution models. Evaluation of the species distribution models for the Coachella Valley fringe-toed lizard and Coachella Valley milkvetch is in progress using quantitative analytical tools (e.g., Mahalanobis) For the several species addressed in the UCR analysis, quantitative analysis<sup>20,21</sup> has supported the accuracy of the species distribution models used in the MSHCP. As part of Plan implementation, the natural communities will be refined and updated as appropriate; Section 8.3.4.3 of the Plan provides for the ability to update and remap natural communities or Covered Species models. The updates and refinements shall not be implemented in any way that would increase the amount of Take or reduce the amount of conservation specified by the Plan for Covered Species or natural communities.

Some of the commenters expressed concern that the models identify Habitat or Core Habitat for a species in locations where the species has not been observed. It is important to note that conservation of species requires more than an area of Habitat where a species has been observed. For Covered Species, a Conservation Goal is to “conserve Core Habitat and associated ecological processes (for each species), allowing evolutionary processes and natural population fluctuations to occur,” and to “minimize fragmentation, human-caused disturbance, and edge effects to Core Habitat by conserving contiguous Habitat and effective Linkages between patches of Core Habitat.” The areas identified in the Plan to be conserved for a given species are composed of a Habitat patch or aggregation of Habitat patches that is: (1) of sufficient size to support a self-sustaining population of that species, (2) is not fragmented in a way to cause

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<sup>20</sup> Barrows, C.W., M.B. Swartz, W.L. Hodges, M.F. Allen, J.T. Rotenberry, B. Li, T. A. Scott, and X. Chen. 2005. „A Framework for Monitoring Multiple-Species Conservation Plans.“ *Journal of Wildlife Management* 69(4):1333–1345).

<sup>21</sup> Preston and Rotenberry *in review*.

separation into isolated populations, (3) has functional Essential Ecological Processes, and (4) has effective Biological Corridors and/or Linkages to other Habitats, where feasible, to allow gene flow among populations and to promote movement of large predators.

The overview of the species Habitat distribution modeling process in Section 3.6 of Appendix I of the Plan acknowledges the limitations of the models, which are based primarily on qualitative rather than quantitative data. It also reinforces that these models were developed to ensure a comprehensive reserve design process. This reserve design process was developed to include Habitat representing the full range of environmental conditions that could be occupied by each Covered Species within the Plan Area. The species models were developed to include occupied as well as potential Habitat to provide flexibility in the face of changing environmental conditions, including those associated with climate change and global warming.

#### ISA Review

Some of the public comments express concern that the recommendations made by the ISA were not incorporated as Plan Elements. The ISA Review is provided in its entirety in Section 3.3 of Appendix I of the MSHCP. Apparently some commenters were confused by the references in the ISA Review to conservation alternatives. It is important to note that the document that was reviewed by the ISA was the January 2001 Administrative Review Draft of the Plan and that the ISA report was completed in April 2001. Their comments apply to the 2001 document, not the February 2007 Recirculated Draft MSHCP or the February 2006 Draft MSHCP. As noted in the introduction to Section 3.3 of Appendix I of the MSHCP, Conservation Alternatives 1, 2, and 3 referred to in the review were the initial alternatives prepared in 2000, not the alternatives contained in the February 2007 Recirculated Draft MSHCP. As described in Section 3.7.4 of Appendix I of the Plan, additional areas were considered for potential inclusion in the Conservation Areas in response to the ISA report. This analysis included review of the recommendations of the ISA, field visits, meetings with other outside biologists, and consideration of additional information. The findings of a USGS study<sup>22</sup> were also considered in this analysis. Based on this analysis, some areas were added to Conservation Alternative 2 and a new conservation alternative was developed for further discussion. This alternative was discussed in a series of meetings among CDFG, USFWS, CVAG staff, and local jurisdictions to obtain additional information, including biological and land use information. Through this process, the SAC's revised conservation alternative was further revised. In no case were the

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<sup>22</sup> U.S. Geological Survey. 2002. Long-term Sand Supply to Coachella Valley Fringe-toed Lizard (*Uma inornata*) Habitat in the Northern Coachella Valley, California. Water resources investigations report # 02-4013, U.S. Geological Survey in cooperation with U.S. Fish and Wildlife Service. Tucson, Arizona. 50 pp.

resulting boundaries of the Conservation Areas less than those recommended by the SAC. The result was the Preferred Conservation Alternative presented in Section 4 of the Plan.

Comments suggest the Plan did not incorporate standards of scientific peer review. Federal standards for peer review have been provided in a 2005 Office of Management and Budget bulletin on peer review. This bulletin exempts federal permitting proceedings from peer review requirements;<sup>23</sup> hence, for example, the formation of and use of ISA was above and beyond what is required by the OMB bulletin. Nevertheless, the input of the ISA was a critical element in the preparation of the Plan and, as described below, ISA recommendations were incorporated in the Plan. The MSHCP has incorporated peer review throughout the process, and the Lead Agencies believe that the standards for peer review have been exceeded. The Plan identifies the continued use of independent scientists. As an example, the Trails Plan will involve independent scientists in the development and review of the research program. The ISA clearly stated that it found no fatal flaws in the Plan during its review. The ISA also wrote in the introduction to its April 2001 report,<sup>24</sup> “we want to commend the Scientific Advisory Committee (SAC) and others who contributed to the Draft Plan for producing what is sure to be one of the most scientifically defensible and thorough HCPs or NCCPs ever developed.” The following paragraphs review the key recommendations and concerns in the ISA report and address how these recommendations were incorporated in the Preferred Alternative. The ISA recommendations addressed below from their report commence on Page A1-32 of Appendix I of the Plan.

Uncertainty: Sufficiency-Necessity Standard and the Precautionary Principle: The ISA supported the use of the precautionary principle in cases of high uncertainty and high risk, as is the case in the Coachella Valley. The ISA recommended that rigorous science and more data can balance the problems of uncertainty about the subject ecological systems and Covered Species. In response to the recommendations of the ISA, additional lands were added to the Conservation Areas in the Preferred Alternative. These additional lands were added to provide a more complete array of habitats across a range of environmental conditions for each species, enhanced connectivity through biological corridors and linkages, and more conservation of essential ecological process areas. Additional data, including data provided by individual species experts consulted after the ISA report and data collected by UCR Center for Conservation Biology, were used in the reserve design process resulting in the Preferred Alternative. As recommended by the

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<sup>23</sup> 70 FR 2677.

<sup>24</sup> Noss RF, A. Allen, G. Ballmer, J. Diffendorfer, M. Soule, R. Tracy, and R. Webb. 2001. *Independent Science Advisors Review: Coachella Valley Multiple Species Habitat Conservation Plan/Natural Communities Conservation Plan*. Unpublished report to The Nature Conservancy. April 13, 2001. 52 pp.

ISA, a more comprehensive Adaptive Management program was developed as part of the Plan as a means of addressing uncertainty through a hypothesis-driven process.

Climate Change and Other Long-term Environmental Change: The ISA review suggested that “maintaining well-connected, heterogeneous landscapes with multiple microhabitats and potential refugia is a sensible strategy in the face of climate change in any direction.”

1. To address the concerns of the ISA as well as consideration by the SAC and Wildlife Agencies, the reserve design was reviewed to evaluate the extent to which “multiple microhabitats” and “potential refugia” were included in the Conservation Areas. Some areas were added, or expanded, in part to address this concern (e.g., Highway 111/I-10 Conservation Area, Indio Hills/Joshua Tree National Park Linkage Conservation Area). Discussion of long-term impacts from climate change is provided in Section 3.2.2.3 of Appendix I of the Plan, with the conclusion, “As the climate changes in the future, there is a possibility that the habitat at one or more sites will become unsuitable for a target species. But preserving multiple sites in this manner will increase the likelihood that some refugia for each of the species will be maintained if climatic conditions change over time.”
2. Habitat/Landscape Level Questions:
  - a. The Preferred Alternative accepted the premise of the ISA that “the Plan would be improved by the inclusion of additional habitat.” The Preferred Alternative was the result of additions to the version of Alternative 2 described in the ISA review. Additional habitat was added to the Conservation Areas in the Snow Creek area, Mission Creek area, Whitewater Preserve area, Willow Hole sand source area, Flat-top Mountain area, and the East End of the Indio Hills. As described in Section 3.4 of the Plan, the evaluation and analysis that resulted in the Preferred Alternative addressed some of the specific criteria discussed by the ISA beginning on page AI-37 as follows:
    - Habitat patch size was evaluated for each Covered Species and was designed to incorporate available habitat, based on best available science, in patches large enough to sustain these species. This analysis incorporated connectivity issues. Description of Core Habitat is provided in Section 9 of the Plan for each species.
    - Connectivity was evaluated, and Biological Corridors and Linkages were mapped. In 2002, the dimensions of culverts and bridges that function as biological corridors were measured and incorporated into the reserve design. Section 4.4 of Appendix I of the Plan includes the data on these biological corridors. The issues relative to connectivity within the Plan Area were carefully considered in the

reserve design process following completion of the ISA review. The recommendations of the ISA were incorporated in the Preferred Alternative. The Plan will ensure the conservation of significant Biological Corridors identified in various local and regional efforts addressing connectivity, including the San Gorgonio Pass/Whitewater River Corridor and the Indio Hills/Joshua Tree National Park corridor. Efforts to address connectivity around the north end of the Salton Sea involve several other efforts outside the MSHCP, including the Salton Sea restoration effort and the activities of the CVWD. The Coachella Valley Stormwater Channel and Delta Conservation Area would benefit these other regional efforts.

- Large predators were considered in the delineation of Conservation Areas in the Preferred Alternative, particularly with respect to connectivity concerns. The potential for large predators to move across the landscape of the Conservation Areas was addressed by inclusion of areas such as the San Gorgonio Pass connections in Stubbe Canyon and Whitewater Canyon and a major linkage area between the Indio Hills and Joshua Tree National Park.
  - Protection of the range of environmental conditions within which each species is known to occur was added as a Conservation Objective for each Covered Species (See Section 9 of the Plan).
  - Essential Ecological Processes were carefully considered and areas were added to the Conservation Areas to ensure protection of sand transport systems, hydrological processes, connectivity, and other key processes.
  - Edge effects were addressed by incorporating additional habitat in perimeter areas for each Conservation Area. Land use adjacency guidelines were added to address edge effects outside the Conservation Areas.
  - Impacts from deleterious activities such as illegal dumping and off highway vehicle activity will be evaluated and controlled through the Monitoring and Management Program, as described in Sections 8, 9, and 10 of the Plan.
  - Impacts of exotic invasive species will be addressed through the Monitoring and Management Programs. Control programs for some invasive species (e.g., tamarisk) are already well underway.
- b. The ISA provided important recommendations regarding the site identification process for the MSHCP as it was described in the January 2001 Administrative Review Draft they evaluated. Based on their recommendations, the SITES model

(*SITES V 1.0: an analytical toolbox for designing ecoregional conservation portfolios*, The Nature Conservancy) was used to complete an analysis of the reserve design for the MSHCP. Using the SITES program, a reserve design very similar to the Preferred Alternative was selected.<sup>25</sup> This evaluation is described in Section 3.7.3.3 in Appendix I of the Plan. The discussion of the site identification process in this section of the ISA review (page AI-124) includes a statement that “the site identification process involved both scientific and non-scientific analyses... which involve issues such as monetary value of property as an inhibition to purchase, and prior land use history....” This issue is discussed here and elsewhere in the ISA review although it appears to be the result of an apparent miscommunication and misunderstanding. Socioeconomic and political factors, including monetary value of property and prior land use, were not part of the site identification process except that currently developed areas were removed. As described in Section 3.7 of Appendix I of the Plan, the process considered factors with a biological or conservation basis.

- c. The ISA made recommendations regarding the need for better documentation of the methodology for elements of the Plan including Core Habitat. Section 3.2.2.3 of Appendix I of the Plan includes a definition and, together with Section 3.1.4 of the Plan, describes the delineation and incorporation of Core Habitat in the reserve design process.
- d. As previously noted, some of the assumptions of the ISA in terms of the influence of socioeconomic factors in the reserve design process by the SAC were not correct. The final Preferred Alternative did, however, incorporate the recommendations of the ISA with regard to, for example, underpasses for wildlife. The Preferred Alternative incorporated provisions for underpasses when roads are widened (see Section 4 of the Plan).
- e. The buffer zone issue raised by the ISA was addressed in the Preferred Alternative by incorporating additional habitat where possible in the “outer zone” of each reserve area.

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<sup>25</sup> Allen M, W. Hodges, T. Scott, S. Snyder, T. Tennant, and W. Wehtje. 2002. Report to CVAG on Supplemental Activities: July 10, 2002 (Task 1: Documentation of Preserve Design Selection Criteria; Task 2: Evaluation of the Sites Model for Preserve Design; Task 3: Natural Community Map Evaluation, Natural Community and Mapping Unit Accuracy). Unpublished report to Coachella Valley Association of Governments (CVAG) prepared by listed associates of the Center for Conservation Biology, University of California Riverside.

- f. With respect to the effects of roads and the potential for mitigation measures, the recommendations of the ISA were incorporated in the Preferred Alternative. As recommended by the ISA, specific consideration is given to the effects of roads in the Monitoring Program, for example, in Section 8.4.2.3.3 of the Plan regarding species monitoring in alluvial fan and wash communities: “Data will be used to address the need for measures to ensure that wildlife can cross Dillon Road, which could include lowering of speed limits, directed fencing along the roadside, underpass construction, or signage.” This is one example of numerous measures to address the effects of roads.
- g. The recommendations from the ISA with regard to grouping Covered Species have been incorporated into the Monitoring and Management Programs where species have been grouped according to natural community assemblages. This approach is also consistent with the recommendations of Atkinson et al. (2004).
- h. The comments of the ISA with respect to the CVWD groundwater management plan and, in particular, mesquite hummocks and the influence of groundwater changes have been addressed in the Plan through monitoring and Adaptive Management. As described in Sections 8.4.1.3.1 and 8.4.1.3.2 of the Plan, the relationship between mesquite hummocks and groundwater will be evaluated through the Monitoring Program and Adaptive Management. CVWD will cooperate in this effort as described in Section 8.4.1.3.1. This monitoring and Adaptive Management will include the mesquite hummocks along the fault in the Desert Hot Springs, Cathedral City, and Indio areas.

#### Reliability of Data and Acceptable Biologist Standards

Several commenters expressed concern about the “Acceptable Biologist” standard, suggesting that it would not allow an objective process. One comment stated that there is “no objectivity” among acceptable biologists whom one can consult. It is important to note that the list of Acceptable Biologists is for the purposes of conducting surveys of Covered Species only for the Required Avoidance, Minimization, and Mitigation Measures described in Section 4.4 of the Plan. The discussion of the list of Acceptable Biologists in Section 4.4 does provide for the CVCC to develop a process which likely will include criteria consistent with this suggestion.

The MSHCP has, since its inception, made use of scientists with expertise relevant to the Covered Species and natural communities. The Plan includes the use of outside scientists as part of the implementation program. The Monitoring and Management Program includes specific objectives to establish an evaluation committee (see Section 8.2.2 of the Plan). The research program for the Trails Plan will include independent scientists in the design and implementation (see Section 8.5.1 of the Plan).

## **Major Issue Response 2: Regulatory Takings**

Several comments have alleged that, once implemented, the Plan will effect a Fifth Amendment physical and/or regulatory taking. The procedures established under the Plan will not result in either form of a taking. As several comments have noted, the final Clause of the Fifth Amendment provides: “...nor shall private property be taken for public use without just compensation.” From this language, courts have drawn a distinction between “physical” and “regulatory” takings (*Tahoe-Sierra Preservation Council, Inc. v. Tahoe Reg’l Planning Agency*, (2002) 535 U.S. 302, 321). Physical takings occur when a government acquires private property as a result of a condemnation proceeding or a physical appropriation. Regulatory takings refer to instances in which a government regulation prohibits a property owner from making certain uses of her private property.

### *Physical Takings*

In general, physical takings are readily identifiable. These occur when an agency acquires private property through a condemnation proceeding or physical appropriation. The Plan requires no such action. As discussed at Section 6.6.1.2 of the Plan, the HANS process provides for the acquisition of land needed for conservation from willing sellers either (1) at market value as determined by an appraisal, or (2) through other compensatory incentives. When such property is conserved, it will become part of the MSHCP Reserve System. However, the Plan does not require any Permittee to condemn or physically appropriate any land necessary for implementation of the Plan. CVCC will only acquire land from willing sellers.

### *Regulatory Takings*

Regulatory takings occur where an agency regulation serves to deprive an owner of her land in a way that is functionally equivalent to a physical taking (*Lingle v. Chevron, U.S.A., Inc.* (2005) 544 U.S. 528, 538-540) (“*Lingle*”). As the Supreme Court has noted, treating all land-use regulations as *per se* takings “would transform government regulation into a luxury few governments could afford” (*Tahoe-Sierra Preservation Council, Inc.* 535 U.S. at 330). Thus, the Supreme Court has identified four narrow instances in which a government regulation could effect a regulatory taking, none of which are triggered by the Plan.

The first instance involves the situation in which an agency requires an exaction on land in exchange for a permit. If the exaction substantially advances the same government interest that would furnish a valid ground for denial of the permit, and is roughly proportional in nature and extent to the impact of the proposed Development, then no taking has occurred [*Id.* (discussing the *Nollan* and *Dolan* tests)]. Here, the exaction substantially advances the government’s interest in Habitat conservation, and is roughly proportional to the impact arising from Development. Thus, no taking has occurred.



Second, where a regulation advances a public interest and allows the land to retain some value and the owners to retain some rights, it is unlikely that a court will find a taking (*see Tribe, American Constitutional Law* (1988) p. 597 (discussing the *Penn Central* test)). Under this test, the regulation must effect a situation functionally equivalent to a physical taking with a direct appropriation and ouster (*Lingle*, 544 U.S. at 538-540). Here, the Plan clearly advances a public interest, and all land will retain value. Property owners whose land is not purchased will retain the right to develop some or all of their land, subject to compliance with the Plan. Therefore, the Plan will not effect a regulatory taking under the *Penn Central* test.

The third narrow instance where a court has found a taking involves a situation in which the government requires a property owner to allow a permanent physical invasion of her property. (*See Loretto v. Teleprompter Manhattan CATV Corp.*, (1982) 458 U.S. 419 (state law requiring landlords to permit cable companies to install cable facilities in apartment buildings effected a taking).) Under the Plan, no physical invasion of property will take place, nor will an agency require any property owner to allow a physical invasion of her property. Thus, this regulatory taking is not applicable.

Finally, where a regulation is so onerous as to deprive an owner of “all economically beneficial use” of his land, the Supreme Court has held that a taking has occurred and compensation is required (*Lucas v. South Carolina Coastal Council*, (1992) 535 U.S. 1003, 1019). Thus, for Fifth Amendment compensation to be awarded, such a complete regulatory taking requires 100% diminution in value (*Tahoe-Sierra*, at 330). The Plan will not cause this result.

The Supreme Court has held that even a complete temporary building moratoria is not a *per se* taking (*Tahoe-Sierra Preservation Council, Inc. v. Tahoe Reg’l Planning Agency*, (2002) 535 U.S. 302). In *Tahoe-Sierra*, a governmental planning agency imposed a complete 32-month moratorium on all Development while the agency analyzed the effects of Development on Lake Tahoe and devised a land-use scheme to best preserve the environment. The issue before the Court was whether such a moratorium, imposed during the process of devising a comprehensive land-use plan, constitutes a *per se* taking of property requiring compensation (*Tahoe-Sierra*, at 306). In determining that no taking occurred, the Court reasoned that such a moratorium is an effective mechanism that allows the government to temporarily preserve the status quo while undertaking a comprehensive planning effort. The Court hypothesized that if such action did amount to a taking, agency officials may “rush through the planning process or abandon the practice altogether,” which would defeat the interest governments have in facilitating informed land-use decision-making (*Id.* At 339; see also *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 413 (“Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law.”)). In fact, *Tahoe-Sierra* notes that the interest in protecting the governmental decision-making process “is even stronger” in cases similar to this—where “an agency is developing a regional plan” (*Tahoe-Sierra*, at 340).

The Plan places far fewer restrictions on landowners than did the agency in *Tahoe-Sierra*. In contrast to the complete moratoria imposed on the entire planning area in *Tahoe-Sierra*, here the Plan would impose no moratoria. In fact, the Joint Project Review (JPR) process, discussed in Section 6.6.1.1 of the MSHCP, states that it in no way limits the Local Permittee's land use authority; the Permittee has complete authority to approve a project. Likewise, the HANS process focuses on *acquiring* property from *willing* sellers through just compensation in full compliance with the Fifth Amendment. Thus, although the landowners may have to go through the HANS and/or JPR processes, as *Tahoe-Sierra* demonstrates, this does not result in a regulatory taking.

Additionally, California courts have long held that planning functions are within a local agency's police powers and are not takings. In *Landgate v. California Coastal Commission*, (1998) 17 Cal.4<sup>th</sup> 1006, the California Supreme Court indicated that land use regulations that are part of a reasonable regulatory process designed to advance legitimate government interests are not a taking.

Finally, the Plan does not apply to projects with legally vested rights. However, a developer may elect to comply with the Plan if Take authorization under Section 10 of FESA is required for the project. Alternatively, a development would have to obtain authorization separately from the USFWS (under FESA) and CDFG (CESA). The state and federal ESAs are laws that must be complied with regardless of whether the MSHCP is in effect. These laws, therefore, require authorization of some sort be obtained for projects that could result in Take of listed species.

#### Land Value Diminution Concerns

The MSHCP has instituted an appraisal process to help ensure that property values will not be diminished by implementation of the Plan. The appraisal will determine value based on overall market conditions in the applicable portion of the Coachella Valley. Furthermore, the appraisal determines value of the subject property as compared to the value of a similar property, excluding consideration of the fact that the subject property is within a Conservation Area.

Comments suggesting that implementation of the Plan will cause a diminution in the value of private land are not supported. As the Supreme Court posited in *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency* (2002) 535 U.S. 302, 341, land values may increase in the future because certain areas within the Plan Area will remain in a pristine state. Moreover, as explained in *Danforth v. United States* (1939) 308 U.S. 271, 285, "[a] reduction or increase in the value of property may occur by reason of legislation for or the beginning or completion of a project" but "such changes in value are incidents of ownership [and] cannot be considered as a 'taking' in the constitutional sense."

### **Major Issue Response 3: Adequacy of Plan Funding**

The Permittees' obligation under the MSHCP is to conserve the 115,140 acres (as of 2006) as described in Section 4.2.2.2 of the Plan and to manage and monitor in perpetuity those lands as described in the MSHCP. This acreage includes 18,200 acres of Existing Conservation Lands owned by the Permittees; 7,500 acres already owned, but not currently conserved, by the Permittees, and 540 acres to be acquired and conserved by State Parks, leaving a balance of 88,900 acres to be acquired or otherwise conserved as of 2006.

The acquisition of 88,900 acres, as of October 2006, plus the management and monitoring in perpetuity of Permittee lands, is the actual commitment, not providing a specific amount of money for land acquisition, administration, and land management and monitoring. The dollar amounts identified in the MSHCP are estimates of the costs of those activities. The dollar figures reflect a snapshot in time, and the MSHCP clearly recognizes and anticipates that the actual costs may be more or less depending on such factors as how land values change over the 30-year acquisition period and how the actual costs of monitoring and management change over time. Acquisition costs will be affected by market fluctuations as well as how much land is conserved through means other than purchase. Market fluctuations can be dramatic. From 1994/5 through 1998/9, assessed values for unimproved land in Riverside County declined according to Riverside County Assessor's historical assessed value data. In 2004 and 2005, on the other hand, land values in many areas of the Coachella Valley rose dramatically, perhaps in an unprecedented fashion. Because real estate markets are cyclical, the dramatic rate of increase of those years cannot be expected to continue. Real estate values are likely to stabilize and remain at the same level, increase only very slowly, or even decline for a period of years. Unfortunately, projecting what will happen with the real estate market is much like attempting to project what will happen with the stock market. Just as there is historical evidence that the stock market rises over the long term but fluctuates significantly in the short-term, there is historical evidence for a long-term increase in land values with short-term fluctuations.

The MSHCP includes two mechanisms to address the unknown rate at which land values are expected to change over time. First, the MSHCP increases the land acquisition cost projections by 3.29% annually to anticipate an increase in value. Secondly, and more importantly, the CVCC will have a new Nexus Study prepared every 5 years or more often if conditions warrant. This ensures that changes in land value—whether dramatic or modest—will be taken into account in regular updates, so that the Local Development Mitigation Fee can be adjusted as needed. In conjunction with the other funding sources for land acquisition described in Section 5.2 of the MSHCP, this ensures that there will be adequate funding over the 30-year acquisition time frame to acquire all the land required of the Permittees. It should particularly be noted that because the Market Study was based on land values prior to the anomalous, dramatic increase in land value of the recent years, CVAG had the Market Study (August 2006) and Nexus Study (January 2007)

updated to ensure that the acquisition cost projections and Local Development Mitigation Fee are current when the MSHCP is adopted. The new Market Study identifies a significant increase in acquisition costs for the Permittees' obligation, and the revised Nexus Study supports a modified Local Development Mitigation Fee as described in Section 5.2.1.1 of the MSHCP.

As mentioned above, acquisition costs will also be affected by how much land is conserved through means other than purchase. For example, if a Development is approved in a Conservation Area, conditions of approval imposed by the local jurisdiction may result in a portion of the property being set aside as permanent open space. This is not unusual when Cities or the County approve projects involving property with steep slopes, floodplain, earthquake faults, or other constraints or when clustering is used to transfer density from one part of a property to another. Any land conserved in this manner reduces the amount of land that needs to be purchased. To be conservative, the MSHCP does not rely on any land being conserved in this manner; thus, the estimated acquisition costs in the MSHCP are a worst-case scenario in which all 88,900 acres need to be purchased. If some land is conserved without actual purchase, the total acquisition costs will be reduced.

Some comments suggested that because state and federal funds cannot be guaranteed, the state and federal contributions may not be made, and, therefore, the MSHCP may start with a funding shortfall. The MSHCP clearly states that the Local Permittees' obligation is to conserve 88,900 acres (as of October 2006), as described in Section 4.2.2.2 of the Plan, and that the lands to be acquired as the state and federal contribution, as well as the Complementary Conservation, are not a Permittee obligation for the purposes of the authorization of Take (see Sections 4.2.1, 4.2.2.1, 5.1.1, 5.1.2.1, and 5.2.4 of the MSHCP and Section 12.1.1 of the Implementing Agreement (IA)). While the Permittees' Take Authorization is not dependent on the state and federal contributions being made, it should be noted that the state and federal governments have a history of extensive acquisitions in the Plan Area. For example, since 2000, more than \$48 million in state bond funds has been expended or appropriated to acquire land within the Conservation Areas. Federal funding for acquisitions of land in the Conservation Areas has totaled more than \$22 million to the BLM, U.S. Forest Service, and USFWS in the last 10 years for acquisitions.

Comments variously assert that acquisition cost projections in the Plan appear to be a variety of percentages of actual fair market value. Information is not provided in the comment letters regarding brokers or methodology used or providing values better reflecting the current marketplace; cost projections for acquisitions were determined as described in MSHCP Section 5.1.2.

One commenter also asserts that land values are significantly understated, and, therefore, the mitigation fee is likely to be much too low; this would cause the Plan to be invalidated by the courts as in *National Wildlife Federation v. Babbitt*. As stated previously, the MSHCP provides

for adequate funding for land acquisition, particularly in view of the MSHCP's mechanisms for adjusting the fee as needed over the 30-year acquisition period. Furthermore, the commenter asserts that if accurate costs were used, the mitigation fee would be as much as 10 times higher, and CVAG members would not approve of such a Plan. This statement is speculative, and no data are provided by the commenter to support the assertion.

Some commenters have attempted to make inappropriate comparisons to *Southwest Center for Biological Diversity v. Bartel* (2006) 470 F. Supp. 2d 1118 (“*Southwest Center*”). In *Southwest Center*, a Habitat Conservation Plan was held to not have adequately assured funding. The City of San Diego there “expressly refused to guarantee funding with a clearly identified source of revenue.” (*Southwest Center*, 470 F.Supp.2d at 1156). The court faulted the City of San Diego’s reliance on obtaining funds via voter measures and on the participation of other jurisdictions not then a party to the HCP. (*Ibid.*) No such future actions are required for funding in the MSHCP. The MSHCP clearly provides a stream of funding sources for land acquisition, management and monitoring, and the establishment of a perpetual endowment. These funding sources include infrastructure mitigation payments, a developer impact fee, and an existing tipping fee, none of which depend on voter approval or the aid or joining of any future third parties. Thus, the key element that was lacking in the *Southwest Center* case, i.e., a commitment on the part of the City of San Diego to fund the HCP, is clearly fulfilled here by the multiple obligations placed on the Permittees by the Implementing Agreement.

Section 5.2.2.4 of the MSHCP addresses the legal issues related to Eagle Mountain and acknowledges that the potential outcome of the litigation is not likely to be known for some time. However, it is expected that the litigation will be resolved most likely before 2010. As the Eagle Mountain project contains an agreement dedicating 90 cents per ton to Open Space preservation, it would be irresponsible for CVAG to not include this potential funding source in the MSHCP budget. To not do so now would allow other agencies to attempt to utilize this funding for their own purposes—a situation that previously has been successfully rebuffed by CVAG.

The MSHCP projects Environmental Mitigation Trust Fund revenues becoming available in year 2010, and recognizes that litigation is still pending. While noting that it is still reasonable to project the Environmental Mitigation Trust Fund as a revenue source, the discussion in Section 5.2.2.4 recognizes that other funding sources could be necessary to offset revenues not available from this source. The Plan identifies a list of other reasonable sources of funding. For example, there is an existing tipping fee of \$1 per ton that is collected on all waste at Riverside County landfills for open space purposes. The fee collected on trash originating in the Coachella Valley is returned to the Coachella Valley and is one source of funding included in the MSHCP budget. This fee provided over \$550,000 to the Coachella Valley in fiscal year 2005/2006 and is expected to grow with the population.

Eagle Mountain is projected to provide the following funding:

- Years 5-14: \$1,125,000 Annually (\$11,250,000 for the ten-year period)
- Years 15-24: \$2,250,000 Annually (\$22,500,000 for the ten-year period)
- Years 25-34: \$3,375,000 Annually (\$33,750,000 for the ten-year period)
- Years 35-71: \$4,500,000 Annually.

With respect to the waste stream predicted for Eagle Mountain, the numbers provided are not speculative but were developed in discussions between CVAG and the Director of Riverside County Waste Management. The estimate is conservative, as it assumes Eagle Mountain will come on line in 2010 with a small amount of waste that will remain constant for the first 10 years of operation and then incrementally increase to a maximum of 75% of the total permitted annual capacity of 20,000 tons per day. As provided in Section 5.2.2.2 of the Plan, the CVCC will annually review funding adequacy and make necessary adjustments to meet its obligations under the Plan, consistent with Section 10(a)(2)(B)(iii).

Given the amount of money projected to come from Eagle Mountain on an annual basis, increasing the existing tipping fee, which could be approved by a vote of the Riverside County Board of Supervisors after the requisite public hearing process, could provide more than adequate funding to replace revenues from the Eagle Mountain Environmental Mitigation Trust Fund. Thus, the arguments of various commenters that the funding of the MSHCP is inadequate under *Southwest Center* are not correct because (1) these funding sources are only backups to the Eagle Mountain Trust Fund, and (2) only some of the potential backup sources would require voter approval, while others are more directly under the control of the Permittees' legislative bodies.

Lastly, as described in Section 12.3 of the Implementing Agreement, the Permittees and the Wildlife Agencies will evaluate the performance of the funding mechanisms and develop any necessary modifications to address possible shortfalls on an annual basis. This annual evaluation will include an assessment of the funding plan and anticipate funding needs over the upcoming eighteen (18) months for the purpose of identifying any potential deficiencies in cash flow. If deficiencies are identified through this evaluation, the Permittees and the Wildlife Agencies will develop strategies to address any additional funding needs consistent with the terms and conditions of the Plan. Additional funding needs will be addressed as set forth in Section 5.2.2 of the Plan.

#### **Major Issue Response 4: Rough Step/Proportionality Requirements**

The NCCP Act of 2002 requires that “mitigation and conservation measures are being implemented roughly proportional in time and extent to the impact on habitat or covered species authorized under the plan” and, further, “Evaluation of the effectiveness of the plan in meeting the conservation objective of the plan” [Fish and Game Code Sections 2805(f)(1)(C) and (D)]. The NCCP Act of 2002 also provides for suspension and revocation of the permit “If the plan participant fails to maintain the rough proportionality between impacts on habitat or covered species and conservation measures,” or “If the plan participant adopts, amends, or approves any plan or project without the concurrence of the wildlife agencies that is inconsistent with the objectives and requirements of the approved plan” [Fish and Game Code Sections 2820(b)(3)(B) and (C)]. Thus, receiving Take Authorization requires that the Permittees maintain a rough proportionality between the amount of conservation of habitat accomplished. This is a legal obligation of the Permittees. Rough Step and Rough Proportionality, as described below, are mechanisms in the MSHCP to ensure compliance with these statutory requirements.

Rough Step refers to an accounting process to monitor the conservation and loss of Habitat areas, natural communities, Biological Corridors, and Essential Ecological Process areas in the Conservation Areas. The purpose of Rough Step is to ensure that as the MSHCP Reserve System is being assembled over time, Development on lands within the Conservation Areas does not substantially reduce the opportunity to conserve the Additional Conservation Lands necessary to meet Covered Species and natural communities Conservation Goals and Objectives. A further purpose is to ensure that 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 Goals Objectives. Rough step, therefore, focuses on what happens within the Conservation Areas, as opposed to Rough Proportionality, which focuses on overall loss of Covered Species Habitat and natural communities in the Plan Area as a whole.

The MSHCP requires an annual Rough Step analysis conducted by CVCC for each Conservation Area. The annual Rough Step analysis will be conducted for each Conservation Objective to ensure that Development in the Conservation Areas is not precluding the attainment of each objective, including those for the Covered Species. 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 is necessary to ensure that Permittee land use decisions and CVCC acquisition priorities are both ensuring, on an ongoing basis, that Development does not preclude attainment of the Conservation Goals and Objectives. If the Permittees do not comply with rough step requirements set forth in Section 6.5 of the MSHCP, the Wildlife Agencies have the right to suspend or revoke all or portions of the permit, in accordance with the laws and regulations in force at the time of such revocation or suspension. Such suspension or revocation may apply to

the entire applicable Permit or only to a portion such as specified Conservation Area, specified Covered Species, or specified Covered Activities. Except as otherwise required by law, prior to taking action to revoke or suspend the Permits, the Wildlife Agencies, as applicable, shall: (1) provide 30-day prior written notification to the relevant Permittee(s) and the CVCC of the proposed revocation or suspension, and (2) meet and confer with the relevant Permittee(s) and the CVCC to attempt to avoid the need to revoke or suspend all or a portion of the Permits. The Parties may rely upon the informal meet and confer process set forth in Section 23.6 of the IA for disputes concerning potential Permit revocation or suspension (Section 23.5).

Rough proportionality refers to an accounting mechanism to ensure that the rate of MSHCP Reserve Assembly is roughly proportional with the amount of Development occurring in the Plan Area that results in loss of Habitat for the Covered Species and loss of the natural communities. It is described fully in Section 5.2.2.3 of the MSHCP. Accounting for rough proportionality occurs every 5 years. If, at the end of any 5-year period, the rough proportionality test has not been met, the Permittees and the Wildlife Agencies will meet within 90 days to begin to develop a strategy to address the need for a balance between Conservation and Development.

Regarding the comment that failure to maintain Rough Step and Rough Proportionality could lead to the loss of the Permits, which could result in the loss of highway improvements, as permitted in the Plan, CVAG considers revocation of the MSHCP Permits and consequent loss of Take Authorization for highway improvements as unlikely. If Permit suspension or revocation were ever proposed, as noted above, Permit suspension or revocation requires a process that includes 30-day prior written notification to the relevant Permittee(s) and the CVCC of the proposed revocation or suspension, and a meet and confer process with the relevant Permittee(s) and the CVCC to attempt to avoid the need to revoke or suspend all or a portion of the Permits. Furthermore, as described in Section 6.6.2 of the MSHCP, 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 utilize available credits from the bank toward meeting the mitigation requirement for the project. Any Take Authorization required for such projects would then be obtained through either a Section 7 consultation where there was a Federal nexus, for example through the Federal Highways Administration, or through a separate Section 10(a)(1)(B) permit. Similarly, if the Permits issued in conjunction with the Plan are ever suspended or revoked, the regional transportation projects listed as Covered Activities in Section 7.2.3 of the Plan will 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.



### **Major Issue Response 5: HANS Process**

Most comments responding to the HANS process alleged either that HANS would effect a Fifth Amendment “taking” or that HANS violated the Permit Streamlining Act. The HANS process does neither.

The HANS process applies only in portions of the Santa Rosa and San Jacinto Mountains Conservation Area as depicted in Section 4.3.21 of the MSHCP. The HANS process does not deprive landowners of all economic value of their property. Instead, as indicated in Section 6.6.1.2 of the MSHCP, the HANS process is designed to only acquire a property interest from those willing to convey the interest in exchange for fair market value or, at the option of the owner, for other incentives. Project applicants will either be allowed to proceed with Development as indicated in Section 6.6.1.2 of the MSHCP, or the property needed for inclusion within the MSHCP Conservation Area will be subject to purchase pursuant to the terms of a negotiated purchase agreement. See Major Issue Response 2 for more information regarding the issue of HANS and Fifth Amendment takings.

Comments also allege that HANS and/or the JPR processes violate the Permit Streamlining Act. Government Code Section 65943(a) of the PSA states: “Not later than 30 calendar days after any public agency has received an application for a development project, the agency shall determine in writing whether the application is complete and shall immediately transmit the determination to the applicant for the development project.” If the agency does not make such determination within the specified time period, the application will be deemed complete (*Id.*). If the application is determined not to be complete, the agency’s determination shall specify those parts of the application that are incomplete and shall indicate how they can be made complete (*Id.*).

Therefore, the processing time periods in the PSA begin to run when the Development application is accepted as complete by the applicable County or City. Under the Plan, a Local Permittee may not deem a Development application complete until the JPR and, if necessary, the HANS processes are complete. See the MSHCP at Sections 6.6.1.1 (“The application will not be deemed complete by the Permittee prior to the completion of the [JPRP]”) and 6.6.1.2 (“The County and impacted cities will employ HANS in conjunction with the [JPR in the specified Conservation Area]” (emphasis added)). Therefore, the Local Permittee shall specify to the applicant that the JPR and HANS processes must be completed before the application is deemed complete. Once an application is complete, subsequent deadlines under the PSA will commence (Cal. Gov. Code §65944).

### **Major Issue Response 6: No Surprises Assurances**

Several commenters have requested a discussion of the current state of the “No Surprises Rule” and/or whether the MSHCP will be consistent with the federal ruling.

The HCP Assurances Rule (“No Surprises”) (63 Federal Register 8859, as codified in 50 C.F.R. Sections 17.3, 17.22[b] and 17.32[b]) provides regulatory assurances to holders of Incidental Take Permits issued under Section 10 of FESA. Essentially, this Rule states that Permittees will not be required to commit funds or resources beyond the level agreed upon in the HCP or IA at the time the permit was issued to mitigate the effects of “unforeseen circumstances” on species covered by the permit and their habitats. The government will honor these assurances as long as a Permittee is implementing the terms and conditions of the HCP, permit, IA, and associated documents in good faith. In effect, this regulation states that the government will honor its commitment as long as the HCP Permittees honor theirs. Because the implementation of the HCP Assurances Rule affects the circumstances under which a Permit may be revoked, the Permit Revocation Rule was revised accordingly.

In 2003, a district court vacated the Permit Revocation Rule for Incidental Take Permits and remanded it to the USFWS for reconsideration. The court also ordered that Incidental Take Permits not include No Surprises Assurances from June 10, 2004, forward until the Permit Revocation Rule was subject to new rulemaking. That rulemaking was completed on December 10, 2004 (69 Fed. Reg. 71723), and the new Permit Revocation Rule became effective January 10, 2005. From that day forward, as confirmed in a new memorandum dated January 19, 2005, there are no constraints on the inclusion of No Surprises Assurances in new incidental take permits. On August 30, 2007, U.S. District Court Judge Emmet Sullivan ruled that the Permit Revocation Rule and the HCP Assurances Rule were both valid and consistent with the FESA (*Spirit of the Sage Council v. Kempthorne*, 2007 U.S. Dist. LEXIS 63684).

Therefore, the MSHCP’s position on No Surprises, as discussed in Section 6.8 of the MSHCP, is consistent with the USFWS ruling and the present state of the law. Therefore, there is no need to modify this language in the final MSHCP. It is also worth noting that this is not a critical component of the MSHCP; had either of the two Rules been vacated, the MSHCP would still have continued to achieve project objectives.

## **Major Issue Response 7: Monitoring and Adaptive Management Programs**

The Management and Monitoring Programs for the MSHCP provide the overall approach for the implementation of monitoring and management. The Management and Monitoring Programs are designed to function in an Adaptive Management framework. This approach is consistent with USFWS in its description of adaptive management: “The primary reason for using adaptive management in HCPs is to allow for changes in the operating conservation program, which may be necessary to reach the biological objectives of the HCP” (<http://www.fws.gov/endangered/hcp/NOSURPR.HTM>). These interrelated programs, monitoring, management, and adaptive management, are described in their entirety in Section 8 of the Plan. This Plan, like other large regional HCP/NCCPs, is designed to ensure long-term conservation of Covered Species and natural communities, despite uncertainties about the behavior of the extremely complex and ever-changing ecological systems that are its focus. Uncertainties exist about how large-scale ecosystem processes, such as floods, drought, fire, and other perturbations, affect the species and ecosystems. Despite the extensive data gathering that has been part of the Plan development process, uncertainties exist due to lack of information about the species life histories, habitat relationships, and multiple species interactions.

As a result of this uncertainty, the framework for the MSHCP Management and Monitoring Programs begins with a baseline phase. As described in Section 8.3.3 of the Plan, the baseline phase will have as its primary objective “...to conduct baseline surveys and to develop and test methods and protocols. *A priori* hypotheses about the factors affecting the distribution of species can be tested during these surveys.” This data gathering phase will provide the baseline for the testing necessary for long-term monitoring and resolving critical management uncertainties.<sup>26</sup>

This “framework” approach is consistent with recommendations and requirements for HCPs and NCCPs. The federal HCP Handbook Addendum or Five-Point Policy<sup>27</sup> describes, “The key components that make an adaptive process in HCPs meaningful. These components include careful planning through identification of uncertainty, incorporating a range of alternatives, implementing a sufficient monitoring program to determine success of the alternatives, and a feedback loop from the results of the monitoring program that allows for change in the management strategies.” The California NCCP Act (2003) requires an Adaptive Management approach. Many of the tenets of the framework for this Monitoring and Management Program

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<sup>26</sup> <sup>26</sup> Atkinson et al. 2004. “Designing Monitoring Programs in an Adaptive Management Context for Regional Multiple Species Conservation Plans”

<sup>27</sup> USFWS 2000.

have been described in a peer-reviewed publication, A Framework for Monitoring Multiple Species Conservation Plans,<sup>28</sup> which uses the Coachella Valley MSHCP as an example.

Comments that the MSHCP contains inadequate detail may have been made because the Management and Monitoring Programs are described in terms of a framework. In a document developed by scientists from USGS and CDFG, in partnership with USFWS, the approach used in the MSHCP is described, “In the face of limited knowledge and ability to make predictions, NCCP/HCPs should be designed to improve our understanding of the ecological systems the plans are designed to protect, by adjusting management and even the conservation strategy as necessary in an “adaptive management” framework.”<sup>29</sup> As described in Section 8 of the MSHCP, this framework is adaptive and subject to modification as system stressors change and as new information on how better to manage the MSHCP Reserve System to achieve the species and Habitat goals becomes available

The Monitoring and Management Programs are intended to be fully integrated, with Adaptive Management as a key element of the process. Figure 8-4, Integration of the Monitoring Program and Management Program, illustrates the feedback loop. This figure portrays the manner in which data from the Monitoring Program are used in the Management Program and as part of an Adaptive Management process. Some confusion in the comments may have arisen by the reader not understanding that where Adaptive Management is referenced, it is a part of the Management Program. Monitoring data are designed to inform the Management Program and facilitate Adaptive Management as a means of learning more about the ecological systems that are an important element of this Plan.

In “Designing Monitoring Programs in an Adaptive Management Context for Regional Multiple Species Conservation Plans,”<sup>30</sup> Atkinson et al. provide excellent guidance for this process. Several of the authors of this document were involved in the development of the Management and Monitoring Programs for the MSHCP (Andrea Atkinson, Brenda Johnson, and Yvonne Moore), providing important suggestions and input to the Draft Plan. Because this document was prepared in part by CDFG staff in the Natural Communities Conservation Planning program (NCCP) and is endorsed by USFWS, it provides a useful tool for evaluating a monitoring and

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<sup>28</sup> Barrows, C.W., M.B. Swartz, W.L. Hodges, M.F. Allen, J.T. Rotenberry, B. Li, T. A. Scott, and X. Chen. 2005. „A Framework for Monitoring Multiple-Species Conservation Plans.“ *Journal of Wildlife Management* 69(4):1333–1345).

<sup>29</sup> Atkinson et al. 2004. “Designing Monitoring Programs in an Adaptive Management Context for Regional Multiple Species Conservation Plans”

<sup>30</sup> Ibid.

Adaptive Management program for consistency with HCP and NCCP guidelines. The steps for monitoring in an Adaptive Management context,<sup>31</sup> and the extent to which these steps were incorporated in the Coachella Valley MSHCP, are as follows:

1. *Identify goals and objectives of the conservation plan. These goals and objectives should be biologically meaningful, measurable, feasible, consistent with current knowledge, compatible in a multiple species context.* The Goals and Objectives for the Monitoring Program are listed in Section 8.1.1 of the Plan and for the Management Program in Section 8.1.2 of the Plan. These programs are designed to focus on determining if the Plan is achieving its Conservation Goals for Covered Species and conserved natural communities (monitoring) and, if not, that actions will be taken to ensure that Conservation Goals are met (management). Conservation Goals and Objectives for each proposed Covered Species are provided in Section 9 of the Plan, including individual species population-level goals. Conservation Goals and Objectives for natural communities are provided in Section 10 of the Plan.
2. *Identify scope of monitoring program.* The Monitoring and Management Programs address all the elements of scope, including geographic range, users of the information, spatial scale of focus, the time scale, and opportunities for partnership. The implementation of the Management and Monitoring Programs involves state and federal agencies in addition to the Permittees. These programs are designed to establish a cooperative partnership among the Permittees and the other land management agencies within the Reserve System to meet the Conservation Goals and Objectives of the Plan.
3. *Compile information relevant to monitoring program design.* Section 8.3.1 of the Plan describes the current monitoring programs on Existing Conservation Lands within the Reserve System. Some of these programs have been ongoing for many years, providing an excellent baseline of data on some species. In addition, CVAG, with funding provided by CDFG, initiated a preliminary monitoring effort to collect baseline data and evaluate potential monitoring protocols for the MSHCP. This program has been carried out by UCR Center for Conservation Biology scientists from 2002 through 2007.<sup>32</sup> It has provided an excellent beginning for the Monitoring Program and Adaptive Management.
4. *Strategically divide the system and set priorities.* (1) Group Covered Species; (2) group natural communities into natural community assemblages; and (3) identify landscape-

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<sup>31</sup> Ibid.

<sup>32</sup> UCR Center for Conservation Biology 2007.

level issues. The MSHCP Monitoring Program will involve monitoring at multiple scales, as described in Section 8.3.4 of the Plan. The program includes species-level, landscape-level, and natural community-level monitoring. The use of natural community assemblages is an important element of the Monitoring Program and was used as an example in the Atkinson et al. document.<sup>33</sup>

5. *Develop simple management-oriented conceptual models.* Section 8.4 of the Plan presents conceptual models focusing on identified threats or stressors and potential management actions within each natural community assemblage in the Plan Area. Several of these models were used as examples in the Atkinson et al. document.<sup>34</sup> The focus of these models is to link the Conservation Objectives to causes of change within ecosystems and management actions to respond to them. The models will continue to be updated, incorporating new data available from the Monitoring Program.
6. *Determine what to monitor and identify critical uncertainties.* Section 8.4 of the Plan provides a detailed discussion of the attributes that have been identified as important for monitoring, along with key monitoring objectives that identify critical uncertainties. Additional discussion and clarification are provided in Sections 8.2 and 8.4 of the Plan.
7. *Determine strategy for implementing monitoring.* Implementation of the Monitoring Program is described in terms of a preliminary work plan, personnel, and program costs in Section 8.8 of the Plan. The implementation involves a phased approach, beginning with a baseline phase during which baseline data will be gathered and sampling protocols for long-term monitoring will be developed and tested. Table 8-10 of the Plan outlines the work plan for the Monitoring Program in Years 1 through 5. Monitoring Program implementation also includes statistically rigorous sampling design, addressed by the Scientific Principles in Section 8.3.2 of the Plan. These principles are consistent with the recommendations of Atkinson et al.<sup>35</sup>
8. *Development data quality, assurance, data management, analysis and reporting strategies.* Data management and program reporting issues are addressed in Sections 8.6 and 8.7 of the Plan. The Management and Monitoring Programs are designed to provide an integrated information sharing and communication process. The Land Manager and

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<sup>33</sup> Atkinson et al. 2004. "Designing Monitoring Programs in an Adaptive Management Context for Regional Multiple Species Conservation Plans"

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

Monitoring Program Administrator will work closely together to ensure that monitoring results and management actions are part of a continuous feedback loop. Already a positive communication process has been underway with the preliminary monitoring effort by the UCR Center for Conservation Biology. CVAG has held annual monitoring seminars since 2002, including the most recent Coachella Valley Biological Monitoring Program Symposium in November 2006, where results of the monitoring efforts are presented to agency personnel and interested members of the public.

9. *Complete the adaptive management loop by ensuring effective feedback to decision-making.* Figures 8-4 and 8-5 of the Plan describe the integration of the Management and Monitoring Programs and the Adaptive Management feedback loop.

Some comments addressed the ISA Review, which was completed in April 2001. The ISA emphasized that the Monitoring Program should include an evaluation of the relative influence of factors that affect/drive population fluctuations. This information feeds into the Adaptive Management process where a determination of whether a management response is appropriate can be made.

- A review of the ISA report indicates that the “Elements of a Science-based Adaptive Management Program” recommended by Dr. Tracy have all been incorporated in the MSHCP Management and Monitoring Programs as described in the review:
- Identification of Explicit (Quantifiable) Scientific Goals and Objectives:
  - See Sections 8.1.1 and 8.1.2 of the Plan for overall Monitoring and Management Goals and Objectives, and Section 8.4 under individual natural community assemblages for key monitoring objectives.
- Identification of Likely Environmental Stressors:
  - Conceptual models of “habitat threats” or environmental stressors are provided for each natural community assemblage and the associated Covered Species in Section 8.4 (e.g., Figure 8-9, Alluvial fan and wash Habitat Threats Model).

- Construction of Conceptual Models Describing Crucial Ecosystem Interactions:
  - Section 8.2.5 of the Plan describes the use of conceptual ecosystem models. Conceptual models of habitat threats described above, as well as community models (e.g., Figure 8-7, Aeolian Community Sand Process Model) are included in Section 8.4. These models will be revised and updated as new information is obtained.
- Identification of Indicators:
  - As noted in Section 8.3.3 of the Plan, during the baseline phase of Monitoring Program, the potential for the use of indicators will be evaluated, “An additional objective during this first phase will be to determine if certain Covered Species, Habitat level variables, or landscape metrics can serve as effective surrogates, umbrella species, or other *indicators*, for species groups or associations within natural community assemblages. This would be determined by analyzing data that test the assumption that there is a predictable mathematical relationship between the indicator and the variables of interest (i.e., Covered Species).”
- Development of Sampling Design to Estimate Status and Trends of Indicators:
  - The sampling design to evaluate status and trends of indicators will be developed during the baseline phase of the Monitoring Program, as described in Section 8.3.3. In all cases, sampling design will be developed consistent with the Scientific Principles (Section 8.3.2).
- Determination of Threshold Values That Will Trigger Need for Management Changes:
  - The determination of thresholds is addressed in the Introduction and Purpose for the Management and Monitoring Program in Section 8.1: “the data gathered will help identify the thresholds that would trigger when Adaptive Management actions are appropriate and test their efficacy.” Identifying thresholds for initiating Adaptive Management is an important goal and the establishment of these thresholds is a specific objective of the Monitoring Program in Section 8.1.1: “Establish thresholds for changing or modifying management and identify appropriate responses or management practices for statistically and biologically significant changes in populations, communities, and ecological processes.” It should also be noted that some caution regarding the development and use of thresholds



and triggers has been advised.<sup>36</sup> Thresholds are often conceptualized as a static number, which is a challenge in ecosystems where carrying capacity is not static. The Plan approach is to identify the primary drivers of population dynamics for each species, and determine normal variances in response to those drivers. At the same time, the influence of potential threats or stressors is measured. A significant departure from the expected response to natural drivers then becomes the trigger or threshold for management. The data collected simultaneously on the influence of the stressors provides explicit direction as to what course management actions should take.

The following paragraphs address specific comments that were made in more than one comment letter:

**A. The Adaptive Management Plan is not based on best available science.**

The Management Program, which includes Adaptive Management, is a science-based program which involves an integration of monitoring and management to provide a feedback loop from data gathered on Covered Species and natural communities. As stated in the Goals and Objectives (Section 8.1.2 of the Plan) for the Management Program, “the Management Program will incorporate Adaptive Management, which includes the integrated multidisciplinary approach to addressing management practices, evaluating management actions, and assessing threats using appropriate experimental approaches at species, community, and landscape levels.” The science-based Adaptive Management approach (Section 8.2.4.3 of the Plan) is specifically described as, “...the application of the scientific method to management strategies.” The Management Program is integrated with monitoring, which is guided by scientific principles (Section 8.3.2 of the Plan) to ensure a program that is scientifically rigorous, question-based, and with the strongest inference possible. The Plan is designed as a framework that describes a process for scientific evaluation of both the stressors that affect Covered Species and natural communities and the management actions to address them. Over the course of a 75-year Permit, it would be impossible to describe specifics as to which management actions will be tested. As noted above, uncertainty exists about the complex ecological systems conserved by the Plan. To the extent stressors and Adaptive Management concerns are known, these are included in the conceptual models in Section 8.4. For each Covered Species and natural community, known threats and limiting factors as well as potential Adaptive Management actions are described in Sections 9 and 10 (e.g., Section 9.2.1.2 for Mecca aster). The Plan delineates a process for identifying and

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<sup>36</sup> Ibid.

scientifically evaluating Adaptive Management actions (see Figure 8-4) through integration of the Monitoring and Management Programs.

The Adaptive Management process is based on quantitative evidence and hypothesis testing. The description of Adaptive Management in Section 8.2.4.3 states, “A key element of Adaptive Management is the establishment of testable hypotheses linked to the conservation strategies and their biological objectives.<sup>37</sup> The hypotheses are tested with the commencement of the management options, results are quantified and analyzed, and uncertainty reduced. Hypotheses are restated, and the process repeated until goals are met or uncertainty reduced sufficiently.” The entire process is designed to allow objective scientific evaluation of the effectiveness of its action.

With respect to the decision process and line of authority, Section 8.2.2 of the Plan describes the organizational structure for implementation of the Management Program. Figure 8-1, Organizational Structure and Design Process for Monitoring and Management Programs, illustrates the decision process for determining the response to feedback from the Monitoring Program. The Land Manager “has the responsibility to facilitate the exchange of information regarding all completed and proposed management and Adaptive Management actions.” The Land Manager would work in close coordination with the Monitoring Program Administrator and the Reserve Management Unit Committees (RMUCs) to facilitate the exchange of Monitoring Program data. Within 3 years of Permit issuance, Reserve Management Unit Plans will be developed, to include “...ongoing management measures and Adaptive Management actions, schedules, and responsibilities for implementation.” The description of the elements of these plans and the responsibilities of the personnel for the Management and Monitoring Programs is provided in Section 6 of the Plan.

The use of “approved biologists” does not apply to the Management and Monitoring Programs. The “Acceptable Biologist” standard is for surveys required as part of the Required Avoidance, Minimization, and Mitigation Measures described in Section 4.4 of the Plan. Personnel involved in implementation of the Management and Monitoring Programs will be selected for their experience and skill level; individuals for each position must possess previous experience in the relevant field and a demonstrated ability to complete the functions described in the Plan. The Monitoring Program will be supervised by a community ecologist and overseen by a Monitoring Program Administrator who is responsibility for the scientific integrity of the process.

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<sup>37</sup> USFWS 1996, HCP Handbook.

- B. **As presented in the Plan, the Monitoring and Management Programs, which include Adaptive Management, do not provide sufficient information to be evaluated. Comments suggest that the Adaptive Management provisions represent “deferral of analysis.”**

The Adaptive Management provisions of the MSHCP are not an improper deferral of analysis but rather a required element under both HCP and NCCP standards for Plan implementation. As defined in the NCCP Act of 2002,<sup>38</sup> adaptive management means “to use the results of new information gathered through the monitoring program of the plan and from other sources to adjust management strategies and practices to assist in providing for the conservation of covered species.” The Adaptive Management provisions described in Section 8 of the MSHCP are a means to evaluate the success of the Conservation Goals and Objectives in ensuring long-term persistence of Covered Species populations. These provisions also provide for adaptations in the Management Program to address present and future impacts and threats as well as changing conditions over the 75-year Permit term. The suggestion of “deferral of analysis” confuses the requirements for analysis using the best available science for Permit issuance with the requirements for monitoring and management. Information and analysis developed as part of the Adaptive Management plan measures the effectiveness of preserve management activities in providing benefits for Covered Species.

In the context of both an HCP and an NCCP, monitoring and management are required elements that must be fully integrated into the HCP/NCCP document. They are considered as mitigation. This goes beyond the requirements of CEQA. Section 10 (Endangered Species Act) regulations “require that an HCP specify the measures the applicant will take to ‘monitor’ the impacts of the taking resulting from project actions (50 CFR 17.22(b)(1)(iii)(B) and 50 CFR 222.22(b)(5)(iii)).”<sup>39</sup> The Plan clearly identifies the Adaptive Management element of the Monitoring and Management Programs. The Monitoring Program is consistent with the recommended elements for monitoring in a large-scale, regional HCP.<sup>40</sup> Figure 8-5 of the Plan identifies the application of the Adaptive Management process.

In the description of the Monitoring Program, the environmental variables (stressors) that are hypothesized to affect each Covered Species and natural community are identified. The environmental variables or stressors that are known are identified primarily through the

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<sup>38</sup> Fish & Game Code, §2800 et seq.

<sup>39</sup> USFWS 1996.

<sup>40</sup> Ibid., pp. 3-26 to 3-27.

conceptual models that are presented for each natural community assemblage. Covered Species are all affiliated with one of these natural community assemblages, beginning with Section 8.4.1 of the Plan on aeolian sand communities. Figure 8-8, the Aeolian Sand Habitat Threats Model, clearly identifies those threats or stressors that affect Covered Species affiliated with the aeolian sand habitats. This figure also appears as Figure 6 in “Designing Monitoring Programs in an Adaptive Management Context for Regional Multiple Species Conservation Plans” (Atkinson et al. 2004). It is important to recognize that not all environmental stressors that are or may be significant to the Covered Species are known. That is exactly why an Adaptive Management approach is part of the Plan. The intent for an Adaptive Management program is to address uncertainty in the ecological systems that are the subject of the MSHCP. The Adaptive Management program is consistent with the HCP Addendum which provides for an adaptive management strategy as a means to address uncertainty “[i]f we lack critical information regarding the biological needs of a species proposed to be covered under an HCP, we will not issue a permit until such information is obtained or an acceptable adaptive management strategy is incorporated into the HCP to address the uncertainty.”

#### **Major Issue Response 8: Legal Adequacy of the Draft EIR/EIS Alternatives**

A Draft EIR must describe a range of reasonable alternatives to the proposed project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project. (See Public Res. Code, §21100(b)(4); State CEQA Guidelines §15126.6(a).) However, a Draft EIR need not consider every conceivable alternative to a project. Rather, the nature and scope of the alternatives to be discussed is governed by the rule of reason. (State CEQA Guidelines §15126.6(a).) The rule of reason requires the lead agency to select and discuss *only* those feasible alternatives necessary to permit a reasoned choice, and in a manner to foster meaningful public participation and informed decision-making. (State CEQA Guidelines §15126.6(f).) In addition to reasonable alternatives, a Draft EIR is required to analyze the No-Project alternative (State CEQA Guidelines §15126.6(e).).

Similarly, under NEPA, a Draft EIS requires discussion only of reasonable alternatives. (40 C.F.R. §1502.14). The number of alternatives within the reasonable range is directly related to the statement of purpose and need. (Natural Resources Defense Council v. Callaway, 524 F.2d 79 (2d Cir. 1975)). Although an infinite number of alternatives and possible variations could be identified, neither EIRs nor EISs are required to evaluate all possible alternatives or “consider an alternative whose effects cannot be reasonably ascertained and whose implementation is considered to be remote and speculative.” (State CEQA Guidelines § 15126(d)(5)C; 40 CFR §1502.14(a).).

Regarding content of alternatives, CEQA and NEPA vary in their requirements. In a Draft EIR, each selected alternative and the no project alternative must provide sufficient information to

allow meaningful evaluation, analysis, and comparison to the proposed project. Discussion of environmental effects of alternatives may be in less detail than the discussion of the impacts of the project as proposed. (State CEQA Guidelines § 15126.6(d).) NEPA requires a slightly higher threshold, requiring rigorous exploration and objective evaluation of each selected alternative. Alternatives in an EIS must be discussed at an equal level of detail as the proposed project. (40 C.F.R. §1502.14).

As required by both CEQA and NEPA, Section 2 of the Recirculated Draft EIR/Supplemental Final EIS extensively discusses a range of potentially feasible, reasonable alternatives in detail. The process of alternatives selection is discussed in Section 3.5 of the Recirculated Draft MSHCP, and Section 4 of the Recirculated Draft EIR/Supplemental Final EIS examines the effects of these alternatives in detail. The Alternatives analyzed in the Recirculated Draft EIR/Supplemental Final EIS are (1) the Proposed Action/Preferred Alternative, (2) Public Lands Alternative, (3) Core Habitat with Ecological Processes Alternative, (4) Enhanced Conservation Alternative, and (5) No Action/No Project Alternative. Alternatives (1) – (4) are potentially feasible alternatives which, if implemented, would have the potential to reduce or avoid certain adverse environmental effects associated with the proposed Plan. Alternative (5) is required by both CEQA and NEPA. All five alternatives identified in the Recirculated Draft EIR/Supplemental Final EIS were chosen to foster meaningful public participation and informed decision-making. Each alternative was considered and evaluated in close consultation with parties of interest and regulatory agencies

In addition, the Wildlife Agencies recommended inclusion of an alternative that fully protected those areas encompassed by the current composite modeled distribution and known locations of target species in the Plan Area. However, it was determined that such an alternative would result in significant reduction in Take Authorization and significant increase in costs, making the alternative infeasible as well as fail to meet project objectives. Therefore, no further analysis was conducted nor required. See Section 3.5.5 of the Plan.

It should also be noted that Section 3.2 of the MSHCP provides a list of all species and natural communities that were identified in the Planning Agreement. To summarize, 27 of the 52 species originally considered for inclusion in the Plan are now Covered Species under the Plan. As pointed out in Section 3.2.1, the reasons for not covering a species include lack of known locations in the Plan Area or insufficient data to facilitate conservation planning. In addition, 27 of the 46 natural communities originally identified are included in the Plan's Conservation Areas.

The Recirculated Draft EIR/Supplemental Final EIS's conclusion that the proposed MSHCP is the Environmentally Superior/Environmentally Preferable Alternative is supported by the discussion of considered alternatives in Section 3.5 and Section 4 of the Recirculated Draft MSHCP, and in Section 2.0 of the Recirculated Draft EIR/Supplemental Final EIS.

### **Major Issue Response 9: Consistency of the Plan with FESA/CESA**

Several commenters have commented that the Plan violates FESA and provisions in the Fish and Game Code. The MSHCP is consistent with and does not violate FESA. Under the FESA's statutory structure, non-federal entities, such as state or municipal governments, businesses, associations, or private individuals (or any combination of these parties, such as a joint power authority), that cause a Take are subject to liability under section 9 of the FESA, unless the entity receives a Section 10(a) Incidental Take Permit. Such a Permit may be issued by the USFWS under certain conditions when the "taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity" 16 U.S.C. § 1539(a)(1)(B). In order to secure a Section 10 Incidental Take Permit, the applicant must submit an HCP to the USFWS that specifies the following: (1) the impact that will likely result from such a taking; (2) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps; (3) what alternatives actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and (4) such other measures that the Secretary may require as being necessary or appropriate for the purpose of the Plan. (See 16 U.S.C. § 1539(a)(2)(A).) CVAG submitted the MSHCP to the USFWS. After receiving public comment on the Final MSHCP, Final EIR/EIS, and Final IA, the USFWS will complete its analysis and determine whether the application and associated documents meet the legal requirements of NEPA and FESA, including the requirement that the Take will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. (See 16 U.S.C. § 1539(a)(2)(B)(iv).)

The MSHCP's habitat-based approach is also consistent with, and does not violate, CESA because it focuses on species protection by preserving their habitat. CESA specifically states that it "is the policy of the state to conserve, protect, restore, and enhance any endangered species or any threatened species and its habitat and that it is the intent of the Legislature, consistent with conserving the species, to acquire lands for habitat for these species" (Fish and Game Code, §2052; *emphasis added*). "Conserve" is further defined by Fish and Game Code Section 2061 to mean "the use of, all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary. These methods and procedures include, but are not limited to, all activities associated with scientific resources management, such as research, census, law enforcement, habitat acquisition, restoration and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking." The methods outlined in the MSHCP/NCCP include measures to preserve and maintain the habitat essential for the conservation of endangered species, as authorized by CESA.

After receiving public comment on the Final MSHCP/NCCP, the CDFG will complete its analysis and determine whether the Plan fully complies with the NCCP mandates, many of which are included here. The primary objective of the NCCP program is to conserve natural communities at the ecosystem scale while accommodating compatible land uses (Cal. Fish and Game Code §2800 et seq.). The CDFG shall approve a NCCP after finding that (1) the conservation plan was developed in accordance with provisions in Section 2810, (2) the plan integrates adaptive management strategies that are periodically evaluated and modified; (3) the plan provides for habitat protection on an ecosystem level; and (4) the development of a reserve system and conservation measures that provide such elements as habitat corridors, large habitat blocks that will support sustainable populations, representative environments, and a range of environmental gradients. The NCCP must also include such items as a monitoring program, an adaptive management program, estimated time frames for the implementation of conservation measures, an adequate funding program, and an implementation agreement.

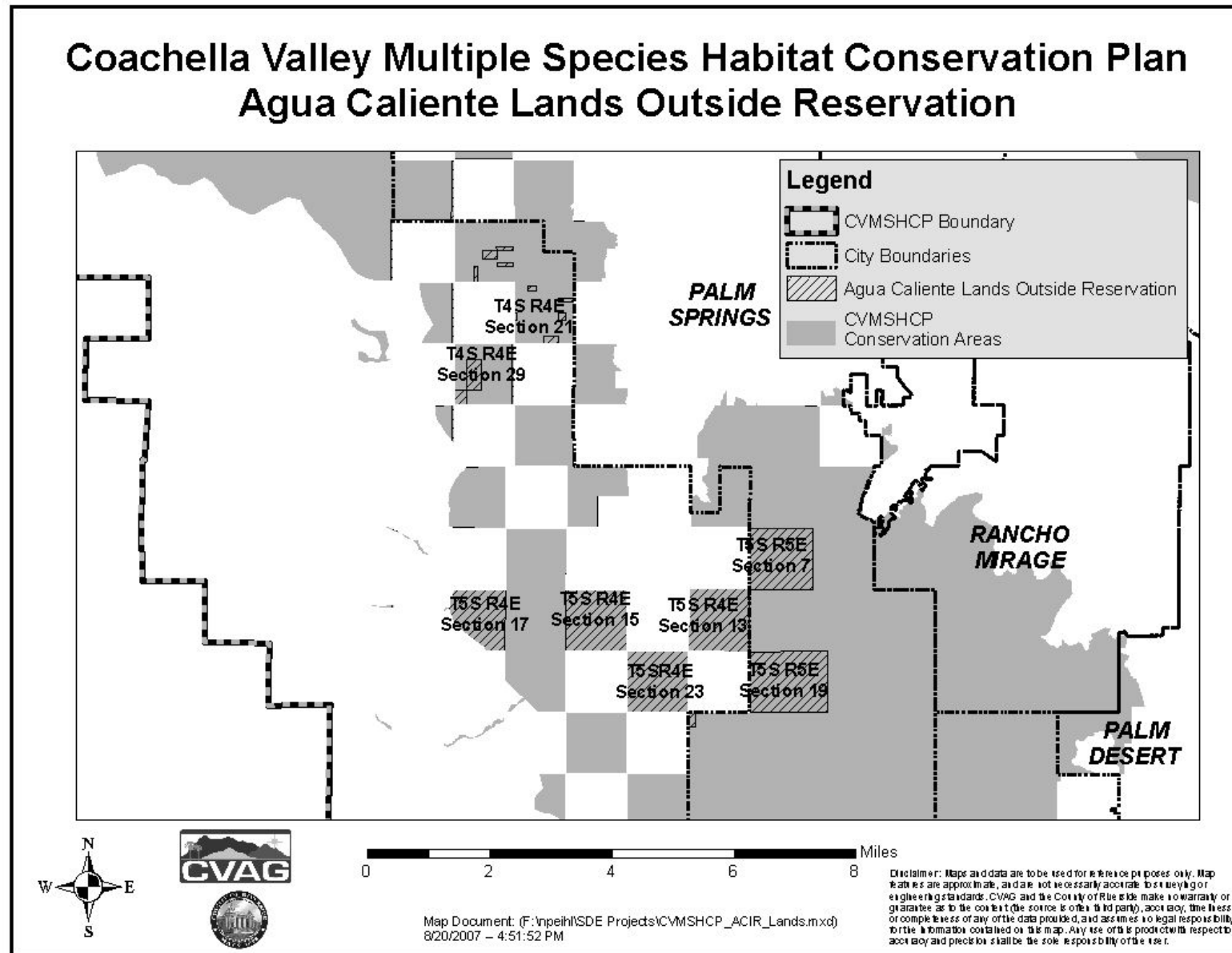
## **RESPONSES TO TRIBAL GOVERNMENT COMMENTS**

### **COMMENTS A: AGUA CALIENTE BAND OF CAHUILLA INDIANS**

Dated: May 29, 2007

- A-1** The comment is noted. References to ownership of lands by the Agua Caliente Band of Cahuilla Indians in the Final Recirculated EIR/Supplemental Final EIS have been revised to note the four ways land can be “owned” by the Agua Caliente Band of Cahuilla Indians.
- A-2** It is understood that the Tribal Government owns properties outside the boundaries of the Reservation but within the MSHCP Plan Area and that these properties are proposed to be covered by the Tribal HCP currently under review by the USFWS. The lands proposed to be removed from the MSHCP Plan Area are depicted on the map on the following page and will be considered as Not a Part of the Plan Area. If the Tribal HCP is approved by the USFWS, the Permittees will consider an amendment to remove these lands. In any case, if such an amendment to the MSHCP is proposed, it would be subject to further CEQA/NEPA review, as required by law.
- A-3** The references to Reservation acreages in the Coachella Valley MSHCP and EIR/EIS have been revised to reflect the acreages noted in the comment.
- A-4** It is understood that Reservation lands are covered by the Tribal HCP and not by the Coachella Valley MSHCP and the analyses conducted for the MSHCP did not include Reservation Lands.





**RESPONSES TO STATE GOVERNMENT COMMENTS**

**COMMENTS B: NATIVE AMERICAN HERITAGE COMMISSION, STATE OF CALIFORNIA**

Dated: April 20, 2007

- B-1**      Section 4.9.2 of the Recirculated Draft EIR/Supplemental Final EIS includes analysis of potential cultural and historic resources impacts per CEQA Guidelines 15064.5 that are substantially similar to the recommendations described by the commenter and fully mitigate any potential impacts to less than significant; therefore, further mitigation is not required.

**COMMENTER C: OFFICE OF PLANNING AND RESEARCH, STATE  
CLEARINGHOUSE, STATE OF CALIFORNIA**

Dated: May 10, 2007

- C-1**      No state agencies submitted comments by the close of the review period of May 9, 2007. No further response is needed.

**COMMENTER D: CALIFORNIA STATE SENATOR, JIM BATTIN**

Dated: May 29, 2007

**D-1** In accordance with CEQA requirements, the EIR/EIS provides a comprehensive assessment of environmental impacts associated with approval and implementation of the MSHCP. A broad and comprehensive range of mitigation measures and monitoring/reporting programs, which have been directly integrated into the MSHCP, would reduce potentially significant impacts to levels of insignificance for CEQA analysis purposes. In addition, mitigation measures set forth in the EIR/EIS would reduce impacts to land use compatibility, transportation and circulation, flooding and hydrology, biological resources, and socio-economic resources to levels below significance for CEQA analysis purposes. Therefore, for CEQA analysis purposes, implementation of the MSHCP would not have a significant impact on the environment.

**D-2** As further discussed in Major Issue Response 2, implementing the Plan will not depress land values.

The MSHCP does not restrict Development of lands outside of Conservation Areas, and the designation of land in a Conservation Area does not automatically trigger a complete restriction on Development. The HANS and JPR processes discussed in Section 6 of the MSHCP set forth the process for Development in the Conservation Area, and Sections 4 and 9 of the Plan outline the Plan and the proposed Covered Species' Goals and Objectives. For further analysis of HANS, see Major Issue Response 3. As described in Section 6.1.2 of the MSHCP, fair market value will be determined by an appraisal process. The appraisal will determine value based on overall market conditions in the applicable portion of the Coachella Valley. Furthermore, the appraisal determines value of the subject property as compared to the value of a similar property, excluding consideration of the fact that the subject property is within a Conservation Area.

The comment provides no basis for its statement that the Plan makes the land Development process inaccessible and not navigable for citizen property owners; therefore, further response is not possible. However, the Lead Agencies direct the commenter to Section 6 of the MSHCP, which sets forth the process for Development within the Conservation Areas.

The comment regarding government agencies offering many millions of dollars less than fair market value for lands designated as protected habitat does not provide enough detail to permit a response as to the environmental impacts of the Plan. As

described above and in Section 6.1.2 of the MSHCP, fair market value will be determined by an appraisal process.

The commenter provides no documentation of allegations related to LAFCO actions and DOI/DFG letters. While not required to do so, CVAG did notify the owner of record of every parcel in the Conservation Areas of the availability of the February 2006 MSHCP and the February 2007 Recirculated Draft MSHCP for review and comment. CVAG believes that the announcements listing the public forum schedule and written comment review period for the February 2007 Recirculated Draft MSHCP were clear. CVAG agrees that Interstate 10 improvements are not contingent on MSHCP approval.

The comment regarding the approval process for the Western Riverside County MSHCP is not pertinent to the Coachella Valley MSHCP; therefore, no response is required.

**D-3** CVAG agrees that the Plan in no way restricts the legal rights of environmental groups.

**D-4** See Major Issue Responses 1 and 7.

The purpose of the MSHCP is to obtain an Incidental Take Permit for currently listed animal species and animal species likely to become listed during the 75-year Permit term. As described in MSHCP Section 6.8.3.5, should new species be listed by the USFWS, Permittees would avoid actions that may cause Take, jeopardy, or adverse modification of Critical Habitat 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 of the Plan.

## **RESPONSES TO SPECIAL DISTRICTS/REGIONAL AGENCIES COMMENTS**

### **COMMENTS E: RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT**

Dated: April 17, 2007

- E-1** The suggested language changes have been made to Section 4.3.7 of the Plan, with minor modifications, as follows: “As a result of a decision by the City of Desert Hot Springs not to participate in the Plan, private lands within the City limits of Desert Hot Springs are not included in the Upper Mission Creek/Big Morongo Canyon Conservation Area, with the exception of those lands necessary to provide for flood control as well as associated habitat conservation along Morongo Wash. Within the Conservation Area, a Special Provisions Area has been delineated to address a potential Morongo Wash flood control facility and its associated mitigation, as well as conservation for a wildlife habitat corridor and additional habitat necessary to accomplish the goals of the Plan.”
- E-2** The commenter recommends modification to the language in the avoidance, minimization, and mitigation measures described in Section 4.4 of the Plan for Palm Springs pocket mouse. The referenced statement has been modified to incorporate the commenter’s suggestion, as well as additional clarification as follows: “Clearing of native vegetation (e.g., creosote, rabbitbrush, burrobrush, cheesebush) should be followed by revegetation, including natural reestablishment and other means, resulting in habitat types of equal or superior biological value for Palm Springs pocket mouse.”
- E-3** Bullet 4a on page 7-36 of the Final Recirculated Plan has been revised to read “CVCC shall be responsible for ensuring conservation of acreages as described in Section 4.3.7 and identified in Tables 4-42d and 4-42e for the Special Provisions Area.” See Section 5, Clarifications and Revisions, of this Responses to Comments document. In addition, for clarification, the description of the Special Provisions Area found in Item 4b on page 7-36 has been added to Section 4.3.7 of the Plan.
- E-4** Bullet 4c on page 7-36 of the Plan has been revised to state: “A suitable habitat corridor is defined as an area that meets the habitat requirements of Palm Springs pocket mouse (see Section 9.8.3); the suitable habitat corridor shall maintain a natural ephemeral desert wash without habitat impediments and may include the proposed Covered Facility.”

**COMMENTER F: RIVERSIDE COUNTY WASTE MANAGEMENT DEPARTMENT**

Dated: May 29, 2007

- F-1** As stated in Section 5.2.1.2 of the MSHCP, fees on the importation of waste into landfills and transfer stations (Conservation Trust Fund) were based on a Waste Tonnage Chart provided by the Riverside County Waste Resources Management District. If a revision to the Waste Tonnage Chart is available, CVAG would appreciate receiving an updated version. The comment does not provide a revised tonnage estimate. See also Major Issue Response 3. With regard to the adequacy of the 4% increase in the tonnage of waste subject to the tipping fee, it should be noted that (1) a revision of AB 939 is speculative, and (2) while there might be short-term fluctuations in the tonnage, over the 75-year lifespan of the Plan, it is anticipated that the annual tonnage increase will average 4%. Additionally, all Plan financing is subject to review on an annual basis.

## **RESPONSES TO LOCAL AGENCIES COMMENTS**

### **COMMENTS G: CITY OF DESERT HOT SPRINGS (BY MEYERS, NAVE, RIBACK, SILVER, AND WILSON PROFESSIONAL LAW CORPORATION)**

Dated: May 29, 2007

- G-1** Regarding the comment that the MSHCP does not provide a discussion of the impacts that are likely to result from implementation of the Plan, the commenter is referred to the Environmental Impact Report/Environmental Impact Statement (EIR/EIS). The EIR/EIS provides the analysis of the impacts of the Plan, including specifically an analysis in Section 4.7.3 of the impacts of the MSHCP on Biological Resources. It clearly identifies that the MSHCP "...would result in a net beneficial impact to the Covered Species and natural communities as the Plan would reduce fragmentation, shielding of blowsand habitat, and blocked ecological processes." This section also provides analysis of the impacts of the Plan and the resulting authorized Take on each Covered Species and natural communities. Section 4.6 of the Plan also describes the impacts of Plan implementation in terms of Take and Habitat loss for Covered Species.
- G-2** The commenter references Section 4.6 of the MSHCP and Table 4-114, which identifies the anticipated levels of Take and habitat loss for Covered Species under the Plan. The commenter notes that "...anticipated take is measured in terms of habitat acres affected by the covered activities outside and inside the conservation areas" and appears to question the standard for measuring Take. According to the HCP Handbook (USFWS 1996), issuance of an incidental take permit, including a Section 10 permit, is a Federal action subject to Section 7 of the ESA. As noted in *Arizona Cattle Growers Association v. United States Fish and Wildlife, et al.*, 273 F.3d 1229.1250 (C.A.9 (Arizona), 2001), the assessment of Take based on Habitat loss "is consistent with the Fish and Wildlife Service's Section 7 Consultation Handbook: When preparing an incidental take statement, a specific number...or level of disturbance to habitat must be described...some detectable measure of effect should be provided...[I]f a sufficient causal link is demonstrated (i.e., the number of burrows affected or a quantitative loss of cover, food, water quality, or symbionts), then this can establish a measure of the impact on the species or its habitat..." In this case, impacts to Covered Species are clearly linked to impacts to and disturbance or loss of habitat. The HCP Addendum (USFWS 2000) states that there are situations where precisely quantifying the number of individuals that are anticipated to be taken is a less effective method than estimating the amount or extent of Take in terms of the amount of habitat altered. The Reserve System will effectively compensate for



potential adverse impacts to the Covered Species because it will: (1) ensure Conservation of Core Habitat; (2) protect Essential Ecological Processes needed to maintain this Habitat; and (3) maintain Biological Corridors and Linkages among conserved populations to provide for population fluctuation and enhance genetic diversity.

- G-3** We agree that “while an HCP can use habitat impacts/destruction to express a level of take for a species, the document must first establish a correlation between the habitat and the species.” Throughout Section 4 of the Plan, the relationship between habitat and species conservation is described. For each Conservation Area, introductory paragraphs discuss the relationship between conservation of Covered Species and protection of Core Habitat, Essential Ecological Processes, and Biological Corridors, which are then described in measurable Conservation Objectives that identify the amount of disturbance or Take that is authorized under the Plan. The commenter incorrectly states that the only discussions of Take in the MSHCP are in Table 4-116 and Sections 4 and 9. It should be noted that, as its title indicates, Table 4-116 is a summary table that includes the conservation measures and the levels of Take for each species for the convenience of the reader. With respect to the Coachella Valley milkvetch question posed in the comment, 42% refers to the percentage of the total acres of Habitat for this species in the Plan Area. In this case, the 42% indicates acres subject to Take, primarily outside the Conservation Areas where Habitat quality has been compromised. As the title for Section 4.6, “Impact and Anticipated Levels of Take and Habitat Loss,” clearly identifies, this section covers the relationship of Take to the Habitat acres affected by the Covered Activities under the Plan. Table 4-114 provides the number of acres of Take (expressed as “acres authorized for impact”) that are authorized for each Covered Species. In addition, the table identifies another measurable standard, the number of known locations that could be impacted as a result of the Plan. Section 9 includes specific Conservation Goals and Objectives for each species that correlate conservation of habitat with conservation of the species and establish measurable standards for both Conservation and Take. For a complete Impact or Take Analysis for each Covered Species, the commenter is referred to Section 9 of the Plan. It should be noted that under FESA, a Take permit is not provided for plant species. Thus, the analysis for plants refers to impacts rather than Take. In addition to the discussions of Take in Volume 1, the MSHCP, analysis of the impacts of take can be found in Volume 2, the EIR/EIS. The commenter is referred to Section 4.7 of the EIR/EIS, which, as previously noted, provides analysis of the impacts to biological resources, including Covered Species. Section 4.7.3 of the EIR/EIS addresses the correlation between habitat and the species when it states that “...the Proposed Action/Preferred Alternative would result in a net beneficial impact to the Covered Species and natural communities as the Plan would reduce

fragmentation, shielding of blowsand habitat, and blocked ecological processes. The Plan would establish a Reserve System to conserve, monitor, and manage Core Habitat, Essential Ecological Processes, and Biological Corridors and Linkages needed for the Conservation of the Covered Species and natural communities included in the Plan... The Plan provides Take Authorization for Covered Species associated with specified Covered Activities within the Plan Area. The Plan is designed to minimize and mitigate impacts of these Covered Activities.”

**G-4** As referenced in *Arizona Cattle Growers Association v. United States Fish and Wildlife, et al. (op cit.)*, the requirements for the analysis of Take and ultimately the development of an incidental take statement are set forth in Section 7(b)(4), 16 U.S.C. § 1536(b)(4). Such a statement must specify the impact of the taking on the species, reasonable and prudent measures necessary to minimize such impact, and terms and conditions required to implement the reasonable and prudent measures (16 U.S.C. § 1536(b)(4)(i), -(ii), -(iii)). This is the format for the Take Analysis provided for all covered animal species in Section 9 of the MSHCP. The commenter incorrectly states that “there is no discussion as to which sections of the Coachella Valley have higher densities of desert tortoises....” The Take Analysis in Plan Section 9.6.1.4 includes a discussion of the significance of the Plan Area to desert tortoise in the context of this species’ entire range and identifies the areas where desert tortoise are known to occur at higher densities within the Plan Area. Section 9.6.1.4 then provides a description of the “Effects of Take on the Desert Tortoise,” which addresses the impacts of Take; in this case, habitat loss. This section explains how the levels of Take indicated by the raw acreage numbers need to be evaluated in the context of the benefits of establishing Conservation Areas, which reduce fragmentation and provide for connectivity to ensure conservation of this species. The section goes on to detail how the actual reduction in Habitat value is expected to be considerably less than indicated by the raw acreage numbers. Thus, the determination that the issuance of a Take Permit will not jeopardize the continued existence of desert tortoise in the Plan Area requires an evaluation of the benefits of the MSHCP as well as the impacts. This analysis is provided in Section 9.6.1.4 of the Plan.

**G-5** The commenter references the use of terms in Sections 4 and 9, which appear in the definitions beginning on page xxix of the MSHCP, Volume 1, including “core habitat” (page xxxi) and “other conserved habitat” (page xxxv). The use of the terms “breeding habitat” and “migratory habitat” is described on page 9-125 of the Plan in reference to migratory birds that are Covered Species. Each of the terms cited contributes distinct information to the descriptions and is a well-known term in the ecology and conservation planning literature. These Habitat descriptions are not mutually exclusive. The commenter also refers to a discrepancy in totals for the

- Coachella Valley milkvetch. As a result of additional review and verification of the numbers and calculations throughout the document, some minor calculation errors were identified. The numbers for Coachella Valley milkvetch in Table 4-114 have been corrected. In order to obtain the total acres in the Plan Area for Coachella Valley milkvetch, by addition, one must also include the acres in fluvial sand transport areas, shown in parentheses in the column labeled “Remaining Acres to be Conserved.”
- G-6** The commenter identifies a potential error in calculation for the Coachella Valley milkvetch in Section 9. As noted in the response to Comment G-5, some minor errors were identified and have been corrected in Table 4-114 of the Final Recirculated MSHCP, Section 9, and elsewhere, as appropriate. The additional acres to be conserved in the future for Coachella Valley milkvetch is 11,650 acres, not 11,608 acres as shown in the Recirculated Draft Plan. The sum of 11,650 acres and the acres of Existing Conservation Land, 7,707 acres, is 19,357 acres, as shown in Table 4-114. The commenter’s assertion that the MSHCP fails to identify the amount or extent of Take of the listed species does not take into account the provisions of the FESA whereby the level of disturbance to habitat is considered an acceptable means of identifying the extent of Take. The MSHCP identifies the amount and extent of Take in the analysis for each Covered Species in Section 9, consistent with the requirements for an HCP. The Plan adequately implements the minimization and mitigation requirements mandated by Section 10(a)(2)(B)(ii) of the FESA. See also responses to Comments G-2, G-3, and G-4.
- G-7** The commenter correctly notes that, absent Incidental Take authority, Development and other activities that would result in Take of listed animal species in the Coachella Valley would be in violation of Federal law. Nothing in the MSHCP documents presumes that the FESA is currently being violated. Project by project analysis is being completed consistent with FESA. At the present time, authorization to Take listed species can be obtained through the Section 7 consultation process or through obtaining an individual Section 10 Incidental Take Permit with the USFWS. Take has and will occur absent the creation of a Conservation Area reserve system. However, the commenter’s presumption that the benefits of the MSHCP are based on a conclusion that “...conservation of any percentage of this acreage will result in a net benefit to the species, even if take is authorized for a large percentage of the Plan area,” appears to miss the key points of the Take analyses in Section 9 of the Plan. As described in Section 9.2.2.4 for the Coachella Valley milkvetch, a federally listed endangered plant, “...the combination of the overall Conservation measures; species-specific measures such as management to minimize impacts such as OHV trespass and invasive species, monitoring to better understand the ecology of this species and the potential impacts of invasive species, and long-term protection, management, and

enhancement of Coachella Valley milkvetch Habitat is expected to effectively compensate for potential adverse effects to this endangered plant species.” The conservation of listed species through a regional MSHCP provides the aforementioned benefits for species conservation, beyond the numerical calculation of acres of Take and conservation. These benefits, which derive from MSHCP elements, including a science-based reserve design process, coordinated acquisition, and monitoring and management programs, are not available through project-by-project mitigation that would occur absent a regional MSHCP.

- G-8** The commenter is incorrect in stating that Take of listed species cannot lawfully occur absent an MSHCP. Take of a listed animal species can lawfully occur through: (1) a Section 7 consultation and issuance by the USFWS of a biological opinion that confers an Incidental Take Statement that exempts the Take. This biological opinion details the project description along with proposed conservation measures; specifies impact of such incidental taking on the species, specifies those reasonable and prudent measures that the USFWS considers necessary or appropriate to minimize the impact of the taking; and sets forth the terms and conditions to implement such measures; (2) Issuance of a Section 10(a)(1)(B) Incidental Take Permit through the HCP process. In order to secure a Section 10 Incidental Take Permit, the applicant must submit an HCP to the USFWS that specifies the following: (1) the impact that will likely result from such a taking; (2) what steps the applicant will take to minimize and mitigate such impacts, and the funding that will be available to implement such steps; (3) what alternatives actions to such taking the applicant considered and the reasons why such alternatives are not being utilized; and (4) such other measures that the Secretary may require as being necessary or appropriate for the purpose of the Plan (see 16 U.S.C. §1539(a)(2)(A).). Section 7 biological opinions have been issued by the USFWS for listed species during the time the MSHCP has been in preparation. The MSHCP analysis does not in any way include the premise that “the ESA is being violated and will continue to be violated.” The impacts analysis in Section 4.7 of the EIR/EIS and additional analysis in Section 9 of the Plan are based on the premise that a comprehensive regional plan to provide for long-term conservation and persistence of the Covered Species provides much greater benefit than project-by-project mitigation that is occurring now, absent the MSHCP. The benefits of the MSHCP that are addressed in the impacts analysis include the conservation of Core Habitat, Essential Ecological Processes, Biological Corridors and Linkages and other key Habitat elements for the Covered Species that could not be protected in a project-by-project, piecemeal approach to mitigation. In the case of the Coachella Valley milkvetch, it should be noted that under FESA, a Take permit is not provided for plant species. The impact analysis for this species identifies that while some loss of habitat will occur for the Coachella Valley milkvetch, the MSHCP

provides for conservation of Core Habitat and other required elements necessary to ensure the long-term persistence of this species in perpetuity. In addition to Conservation of Covered Species and their Habitat, the Plan also provides for funded long-term monitoring and management to ensure that these species persist. These benefits cannot be ensured absent the regional HCP process. The commenter expresses concern about the Coachella Valley milkvetch with respect to issuance criteria of Section 10(a)(1)(B) of the FESA. The commenter is directed to the analysis in Section 9.2.2.4 of the Plan, which includes both an analysis of the overall benefits of the MSHCP in ensuring conservation of this Covered Species as well as a discussion of the Conservation Goals and Objectives for this species in terms of issuance criteria. See also response to Comment G-7.

- G-9** The commenter expresses concern about the funding for the MSHCP. As discussed in Major Issue Response 3, the Local Permittees, as members of the CVCC, are collectively obligated via the Implementing Agreement to acquire or otherwise conserve 88,900 acres of land. This obligation has been expressed in terms of acres instead of dollars in recognition that the price of land will fluctuate with time; thus, an obligation to acquire 88,900 acres ensures that the Implementing Agreement requires the same amount of conservation regardless of economic conditions at any point in time. The Implementing Agreement requires that the Permittees each adopt a Local Development Mitigation Fee for the provision of funding such that CVCC may acquire the conservation lands required by the Plan, as well as fund the management and monitoring required by the Plan. The commenter's citation to *National Wildlife Federation v. Babbitt*, (2000) 128 F.Supp.2d 1274, 1295 is therefore not relevant, since here the funding of the Plan is not dependent upon the actions of "third parties," rather, the MSHCP's funding via the Local Development Mitigation Fee is secured by the contractual obligation on the Permittees themselves to adopt the Fee. Furthermore, the Plan does contain several provisions designed to accommodate a change in conditions. For instance, the Local Development Mitigation Fee will be indexed to the Consumer Price Index, and at a minimum of every 5 years a new Nexus Study will be conducted to ensure the continued sufficiency of the Fee. Additionally, while it is possible that the resolution of pending litigation could affect the availability of funds from the Eagle Mountain Landfill, the Plan does provide a list of alternative sources of funding, and in any case the execution of the Implementing Agreement and the commitment to acquire 88,900 acres will ensure that one or more of these alternative funding sources will be utilized. As described in Section 12.3 of the Implementing Agreement, the Permittees and the Wildlife Agencies will evaluate the performance of the funding mechanisms and develop any necessary modifications to address possible shortfalls on an annual basis. This annual evaluation will include an assessment of the funding plan and anticipate funding

needs over the upcoming eighteen (18) months for the purpose of identifying any potential deficiencies in cash flow. If deficiencies are identified through this evaluation (although none are expected at this time), the Permittees and the Wildlife Agencies will develop strategies to address any additional funding needs consistent with the terms and conditions of the Plan. Additional funding needs will be addressed as set forth in Section 5.2.2 of the Plan. Therefore, the commenter's statement that the Plan funding is dependent upon the action of third parties or that the Permittees have not obligated themselves to fund the Plan is incorrect.

See also responses to Comments G-12 and W-24.

- G-10** The Permittees, including the eight participating Cities and Riverside County and other Permittees, upon their approval of the MSHCP will sign the Implementing Agreement as their commitment that they will abide by the provisions of the Plan. Once they have approved the Plan and signed the Implementing Agreement, they will also have committed to adopt a fee ordinance that will provide for the collection of the Local Development Mitigation Fee. Although the adoption of a fee ordinance will require a vote of the governing body of each jurisdiction, it is provided for through the Implementing Agreement. The Permits would not be issued until the votes on the Implementing Agreement and fee ordinance have occurred.

The commenter's comparison to *Southwest Center for Biological Diversity v. Bartel* (2006) 470 F. Supp. 2d 1118, is not appropriate. In *Southwest Center*, a Habitat Conservation Plan was held to not have adequately assured funding. The City of San Diego there "expressly refused to guarantee funding with a clearly identified source of revenue." *Southwest Center*, 470 F.Supp.2d at 1156. The court faulted the City of San Diego's reliance on obtaining funds via voter measures and on the participation of other jurisdictions not then a party to the HCP. *Ibid*. Here, however, the supposedly speculative future action that the commenter objects to is not the unpredictable decisions of the entire electorate, but rather the adoption of the Local Development Mitigation Fee by the decision-making bodies of the Permittees, *which are obligated to do so via the Implementing Agreement*. Thus, the key element lacking in the *Southwest Center* case, i.e., a commitment on the part of the City of San Diego to fund the HCP, is clearly fulfilled here by the multiple obligations placed on the Permittees by the Implementing Agreement.

- G-11** The MSHCP provides a variety of mechanisms to ensure that the mitigation fees collected will be adequate to provide for acquisition of lands. The commenter is incorrect in asserting that the mitigation fee is based on "estimates" of land costs. The MSHCP includes two mechanisms to address the unknown rate at which land values are expected to change over time. First, the MSHCP increases the land acquisition

cost projections annually according to the Consumer Price Index. Secondly, and more importantly, the CVCC will have a new Nexus Study prepared every 5 years or more often if conditions warrant. This ensures that changes in land value—whether dramatic or modest—will be taken into account in regular updates, so that the Local Development Mitigation Fee can be adjusted as needed. See Major Issue Response 3. See also response to Comment G-9 regarding the annual evaluation of the funding plan and related “fail-safe” guarantees.

**G-12** Section 5.2.2.4 of the MSHCP addresses the legal issues related to Eagle Mountain and acknowledges that the potential outcome of the litigation is not likely to be known for some time, but most likely before 2010. As the Eagle Mountain project contains an agreement dedicating 90 cents per ton to Open Space preservation in the Coachella Valley, it would be irresponsible for CVAG to not include this potential funding source in the MSHCP budget. To do so now would allow other agencies to attempt to utilize this funding for their own purposes—a situation that has already occurred and been successfully rebuffed by CVAG. The MSHCP projects Environmental Mitigation Trust Fund revenues becoming available in year 2010 and recognizes that litigation is still pending. While noting that it is still reasonable to project the Environmental Mitigation Trust Fund as a revenue source, the discussion in Section 5.2.2.4 recognizes that other funding sources could be necessary to offset revenues not available from this source. The Plan identifies a list of other reasonable sources of funding. See also Major Issue Response 3.

**G-13** To address possible funding shortfalls, Section 12.3 of the Implementing Agreement requires the Permittees and the Wildlife Agencies to complete an Annual Evaluation of Funding to evaluate the performance of the funding mechanisms and develop strategies to address any additional funding needs consistent with the Plan and the IA. The additional funding sources identified in Section 5.2.2.4 of the Plan are not “vague references to potential sources” but rather successful funding sources that have been used in other HCPs and regional planning efforts, in California and elsewhere, to fund habitat conservation, open space protection, and other public benefits. The commenter provides no reason to conclude that any of the other funding sources would not work. The MSHCP describes a well-thought-out and carefully analyzed (Muni Financial 2006) plan for funding with a specific process to identify and correct potential funding shortfalls before they become a problem. See also responses to Comments G-10 and G-12.

**G-14** The commenter confuses baseline data for the reserve design process and development of Conservation Goals and Objectives with collection of baseline data for the ongoing Monitoring Program described in Section 8.8 of the Plan. Baseline

data on species and natural communities have been obtained as described in Major Issue Response 1, and continue to be gathered during the development of the MSHCP, including the reserve design process and development of Covered Species distribution models and natural communities map. These baseline data are gathered before any Permit decision. These baseline data have been used to identify the Conservation Areas and to develop the Conservation Goals and Objectives. These baseline data are adequate for CEQA/NEPA purposes. With the issuance of the Permits, the Permittees are responsible for the full implementation of a Monitoring Program, including the development of baseline data as described in Section 8 of the Plan. The baseline phase will begin year 1 post Permit decision. These baseline data are used to assess Plan effectiveness in terms of the Conservation Goals and Objectives of the MSHCP. The Monitoring Program schedule, including a baseline data phase, is consistent with the recommendations of the Independent Science Advisors and a guidance document for monitoring prepared by the USFWS, CDFG, and other collaborators (Atkinson et al. 2004).

- G-15** The MSHCP addresses two types of monitoring, compliance monitoring to ensure that the provisions of the Plan are being met and effectiveness monitoring to ensure that there is long-term persistence of the Covered Species and natural communities. The compliance monitoring requirement is addressed in Section 6.4 of the Plan, which describes the annual reporting requirements for the MSHCP. The CVCC will be responsible for monitoring and reporting on the Take allowed both inside and outside the Conservation Areas. In addition to reporting on the results of the biological Monitoring Program, annual reports to the USFWS and CDFG will provide an accounting of the number of acres of Core Habitat, Other Conserved Habitat, and conserved natural communities developed or impacted by Covered Activities both within and outside the Conservation Areas each year. The annual report will also provide an accounting of the status of each Covered Species with respect to the Species Conservation Goals and Objectives, consistent with the provisions in the HCP Handbook.



**COMMENTS H: CITY OF DESERT HOT SPRINGS (BY MEYERS, NAVE, RIBACK, SILVER, AND WILSON PROFESSIONAL LAW CORPORATION)**

Dated: May 30, 2007

- H-1**      The CVAG Executive Committee, by its action in July 2006, directed that the Recirculated Draft MSHCP address a future flood control facility along Morongo Wash. Section 4.3.7 of the Plan addresses the Special Provisions Area, as modified consistent with Comment E-1 from the Riverside County Flood Control and Water Conservation District: “Within the Conservation Area, a Special Provisions Area has been delineated to address a potential Morongo Wash flood control facility and its associated mitigation, as well as conservation for a wildlife habitat corridor and additional habitat necessary to accomplish the goals of the Plan.” The dimensions of a future Flood Control facility will be determined by the Riverside County Flood Control and Water Conservation District as it completes a master drainage plan for the area. The final design, construction, operation and maintenance of the flood control facility will require a Minor Amendment with Wildlife Agency concurrence (see page 7-36 of the Recirculated Draft Plan). The Special Provisions Area is also designed to allow sufficient area to maintain biological connectivity along Morongo Wash from Upper Mission Creek to the Willow Hole Conservation Area. Section 2820 of the NCCP Act (2003) requires that the reserve design and conservation measures provide for conservation of the species including under Item 4(E), “...sustaining the effective movement and interchange of organisms between habitat areas in a manner that maintains the ecological integrity of the habitat areas within the plan area.” The Special Provisions Area is designed to meet this requirement and ensure the long-term connectivity along Morongo Wash.

## **RESPONSES TO INDIVIDUALS AND ORGANIZATIONS COMMENTS**

### **COMMENTS I: THE HERPETOLOGISTS LEAGUE**

Dated: May 29, 2007

- I-1** The commenter's support for the Conservation Goals and Objectives and Required Measures of the Plan is noted.
- I-2** Please see responses to Comments I-3 through I-10, which address each issue in detail.
- I-3** As described in Section 8.3 of the MSHCP, implementation of the Monitoring Program will be the responsibility of the Monitoring Program Administrator, working in coordination with the CVCC, the Reserve Management Unit Committees, and the Reserve Management Oversight Committee. Annual plans will be prepared and reviewed by the RMUC; these plans will be public documents, and RMOC meetings will be public meetings with an opportunity to comment. The Plan also provides for the involvement of Independent Science Advisors in the Monitoring and Management Programs. As described in Section 8.7, annual reports on the research and monitoring will summarize the results of each year's monitoring efforts. These reports will be provided to the management committees and the Land Manager. They will be public information and would be available to interested members of the public.
- I-4** Comment is noted. USFWS will be involved in the development and implementation of the Monitoring Program as a member of the RMOC and will suggest that monitoring protocols used for single-species HCPs may not be sufficient to ascertain population trends in multiple-species HCPs. See also Major Issue Response 7.
- I-5** The comment on the importance of ensuring that long-term monitoring is conducted during the entire 75-year Permit period is noted. Section 5.1.4 of the MSHCP describes funding for the Monitoring Program during the 75-year term of the Permit. See also Major Issue Responses 3 and 7.

Commenter notes that a successful long-term monitoring program is dependent on adequate funding, availability of study sites and data, and other necessary resources that should be available during the duration of the Plan. As described in Section 8.8, the Monitoring Program is designed to continue throughout the 75-year term of the permit. Table 8-11 identifies the funding for the Monitoring Program, which is provided for 75 years, including the personnel and resources necessary for implementation.

- Commenter also states that the first decade will be the most crucial time for assessing population impacts from Plan activities. This is exactly the reason why Adaptive Management, alongside the Monitoring protocols, will provide the best assurances for maintenance of the Covered Species.
- I-6** One of the most significant elements of the MSHCP is the conservation of Essential Ecological Processes, including sand transport. The reserve design process for the Conservation Areas has carefully and thoroughly addressed the conservation and maintenance of sand source and sand transport areas that support habitat for the Coachella Valley fringe-toed lizard and other aeolian and sand-dependent species. Section 8.4.1 of the Plan is specifically focused on the aeolian sand dune ecosystem. Conceptual models (Figures 8-7 and 8-8) identify the processes and potential threats to this system and the species that depend on it. This program has been designed to provide the flexibility to allow adaptations in both monitoring and management to ensure long-term maintenance of Coachella Valley fringe-toed lizard populations and other aeolian sand-dependent species.
- I-7** The commenter expresses concern about the impacts of invasive plant species and the need to manage these species. The Lead Agencies recognize the potential for impacts from invasive plants and the potential need to manage these species. Invasive species are already being monitored by UCR biologists working in concert with CVAG and CDFG. Section 8 of the Plan describes the need to monitor and manage these invasive species. Funding has been identified in the Management Program budget (Table 8-9) and the Adaptive Management Program fund that could be used to address invasive species. CVAG and, ultimately, the CVCC are involved with the Low Desert Weed Management Area to provide for cooperative partnerships to manage invasive species.
- I-8** The Permittees, in signing the Implementing Agreement, commit to implementation of the provisions of the MSHCP, including the Monitoring and Management Programs. The management of the reserves will involve an ongoing cooperative partnership among the CVCC, USFWS, CDFG, BLM, NPS, State Parks, CVMC, and other public and private land managers in the Plan Area. Monitoring programs will be developed with input and support from staff with appropriate expertise from these agencies. Figure 8-4 of the Plan illustrates how monitoring data will be continuously evaluated by the RMOC, which includes the Wildlife Agencies, and how corrective actions will be taken as determined through the integration of monitoring and adaptive management. The Wildlife Agencies are required by the provisions of the HCP Handbook and the NCCP Act to ensure the implementation of the Monitoring Program. The comment is speculative with respect to the USFWS's ability to enforce

- the law. The Plan Permittees are committed by the Implementing Agreement to work with the Wildlife Agencies to use the Monitoring Program to ensure that the Plan preserves the 27 Covered Species in perpetuity.
- I-9** On April 26, 2007, LAFCO approved lands designated for the Palmwood project to be annexed from unincorporated Riverside County to the City of Desert Hot Springs. On July 12, 2007, LAFCO overturned its decision on the Palmwood annexation and voted to deny the annexation. No changes to the Plan or EIR/EIS are required, and recirculation of the Plan is not warranted.
- I-10** Even though the City of Desert Hot Springs is not a Permittee under the Plan, the USFWS and CDFG will continue to review and comment during public review of environmental documents for which the City of Desert Hot Springs is the Lead Agency, as appropriate.
- I-11** Measures are incorporated in the Plan that require adequate funding, monitoring, and management. See also responses to Comments I-5, I-6, and I-8. Section 8 of the Plan describes the Monitoring Program, including how population data for Coachella Valley fringe-toed lizard and other endemic species covered by the Plan will be used to guide Adaptive Management.

**COMMENTER J: C.D. SCOBEE**

Dated: May 29, 2007

**J-1** The commenter has asked that his letter on the prior EIR/EIS be responded to in considering the recirculated EIR/EIS. As part of his February 6, 2006 letter, the commenter asks that the document be revised and recirculated, which was subsequently done. The commenter's May 29, 2007 letter therefore does not specifically provide comments on the revised document nor provide specific comments about its adequacy. As described in Major Issue Response 1, Use of Best Available Science, the ISA provided review of the MSHCP in its early draft form. However, the ISA clearly stated that it found no fatal flaws in the Plan during its review. The ISA also wrote in the introduction to its April 2001 report, "we want to commend the Scientific Advisory Committee (SAC) and others who contributed to the Draft Plan for producing what is sure to be one of the most scientifically defensible and thorough HCPs or NCCPs ever developed." As described in the responses to this comment letter, the MSHCP and EIR/S are in compliance with the law and neither a second recirculated document nor SEIR/S preparation is required.

**J-2** The Lead Agencies have responded in good faith to the comments submitted on the February 2006 Final EIR/EIS referenced by the commenter. To the extent that the comments submitted on that document apply to the Recirculated Draft EIR/S, the Lead Agencies have provided responses. The commenter is correct in that CEQA emphasizes public disclosure and public participation. Three of CEQA's objectives are (1) to disclose to decision makers and the public the significant environmental effects of proposed activities; (2) to disclose to the public reasons for agency approval of projects with significant environmental effects; and (3) to enhance public participation.

The public has had multiple opportunities to review and comment on the draft MSHCP. Section 1.4 of the Plan describes the MSHCP planning process and the public's participation in it. In addition, Section 1.1 of Appendix I of the Plan describes public meetings held from 1995 to 2003. The February 2007 Recirculated Draft MSHCP was available at local libraries and online at <http://www.cvmshcp.org> from March 30, 2007, to May 29, 2007, for public review and comment. All written comments received during the review period have received a response in this Responses to Comments document. In addition, the public had the opportunity to discuss the Plan at three public forums held on (1) Thursday, April 12, 2007, at 6 p.m. at Palm Springs City Council Chambers; (2) Saturday, April 14, 2007, at 10 a.m. at Palm Desert City Council Chambers; and (3) Tuesday, April 17, 2007, at 6 p.m. at Coachella City Council Chambers.

- A public hearing and CVAG special meeting on the Final MSHCP is scheduled for 6 p.m. September 10, 2007, at the University of California, Riverside— Palm Desert campus, 75080 Frank Sinatra Drive, Palm Desert, California, to consider approval of the MSHCP. The public will have the opportunity to make comments regarding Plan approval at that time.
- J-3** The Coachella Valley fringe-toed lizard is listed under California Endangered Species Act requirements. This is a comment on the listing of the Coachella Valley fringe-toed lizard species, which is an issue that the commenter needs to address with the CDFG. It is not an MSHCP issue, since listing is not a prerequisite for inclusion within an HCP. Additionally, the report cited by the commenter is three decades old and did not address the issue of whether the lizard should be listed; the referenced report is assumed to have been superseded.
- J-4** The commenter is incorrect; the Lead Agencies have incorporated this report into the body of knowledge used in preparing this Plan, in addition to other, more recent studies. Please see also Response to Comment J-3.
- J-5** All literature cited in the Plan was considered in Plan preparation and in responses to public questions and comments and was incorporated in Section 11, Literature Cited, for that reason.
- J-6** As stated in the February 2006 Response to Comments document (specifically in response to Comment B10-08), the editorial corrections described were made in the February 2006 Final EIR. See Section 9.6.2.4 of the Final Recirculated Plan. After the MSHCP is published, the method used to correct (1) typographical, grammatical, and similar editorial errors that do not change the intended meaning and (2) maps or exhibits that contain insignificant errors in mapping is described under “Clerical Changes” in Section 6.12.1 of the Plan.
- J-7** As noted in Section 9.6.2.2 of the Recirculated Draft Plan, there are approximately 27,070 acres of Habitat for the Coachella Valley fringe-toed lizard within the Plan Area, of which approximately 11,802 acres are considered Core Habitat. Section 4.7.3 of the Final Recirculated EIR/Supplemental Final EIS analyzes the impacts to biological resources, including the Coachella Valley fringe-toed lizard, and identifies that “Approximately 13,681 acres (51%) of all habitat and 61% of non-Federal lands would be subject to Take Authorization under the Preferred Alternative. There would be approximately 606 acres (5%) of Core Habitat subject to Take Authorization....” The entire known range of the Coachella Valley fringe-toed lizard is within the MSHCP boundary; however, some of the Coachella Valley fringe-toed lizard

modeled Habitat is on lands “not a part” of this Plan because they are on land owned or managed by the Agua Caliente Band of Cahuilla Indians.

**J-8** According to an estimate based on the lands “not a part” of this MSHCP, there are approximately 4,087 acres of modeled Coachella Valley fringe-toed lizard Habitat that are “not a part” of this Plan. As noted in the Recirculated Draft MSHCP and Recirculated Draft EIR/Supplemental Final EIS, the Agua Caliente Band of Cahuilla Indians Tribe has drafted its own HCP, which is currently being reviewed by the USFWS. The Coachella Valley MSHCP could not rely on these lands, which are not subject to the land use controls of the Permittees. The USFWS will evaluate and analyze both the status of the species and the proposed impacts from both the Coachella Valley MSHCP and the Agua Caliente Band of Cahuilla Indians Tribal HCP on the Coachella Valley fringe-toed lizard prior to Permit decision. The conservation efforts for the Coachella Valley fringe-toed lizard on lands not a part of the Plan are outside the scope of the subject MSHCP.

**J-9** The Lead Agencies are aware of no conclusive evidence that would support a change in listing status for the Coachella Valley fringe-toed lizard as a full species. According to the Center for North American Herpetology (2007), “Trepanier and Murphy (2001 *Molecular Phylogenetics and Evolution* 18(3): 327-334), using mtDNA, concluded that this genus consisted of five distinct species in the United States, as follows: *Uma inornata* (the Coachella Valley fringe-toed lizard), *Uma notata*, *Uma rufopunctata*, *Uma scoparia*, and an as yet unnamed species.” Stebbins (1985, 2003)<sup>41</sup> also maintained *Uma inornata* as a distinct species. A NatureServe (2002) summary of the Trepanier and Murphy (2001) study<sup>42</sup> states that they “used mitochondrial DNA data to examine phylogenetic relationships among the three northernmost *Uma* species and concluded that either a two-species (*Uma scoparia*, *U. notata*) or five-species (*U. scoparia*, *U. notata*, *U. inornata*, and *U. rufopunctata*, plus an undescribed species from Mohawk Dunes, Arizona) classification is appropriate. They preferred the latter arrangement.... Here we maintain *U. inornata* as a species....” Crother et al. (2003)<sup>43</sup> adopted the taxonomy preferred by Trepanier and

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<sup>41</sup> Stebbins, R. C. 2003. *A field guide to western reptiles and amphibians*. Third edition. Houghton Mifflin Company, Boston.

<sup>42</sup> Trepanier, T. L., and R. W. Murphy. 2001. “The Coachella Valley fringe-toed lizard (*Uma inornata*): genetic diversity and phylogenetic relationships of an endangered species.” *Molecular Phylogenetics and Evolution* 18:327-334.

<sup>43</sup> Crother, B. I., J. Boundy, J. A. Campbell, K. de Quieroz, D. Frost, D. M. Green, R. Highton, J. B. Iverson, R. W. McDiarmid, P. A. Meylan, T. W. Reeder, M. E. Seidel, J. W. Sites, Jr., S. G. Tilley, and D. B. Wake. 2003. “Scientific

- Murphy, maintaining *Uma inornata* as a distinct species. Additionally, whether or not the lizard should be listed is not within the purview of the Permittees nor within the analysis in the Plan or EIR/EIS.
- J-10** In reference to the Trepanier and Murphy study (2001), the commenter presents an incomplete quote that misrepresents the conclusion of the authors. Please see response to Comment J-9. The commenter cites comments made by one of the authors whereby he clarifies terminology used in the paper. The Lead Agencies accept the current taxonomy of the Coachella Valley fringe-toed lizard as a distinct species. It should be noted that, under FESA, subspecies and “distinct population segments” are recognized and can be listed with the same protection under the law afforded a species. Therefore, with respect to the Conservation Goals of the MSHCP, the Coachella Valley fringe-toed lizard will be treated as a listed species regardless of current taxonomy.
- J-11** Please see response to Comment J-9.
- J-12** The commenter references various quotes from a paper by Ken Norris. The reference to the page number has been corrected. Comment is noted.
- J-13** The comment appears to relate the Norris paper (1958) to the use of wildlife corridors by Coachella Valley fringe-toed lizard. Comment is noted. The MSHCP provides for biological connectivity through design of the MSHCP Reserve System and Conservation Goals and Objectives that require that connectivity be maintained. The Monitoring Program will gather data on the use and effectiveness of Biological Corridor and Linkage areas and will provide data for effective design of future wildlife corridors.
- J-14** The comment notes that a searchable database of “wildlife crossings” does not provide a case history that would “come close to being adequate” for the Coachella Valley fringe-toed lizard. Section 8.4.7.2 of the MSHCP describes how Biological Corridors will be monitored and evaluated. The MSHCP anticipates that future wildlife corridors or crossings will be designed to suit the needs of the appropriate Covered Species, including Coachella Valley fringe-toed lizard.
- J-15** Biological Corridors, which include the wildlife undercrossings discussed by the commenter, are intended to maintain genetic connectivity for the Covered Species in
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and standard English names of amphibians and reptiles of North America north of Mexico: update.” *Herpetological Review* 34:198-203.



the Plan. In order to maintain long-term viability for these species, connectivity must be ensured. In terms of connectivity, the MSHCP Reserve System was designed to ensure connectivity between core populations within the Plan Area. With regard to connectivity for the fringe-toed lizard, Conservation Goals and Objectives (see, for example, Table 4-116) state that the MSHCP will ensure that connectivity between conserved populations of this species is maintained. See also response to Comment J-14. The Biological Corridors are features incorporated in the Plan and not regarded as mitigation in the EIR/EIS. The U.S. Department of Transportation “Critter Crossings” website has some data regarding use of wildlife crossings for reptiles and amphibians (<http://www.fhwa.dot.gov/environment/wildlifecrossings/amphibians>). Of note are case studies for crossings along a short stretch of U.S. 441 in central Florida and along Henry Street in Amherst, Massachusetts. Additional published studies on wildlife crossings include work by Jackson and Griffin<sup>44</sup> and Puky.<sup>45</sup>

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<sup>44</sup> Jackson, S.D. and C.R. Griffin. 2000. “A Strategy for Mitigation Highway Impacts on Wildlife.” pp. 143-159 in Messmer, T.A. and B. West, (eds) *Wildlife and Highways: Seeking Solutions to an Ecological and Socioeconomic Dilemma*. The Wildlife Society.

<sup>45</sup> Puky, M. 2003. “Amphibian mitigation measures in Central-Europe.” *Proceedings of the International Conference on Ecology and Transportation, 26-31 August, 2003, Lake Placid, New York, USA*. Irwin, L.C., Garrett, P. and McDermott, K.P., editor. 413-429. Center for Transportation and the Environment, North Carolina State University, USA.

**COMMENTS K: AMERICAN SOCIETY OF ICHTHYOLOGISTS AND  
HERPETOLOGISTS CONSERVATION COMMITTEE**

Dated: May 29, 2007

- K-1** Comment is noted. The Lead Agencies anticipate that the Plan would protect the wind-blown processes necessary for the sand-dependent proposed Covered Species. See response to Comment I-6.
- K-2** Please see responses to Comments K-3 through K-11, which address each issue in detail.
- K-3** Please see response to Comment I-3.
- K-4** Please see responses to Comments I-4 and I-5.
- K-5** See response to Comment I-6.
- K-6** See response to Comment I-7.
- K-7** See response to Comment I-8.
- K-8** See response to Comment I-9.
- K-9** See response to Comment I-10.
- K-10** See Section 9.4.1 of the Plan, which details the Conservation Goals and Objectives for desert pupfish, including a goal to “Ensure conservation of desert pupfish by maintaining the long-term persistence of self-sustaining populations and conserving Habitat quality through biological monitoring and Adaptive Management actions in the Plan Area.” This section includes provisions to ensure the maintenance and protection of ecological processes, including hydrologic processes, which will address water quality (e.g., sedimentation) and quantity. In the Plan Area, the desert pupfish is associated with natural pools in the lower Coachella Valley Stormwater Channel and Salt Creek areas, as well as agricultural drains surrounding the Salton Sea. Pupfish “refugia” are also located in Dos Palmas and in the Coachella Preserve in Thousand Palms. Section 8.4.5.2 of the Plan addresses management of pupfish Habitat. It includes a requirement for CVWD to establish at least 25 acres of managed replacement Habitat for desert pupfish, to be determined with input from the Wildlife Agencies to 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 evaluate impacts of drain maintenance on pupfish populations and will

modify its maintenance practices if it is determined that such modification would significantly minimize impacts to pupfish. Within 5 years of Permit issuance, CVCC shall develop, submit for review and approval by the Wildlife Agencies, and implement a management strategy with the goal of sustaining healthy populations of desert pupfish in the Plan Area in perpetuity.

Conservation measures for desert pupfish will be coordinated for consistency with the recovery plan for this species. In addition to the specific requirements described in the MSHCP, the Plan provides that a program of biological monitoring and Adaptive Management actions will be developed within one year of Plan approval, to ensure persistence of pupfish populations. The Plan and EIR/EIS therefore do provide adequate protection for this species. See also response to Comment BM-9. The MSHCP is not a recovery plan for desert pupfish.

**K-11**      See response to Comment I-11.

**COMMENTER L: SIERRA CLUB (BY WORDEN WILLIAMS, APC)**

Dated: May 29, 2007

- L-1** CVAG has and will continue to coordinate with the Agua Caliente Band of Cahuilla Indians with respect to their habitat conservation planning effort. The Tribal HCP is expected to be available for comment and review in fall 2007. At that time, it will be appropriate to submit any comments or concerns regarding the Tribal HCP. The common thread between the two planning efforts has been the USFWS. The USFWS has been coordinating issue resolution and will be resolving any unresolved issues as they become apparent. At this point, the two Plans complement each other; however, they are different and do not depend on each other for coverage of species.
- L-2** The commenter expresses concern about the survival and long-term recovery of Peninsular bighorn sheep and concerns that the Plan does not prevent jeopardy of the Peninsular bighorn sheep. The MSHCP Conservation Areas include virtually all of the Essential Habitat for Peninsular bighorn sheep delineated by the Recovery Plan for this species. Extensive conservation measures for Peninsular bighorn sheep have been incorporated in the MSHCP, and CVAG is confident that the MSHCP provides for the conservation of Peninsular bighorn sheep. CVAG has worked closely with the Wildlife Agencies and independent scientists to ensure that the MSHCP Reserve System, the Conservation Objectives, Required Measures, and other provisions provide for the long-term persistence of Peninsular bighorn sheep in the Plan Area. The jeopardy analysis has not been analyzed in the Plan or in the EIR/EIS. It is the responsibility of the USFWS prior to Permit issuance to comply with the requirements of Section 7 of FESA, which includes a jeopardy analysis. The USFWS will make the determination as part of their Findings under Section 10 of FESA as to whether to issue Take Authorization for the proposed Covered Species. CDFG will make their findings consistent with CESA. See also response to Comment L-3. Issues regarding mesquite habitat are addressed in response to Comment L-7.
- L-3** A series of comments refer to Special Provisions written for the proposed Shadowrock Project in Chino Canyon should the proponent seek incidental take coverage for federally listed species through the MSHCP. In the Final Recirculated MSHCP, Shadowrock is a Special Provisions Area and would receive Take Authorization if it complies with the Special Provisions. Alternatively, Shadowrock may pursue an authorization through Section 7 of the FESA. Regarding Shadowrock, Section 4.3.21 of the Plan states, "If a Take Permit for endangered and threatened species is issued through the Section 7 Biological Opinion, then no Take will be provided through the MSHCP for those species."

At this time, the Shadowrock project has received Take authorization through the federal Section 7 process via an Army Corps of Engineers Nationwide Permit for Peninsular bighorn sheep, least Bell's vireo, and desert tortoise. A reinitiation of this biological opinion has been requested and is being processed by the USFWS. It is likely that this Section 7 process will be completed prior to the issuance of the CVAG MSHCP Section 10 permit. Therefore, because CVAG has been informed by the City of Palm Springs that the Shadowrock project is a vested project in the City of Palm Springs and will have met the federal requirements for complying with the federal Endangered Species Act, the Plan will not apply. Should Shadowrock desire coverage of non-listed species, the developer could voluntarily elect to comply with MSHCP requirements in order to receive Take Authorization for non-listed species through the MSHCP provided that the Project Applicant complies with all Plan requirements.

In the future, should the project be determined by the City of Palm Springs or the Courts to not be a vested project, and/or should the Developer not build within the timeframe for the Nationwide Permit under which the biological opinion was issued, the project would be considered within the Plan Area and within the Special Provisions Area.

With respect to specific comments regarding the Special Provisions for the Shadowrock project, the following specific responses are provided.

The comment on Provision 1(b) addresses a conservation easement. The MSHCP language regarding legally binding instruments has changed to include a definition of a Legal Instrument as an instrument acceptable to the Wildlife Agencies that provides legal protection in perpetuity to conservation lands. The definition of "Legal Instrument" can be found in the Definitions section of the MSHCP. Regarding the overpass, Provision 1 requires a wildlife corridor across Chino Canyon, as shown in Figure 4-26e(1)A; the easement for the overpass described in Provision 2 ensures that this corridor could be constructed if an overpass is deemed necessary. Provision 4 calls for a vegetation management plan so that issues identified by the commenter related to potential loss of riparian habitat can be addressed prior to action being taken. This vegetation management plan would be approved by the Wildlife Agencies who would consider impacts to other listed species as part of their analysis. Provision 10 calls for funding to be derived from a percentage of proceeds from retail sales at a proposed hotel within the Shadowrock project. The MSHCP Management and Monitoring Program budgets, which would provide funding for MSHCP-related Peninsular bighorn sheep management and monitoring are not dependent on these funds. Peninsular bighorn sheep augmentation is not funded by the MSHCP and is not

a requirement for Plan implementation. In addition to these requirements, if for some reason, the Section 7 process is not completed or the Developer withdraws the Army Corps of Engineers application, all the conservation measures and terms and conditions in the Section 7 consultation will be added to this Special Provisions Area.

The commenter expresses concern about the proposed movement corridor for bighorn sheep across Chino Canyon. Required Measure 1(e) requires that “Development shall not preclude Habitat connectivity or movement.” Through the MSHCP special provisions (if the project obtains Take through the MSHCP), Wildlife Agency approval is required for major elements of the wildlife movement corridor, including the design and location, dedication of conservation easements, and the vegetation management plan; these elements must be approved by the Wildlife Agencies prior to issuance of a grading permit for the project. The special provisions also require coordination with the Agua Caliente Band of Cahuilla Indians Tribal HCP to ensure that a functional Biological Corridor for Peninsular bighorn sheep is maintained. If the Conservation Objectives are not met, the Wildlife Agencies could initiate Take Permit suspension and revocation. See Section 23.5 of the IA. During the development of the MSHCP, the Recovery Plan for Bighorn Sheep in the Peninsular Ranges (USFWS 2000) was used to identify the critical components of bighorn sheep habitat. Corridors that maintain habitat connectivity are one such critical component. The provisions of the MSHCP require that an effective biological corridor be maintained in this area. If the project obtains Take through the MSHCP, it will be required to go through the JPR process. The consistency determination with regard to the special provisions for this project would be made by the CVCC using the process outlined in Section 6.6.1.1 of the Plan. This determination is made with input from the Wildlife Agencies. If a project is not consistent with the Conservation Goals and Objectives and Required Measures, including Special Provisions, the Plan provides a meet and confer process to resolve inconsistencies with these measures. Within the Permittee-owned lands for the MSHCP Reserve System, it will be the responsibility of the CVCC to work in coordination with the RMUC and RMOC, which include the Wildlife Agencies, so that monitoring and Adaptive Management will be used to determine if the corridor is effective and to implement management actions to ensure its effectiveness. The above described measures identify the responsibility of the Wildlife Agencies and the CVCC to ensure a functional corridor for Peninsular bighorn sheep. The comment provides no supporting evidence or information for the claim of an improper deferral of environmental analysis and mitigation.

With respect to the commenter’s suggestion that the MSHCP fails to analyze the direct, indirect, and cumulative impacts of the proposed Palm Hills project, the conservation of habitat and analysis of the impacts of Take for bighorn sheep was

based on the recovery regions for this species as delineated in the Peninsular Bighorn Sheep Recovery Plan (USFWS 2000). Section 9.8.4.4 of the Plan includes an analysis of the impacts of disturbance on Peninsular bighorn sheep.

With respect to the particular comments about the Palm Hills development area, special provisions and measures shall apply if Take Authorization for the Palm Hills project is sought through the MSHCP rather than a Section 7 consultation. These provisions, listed under required measures for the Santa Rosa and San Jacinto Mountains Conservation Area, were designed to address the potential for bighorn sheep to expand into the Eagle Canyon area and to reduce impacts to movement corridors and water sources. The special provisions, developed through discussions with the Wildlife Agencies, are designed to minimize effects through mitigation measures and various site-specific characteristics. Additionally, the Palm Hills project must be consistent with the MSHCP. It is not likely that a Section 7 process would be initiated and completed prior to the issuance of the Permit for the MSHCP; therefore, if the project moves forward, it would need to comply with the MSHCP.

Commenter asserts the MSHCP will facilitate the Development and destruction of alluvial habitats because they will be selected for the percentage of allowable take. In the Plan Area, valley floor and alluvial habitats have always been favored sites for Development in contrast to the steeper and more rugged mountain sides. Alluvial and valley-floor habitats may continue to be preferred as building sites because they are much easier and less expensive places to build and live. The Lead Agencies recognize that alluvial habitats are essential for bighorn sheep and other wildlife, and, therefore, the MSHCP requires measures to minimize impacts to these habitats. For example, instead of allowing Development to be scattered across a site, resulting in maximum impact, Development must be clustered and located at the lowest possible elevation and away from the mouth of any canyon. These required measures are intended to preserve the areas bighorn sheep are most likely to frequent. Commenter is correct that a large amount of alluvial habitat within the Plan Area has already been developed and no longer provides habitat for bighorn sheep or other Covered Species. Therefore, the Plan designates 1,235 acres of alluvial fan habitat as 10% habitat loss areas. To avoid regulatory takings, the MSHCP does not propose to prohibit all future development in alluvial fan habitat. Although some amount of alluvial habitat will be developed, the Lead Agencies believe over the long-term the MSHCP will result in a much greater amount of alluvial habitat being conserved for wildlife compared to proceeding without the benefit of comprehensive reserve design and expenditures toward wildlife conservation.

During lambing, ewes normally isolate themselves from other sheep and center their core use areas in rugged cliff complexes or “lambing areas” to avoid predators. Exceptions to this behavior do occur, and ewes occasionally have lambs in less rugged terrain, which sometimes makes it difficult to delineate lambing areas. Because of the usually very rugged character of lambing areas, this type of terrain is unlikely to be developed. However, projects located too close to lambing areas may cause ewes to alter their behavior and move elsewhere. After delivering a lamb, ewes soon rejoin their group, where they depend upon the entire home range to acquire the resources needed to successfully raise a lamb. Therefore, management strategies that focus solely on lambing areas may fail to provide other important resources.

With respect to the suggestion that the MSHCP “permits the development of nearly 20% of the private lands in the San Jacinto and Santa Rosa Mountains,” the MSHCP included virtually all essential habitat delineated in the Recovery Plan within the Conservation Areas. The MSHCP will conserve all but 2.4% of this habitat. The distribution of this 2.4% is important, and the required measures were designed to minimize the impact of permitting this take by requiring the clustering of development at low elevations. To prohibit all development, or take, on private lands within the Conservation Areas would expose the MSHCP to litigation. Sections 4.2 and 5 of the Plan outline the Permittee’s obligations and funding mechanisms for acquiring land within the Conservation Areas, including Peninsular bighorn sheep habitat in the Santa Rosa and San Jacinto Mountains Conservation Area.

For a discussion concerning water sources, please see response to Comment L-4.

With respect to the desert tortoise corridor, desert tortoise are capable of traversing remarkably rugged terrain as evidenced by their presence in the Santa Rosa Mountains. The availability of areas for desert tortoise to potentially move across Chino Canyon is not limited to “a deeply incised permanent riparian area.” With respect to the Least Bell’s vireo, the existing Section 7 biological opinion and the MSHCP Special Provisions require a vegetation management plan for the proposed new movement corridor for bighorn sheep so that the CVCC can ensure that impacts to this endangered bird are addressed.

- L-4** Water sources were one of the first resources recognized as being important to desert bighorn sheep; consequently, wildlife managers have spent considerable effort protecting existing sources and creating new ones. People are also attracted to water sources in a desert environment, and several bighorn herds were displaced when human use became too frequent, sometimes bordering on permanent. Consequently, state Wildlife Agencies developed guidelines or regulations that prohibited camping and other activities within a quarter mile radius of certain water sources that were



important to bighorn sheep. Therefore, when searching for a quantitative value to buffer water sources located in the Conservation Areas from encroaching Development, a quarter mile was chosen based upon its use in the southwest for many years. Additional guidelines to ensure that bighorn sheep access to water sources is not impacted will be provided in the Implementation Manual. Site-specific considerations will also be taken into account during the JPR process, and Wildlife Agencies and the public will have the opportunity to comment on the potential impacts of a specific project on biological resources, including those stemming from proximity to bighorn sheep water sources. The conservation measure is therefore appropriate as written.

The identification and listing of water sources in the Conservation Area will likely remain a dynamic exercise throughout the life of the Plan. Water sources may appear during wetter years and disappear during drier years. The MSHCP goal is to continually update and track the list of “permanent,” seasonal, and ephemeral water sources. Eagle Canyon has provided water for bighorn sheep over the years as evidenced by the trailing on the canyon sides and down into the canyon, as well as past direct observations. Figure 4-26(f) of the Plan was revised in the Final Recirculated MSHCP to incorporate this water source.

- L-5** The Trails Plan has been designed to be a multi-agency cooperative approach to trails management in the Santa Rosa and San Jacinto Mountains. Many of the trails in the Conservation Area occur in large part on BLM and, to a lesser extent, on CDFG lands. Consequently, to have a functional trails plan it is necessary to coordinate planning with the BLM, CDFG, and other agencies. The multi-agency cooperative approach was deemed the most effective way to manage trails in the Santa Rosa and San Jacinto Mountains. A cooperative funding program involving BLM, USFWS, CDFG, or other agency partners is also anticipated to the extent funds are available. However, should funding from state and federal partners not be available, the CVCC Monitoring Program budget includes the necessary allocation to fully fund the research program. Section 8.8.3 of the Plan describes the funding for the trails research program and Peninsular bighorn sheep monitoring. Budgets for these programs were developed with input from bighorn sheep biologists from USFWS, BLM, and CDFG. As an example of cooperative funding, the BLM may help provide funding for technicians to monitor trail use levels, because having duplicate sets of technicians for the same trails would waste resources. Because of this inter-agency interaction, it might appear as if the MSHCP is dependent upon the BLM for funding trail monitoring, when it provides for a logically cooperative effort. Likewise, the CVCC will cooperate with CDFG, USFWS, BLM, and other agencies in monitoring bighorn sheep populations. Where there is no legitimate reason for cooperatively

funding an activity, the Permittees are fully committed to funding their responsibilities for bighorn sheep conservation within the Plan Area.

Under the federal Endangered Species Act [Section 10(a)(2)(A)] and federal regulation [50 CFR 17.22(b)(1), and 222.22], a conservation plan submitted in support of an Incidental Take Permit application must detail the funding that will be made available to monitor, minimize, and mitigate impacts. Therefore, before the USFWS can legally issue an incidental take permit, it must be assured that such funding is available. In the future, if the Permittees fail to provide sufficient funding to meet their obligations under the MSHCP, then the USFWS can suspend or revoke the Incidental Take Permit.

Commenter asserts that 5 years is too short a time period to adequately study the population level effects of mountain recreation on bighorn sheep. Some phenomena, such as population trajectories, may not become clearly evident within a 5-year time frame because of natural variation and because there are usually a number of interacting factors affecting a population. Likewise, populations of large, free-ranging mammals frequently experience time lags in their population dynamics, meaning a limiting or regulating factor may begin affecting the population before it becomes obvious in terms of animal numbers. Populations typically have some “momentum” in one direction or another, and it can take some time before an obvious change in animal numbers occurs. As described in Section 7.3.3.2.1 of the Plan that the Trails Plan does not anticipate or require a full assessment of population level effects during the 5-year research program. However, there is much that can be learned in 5 years that will greatly enhance the ability to adequately conserve and recover bighorn sheep in the local mountains while providing quality recreational experiences for people. Questions such as, “At what rate is the level of trail use increasing in the Conservation Area?” or “Are bighorn sheep spatially displaced by trail users, and, if so, are they able to find similar habitat elsewhere?” or “Do bighorn ewes abandon regularly used lambing areas if trail use occurs within these areas?” are possible to answer, and some have already been addressed elsewhere by researchers. These are questions that can be investigated with testable hypotheses within the available time frame which will contribute to an understanding of the mechanisms at work and the local behavioral patterns and responses of bighorn sheep. Answering these questions will provide the information needed to move forward under an adaptive management approach, by basing future management actions on locally obtained and reliable data.

The life of the Plan is for 75 years; consequently, it is difficult to predict all the future changes and events that will occur and the management actions that will be needed to deal with them. The Trails Plan provides for completion of an MOU, a sample of

which is provided in Appendix III of the Plan, among the Wildlife Agencies, BLM, and the CVCC, which describes the roles and responsibilities of these agencies in implementation of the Trails Plan, including monitoring, enforcement, and research. Therefore, the Plan contains mechanisms and structures for dealing with future challenges, and the adaptive management and monitoring portions of the MSHCP, in conjunction with the committee systems, are the chief means of providing the flexibility to solve future problems.

In terms of the trails research program, the future is essentially “now,” because the initial phases of trails research will begin early in Plan implementation. Please see response to Comment M-2. The need for research that provides stronger inference, less uncertainty, and local knowledge has been recognized by many, including the Wildlife Agencies. However, stronger inferences are difficult to obtain without using study designs that enable the researcher to manipulate treatment levels, in this case—trail use levels. Therefore, restrictions and possibly closures may be essential for answering certain questions. Enforcement and a trail user education program will ensure that trail users do not disrupt study designs by using closed or use-restricted research trails. Implementation of the Trails Plan is a multi-agency commitment, as described in Section 7.3.3.2 of the Plan. BLM has committed to implement the trails management plan through its CDCA Plan.

- L-6** The MSHCP is a 75 year plan. In the preparation of the Trails Plan, the potential for new trails was evaluated based on input from the community about potential trail locations. The Palm Desert to La Quinta Connector Trail was evaluated in this context. Other new trails evaluated in the preparation of the Trails Plan included a perimeter trail system. In the revision of the Trails Plan mentioned by the commenter, the need for a research program was identified to assess the potential impacts of trail use on bighorn sheep. As described in Section 7.3.3.2.1 of the Plan, proposals to construct any new trails have been deferred until the research program has been completed. The Trails Plan clearly states that new trails, including the Palm Desert to La Quinta Connector Trail, will be evaluated to ensure they do not adversely affect bighorn sheep. The Final Recirculated MSHCP further clarifies that a research program on captive bighorn sheep would be necessary before a determination about the construction of this trail can be made; this determination would include the results of the research program on wild sheep.

Commenter mentions the possible habituation to human hikers by captive sheep and suggests that such an event would make the captive-reared sheep less likely to survive in the wild. The Lead Agencies are unaware of any published evidence documenting that habituation to hikers results in bighorn sheep becoming less vigilant and more

vulnerable to natural predators, such as mountain lions. However, habituated sheep may begin frequenting towns and cities, where they experience higher than normal mortality rates from urban causes, such as collisions with cars and consuming poisonous ornamental plants. Such situations pose a threat to sheep and people as well. There is also some evidence that normal maternal behavior can be disrupted when bighorn ewes begin frequenting urban areas, thus resulting in higher lamb mortality. The potential for habituation would be one factor to be evaluated in a potential research program regarding the impacts of trail use on captive bighorn sheep.

In summary, the effects of recreational trails on bighorn sheep abundance, distribution, and behavior will be addressed in the research program. Any research program on captive bighorn sheep would be developed with input from expert biologists from CDFG, USFWS, BLM, and other outside experts as needed. Such a research program would also require permission from the Bighorn Institute before captive bighorn sheep in their facility are used in a potential study. The Lead Agencies are aware of the available peer-reviewed literature regarding the role that past augmentations have played in preventing the extirpation of bighorn sheep in these local mountain ranges. Should future research eliminate the uncertainty concerning its effects on the captive bighorn sheep, then construction of the Connector Trail would be allowed as a Covered Activity. Please see also responses to Comments M-2 through M-6 for additional details on this topic.

- L-7** The comment addresses the mesquite dunes associated with the San Andreas Fault in the vicinity of Palm Drive within the Willow Hole Conservation Area. Section 8.4.1 of the Plan addresses the management of aeolian sand communities, including mesquite hummocks, and describes a management goal “to maintain or increase groundwater levels so that mesquite hummocks can be maintained in extent and can regenerate” (page 8-47 of the Final Recirculated Plan). Section 8 also calls for an evaluation of water requirements, the source of water to support mesquite restoration or enhancement, and the relationship with groundwater levels. It states that if natural and human-induced impacts on this resource are to be mitigated, the relationship between hydrologic conditions and the health and reproduction of the native mesquite hummocks need to be quantified. A link between groundwater and mesquite health is unclear, especially in sites such as Willow Hole where depth to groundwater varies widely in the fault area. Sand dunes hold water and may provide a significant portion of water needs for mesquite. In the Mojave and Sonoran deserts (including the Coachella Valley), rainfall may be insufficient to provide adequate surface soil

moisture for mesquite to survive.<sup>46,47</sup> Mesquite hummocks are associated with shallow water tables,<sup>48,49</sup> and reductions in water availability can reduce the extent of these natural communities or cause compositional shifts from more mesic to more xeric species.<sup>50,51,52</sup> This is a research question to be addressed in monitoring the mesquite hummock natural community. A specific management objective to “maintain or increase groundwater levels so that mesquite hummocks can be maintained in extent and can regenerate,” was included in Section 8.4.1.1 of the Management and Monitoring Program section of the Plan. Adaptive Management of the community would be triggered if monitoring indicates the necessity for management actions to ensure the health and persistence of mesquite hummocks **in the Conservation Areas where this natural community exists**. If natural and human-induced impacts on this resource are to be mitigated, the relationship between hydrologic conditions and the health and reproduction of the native mesquite hummocks should be further quantified. CVWD and others monitor groundwater and have data at well sites in and around the Conservation Areas. Monitoring will involve utilizing these groundwater data and evaluating the health of the mesquite (plant characteristics) in the Willow Hole, Thousand Palms, East Indio Hills, and Dos Palmas Conservation Areas, and its relationship to hydrologic/groundwater conditions in the Coachella Valley.

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<sup>46</sup> Mission Springs Water District (MSWD). 2004. *Draft Environmental Impact Report for the Mission Springs Water District*. 900 Zone Project. MSWD. February.

<sup>47</sup> Sosobee, R.E. and C. Wan. 1989. Plant Ecophysiology: A Case Study of Honey Mesquite. *In*: A. Wallace, E.D. MacArthur, M.R. Haferkamp (compilers). *Proceedings – Symposium on Shrub Ecophysiology and Biotechnology*; 1987 June 30-July 2. Logan, UT. USDA, Forest Service, Intermountain Research Station, Gen. Tech. Rep. INT-256.

<sup>48</sup> Jarrell, W.M. and R.A. Virginia. 1990. “Soil Cation Accumulation in Mesquite Woodland: Sustained Production and Long-term Estimates of Water Use and Nitrogen Fixation.” *Journ. of Arid Environ.* 18:51-58.

<sup>49</sup> Nabhan, G.P. 2001. Mesquite as a Mirror - Mesquite as a Harbor. <http://www.spmesquite.com/articles/mirror.html>.

<sup>50</sup> Rood, S.B. and J.M. Mahoney. 1990. Collapse of Riparian Poplar Forests Downstream of From Dams in Western Prairies: Probable Causes and Prospects for Mitigation. *Envir. Mgmt.* 14:451-464.

<sup>51</sup> Stromberg, J.C. 1993. “Riparian Mesquite Forests: a Review of their Ecology, Threats and Recovery Potential.” *Journ. of Arizona Nevada Academy of Sciences*. Vol. 27.

<sup>52</sup> Stromberg, J.C. and D.T. Patten. 1990. “Riparian Vegetation Instream Flow Requirements: A Case Study From a Diverted Stream in the Eastern Sierra Nevada, California.” *Envir. Mgmt.* 14:185-194.

- L-8** Commenter states that the MSHCP needs to address the approval by LAFCO on April 26, 2007, of lands designated for the Palmwood project to be annexed to the City of Desert Hot Springs. However, on July 12, 2007, LAFCO voted to reconsider the April 2007 decision and subsequently overturned its decision on the Palmwood project, denying the annexation. No changes to the Plan or EIR/EIS are required.
- L-9** Approved existing specific plans are not subject to the MSHCP; however, if additional discretionary entitlements are required, then MSHCP requirements must be met. At Adams Ranch (now known as the Fiesta de Vida project), a functional corridor that maintains habitat connectivity is a required measure described in Section 4.3.15. The Adams Ranch/Fiesta de Vida property has been significantly disturbed by previous agricultural use. If additional discretionary entitlements are proposed, the MSHCP requirements will be applied and the habitat in the corridor will be restored and enhanced as necessary to maximize the corridor's functionality. As mentioned previously, the Shadowrock project obtained Incidental Take authorization under Section 7 of the FESA with a no jeopardy and no adverse modification biological opinion. The commenter referred to a jeopardy opinion. In 1998, a draft jeopardy conference opinion was issued with a reasonable and prudent alternative that would permit the project to proceed. This draft conference opinion was never adopted as final. The more recent biological opinion has significantly more off-setting measures that contribute to conservation and that opinion forms the baseline for the Plan. Also, the status of the species improved significantly between 1998 and 2007, allowing for more flexibility in allowing for incremental effects to the species.
- L-10** The commenter refers to Sections 4 and 9 of the Plan but provides no specific reference or examples regarding contradictory standards within the Conservation Areas. The Lead Agencies do not agree that the standards are contradictory as the provisions in both Sections 4 and 9 will accomplish the Conservation Goals and Objectives of the MSHCP. For example, throughout Section 4 of the MSHCP, measures are referred to and cross-referenced such that they are "...consistent with the Conservation Area and Covered Species Goals and Objectives of the Plan. This includes the Covered Species Conservation Goals and Objectives in Section 9."
- L-11** The commenter is referred to the Definitions section of the Recirculated Draft MSHCP where the term "Legal Instrument" was added. The definition follows: "'Legal Instrument' as used within the Plan and/or IA, shall refer to recorded legal instruments acceptable to the Wildlife Agencies, which provides legal protection in perpetuity to conservation lands; this legal protection may consist of a conservation easement consistent with California Civil Code Section 815 et seq. or a perpetual deed restriction that meets the requirements of a conservation easement under this

statute.” The use of the term “legal instrument” throughout the MSHCP has a consistent meaning per this definition. CVAG and the Wildlife Agencies recognize that the process of obtaining a Legal Instrument on non-CVCC lands will take time; the Plan does provide a definite time period in each case, which varies from six months to three years of Permit Issuance. In the case of Existing Conservation Lands, the non-profit owners are already managing the lands for conservation, consistent with the legal requirement necessary for them to maintain their non-profit status.

- L-12** The comment is appreciated. Although the title may be confusing, it doesn’t have a word missing.

**COMMENTER M: BIGHORN INSTITUTE**

Dated: May 29, 2007

**M-1** Comments that were submitted under the first MSHCP draft were addressed in those responses to comments, and the Lead Agencies direct the Bighorn Institute and other readers to refer to responses to Letters S03, T03, U03, R04, M05, and T06 published in February 2006 rather than reiterating them in this document. Regarding the “lack of regard for protecting the Peninsular bighorn sheep with the revised Trails Plan,” the Wildlife Agencies will be reviewing the final Plan and analyzing the impacts and will only permit the Plan if Permit issuance criteria are met. Changes have been made over the years in the Plan regarding how to deal with trail management and Peninsular bighorn sheep. The Plan’s requirement to have a focused study will lead to more information about sheep and trail use. This information will be incorporated through an adaptive management process, and modifications to trail use may be made over time, as necessary. Within the Plan, re-routing trails, temporary or permanent closures, and other management options have been identified and committed to by Plan Permittees, should such measures be needed.

**M-2** The Trails Plan has evolved over time, and throughout this process, there have been concerns expressed regarding the Connector Trail by some and support for the trail by others. As described below, language has changed from the Recirculated Draft MSHCP to the Final Recirculated MSHCP. The USFWS will be doing an analysis in their biological opinion that will evaluate the specific impacts and add any conditions that may be necessary to protect the sheep.

The MSHCP is a 75 year plan. In the preparation of the Trails Plan, the potential for new trails was evaluated based on input from the community about potential trail locations. The Palm Desert to La Quinta Connector Trail was evaluated in this context. Other new trails evaluated in the preparation of the Trails Plan included a perimeter trail system. In the revision of the Trails Plan mentioned by the commenter, the need for a research program was identified to assess the potential impacts of trail use on bighorn sheep. As described in Section 7.3.3.2.1 of the Plan, proposals to construct any new trails have been deferred until the research program has been completed. The Trails Plan clearly states that new trails, including the Palm Desert to La Quinta Connector Trail, will be evaluated to ensure they do not adversely affect bighorn sheep. The Final Recirculated MSHCP further clarifies that a research program on captive bighorn sheep would be necessary before a determination about the construction of this trail can be made; this determination would include the results of the research program on wild sheep.



- M-3** The issues identified by the commenter will be reviewed and addressed as part of the research program related to captive bighorn sheep and potential trail use. See response to Comment M-2.
- M-4** See response to Comment M-2. The Final Recirculated MSHCP identifies that the research program on captive bighorn sheep would be conducted subsequent to the research program on wild sheep.
- M-5** The Lead Agencies agree the situation posed by the Connector Trail and Bighorn Institute is unique for a number of reasons. The topography and juxtaposition of the trail's location in relation to the Institute's pens play a major role in determining the effects of the project. Such a situation would be difficult to find or re-create elsewhere. Additionally, the Lead Agencies know of no other captive desert bighorn sheep facility that raises sheep under the same conditions, goals, and practices. The other desert bighorn captive facilities are zoos or university research facilities that do not raise sheep with the intent of releasing them to the wild. Therefore, to be valid, if research does occur, it likely would need to be conducted on site, and the potential for impacts to the captive sheep would need to be evaluated in developing the research study design. Language in the Final Recirculated MSHCP has been revised to clarify that if research is pursued on the captive sheep at the Bighorn Institute, the permission of the Bighorn Institute will be obtained prior to the study being initiated..

Commenter mentions the possible habituation to human hikers by captive sheep and suggests that such an event would make the captive-reared sheep less likely to survive in the wild. This is one of the issues the USFWS will be analyzing in the biological opinion. The Trails Plan did not describe in detail timelines, study hypotheses, and methods concerning research on captive bighorn sheep. The Lead Agencies will focus their efforts on the wild population first. Prior to initiation of research on captive sheep, specific research hypotheses, data analyses, and other methods would be developed as part of a request for proposals (RFP) process. The researcher(s) who would be responsible for carrying out research on wild or captive bighorn sheep will be selected through this RFP process.

- M-6** The EIR/EIS does not improperly change the standard of significance with respect to the Bighorn Institute's captive breeding program. As stated in the Plan, the effects of recreational trails on bighorn sheep abundance, distribution, and behavior is a complex topic. The Plan includes measures to increase local knowledge of bighorn/human interactions through a research program to evaluate the effects of trail use on wild bighorn sheep. As stated in Section 5.3.4 of the EIR/EIS, measures are incorporated in the Plan to avoid and minimize impacts to bighorn sheep such that they do not rise to a level of significance. See response to Comment M-2 with respect

- to Plan requirements associated with the Connector Trail. The Final Recirculated MSHCP identifies the need to evaluate new trails to ensure that they do not adversely affect bighorn sheep.
- M-7** As stated previously, the best available science was used to determine the baseline of the Plan's Conservation Areas and associated analysis. The Plan commits to a focused research program to evaluate the effects of recreational trail use on Peninsular bighorn sheep within Essential bighorn sheep Habitat in the Santa Rosa and San Jacinto Mountains. This research will address the proximate response of bighorn sheep to recreation disturbance as well as broader questions about the population-level effects and impacts to long-term persistence of bighorn sheep. A separate research program focusing on the effects of recreational trail use on captive bighorn sheep is also proposed.
- M-8** The EIR/EIS conclusion of no significant impact for the Connector Trail is accurate and is based on avoidance and minimization measures included in the Plan and documented in the EIR/EIS. These measures include a focused research program that will ensure that the trail would not adversely affect bighorn sheep. The Plan specifies that if impacts to wild and/or captive breeding populations would result as determined through the research programs, mitigation measures would be implemented to reduce impacts. See also response to Comment M-2.
- M-9** The avoidance and minimization measures incorporated in the Plan and EIR/EIS do not represent improper deferral of analysis but rather properly establish the performance standards that must be met prior to construction of the Connector Trail. It should also be noted that language has been changed in the Plan that outlines some conditions for coverage of the Trail. The new language provides for permission to be obtained from the Bighorn Institute prior to research on the captive bighorn sheep at their facility. See also response to Comment M-8.
- M-10** Briefly, the difference between the two approaches revolves around handling the existing uncertainty concerning the effects of trail use on bighorn sheep. The precautionary approach was conservative and oriented toward providing a high level of protection for bighorn sheep while increasing knowledge of bighorn/human interactions through research. However, to protect bighorn sheep in the interim, this approach asked humans to sacrifice recreational opportunities by imposing trail closures and restrictions. Therefore, the current approach emphasizes research on the effects of trail use on bighorn sheep in the Santa Rosa and San Jacinto Mountains and monitoring of human use on trails and bighorn sheep populations. In addition, as described in Section 5.3.4 of the EIR/EIS, the Trails Plan incorporates management actions which have been identified to anticipate, address, and mitigate potential

impacts to bighorn sheep. The Adaptive Management approach that allows for management actions to benefit bighorn sheep recovery is demonstrated. For example, Adaptive Management based on data from monitoring and research could result in increased restrictions on trail use should circumstances warrant. Thus, the Trails Plan provides for trail use levels to be modified based on data from the monitoring and research efforts, including local bighorn sheep population data.

The Final Recirculated Plan incorporates 2006 population data for bighorn sheep in the Plan Area. Bighorn sheep within the Plan Area, especially within recovery regions 1 and 2, have lower numbers compared to bighorn sheep inhabiting areas south of these regions. Recovery regions 1 and 2 contain more trail miles with a higher density of trails than other regions. Examining whether this characteristic plays a role in local bighorn sheep behavior, abundance, and distribution will be one of the questions to be addressed in the research program.

**M-11** The decision to reroute the Art Smith Trail was analyzed, approved, and implemented separate from the Trails Plan to mitigate specific, immediate concerns related to bighorn sheep habitat. The Wildlife Agencies provided information and feedback regarding the most effective routing and other measures associated with this reroute.

Information was provided by CDFG, USFWS, and the Bighorn Institute regarding the abundance and distribution of bighorn sheep in Dead Indian and Carrizo Canyons. The information on distribution indicated sheep, including ewes and lambs, heavily used an area just south and above the beginning of the Art Smith Trail as it entered Dead Indian Canyon. Because of the continued low numbers of ewes in this group, land managers decided to take action instead of waiting for approval of the MSHCP and Trails Plan. Rerouting the trail away from this high-use area was considered the most likely option to succeed. The concept of including a “trigger point” of 5 or fewer ewes mandating immediate trail closure had not yet been formulated when efforts to reroute the trail were initiated. Although not a trail closure, the re-routing of the Art Smith trail indicates managers are willing to take large-scale actions to lessen the impacts of the trail system on bighorn sheep. Additionally, the public’s acceptance of re-routing the Art Smith, a trail with much sentimental value, also indicates that people are willing to make sacrifices for bighorn sheep recovery. Such actions to benefit Peninsular bighorn sheep recovery, including reroutes, fencing, and other measures associated with the Art Smith Trail, demonstrate the design of the Trails Plan to provide for rapid implementation of management actions that benefit or enhance Peninsular bighorn sheep conservation.

At this time, the MSHCP has not been adopted; therefore, the Trails Plan is not in effect. Consequently, there is not a legal basis, related to the MSHCP, to impose a

trail closure if a ewe group drops below 5 ewes. Once the Plan is finalized and in effect, the 5-ewe trigger point will become effective. As described in Section 7.3.3.2.1 of the Final Recirculated MSHCP, “the rerouted portion of the Art Smith Trail is not subject to closure at this time although the Dead Indian Canyon subgroup has fewer than five ewes. The research program will monitor the subgroup and trail use to assess whether use of the rerouted trail has any impacts on the subgroup. If there is evidence of a decline in the number of ewes in the subgroup, the meet and confer process described above will be used to determine appropriate actions.”

**M-12** Enforcement is one of the keys to a successful Trails Plan. One of the benefits of the multi-agency cooperative Trails Plan is the ability to provide for management of the trails, including enforcement. The Trails Plan provides for completion of an MOU, a sample of which is provided in Appendix III of the Plan, among the Wildlife Agencies, BLM, other state and federal partners, and the CVCC, which describes the roles and responsibilities of these agencies in implementation of the Trails Plan, including monitoring, enforcement, and research. The Permittees will also commit to implementation of all of the provisions in the Trails Plan through the Implementing Agreement. In addition to providing rangers, the CVCC on behalf of the Permittees will be responsible for coordinating implementation of the Trails Plan, including management through ordinances, signage, and associated and appropriate law enforcement.

**M-13** The MSHCP has been developed using the best available science. Because the Bighorn Institute is permitted by both the USFWS and the CDFG and is required by Permit to submit annual reports and data, input and data from the Bighorn Institute data have been included in the process. Also, the Bighorn Institute has been an active participant in public meetings and has submitted comments.

The MSHCP, including the Trails Plan, has been developed in a public process based on sound scientific foundation with the data and methodology used available for peer review. This process involved the Lead Agencies for the Recirculated Draft EIR/EIS, CVAG and USFWS, as well as CDFG and BLM. The Project Advisory Group has been the primary vehicle for input into the MSHCP. The Bighorn Institute was notified of each of the 53 Project Advisory Group meetings between 1997 and 2003 listed on page 3 of Appendix I to the Plan. The Bighorn Institute was invited to attend all of the meetings held over the course of the MSHCP planning process where scientists with knowledge of any of the Covered Species were brought together, as well as other meetings with independent scientists from outside the Plan Area. In addition, as referenced in the comment letter, a meeting was held with the Bighorn Institute on October 24, 2003, as part of the planning process specifically to hear

concerns with regard to the Trails Plan and the Palm Desert to La Quinta Connector Trail. The Interagency Wildlife Biologist Working Group, including biologists from CDFG, BLM, and USFWS, made several visits to the Bighorn Institute to review data. These biologists and other staff from CDFG, BLM, and USFWS discussed concerns with respect to the Palm Desert to La Quinta Connector Trail with the Bighorn Institute on various occasions throughout the process. Other meetings with the Bighorn Institute were held during the planning process with CVAG, BLM, CDFG, and USFWS. Conversations the Bighorn Institute had with individual biologists (e.g. from USFWS, CDFG, or BLM) were also part of the process and represent efforts to include the Bighorn Institute. The same kind of individual contact was made with other biologists regarding other Covered Species. A hike with biologists from the Bighorn Institute, CDFG, BLM, and USFWS was taken on June 17, 2003, to address several alternative routes for the Palm Desert to La Quinta Connector Trail (Memo from Bighorn Institute to USFWS, BLM, and CDFG, June 18, 2003). This hike was also part of the planning process in which the Bighorn Institute was involved. The level of involvement and access to meetings by the Bighorn Institute was comparable to that for other non-agency or non-Permittee stakeholders and biologists. The Bighorn Institute is encouraged to remain involved and partner with the CVCC for the implementation of the Plan,

**M-14** The Bighorn Institute is recognized as valuable by the Lead Agencies. The Bighorn Institute is encouraged to continue to partner with CDFG, the USFWS, and the CVCC to identify the appropriate role for the Bighorn Institute in the future. Options may include being a contractor, a scientific advisor, a peer reviewer, among others. The composition of the Trails Management Subcommittee is a decision of the CVCC. The potential to add members to the Trails Committee can be considered by the CVCC at their discretion.

**M-15** The Bighorn Institute has provided invaluable information in the past to the CDFG, CVAG, and the USFWS. The monitoring of bighorn sheep will be part of the Monitoring Program described in Section 8 of the MSHCP. Section 6.1.6 of the MSHCP describes the administration of the Monitoring Program. It is anticipated that CVCC will develop a contract for the Monitoring Program and will solicit applicants to conduct the monitoring through a Request for Proposals (RFP) process. Monitoring of bighorn sheep to be carried out on behalf of the CVCC would be included in this RFP process. The Lead Agencies encourage the Bighorn Institute to participate wherever appropriate in Plan implementation.

**M-16** The Department of Interior has adopted a policy requiring the use of Adaptive Management in all habitat conservation plans. The integration of Adaptive

- Management is described in Section 8.2.4.3 of the MSHCP. The precautionary approach has been abandoned in favor of identification of immediate issues and remedies for those issues, standard and identified measures for action, and a fully funded research program that will specifically address sheep/trails related issues.
- M-17** The Recovery Plan has been used as an advisory document and has been followed, as much as possible, in guiding the development of the Plan. The MSHCP not only provides for Conservation, but it also provides for Development and human use. Some of these areas of Development and human use are in areas identified in the Recovery Plan for sheep conservation. The USFWS will do an analysis in the biological opinion, using the Recovery Plan, and will make a determination of jeopardy or no jeopardy.
- M-18** The Final Recirculated MSHCP acknowledges the cooperation of the Bighorn Institute with CDFG in monitoring bighorn sheep populations. The Lead Agencies appreciate the Bighorn Institute's offer to provide updated monitoring information. This information will be useful during Plan implementation. The information regarding the percentage of collared sheep has been corrected and incorporated into the Final Recirculated MSHCP. During Plan implementation, monitoring of bighorn sheep will be a cooperative effort involving CDFG, USFWS, BLM, CVCC, and other partners, including the Bighorn Institute.
- M-19** The Final Recirculated Plan incorporates 2006 data provided by the Bighorn Institute on their latest bighorn sheep population estimates. The statement referenced by the commenter regarding bighorn sheep in the four recovery regions within the Plan Area refers to "a stable or positive trend" in the context of information in the previous paragraph that describes the bighorn sheep population declines since the 1970s. The statement is intended to describe a general trend of increasing numbers of bighorn sheep in the Plan Area more recently. The statement about a stable trend appears to be consistent with the commenter's reference to the northern Santa Rosa ewe group which has "remained stable over the past 3 years." The information on population status of bighorn sheep is appreciated and will be useful in the Plan implementation process,
- M-20** The Lead Agencies have reviewed all of the comment letters, have attempted to verify all information in the documents, and, where appropriate, correct any inaccuracies. See response to Comment M-1.

**COMMENTER N: FLYING J (BY NOSSAMAN, GUTHNER, KNOX & ELLIOTT, LLP)**

Dated: May 29, 2007

**N-1** As described in Major Issue Response 1, Use of Best Available Science, the MSHCP was developed using the best scientific data available, in accordance with federal and state standards for information used pursuant to FESA and the NCCP Act. Furthermore, the authors of the Plan relied on independent experts and science advisors throughout the development of the Plan and subsequent revisions. In response to the concern about biological data being outdated, incomplete, and non-specific, the MSHCP relied on surveys from qualified biologists, including Wildlife Agencies biologists, as well as working through the UCR Center for Conservation Biology. As described in Major Issue Response 1, there are limitations on the available data for a large regional plan that covers over 1 million acres. While every effort was made to address specific information needs, resources did not allow for comprehensive surveys for all of the Plan Area. However, the MSHCP will continue to gather information of species distribution, habitat affiliations, and population size early in the implementation process.

The surveys were conducted through 2006, and the most current data were included in the Recirculated Draft MSHCP. It is not necessary to update the referenced technical appendix to reflect data assembled between 2003 and 2006. Taken together, the Plan and the appendices provide complete documentation of the data used to assemble the MSHCP. The survey data are not outdated and the natural communities mapping and species survey data provide a complete landscape level database for a regional multiple species planning effort such as the MSHCP. Refer to Major Issue Response 1 for additional information regarding development of the Plan in accordance with NCCP reserve design tenets and use of species and habitat modeling as a plan development tool.

The MSHCP was reviewed and subsequently revised based on the ISA review. Through this process, the SAC's revised conservation was further revised to incorporate additional information. The result was the preferred conservation alternative presented in Section 4 of the Plan.

Crosswalks between the natural community classification systems of Holland (1986) and Keeler-Wolf (1995) are provided for each community in MSHCP Section 10. See subsections in Section 10 titled "Comparison with *Manual of California Vegetation*" under "Natural Community Account: Background" for each natural community.

**N-2** The Recirculated Draft EIR/Supplemental Final EIS fully complies with all the provisions of CEQA and NEPA. Commenter's introductory remarks summarize perceived inadequacies for which responses are provided below. The Recirculated Draft EIR/Supplemental Final EIS fully complies with the intent of both CEQA and NEPA in their provisions to providing decision-makers with sufficient information for which to make a decision.

**N-3** State CEQA Guidelines Section 15124 states that the description of the project must contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact: "(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferable topographic. The location of the project shall also appear on a regional map; (b) A statement of the objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project; (c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities; [and] (d) A statement briefly describing the intended uses of the EIR." The MSHCP project description fully complies with CEQA and other applicable laws, is sufficiently detailed, and accurately reflects the MSHCP requirements and potential impacts. The project description completely and accurately discusses the project location and contains all necessary information required by State CEQA Guidelines Section 15124. Specifically, the project description includes the following required elements:

- The precise location and boundaries of the project (Recirculated Draft EIR/Supplemental Final EIS Section 1.9)
- A detailed map and a map showing the project's location in a regional perspective (Recirculated Draft EIR/Supplemental Final EIS Exhibits 1-1 and 1-2)
- A statement of project objectives (Recirculated Draft EIR/Supplemental Final EIS Sections 1.1.1 through 1.1.3; Plan Sections 4 and 9)
- A general description of the project's technical, economic, and environmental characteristics (Recirculated Draft EIR/Supplemental Final EIS Sections 1.6, 1.8, and 2.0). Section 2.0 describes the process used to develop the MSHCP, a description of the Covered Species and natural communities, a description of the MSHCP reserve system, a summary of MSHCP costs and funding, a description



of the MSHCP implementation plan, and a summary of proposed Covered Activities.

- A statement describing the intended uses of the EIR/EIS (Recirculated Draft EIR/Supplemental Final EIS Section 1).

The Recirculated Draft EIR/Supplemental Final EIS analyzes the MSHCP, a document that is designed to provide a framework for future decisions and actions. The description of the proposed MSHCP adequately addresses all integral parts of the project, which are listed in the comment. The commenter seems to imply that these parts of the project are not addressed or analyzed, which is simply an incorrect statement. Thus, the project description is accurate and allows meaningful evaluation of the project's environmental effects.

**N-4** Please see responses to Comments N-1 and N-3 and Major Issue Response 1, Use of Best Available Science. The Recovery Plan (1996) for bighorn sheep is the current plan used by USFWS for this species and is not undergoing changes or revisions at this time. There is no scientific consensus that has called the Recovery Plan into question. With respect to updating vegetation and species data after adoption of the MSHCP, this is not deferral of analysis or assessment of environmental impacts but rather one of many steps in the long-term monitoring and adaptive management program to be undertaken for the MSHCP consistent with the requirements of USFWS's 5-point policy regarding HCPs and consistent with other regional NCCPs/HCPs. The vegetation and species database used for analysis in the EIR/EIS is the same database used in the Plan and used by the Wildlife Agencies for purposes of Plan review and making a Permit decision. See also response to Comment X-7.

**N-5** It is assumed that the commenter is referring to the project objective of streamlining the regulatory process and asserting that this project objective cannot be met. Compared to the current process in which a property owner must negotiate with local, state, and federal agencies at numerous points in the development process to address endangered species issues and obtain appropriate permits, the MSHCP provides a one-stop approach. The Plan also provides a defined amount of mitigation that will be required to address the needs of Covered Species in the Plan Area and that is necessary to enable the Wildlife Agencies to issue permits under FESA and the NCCP Act. Refer to Major Response 1 and the response to Comment N-1 regarding use of best available science to develop the Plan.

With respect to the Santa Rosa and San Jacinto Conservation Area, it is assumed that the commenter is referring to the HANS process where it applies in these areas. The HANS process does not require landowners to prove that their property does not need

to be included in the Reserve System but rather provides an opportunity for landowners to work with Permittees to design projects consistent with the MSHCP and, if necessary, for property to be purchased for inclusion in the Reserve System from willing sellers at fair market value. See Major Issue Response 5.

The JPR process is not “lengthy and fraught with uncertainty” and in fact has specific statutory time frames for each stage; Local Permittees have control over these time frames and may certainly expedite the process as they deem necessary and appropriate. The JPR process would take place concurrently with review of entitlement application and has established timeframes that ensure its completion within the timeframe of review of entitlement applications by individual Permittees.

**N-6** The baseline for the biological analysis is adequate for a landscape-level regional multiple species plan such as the MSHCP. Due to the duration of the Permit (75 years) and size of the Plan Area (1.1 million acres), a certain degree of generality was presented and completely appropriate; however, the Plan provides a complete picture of regional biological conditions based on best available information as discussed in Major Issue Response 1.

**N-7** The Recirculated Draft EIR/Supplemental Final EIS provides sufficient transportation setting information to analyze the effects of the proposed action and issuance of the federal and state Permits for the Plan. No features of the Plan would generate trips resulting in vehicle miles traveled or require construction of roadways and other transportation facilities. Projects within the Plan Area that would generate trips or involve roadway construction would be evaluated in other environmental documents as appropriate when such projects are proposed for Development, and the transportation setting sections of those environmental documents would include specific vehicle miles traveled and other information as appropriate. The Plan does not contemplate expansion of facilities or any type of growth nor does it approve such Development. Therefore, the law does not require that the Lead Agencies for the Plan quantify their use within the Plan Area. The Plan simply describes the existing General Plans of the Permittees, including their circulation elements. In general, circulation element roadways of the Permittees are identified as Covered Activities in the Plan for purposes of Take authorization for Covered Species. Actual review and implementation of circulation element roadways and other features that may be set forth of in the Local Permittees’ General Plans would be subject to the individual review and entitlement processes of the Permittees as Lead Agencies for such projects.

**N-8** The commenter appears to imply that the MSHCP approves infrastructure, which is not the case. During the course of the environmental review process, it was deemed

that air quality impacts would be less than significant from the approval and implementation of the MSHCP and therefore be addressed in Section 4.9, Effects Found Not to Be Significant. According to CEQA Section 15128, “An EIR shall contain a statement briefly indicating the reasons that various possible significant effects of a project were determined not to be significant and were therefore not discussed in detail in the EIR.” Section 3.11 of the Recirculated Draft EIR/Supplemental Final EIS fully describes the air quality environmental setting, including description of sources of regional pollution, which is appropriate for a regional Plan of this nature. The Plan does not contemplate significant nor approve new construction of roadways within the Plan Area. Rather, the Plan simply identifies the existing circulation elements of the Permittees and notes the ways in which those circulation element roadways could be considered to be Covered Activities under the MSHCP. As with all Covered Activities under the MSHCP, the Plan simply provides a vehicle for Take authorization for Covered animal Species associated with project Development. It does not substitute for site-specific environmental review for individual Covered Activities as required by the Permittees that will act as Lead Agencies for such activities if and when proposed. This EIR/EIS in this case analyzed the project that is proposed, namely approval of the MSHCP. With respect to air quality issues related to PM<sub>10</sub> and PM<sub>2.5</sub>, see responses to Comments S-5 and BM-62.

- N-9** In June 2006, the City of Desert Hot Springs made the determination not to approve the Plan, and, therefore, the City is no longer an Applicant under the Plan nor are private lands within the City included in Conservation Areas, with the exception of those lands necessary to address the proposed Flood Control Project and associated habitat conservation along Morongo Wash. West of Highway 62, private lands within the City limits of Desert Hot Springs are not within the land use authority of any Permittee under the Plan; as such, they are not included in the Upper Mission Creek/Big Morongo Canyon Conservation Area. Figure 4-12a depicts the exclusion of these private lands. In the Final Recirculated EIR/Supplemental Final EIS, these lands are presented for information purposes to indicate lands within the Morongo Wash Special Provisions Area within the City. As described in the Plan, these lands would only be conserved if they are acquired from willing sellers for purposes of a Riverside County flood control project within Morongo Wash. Such acquisition and conservation would be undertaken by the Riverside County Flood Control and Water Conservation District, a Permittee under the Plan. As described in the Plan, should the project not take place or conservation not occur within the Special Provisions Area as envisioned in the Plan, the Plan includes options to meet conservation goals elsewhere, outside the City of Desert Hot Springs. Should the flood control project be proposed and implemented at a later time, any potential effects to the City would be evaluated at that time. However, it should be noted that since this portion of the City

is currently occupied by the floodplain for Morongo Wash, it is not anticipated that the flood control facility would have greater effects with respect to physically dividing the city than occurs under existing conditions.

The City of Desert Hot Springs is not a Permittee under the Plan, and development proposals for which the City would be the Lead Agency would not be subject to the MSHCP. No features of the MSHCP would conflict with the City's General Plan. With respect to "46 percent of lands with medium density residential designations," it is assumed that the commenter is referring to the summary Table 4-12 for the City of Desert Hot Springs included in the EIR/EIS. The information in this table and associated discussion was in error in the Recirculated Draft EIR/Supplemental Final EIS and has been corrected in the Final Recirculated EIR/Supplemental Final EIS. There are no developable medium density residential lands within Conservation Areas in the City of Desert Hot Springs. The correction does not alter the analysis or conclusions in the EIR/EIS that socioeconomic impacts from Plan implementation would be less than significant, since there would be less medium density residential lands (0 acres) in the Conservation Area than previously identified with fewer associated impacts.

**N-10** The MSHCP provides Take Authorization for Caltrans projects for the next 75 years, including the regional road network (CVAG TPPS projects) as well as the roads identified in City and County General Plan Circulation Elements. However, the MSHCP does not approve these projects and thus it is not appropriate to analyze their impacts in these documents. CVAG is not the Lead Agency for the provision of approval of the transportation plans within the area; instead it is local transportation agencies and Cities within the Plan Area. The Lead Agencies responsible for individual projects and plans will be responsible for compliance with CEQA and NEPA if and when those projects are proposed for Development. No indirect transportation impacts are anticipated for the approval of the MSHCP. Thus, the Recirculated Draft EIR fully complies with CEQA. Please see also response to Comment N-5.

**N-11** Major Issue Response 1 describes the sources of biological data, the reserve design tenets, and the use of Best Available Science as it relates to the HCP and NCCP standards. Contrary to the commenter's suggestion, the ISA who evaluated the MSHCP in 2001, prior to revisions and improvements made to address their recommendations, stated that "in our view it has no fatal flaws." In fact, in their review of the Plan, dated April 13, 2001 (Noss et al. 2001), the ISA did "commend the Scientific Advisory Committee (SAC) and others who contributed to the Draft

Plan for producing what is sure to be one of the most scientifically defensible and thorough HCPs or NCCPs ever developed.”

With respect to the references to dates in the MSHCP, dates in Appendix I that did not coincide with dates in the MSHCP regarding when field data were collected have been updated in the Final Recirculated MSHCP and EIR/EIS. Data from the CNDDDB were obtained over the course of Plan preparation but were completely updated in 2003. These date references have been updated.

With respect to the comments on Peninsular bighorn sheep, the bighorn sheep Recovery Plan, and the J. Turner et al. paper, see response to Comment BL-2. With respect to the ISA review, it should be noted that the ISA review was completed in 2001 on the Administrative Review Draft for the MSHCP. The issues and comments identified by the commenter were addressed and the Plan was revised accordingly prior to release of the Draft MSHCP in 2006. Major Issue Response 1 describes the revisions made in response to recommendations from the ISA.

**N-12** Section 4.8 of the Recirculated Draft EIR/Supplemental Final EIS provides a detailed quantitative analysis of the referenced socio-economic effects. The potential for significant adverse effects on communities located within the Plan Area was analyzed for each Permittee’s jurisdiction. The City of Desert Hot Springs would retain its land use authority, and, therefore, the Plan would not have land use impacts to the City. The potential for continuing development of healthy economies was assessed and analyzed for developable acreage outside Conservation Areas by land use type (see EIR/EIS Tables 9-1, 9-2, and 9-3). The Plan’s potential impacts to each of these land use categories were also fully assessed (see Section 9.2 of the EIR/EIS).

In addition, the analysis provided in Section 4.8 of the Recirculated Draft EIR/Supplemental Final EIS (p. 4.8-22) clearly demonstrates that there would be minimal or no impact to affordable housing in most jurisdictions. In total, Conservation Area lands throughout the Plan Area represent only 5% of the total medium and high density lands available for Development, and residential development may still occur on these lands as long as it is consistent with Conservation Objectives; thus, it would be incorrect to assume that all Development on these lands would be totally foreclosed. No significant impacts with respect to affordable housing are identified in the EIR/EIS. With respect to portions of the comment related to the City of Desert Hot Springs, refer to response to Comment N-9. Regarding presentation of background information regarding the City of Desert Hot Springs in the EIR/EIS, this was done for disclosure purposes because, while not a Permittee and therefore not subject to the provisions of the MSHCP, the City of Desert Hot Springs remains within the Plan Area for the MSHCP.

Regarding the commenter's more general assertion that the Plan impedes the ability of the Permittees to include within their housing elements provisions for the fulfillment of their regional housing needs, the overall amount of units of residential Development currently designated on lands proposed for Conservation Areas is actually quite low in relation to the total amount of units allowed within the Plan Area via all of the Permittees' General Plans. Because of this, and because not all Development on these lands will be foreclosed by the Conservation Objectives, the impact is considered to be less than significant.

**N-13** The actions analyzed in the Recirculated Draft EIR/Supplemental Final EIS are issuance of the federal and state Permits for Take of Covered animal Species under the Plan. No features of the Plan would result in Development activities or construction resulting in air quality emissions. Development projects undertaken within the jurisdiction of the Permittees according to their General Plans would be subject to CEQA review as appropriate, and air quality effects of such individual Development projects would be analyzed at that time. The Plan does not contemplate nor approve expansion of facilities or any type of growth. Refer to response to Comment N-7.

**N-14** The cumulative analysis presented in Section 9 of the Recirculated Draft EIR/Supplemental Final EIS is adequate and properly focuses on the effects of the proposed action(s)—issuance of HCP/NCCP permits for Take of Covered animal Species. No features of the project would directly preclude or approve Development as anticipated in existing General Plans and other plans and policies of the Permittees.

With respect to the accuracy of baseline data used in the biological resources analysis, please refer to Major Issue Response 1; see also responses to Comments N-1 and N-6. The discussion of cumulative biological resources impacts is contained in Section 9.8 of the EIR/EIS.

With respect to the transportation analysis, the Recirculated Draft EIR/Supplemental Final EIS is accurate in stating that the proposed project would not affect existing or planned roadway networks. No features of the proposed project would alter or affect the existing and planned circulation elements of the Permittees. Road improvement projects are identified as Covered Activities in the proposed Plan, and thus the Plan would simplify the approval process for such projects. For further reference, the cumulative analysis of traffic impacts is located in Section 9.4 of the EIR/EIS.

The referenced sentence fragment in the land use analysis includes a typo—the addition of the word “which” prior to “allows.” This typo is corrected in the Final EIR/EIS and does not affect the analysis or conclusions of the EIR/EIS. The

referenced statements simply indicate that CEQA allows land use analysis based on land use projections and then goes on to state that recent data regarding land conversions were used in the analysis. The baseline for the land use, transportation, and air quality analyses is the general plans of the jurisdictions in the Plan Area. This is an appropriate baseline for the cumulative analysis of these issues. With regard to consideration of mitigation measures and alternatives to avoid and minimize identified cumulative effects, no significant cumulative effects are identified for the proposed project that require such analysis.

**N-15** The growth-inducing impacts of the MSHCP are fully discussed in Section 9 of the Recirculated Draft EIR/Supplemental Final EIS. The EIR/EIS recognizes that, if Development cannot occur where it is currently proposed or at levels currently permitted by the County and local municipalities, such growth must be accommodated elsewhere. Section 9 of the document describes that the MSHCP would remove an impediment to growth by authorizing Take of Covered animal Species; thus, the MSHCP is growth-accommodating, versus growth-inducing. The Plan would also encourage greater land use efficiencies, which would allow continued growth but with fewer of many of the adverse effects typically associated with it. The referenced discussion on page 9-52 of the EIR/EIS simply hypothesizes that a more compact land use pattern may result from assembly and protection of the large, interconnected reserve system under the MSHCP, thereby potentially reducing vehicle miles traveled. The analysis in the EIR/EIS does not rely on such a potential reduction to avoid or minimize identified impacts of the MSHCP.

**N-16** The commenter requests that several more alternatives be analyzed in the EIR/EIS. As discussed in Major Issue Response 8, the range of alternatives is adequate with regard to the requirements of CEQA and NEPA. The alternatives that the commenter suggests result from modifying several variables. For instance, the commenter recommends varying the list of Covered Activities, varying the list of Covered Species, varying the length of the Permit duration, or allowing conservation outside of the Plan Area. The commenter also suggests reduced and increased Take alternatives.

Alternatives that would feature a varied list of Covered Activities would not be appropriate. The list of Covered Activities is broad and includes new Development as well as public facility operations and maintenance and safety activities by the Permittees and emergency response activities. Reduction in the scope of the list of Covered Activities limits the benefits of implementing an MSHCP, since more activities would require individual Take Authorization (in essence, returning to the current piecemeal project-by-project approach). Conversely, broadening the scope of

Covered Activities would mean including existing uses. However, there are legal obstacles to requiring existing uses to comply with the Conservation Objectives or to pay the Local Development Mitigation Fee retroactively for Take that has already occurred. Thus, varying the range of Covered Activities would either not achieve the objectives of the proposed project or would not be feasible.

With regard to varying the list of Covered Species, 52 species were initially considered for inclusion within the MSHCP. However, over the course of data collection, surveys, literature reviews, and consultations with conservation biologists and species specialists, a variety of species were removed from the list. A number of species originally proposed for coverage were dropped from the list due to a lack of information on known locations or insufficient data to support conservation planning for those species. See EIR/EIS Section 2.4; see also EIR/EIS Appendix I, Section 3.8, for further information regarding the rationale for species considered but not proposed for coverage. Consequently, an alternative with an expanded list of Covered Species would not be supported by the science available, while a reduced Covered Species list alternative would not achieve a basic objective and purpose of the proposed Plan.

Varying the length of Permit duration from the currently proposed 75 years to either a shorter or longer term would not result in any appreciable changes with regard to the environmental impacts of the proposed project or whether the proposed project achieves its objectives. The permit term was selected consistent with the project objectives to develop a plan that would streamline Take authorization for projected growth and necessary infrastructure in the Plan Area in an economical manner. The term was selected as reasonable due to the scope and breadth of Plan, the need to establish an adequate endowment to manage and monitor the MSHCP reserve system, and the extensive projected growth and planned infrastructure in the Plan Area. Therefore, this type of alternative need not be analyzed. The suggestion that an alternative be presented that allows for the conservation of lands outside of the Plan Area is also rejected because it would limit the achievement of one of the primary project objectives, the preservation of habitat and species *within* the Plan Area. In addition, the plan areas for NCCPs and regional multiple species NCCPs are designed to provide for regional-scale landscape conservation planning and the concept of preservation outside the defined Plan Area is contrary to the overall intent of an NCCP or regional multiple species HCP.

Lastly, the suggestion that increased or reduced Take alternatives be utilized ignores the fact that the level of Take necessary to achieve the project objectives of conserving habitat and species as well as permit reasonable levels of development



was determined by reference to scientific information and data. This information mandates that the level of Take allowed be consistent with the Plan's identified Conservation Objectives. Therefore, increased Take alternatives would not achieve the biological resources goals of the proposed project. At the same time, reduced Take alternatives would not allow sufficient development to occur, which could require the Local Development Mitigation Fee to be raised to accommodate the increased preservation implied in such an alternative. Consequently, this alternative does not require further analysis.

**COMMENTER O: MISSION SPRINGS WATER DISTRICT**

Dated: May 29, 2007

- O-1**      The Lead Agencies appreciate the information provided and will include it within the administrative record. The comments provided identify corrections that do not alter the analysis or conclusions contained in the Recirculated Draft EIR/Supplemental Final EIS; however, this information will be used during Plan implementation as part of the Monitoring and Adaptive Management Programs.
- O-2**      Please see response to Comment O-1.
- O-3**      Please see response to Comment O-1.
- O-4**      Please see response to Comment O-1.
- O-5**      Please see response to Comment O-1.
- O-6**      Please see response to Comment O-1.
- O-7**      Please see response to Comment O-1.
- O-8**      Please see response to Comment O-1.
- O-9**      In response to the comment, the word “customers” has been deleted from this statement.
- O-10**     Please see response to Comment O-1.
- O-11**     Please see response to Comment O-1.
- O-12**     Please see response to Comment O-1.
- O-13**     The referenced footnote has been corrected.
- O-14**     As suggested by the comment, the Final EIR/EIS has been revised to state that potable water is extracted from only three of the region’s sub-basins.
- O-15**     The Final EIR/EIS reflects the suggested comment that MSWD has begun extracting water from the Garnet Hill Subbasin.
- O-16**     Please see response to Comment O-1.

- O-17** The commenter corrects two typographical errors on page 3-70 of the Recirculated Draft EIR/Supplemental Final EIS. The revisions have been made to the Final Recirculated EIR/Supplemental Final EIS.
- O-18** The commenter asks that a sentence be changed to, “DWA is to assess Mission Springs Water District a replenishment fee...” The revision has been made in the Final EIR/EIS.
- O-19** The commenter corrects Footnotes 81 and 82.

**COMMENTS P: ENVIROMINE, INC.**

Dated: May 29, 2007

**P-1** The comment is noted. It is acknowledged that the referenced 2006 report indicates that available permitted aggregate resources are more limited than noted in the Recirculated Draft EIR/Supplemental Final EIS. No features of the MSHCP would affect existing permitted extraction activities. As stated in the Recirculated Draft EIR/Supplemental Final EIS, a variety of factors are associated with permitting extraction activities, including existing and planned land uses, access, noise, air quality, and biological constraints. These factors would need to be analyzed in permitting future extraction activities with or without the proposed MSHCP. The MSHCP would be one of the factors to consider in permitting potential future extraction activities. No features of the MSHCP alter underlying land use or zoning designations of the Permittees or change permitted uses under those designations. The analysis conclusions in the Recirculated Draft EIR/Supplemental Final EIS would not change. Should extraction activities be proposed within the jurisdiction of one of the Permittees in the Plan Area, the proposal would be reviewed for consistency with the MSHCP and could receive Take authorization through the MSHCP subject to the requirements of the Local Permittee. This could include allocation of some of its Take authorization within a Conservation Area for new or expanded extraction activities by a Permittee. Another method for allowing new or expanded extraction activities within a Conservation Area could be a Like Exchange, such as recently occurred for A-1 Aggregates in the Desert Tortoise and Linkage Conservation Area. It should be noted that many of the existing active aggregate operations in the Plan Area are located outside Conservation Areas. The MSHCP simplifies the process for expansion of extraction activities outside of Conservation Areas.

Therefore, the conclusions in the EIR/EIS with respect to avoidance and minimization of impacts to mineral resources such that they do not rise to a level of significance are accurate. In addition, designation of a mineral resource zone within the Plan Area is not within the purview of CVAG or the MSHCP.

**COMMENTER Q: NANCY MADSON**

Dated: May 25, 2007

- Q-1** As described in Section 7.3.3.2.1 of the Plan, three trails will be closed to recreational activities during the hot season to minimize the potential impediments for access to water by bighorn sheep and other wildlife. Also, Carrizo Canyon and Magnesia Canyon are within CDFG Ecological Reserves and are closed to public access from June 15 through September 30, in accordance with the California Code of Regulations. For a discussion of the basis of the Plan's scientific baseline, please see Major Issue Response 1.

**COMMENTS R: LANDMARK PROPERTIES, U.S., INC. (BY BINGHAM MCCUTCHEN)**

Dated: May 29, 2007

- R-1** Please see Major Issue Response 1, Use of Best Available Science, for discussion of the basis of the Plan's scientific baseline. The development of habitat distribution models is a standard tool in regional conservation planning. The habitat models used in the MSHCP are based on field surveys and location information that was gathered from experts on the Covered Species during the years of Plan preparation. As described in Major Issue Response 1, these models were subject to validation during the process by independent scientists with expertise on the Covered Species. Regarding concerns with the environmental setting and baseline, the EIR/EIS adequately and completely describes and assesses the environmental setting for the Plan. The baseline data and analyses that resulted in the Preferred Alternative are complete and fully comply with CEQA and NEPA. Much of the substance of the comment appears to be predicated on a misunderstanding of the baseline as it is used to describe the Monitoring Program required for Plan implementation. The commenter confuses the baseline data gathering which will start in Year 1 post Permit issuance as part of the Monitoring Program and baseline data gathered for use in Plan preparation and environmental impact analysis. These are baseline data gathering efforts with different purposes. The information provided in the EIR/EIS is adequate to analyze the impacts and inform the public; more analysis and baseline data are not necessary. The commenter appears to suggest that the Monitoring Program and the necessary task of gathering additional baseline data on the species as part of this program during Plan implementation is "deferring environmental analysis." The HCP Handbook requires baseline monitoring as a way to assess the persistence of species populations covered under the MSHCP. However, this baseline monitoring is not the same as the baseline data already gathered. It necessarily occurs after the environmental analysis in the EIR/EIS is complete. The commenter also appears to confuse the verification of "conceptual ecological models" as part of the analysis of the baseline environmental setting. Conceptual ecological models are not part of the EIR/EIS analysis at all but are a tool used in biological monitoring and hypothesis testing and would only be appropriate in the Plan implementation process. The verification of these models is described in Section 8 of the Plan on the Monitoring Program. These models and the baseline data are consistent with the "effectiveness" monitoring recommended by the ISA to evaluate the implementation of Plan Conservation Goals and Objectives. The comment refers to a "substantial disagreement among experts" but does not provide any supporting documentation or evidence of this disagreement. Input from experts was obtained during Plan

preparation as described in Major Issue Response 1. Biological data provided by the commenter is consistent with the species distribution models for the MSHCP; see also response to Comment R-3. The Plan preparers used standard methodologies to determine the location of biological resources in the Plan Area, consistent with the HCP and NCCP requirements, as described in Major Issue Response 1. To the extent that disagreements with specific studies have been raised, those disagreements are addressed individually in the responses to comments, below.

**R-2** Development of the Plan was based on field data gathered from a wide variety of reliable sources, consistent with the NCCP and HCP requirements, as described in Major Issue Response 1. The ISA peer review was a critical element in the preparation of the Plan, and recommendations of the ISA review were incorporated into the Plan. The statements by the ISA quoted in the comment referred to the 2001 Administrative Review Draft of the Plan; Major Issue Response 1 provides a description of how the MSHCP was revised and improved to address these comments. In their review of the Plan, dated April 13, 2001 (Noss et al. 2001), the ISA did “commend the Scientific Advisory Committee (SAC) and others who contributed to the Draft Plan for producing what is sure to be one of the most scientifically defensible and thorough HCPs or NCCPs ever developed.” With respect to the comment regarding the use of GIS, as noted in Major Issue Response 1, the site identification process and development of GIS data, including species distribution models, did not involve socioeconomic or political factors. The GIS data developed for the MSHCP have been developed with high standards for quality; as noted in Section 4.6 of the Plan, the “data error” including mapping errors and incorrect data amounts to a fraction of 1%. Major Issue Response 1 includes a description of how the HCP Handbook and Addendum address the expected uncertainty associated with an HCP and provide acceptable means to address it. Following the ISA recommendations, the MSHCP addressed uncertainty by the inclusion of additional conservation lands for Covered Species habitat and habitat corridors. The significance of potential corridors was emphasized by the ISA. One of the ways this ISA recommendation was addressed was to ensure the conservation of habitat corridors in areas such as Mission Creek and along Morongo Wash, to provide for habitat, “flow of individuals and genes,” and geophysical processes, including sand transport. The MSHCP also includes an adaptive management program consistent with the HCP Handbook.

The identification of Conservation Areas is described in Section 3.1 and Appendix I of the MSHCP and in Section 2 of the EIR/EIS. This process was extremely transparent and was available to the public for input and review through the MSHCP Project Advisory Group. Throughout Plan preparation, maps and information

regarding the identification of Conservation Areas were presented to the Project Advisory Group at their monthly meetings. As described in Section 3.1.4 of the MSHCP, quantitative analyses were used in this process to ensure objectivity. Based on the ISA recommendations, the SITES model (*SITES V 1.0: an analytical toolbox for designing ecoregional conservation portfolios*, The Nature Conservancy) was used by the University of California to complete an analysis of the reserve design for the MSHCP. Using the SITES program, a reserve design very similar to the Preferred Alternative was selected (Allen et al. 2002). This evaluation is described in Section 3.7.3.3 in Appendix I of the Plan.

The use of known locations, limitations on these data, and the reasons why known locations might occur outside of mapped Core Habitat are explained in Section 3.6 of the MSHCP. As noted by the ISA, there are inherent risks in basing a long-term conservation plan solely on known locations. However, it also should be noted that additional conservation lands were added to the Conservation Areas after the 2001 ISA review, including additional known locations. With respect to the 2001 ISA recommendation regarding the need for better documentation of Core Habitat, a description of Core Habitat is provided in Section 9 of the Plan for each species. Section 3.2.2.3 of Appendix I of the Plan includes a definition and, together with Section 3.1.4 of the Plan, describes the delineation and incorporation of Core Habitat in the reserve design process. See also Major Issue Response 1.

**R-3** The location information from the Palmwood biological surveys has been added to the MSHCP database. The Lead Agencies' review of the biological studies prepared for the Palmwood development indicate that the presence of a number of Covered Species, including the Palm Springs pocket mouse, Little San Bernardino Mountains linanthus, Le Conte's thrasher, Coachella Valley round-tailed ground squirrel, and evidence of desert tortoise, was confirmed by the project biologist on the project site. Like the data for the Palmwood project, all of the species distribution information used in the MSHCP was based on results of field surveys and observations of species by biologists over a period of more than 20 years. The Palmwood biological surveys did not identify occurrences of these species that were not already in the CNDDDB and CVAG data bases. The project biologist consulted with CVAG staff and consultants prior to completing surveys for one species, Little San Bernardino Mountains linanthus, to obtain information on the identification of this species, where to survey for the species, and known locations in the data base. See also Major Issue Response 1 regarding the use of biological survey data and the basis for the reserve design.

**R-4** The Plan does not concede the inadequacy of the biological data supporting the baseline findings. The Recirculated Draft EIR/Supplemental Final EIS fully complies



with all the provisions of CEQA and NEPA. As discussed in Major Issue Response 1, the Adaptive Management provisions of the MSHCP are not an improper deferral of analysis but instead are a means by which the Conservation Goals and Objectives for long-term persistence of Covered Species populations can be evaluated and adapted to address impacts and threats as well as changing conditions over the 75-year Permit term. The commenter confuses the requirements for best available science for Permit issuance with the requirements for monitoring. The MSHCP is based on the best scientific and commercial data available, in accordance with federal and state standards for information used in considering Permits pursuant to FESA and the NCCP Act. As described in Major Issue Response 1, these data were gathered from field surveys and other sources. Additionally, the Recirculated Draft EIR/Supplemental Final EIS states that Management and Monitoring Programs incorporated in the MSHCP would be implemented to address to the extent feasible any significant effects remaining after application of the minimizing measures incorporated in the MSHCP. See Major Issue Responses 1 and 7. See also responses to Comments N-1 and R-1.

- R-5** Please see Major Issue Response 7, which states that, in the context of both an HCP and an NCCP, monitoring and management are required elements that must be fully integrated into the HCP/NCCP document. They are not considered as mitigation and are not treated as such in this MSHCP. The Section 10 (Endangered Species Act) regulations “require that an HCP specify the measures the applicant will take to ‘monitor’ the impacts of the taking resulting from project actions (50 CFR 17.22(b)(1)(iii)(B) and 50 CFR 222.22(b)(5)(iii))” (USFWS 1996). The Recirculated Draft Plan clearly identifies the Adaptive Management element of the Monitoring and Management Programs. The Monitoring Program is consistent with the recommended elements for monitoring in a large-scale, regional HCP (HCP Handbook, USFWS 1996, pages 3-26 to 3-27). Figure 8-5 identifies the application of the Adaptive Management process. As described in Major Issue Response 1, Use of Best Available Science, according to the HCP Handbook and Addendum, “The Service(s) believe that covered species, both listed and unlisted, will be afforded more protection because of the conservation measures gained through an HCP process.” The Addendum also provides for an adaptive management strategy as a means to address uncertainty. The latter is the case with the MSHCP. Specific Conservation Goals and Objectives require a management and biological monitoring program for the 75 years of the Permit. The comment suggests that the financial constraints will inhibit effective monitoring, but provides no evidence, documentation, or examples to support this opinion. The comment also expresses the opinion that “it is unlikely that effective monitoring will even be feasible over the long term.” Again, no evidence, documentation, or examples are provided to support this opinion. Section 8.3 of the

MSHCP describes Monitoring and Section 8.8.3 describes the Monitoring Program budget in detail. This budget demonstrates that the necessary funding is available for monitoring of the Covered Species, including listed and unlisted species, consistent with NCCP and HCP standards. It also explains how data from the Monitoring Program will be used to address management concerns through an Adaptive Management process to ensure Conservation Goals and Objectives are met. See also Major Issue Response 3 regarding adequacy of Plan funding.

**R-6** The Recirculated Draft MSHCP does, in fact, provide a clear and specific definition of Edge Effects in Section 4.5 of the MSHCP (Land Use Adjacency Guidelines), which defines edge effects: "...indirect effects are commonly referred to as edge effects, and may include noise, lighting, drainage, intrusion of people, and the introduction of non-native plants and non-native predators such as dogs and cats." The commenter is referred also to Section 3.2.2.3 of Appendix I of the Plan for a discussion of edge effects. Edge effects are a conservation planning and management issue which was addressed in the reserve design and assembly process as well as in the management of the MSHCP Reserve System. Edge effects are not an environmental effect associated with the Proposed Action(s). The analysis in the EIR/EIS fully addresses edge effects in this context. See Major Issue Response 1 for additional discussion of edge effects.

**R-7** The comment references "perceived political realities" and "other inappropriate factors" but provides no specific information or supporting evidence to explain these references or to allow a response. Major Issue Response 1 describes the factors addressed in the reserve design process, which did not include political factors. Biological reports provided by the commenter identify and confirm the presence of Covered Species in the modeled habitat areas, as noted in response to Comment R-2. Covered Species Habitat protected within the Conservation Areas was delineated to "Conserve Core Habitat and associated ecological processes (for each species), allowing evolutionary processes and natural population fluctuations to occur," and to "minimize fragmentation, human-caused disturbance, and edge effects to Core Habitat by conserving contiguous Habitat and effective Linkages between patches of Core Habitat." (See species-specific Conservation Objectives in Sections 4.3.1 through 4.3.21 of the Plan and in Section 9.) There is no need to revise the EIR/EIS. The commenter makes the incorrect assumption that habitat modeling and site-specific surveys are mutually exclusive. Site-specific surveys were completed throughout the Plan Area where access to property was provided. The species distribution models in reserve design and analysis of conservation and take are based on actual current locations as well as other factors relevant to each species. All available survey information and expert input was gathered for the species within the

Plan Area. Major Issue Response 1 and the response to Comment R-1 include additional discussion of the habitat models.

- R-8** The comment addresses the status of the Little San Bernardino Mountains linanthus (LSBML) with respect to the proposed Palmwood site. As noted in the EIR for the Palmwood project, "...The Little San Bernardino Mountain linanthus (or gilia) was found in the Big Morongo Wash Area. LSBML is considered a State species of special concern; it may be declining in Riverside County..." (Draft EIR Palmwood, October 2006, Page 3-5). This species is a USFWS Species of Concern, a BLM Sensitive species, and is on CNPS List 1B. *Linanthus maculatus* is included on the "Special Plants, Lichens, and Bryophytes list" (California Department of Fish and Game, Natural Diversity Database. July 2007, Special Vascular Plants, Bryophytes, and Lichens List. Quarterly publication. 69 pp.). According to Appendix G of the *CEQA Guidelines*, a project may have a significant adverse effect on biological resources if it will: (a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the CDFG or the USFWS (Draft EIR Palmwood, October 2006, page 4-17). Therefore, the commenter's suggestion that the Little San Bernardino Mountains linanthus is "improperly included in the Plan" is not consistent with CEQA or the HCP Handbook recommendations regarding unlisted species.

The Lead Agencies note that the HCP process provides a means to address conservation of unlisted species which otherwise might not be addressed through a standard regulatory process. The MSHCP follows the guidance provided in the HCP Handbook to "increase the biological value of (the HCP) through comprehensive multi-species or ecosystem planning that provides early, proactive consideration of the needs of unlisted species." Non-listed species are treated in the Plan as though they were listed species in order to receive the benefits and protections the Plan provides for Covered Species. Since the status and classification of all species covered by the Plan is unpredictable over the next 75 years, the Plan protects all Covered Species. The MSHCP attempts to limit the potential effects on Plan implementation associated with newly listed species by including a large number of unlisted Species as Covered Species. If such unlisted Covered Species are subsequently listed, the MSHCP will continue to be implemented pursuant to the Plan, IA, and Permits without the need to follow the procedures set forth in Sections 6.8.3.5 and 6.12 of the Plan. The FESA not only deems it appropriate to include listed, proposed, candidate, and unlisted species in an HCP, the FESA actually encourages such inclusion (Section 10 Handbook, pp. 4-1 et seq. ("[t]he Services should explain to any applicant the benefits of addressing unlisted species in the HCP

and the risks of not doing so, and should strongly encourage the applicant to include as many proposed and candidate species as can be adequately addressed and covered by the permit.”). As stated in the Section 10 Handbook, “There are also advantages in addressing unlisted species in the HCP (proposed and candidate species as a minimum), particularly those that are likely to be listed within the foreseeable future or within the life of the permit. Doing so can protect the Permittee from further delays—e.g., having to revise the HCP and amend the permit—should species that were not listed at the time the original HCP was approved subsequently become listed. In addition, the ‘No Surprises’ policy...applies to listed as well as unlisted species if they are adequately addressed in the HCP” (Section 10 Handbook, p. 3-7; see also p. 4-1).

The Lead Agencies appreciate the information from the Palmwood EIR and the report prepared by Mr. Cornett. As noted above, Mr. Cornett requested and obtained information from Plan consultants about the known locations for Little San Bernardino Mountains linanthus. At his request, Mr. Cornett was also provided with information on where this species had been observed and identifying characteristics of the plant. The locations provided by Mr. Cornett in his January 2006 reports coincide with locations already in the MSHCP database that were provided to him before his surveys were done.

The occurrence of Little San Bernardino Mountains linanthus has been documented based on data collected in this area since 1994, from the California Natural Diversity Data Base, Bureau of Land Management, Big Morongo Canyon Preserve, University of California, Riverside, and other sources. Section 9.2.5.5 of the Plan describes a population at the mouth of Big Morongo Canyon north of Indian Avenue, on the present Palmwood property, where more than 10,000 plants were reported in the spring of 1996. These data are from field observations of this species by well-qualified biologists, including individuals with specific expertise on this species, over a period of more than 15 years. See the definition of “Core Habitat” in the Definitions section of the Recirculated Draft MSHCP. Core Habitat is not solely the location where a species is found during a survey. In order to ensure long-term persistence of the species, it includes “The areas identified in the Plan for a given species that are composed of a Habitat patch or aggregation of Habitat patches that (1) are of sufficient size to support a self-sustaining population of that species, (2) are not fragmented in a way to cause separation into isolated populations, (3) have functional Essential Ecological Processes, and (4) have effective Biological Corridors and/or Linkages to other Habitats, where feasible, to allow gene flow among populations....” In the case of Little San Bernardino Mountains linanthus, as described in Section 9.2.5.3 of the Plan, an important part of this species habitat is “...the network of

drainages and interlaced washes that occur in the Mission Creek and Morongo Wash area.” The occurrence of this species is not limited to jurisdictional streambeds as defined by ACOE and CDFG. Therefore, the designation of Core Habitat for the Little San Bernardino Mountains linanthus is appropriate and well-supported by the best available scientific information.

The Lead Agencies appreciate the information provided in the Biological Assessment for the Palmwood project EIR, which confirms the presence of the Little San Bernardino Mountains linanthus on the Palmwood property.

- R-9** The commenter asserts that “there is no such thing as a subspecies of the little pocket mouse known as the Palm Springs pocket mouse.” However, the commenter provides no solid evidence or documentation for this conclusion. The conclusions made by the commenter with respect to the results reported by Swei, Brylski, Spencer, Dodd, and Patton (2003) appear to be a misreading of this analysis and are not consistent with the conclusions of the authors. This 2003 publication in *Conservation Genetics* nowhere states that the “Little Pocket Mouse living in the Coachella Valley ... is not unique in any way.” This comment misinterprets the literature on Palm Springs pocket mouse genetics. Swei et al. (2003) found that there may be **two** subspecies of Little Pocket Mouse in the Coachella Valley and that the pocket mice in the western portion of the Coachella Valley are more closely related to the subspecies in Western Riverside (*Perognathus longimembris brevinasus*, the Los Angeles Pocket Mouse, a California Species of Special Concern) and the San Diego coast (*P. longimembris pacificus*, the Pacific Pocket Mouse, a federally listed Endangered Species) than they are to the pocket mice in the eastern part of the valley. Swei et al. did not invalidate the subspecies but rather suggested that the *bangsi* in the western Coachella Valley could be considered an Evolutionarily Significant Unit as applied under the FESA with the *pacificus* and *brevinasus* subspecies. A more recent paper (McKnight 2005) supported the conclusions of Swei et al. (2003). McKnight did not come to the conclusion that the *bangsi* subspecies is invalid but that the *brevinasus* subspecies of Western Riverside may need to be subsumed within *bangsi*. He found that the sister taxa of *bangsi* is the endangered *pacificus* subspecies of the coast. Taxonomic revisions of Coachella Valley species are a welcome component of research. However, the objective to conserve complete communities of organisms for long-term health and persistence needs to be met with whatever names or status conferred on those organisms.

The commenter further references a petition for emergency listing of the Palm Springs pocket mouse and suggests that the decision not to grant the emergency listing petition should be evaluated in the EIR/EIS. Section 10 and the NCCP Act

allows for the inclusion of an unlisted species in an HCP. According to information from the USFWS, no decision was reached on the petition and the listing petition for this species has been withdrawn. According to the USFWS, the petition calls for conservation, including protection and management of habitat for the species across its entire range and connectivity between habitat areas, to ensure the long-term survival of the Palm Springs pocket mouse. The MSHCP provides for Conservation Goals and Objectives for this species, as described in Sections 4.3 and 9 of the Plan, that are consistent with the information in the listing petition. See also response to Comment R-9.

**R-10** The commenter apparently concludes, based on surveys for the Palmwood project conducted over three months in the fall of 2004 and two months in the spring of 2005, that desert tortoise are not present on the Palmwood site. However, the MSHCP database includes an observation of desert tortoise within 1/8-mile of the Palmwood project boundary. In a letter regarding the Palmwood site, CDFG stated that "...the Project site is within the potential habitat for Desert tortoise. Surveys conducted for the Project found evidence that desert tortoise have used the site. If there is the potential for take of desert tortoise an Incidental Take Permit ... is required, along with appropriate mitigation measures to fully mitigate the impacts of the take" (CDFG letter from Kimberly Nicol to George Spiliotis (Executive Director, LAFCO), March 30, 2007, page 1). As noted in Major Issue Response 1 and response to Comment R-7, Core Habitat includes more than simply the location where a species has been observed. The species does not have to be on the exact site to make it worthy of inclusion in the Conservation Area. See also responses to Comments T-15 and X-5.

**R-11** Section 4.3.3.2 of the Draft Palmwood EIR acknowledges that, although it was not found by the Palmwood project biologist "that this endangered plant species, the triple-ribbed milkvetch, was identified in the CVMSHCP on the site...." The MSHCP database includes two known occurrences for triple-ribbed milkvetch within the Palmwood project boundaries. It should be noted that surveys for this species by the Palmwood project biologist were conducted in the spring of 2005; one season of surveys would not provide the basis for the conclusion that a species is not present, especially when surveys are conducted during a dry year in which few desert annuals were observed in the Coachella Valley. Therefore, revision of the Plan and EIR/EIS with respect to this species is not warranted. Major Issue Response 1 provides a full discussion of the basis for including habitat areas within the Conservation Areas. See also responses to Comments T-15 and X-5.

- R-12** The commenter provides no supporting information or documentation for the assertion that there is no evidence that important wildlife corridors exist on the Palmwood site. Reference is made to extensive studies by a biologist but specific information from these studies on wildlife corridors is not presented. The provision of biological corridors is integral to the assurance of a healthy ecosystem, which also includes the movement of predators across Conservation Areas. As described in Appendix I, the biological corridors were delineated as follows: “Aside from the highway bridges and any Existing Use areas, which are unavoidably narrow segments, the Biological Corridor shall expand to one mile wide to minimize edge effects” (Appendix I, page A1-178). This standard was used to delineate the biological corridors throughout the Plan Area. In their report on South Coast Missing Linkages, Beier et al.<sup>53</sup> recommend a minimum corridor width of 1.2 miles (2 km). The NCCP Act of 2002 requires that conservation plans sustain “the effective movement and interchange of organisms between habitat areas in a manner that maintains the ecological integrity of the habitat areas within the plan area.” [Fish and Game Code Section 2820(4)(E)]. Maintaining biological corridors is also a recognized principle in reserve design. The corridors in the MSHCP were identified and recommended by the SAC and supported by the ISA who reviewed the conservation plan. The South Coast Wildlands project has identified a significant wildlife corridor between the San Bernardino and Little San Bernardino Mountains in the Mission Creek, Dry Morongo, and Big Morongo Canyons vicinity.<sup>54</sup>
- R-13** Neither the EIR/EIS nor the MSHCP references sand transport on the Palmwood property nor suggests that the project will interfere with sand transport. Section 4.3 of the MSHCP identifies Conservation Objectives and Required Measures for the Upper Mission Creek/Big Morongo Canyon Conservation Area; the Palmwood project is within this Conservation Area. The objectives include requirements to conserve and maintain sand transport processes. The EIR/EIS assumes that the Plan will meet the Conservation Objectives. The evaluation of the extent to which any project meets the Conservation Goals and Objectives of the Plan occurs during the JPR process. The JPR process would include an evaluation of whether the Palmwood project met Conservation Objectives, including sand transport objectives.
- R-14** The commenter states that the range of alternatives is “extremely limited.” The Recirculated Draft EIR/Supplemental Final EIS addressed an appropriate range of

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<sup>53</sup> Beier, P., K.L. Penrod, C. Luke, W.D. Spencer, and C. Cabanero. 2005. “South Coast Missing Linkages: restoring connectivity to wildlands in the largest metropolitan area in the United States.” In KR Crooks and MA Sanjayan, editors, *Connectivity and Conservation*, Cambridge University Press (2005).

<sup>54</sup> Penrod, K., C. Cabanero, P. Beier, C. Luke, W. Spencer, and E. Rubin. 2005. *South Coast Missing Linkages Project: A Linkage Design for the San Bernardino-Little San Bernardino Connection*. South Coast Wildlands, Idyllwild, California. [www.scwildlands.org/http://scwildlands.org/missinglinkages/link\\_sanbern2littlesanbern.htm](http://www.scwildlands.org/http://scwildlands.org/missinglinkages/link_sanbern2littlesanbern.htm).

project alternatives, including an Enhanced Conservation Alternative and a No Project Alternative. See Major Issue Response 8.

The alternatives suggested would not be possible for a regional plan of this size and would rely on ever-changing conditions. Furthermore, the alternatives suggested would not meet the project objectives as described in Section 1.1 of the Recirculated Draft EIR/Supplemental Final EIS.

With regard to the suggested alternative that would exclusively utilize site surveys to determine the extent of Conservation Areas, such an alternative would not be feasible as it would not be consistent with the NCCP planning approach using reserve design tenets as described in Major Issue Response 1. Moreover, there is no evidence that such an alternative would reduce project impacts. An alternative that only conserved areas occupied by Covered Species would not be feasible as it would not meet NCCP reserve design tenets with respect to providing large interconnected preserves supporting the life history requirements of Covered Species. Thus, the commenter's proposed alternative does not require further analysis.

With regard to the commenter's suggestion of an alternative that would exclude from the Conservation Areas all lands that are currently designated for residential, commercial, industrial, "or other developed uses," such an alternative is not feasible as it would not be biologically based or data driven consistent with NCCP reserve design tenets summarized in Major Issue Response 1. Planning boundaries associated with commercial, residential, and other land use designations do not relate to presence and distribution of biological resources that are the foundation of a conservation planning effort such as the MSHCP.

Furthermore, avoiding any application of the MSHCP to residential, commercial, or industrial designated lands would not result in the lessening of any significant environmental impacts, since the MSHCP does not have a significant impact due to its inclusion of these lands, as demonstrated in the EIR/EIS. Section 4.8.3 of the EIR/EIS provides a detailed analysis of the impacts of the MSHCP on residential, commercial, and industrial development potential in all the affected jurisdictions. Impacts are quantified by land use category, acreage, and development potential, and the basis for a less-than-significant finding is explicitly provided. The MSHCP is not inconsistent with the existing General Plan designations and does not change those designations. The MSHCP does not preclude development in the Conservation Areas if the development is consistent with the Conservation Objectives. Thus, as indicated in the EIR/EIS, the MSHCP does not have a significant adverse impact on land use in the Plan Area, and inclusion of the suggested alternative is not needed.



The commenter also suggests an alternative limited to only covering species listed as endangered or threatened, stating that this alternative would “have less severe land use, economic and environmental justice impacts....” However, as a preliminary matter, the MSHCP as proposed would not result in any significant impacts, including in the areas mentioned by the commenter. It is also not certain that the alternative would have a substantial effect on the total amount of land set aside for conservation that the commenter expects, in that there would be significant overlap in Core Habitat and Other Conserved Habitat for endangered and threatened Covered Species, on one hand, and the other Covered Species on the other. The Covered Species list was carefully developed as part of the overall conservation planning effort and the concept of confining the list to only listed species was considered and rejected as not meeting overall project objectives of designing a conservation plan that would address the conservation needs of existing and potential future listed species that might constrain growth and development within the Plan Area in the future.

Additionally, a fundamental project objective of the proposed project is the protection and conservation of habitat for 27 species, which includes species not currently listed as threatened or endangered. See EIR/EIS page 1-6. The establishment of this objective as an essential objective of the proposed project is supported in the record. Although not in the most dire of categories for protected species, the non-threatened or endangered species included as Covered Species are nevertheless considered to be sensitive or are otherwise on lists of native species of importance, and are thus worthy of conservation. It is also significant that the original listing of species examined for potential inclusion in the proposed project contained more than 50 species. This list was narrowed, however, based upon limitations on scientific knowledge for some species. Because the proposed alternative would result in this basic project objective not being fulfilled (i.e., the conservation of all 27 species) and would not contribute any new significant information to the EIR/EIS’s analysis (as described above), no further evaluation of this alternative is required. For similar reasons, the commenter’s proposal to combine his suggested alternative into a fourth alternative is also not feasible.

As a general matter, the commenter states that the Plan funding is inadequate. See Major Issue Response 3 regarding adequacy of Plan funding. The Plan is adequately funded; thus, the EIR/EIS does not need to be revised. As described in Section 6.1.2 of the Plan, the Acquisition and Funding Coordinating Committee of the CVCC will set acquisition priorities.

With regard to the commenter’s proposed alternative “that takes account of funding that is actually realistic and foreseeable, and that prioritizes acquisitions based on an

assessment of the actual biological value of the conservation areas identified for acquisition, and prioritizes acquisition based upon the value of the land in implementing the objectives of the MSHCP,” the preferred alternative/proposed project does contain adequate and realistic funding, discussed above. Therefore, no further action is necessary.

- R-15** Section 1.5 of the Recirculated Draft EIR/Supplemental Final EIS provides a comprehensive description of the planning and regulatory environment in which the Plan and EIR/EIS were prepared. Section 1.6 provides a 5-page description of the relationship of the MSHCP to other planning documents, including the General Plans of the Cities and County, Bureau of Land Management Coachella Valley amendment to the California Desert Conservation Area Plan, the San Jacinto and Santa Rosa Mountains National Monument Management Plan, as well as planning and land use documents of various state and federal agencies, and the local Native American Tribes. Section 3.2 of the Recirculated Draft EIR/Supplemental Final EIS provides a detailed description of the land use designations established by the local jurisdictions through their adopted General Plans, including providing acreage and statistical summaries by land use categories and mapping. Existing land uses are also described, as are land uses outside the Plan boundaries. Section 4.2 of the Plan provides a detailed assessment of the potential effects of the MSHCP on land uses.

As noted in Footnote 4 on Table 4-1 of the Plan, other general plan designations include park, specialized park, utility substation, public use, public facilities, and schools. No housing units are identified within these designations that would be affected by the MSHCP. Detailed analysis of the effects of the MSHCP on residentially designated land is provided in Section 4.8 of the EIR/EIS. Refer also to response to Comment N-12.

With respect to commercial and industrially designated lands, quantitative information and analysis is provided in Section 4.8 of the EIR/EIS, with summary information provided in Tables 4-21 and 4-22. As noted, for a substantial number of jurisdictions, no currently designated commercial or industrial lands are located within identified Conservation Areas, with some lands in unincorporated areas of Riverside County having these designations (representing about 8% of total lands within the County with these designations in the Plan Area). The EIR/EIS concludes that there would be no significant effects on commercial and industrially designated lands.

Contrary to the commenter’s assertion, the EIR/EIS fully recognizes the important role of land use elements and general plans in analyzing a regional conservation

planning project such as the MSHCP. For that reason, detailed analysis is provided in Section 4.8 of the EIR/EIS as noted above.

The EIR/EIS concludes that no significant indirect effects would occur with respect to shifting land uses to other locations; under the MSHCP. In fact, the vast majority of lands designated for higher intensity land uses are located outside the identified Conservation Area. The MSHCP would assemble the reserve system from within the Conservation Area, but would not preclude all Development opportunities there.

The proposed project is not inconsistent with any applicable HCP nor other applicable regional plans, including the referenced Santa Rosa and San Jacinto Mountains National Monument Act. As noted above and analyzed in the EIR/EIS, the MSHCP would not impact existing and future growth in the Coachella Valley. In addition, the Plan does not propose buffer zones, nor are such zones created by the Land Use Adjacency Guidelines. The Land Use Adjacency Guidelines simply call for Permittees to use existing and generally accepted development review tools to treat land uses adjacent to the reserve system as though the reserve system were a sensitive neighbor. These guidelines are similar to City or County design standards and reviews that are imposed on Development to ensure compatibility of a proposed land use with adjoining lands, whether those adjoining lands are another type of urban use or are conservation lands. Comparing that kind of Development review with a buffer zone would be similar to comparing a Development review standard that called for low lighting or reduced noise or proper control of urban runoff in an estate residential area to establishment of a buffer zone. See also response to Comment W-4 regarding Land Use Adjacency Guidelines.

- R-16** Section 4.8 of the Recirculated Draft EIR/Supplemental Final EIS provides a detailed quantitative analysis of the referenced socio-economic effects. The potential for significant adverse effects on communities located within the Plan Area was analyzed for each jurisdiction. The potential for continuing Development of healthy economies was assessed and analyzed for developable acreage outside Conservation Areas by land use type. The Plan's potential impacts to each of these land use categories were also fully assessed. In addition, the analysis provided in Section 4.8 of the Recirculated Draft EIR/Supplemental Final EIS (p. 4.8-22) clearly demonstrates that there would be minimal or no impact to affordable housing in most jurisdictions. In total, Conservation Area lands throughout the Plan Area represent only 5% of the total medium and high density lands available for Development. The MSHCP allows Development in the Conservation Areas if the Development is consistent with the Conservation Objectives and Required Measures. As with the other land use designations discussed in the Recirculated Draft EIR/Supplemental Final EIS, the

individual jurisdictions would continue to have the ability to change their General Plans to accommodate land uses with either increased density or increased acreage to address this small potential loss in medium and high density lands.

Also important to note is that lands planned for conservation have the lowest development potential in the Plan Area, both in terms of General Plan land use designations and natural constraints (flooding, blowsand, seismic, utility availability).

Of the approximately 160,090 acres with some Development potential within Conservation Area boundaries, 91.7% are designated for residential densities of 1 dwelling per 10 acres or lower densities. Developable lands located outside Plan Conservation Areas total 155,431 acres (see Recirculated Draft EIR/Supplemental Final EIS Tables 4-1 through 4-24), of which 71% of the acres are designated for or allow residential development, 5% are designated for or allow commercial Development, and 9% are designated for industrial and business park Development. The potential for continued economic development in the Plan Area is not significantly constrained by the Plan. As explained in the Recirculated Draft MSHCP, the Recirculated Draft EIR/Supplemental Final EIS, and the above discussion, implementation of the MSHCP will not significantly affect land use Development patterns in the Plan Area.

It should also be noted that the only clear measure of Development potential on a particular property is a jurisdiction's General Plan. The analysis in the Recirculated Draft EIR/Supplemental Final EIS is based on existing General Plan land use designations in each of the Coachella Valley cities and in the County. It is neither feasible nor appropriate to credibly develop an alternate land use map for each jurisdiction to analyze the potential impacts of changes, which might be made by each jurisdiction over time.

In several impact analysis categories, jurisdiction-specific issues were identified, including potential Plan effects on land uses and circulation, mineral and energy resources, and agricultural lands. The regional socioeconomic environment and potential effects of the Plan on the affected cities and Riverside County were also examined individually. Section 3.15 provides detailed information on a variety of socio-economic categories and trends for each jurisdiction, including population, ethnicity, employment, median household income, agricultural production and tourism. Section 4.8 provides additional information on each jurisdiction, including total assessed valuation, developed and vacant lands, as well as a summary of development potential and fiscal impacts associated with the placement of lands in conservation. Potential impacts to residential (including affordable housing), commercial, and industrial lands were also assessed by jurisdiction. Finally,

Appendix J of the Recirculated Draft EIR/Supplemental Final EIS provided a detailed summary of the comprehensive Fiscal Impact Analysis prepared on a jurisdictional basis for the Final MSHCP. Data in the fiscal analysis are not regarded as stale for purposes of analysis in the MSHCP. Current data on land values and home sales were used in the updated market study developed for the Recirculated Plan and EIR/EIS. In summary, the Recirculated Draft EIR/Supplemental Final EIS is fully compliant with CEQA Guidelines Sections 15091 and 15096, as well as Section 21167.3 of the California Public Resources Code.

Section 9.1 of the Recirculated Draft EIR/Supplemental Final EIS cites relevant portions of NEPA and CEQA regarding the analysis of growth-inducing and cumulative effects. This is followed by a detailed discussion of the development context on a qualitative and quantitative basis, including future development potential within the Plan Area, which facilitates the cumulative and growth-inducing impact assessment (see Section 9.2). Future land conversions, growth in housing and population, future traffic and trip generation potential, and flooding and hydrology are analyzed. The EIR/EIS does not use an “impermissible” ratio approach regarding effects of the MSHCP on employment. It simply states that potential effects on employment could be expected to be equivalent to the potential loss of industrially designated lands within the Conservation Areas, which is quantified and determined to be minimal. Regarding Cities’ sphere of influence, it is not possible at this time to predict what lands may or may not annex to Cities, and the baseline for analysis was therefore the existing general plan land use designations of jurisdictions within the Plan Area.

- R-17** Desert Hot Springs is not a Permittee under the Plan, and the Plan would not affect land use planning and Development in the City. Refer to responses to Comments N-9 and N-12 for discussion of the City of Desert Hot Springs and affordable housing in general. Effects on environmental justice and children are discussed in Section 4.9.8 of the EIR/EIS.

With respect to the Palmwood project, it is located in the County of Riverside and has not been annexed to the City of Desert Hot Springs. Should it be developed in the County, it would be reviewed for consistency with the MSHCP since the County is a Permittee under the Plan. Should it be annexed to the City of Desert Hot Springs, such a consistency review would not take place. In neither case would the MSHCP preclude development of a project on the Palmwood property.

- R-18** The Recirculated Draft EIR/Supplemental Final EIS describes how the possibility of intensified land use would actually enhance land use efficiencies and the cost-effectiveness of infrastructure construction, possibly reduce miles traveled and

pollutants emitted, and potentially provide other positive effects. However, it is noted in the Recirculated Draft EIR/Supplemental Final EIS that the intensification of land use is not a foregone conclusion and that such intensification, if it occurred, would be subject to full CEQA and, where appropriate, NEPA review. It should also be noted, as discussed in the Recirculated Draft EIR/Supplemental Final EIS, that, according to trip generation studies by the Institute of Transportation Engineers, there is an inverse correlation between residential densities and the number of trips generated per household; that is, the higher the density, the fewer trips generated per household. With enhanced proximity of housing to schools and commercial services, fewer trips are by automobile and more are accomplished by mass transit and by non-motorized means of transportation. No further analysis is therefore required.

**R-19** Commenter does not provide a specific environmental comment in the context of CEQA or NEPA, and, therefore, no further response is required. Refer also to response to Comment N-15. With respect to the potential development of lands outside the Conservation Areas that “actually host endangered and threatened species,” the EIR/EIS fully analyzes the impacts of this development. The commenter is referred to Section 4.7.3 of the EIR/EIS, which provides analysis of the impacts of the Plan and the resulting authorized Take on each Covered Species and natural communities. Section 4.6 of the Plan also describes the impacts of Plan implementation in terms of Take and Habitat loss for Covered Species. For a complete Impact or Take Analysis for each Covered Species, the commenter is referred to Section 9 of the Plan. With respect to endangered and threatened species on the Palmwood site, see responses to Comments R-3, R-8, R-9, R-10, and R-11.

**R-20** The MSHCP does not propose nor approve any Development whatsoever, and the EIR/EIS is therefore not required to analyze the effects of Development. The MSHCP instead provides a mechanism for Take authorization for Covered Activities. Individual Development projects would continue to undergo project-specific environmental review and approval of the applicable Local Permittee. With respect to growth inducement, refer to response to Comment N-15.

**COMMENTER S: SUZANNE SLOANE, MARY JUSTICE ET AL.**

Dated: May 28, 2007

**S-1** On July 12, 2007, LAFCO overturned its decision on the Palmwood annexation and voted to deny the annexation. No changes to the Plan or EIR/EIS are required, and an extension of the public comment period is not warranted.

**S-2** Changes to the Plan made to the February 2006 Final MSHCP are shown in the February 2007 Recirculated Draft MSHCP in redline/strikeout format to aid in the review process. Letters were sent to all landowners in the Plan Area notifying them of the public comment period; in addition, a notice was placed announcing the public review period and the public forums in the *Desert Sun* newspaper on March 24, 2007, and the Recirculated Draft MSHCP documents were made available in city halls, libraries, and online at [www.cvmshcp.org](http://www.cvmshcp.org). Notification of the public review period was adequate.

Comments on the Recirculated Draft MSHCP are included in this Responses to Comments document. Comments submitted on the February 2006 Final MSHCP are part of the Administrative Record required for CEQA purposes but are not reproduced in this document. Commenter is correct in that some of the original comments no longer apply to the recirculated draft document.

**S-3** The Thousand Palms Flood Control Project is a Covered Activity in the MSHCP, as the project and its impacts were accounted for in the EIR/EIS analysis. The environmental review process for this project has been completed, and the project has obtained Take authorization through a Section 7 consultation with the USFWS. The decision about whether the project is constructed is not within the purview of the MSHCP nor the Lead Agencies. As noted by the commenter, if the project is constructed, the Plan provides for a maintenance plan that will minimize impacts to Covered Species and natural communities.

**S-4** The Lead Agencies have reviewed the referenced materials. Upon review, the material: (1) was determined to have been previously considered in Plan preparation, (2) was deemed not to constitute new information, or (3) failed to contain specific comments on the Plan requiring response. The Lead Agencies are not able to answer questions about the current or past ownership or employees of the referenced companies; these questions should be directed to the specific organizations listed. CVAG has complied with all requirements of the Public Records Act.

- S-5** The commenter provides no data or information to support the suggestion that “the so-called ‘blow-sand’ is not needed to preserve the Preserve.” The issue of sand source and fluvial and aeolian deposition is discussed at length in the Plan. With respect to the blowsand system for the Thousand Palms area, a significant amount of remote sensing data has been used over the past two decades to show that the Thousand Palms Preserve sand source is primarily from the western portion of the Indio Hills, including the south and eastern slopes of Edom Hill (Griffiths, P.G., Robert H. Webb, Nicholas Lancaster, et al. US Geological Survey. August 29, 2002; also see Simons, Li and Associates 1996, 1997; Meeks and Wasklewicz 1993, 1995.) In addition to the extensive fluvial transport data collected in recent years, decades of wind data also clearly support the sand source analysis used in developing the MSHCP. With respect to the suggestion by the commenter that “the sand deposited on the Thousand Palms Preserve...also causes PM-10 and PM-2.5...,” Section 3.11 of the Recirculated Draft EIR/Supplemental Final EIS addresses the relationship of PM<sub>10</sub> and habitat preservation and notes that much of the fine dust considered a pollutant is associated with urbanization, and to a substantially lesser degree the natural blowsand processes that support unique habitats for sensitive plant and animal species. Section 3.11 of the Recirculated Draft EIR/Supplemental Final EIS describes both natural and man-made sources of fugitive dust and clearly demonstrates that natural conditions and human activity, and not the Plan, determine where sand and fugitive dust are generated. Research, analysis, and regulation by the SCAQMD and the U.S. Environmental Protection Agency focus on anthropogenic (human) sources of fugitive dust because these are the primary sources affecting human health in the Plan Area (also see EIR/EIS Appendix L, Air Quality Background Report and CAA Conformity Analysis). See also responses to Comments AD-21, BM-61, and BM-62.
- S-6** See response to Comment J-9 with regard to the status of the Coachella Valley fringe-toed lizard as a species and the commenter’s inaccurate suggestion that the Coachella Valley fringe-toed lizard “has been shown to be a fraud.” The Independent Science Advisors’ recommendations with regard to the dune systems south of Interstate 10 were incorporated in the reserve design process, in terms of giving consideration to all potential dune system Habitat within the Plan boundary. See Major Issue Response 1. Section 3.2.2.3 of Appendix I of the Plan provides a discussion under the heading of “Sand Source and Sand Transport Processes” about the sand dune system south of I-10 and the reasons it was not included in the Preferred Alternative. While at one time the commenter’s statement that “90% of the blow-sand is south of the I-10” may have been correct, this area has been subject to extensive development and is now either developed or planned for development. Additionally, the sand transport system south of the I-10 freeway has long been compromised, as described in Section 3.2.2.3 of Appendix I of the Plan.



- S-7** The commenter provides no evidence to support the claim that the Thousand Palms Preserve "...is planned to become a tourist attraction/park." The Thousand Palms Preserve includes a visitor center and trails that are open to the public; however, the sand dune areas are limited to public access with a guide. Contrary to the suggestions made by the commenter, the MSHCP allows Development within the Conservation Areas, consistent with the Conservation Goals and Objectives and Required Measures detailed in Sections 4.3 and 9 of the Plan. Nothing in the MSHCP would prohibit a landowner from selling or trading their land. With respect to the sand dunes on the Preserve, the dunes provide quality habitat for Covered Species, including Coachella Valley fringe-toed lizard, the Coachella Valley milkvetch, and other species associated with this habitat. Monitoring of the populations of these species by UCR since 2002 (UCR 2006) indicates that self-sustaining populations are present, evidence that the available habitat is adequate to support these species. The additional areas that will be protected as a result of the MSHCP in the Thousand Palms Conservation Area will ensure that the sand transport system necessary to maintain the sand dunes will be conserved.
- S-8** With respect to air quality and PM<sub>10</sub>/PM<sub>2.5</sub>, see response to Comments S-5, AD-21, BM-61, and BM-62. The commenter is correct that habitat restoration occurs on the Thousand Palms Preserve in a previously disturbed area (an abandoned vineyard), whereby sand gathered from roads and other locations is cleaned and deposited. Over time, the deposited sand blows into dune formations. However, the vast majority of the Thousand Palm Preserve is undisturbed natural sand dune habitat that supports species adapted to survive on their own, without being "specially nurtured."
- S-9** The Lead Agencies are unaware of a "...proposal to reduce traffic on Thousand Palms Canyon Road...", and the commenter provides no specific information or references about this proposal. The Lead Agencies are also unaware of any plans for an "...interpretive center, which will probably be across the street from..." the commenter's land. The Lead Agencies have examined Figure 16b and can find no obvious "little box," so are unable to respond to the questions regarding an "outlined area."
- S-10** As the comment refers to pending litigation, CVAG is unable to respond to this comment.
- S-11** The referenced comments on the previously circulated MSHCP and responses will be part of the administrative record for the EIR/EIS.
- S-12** The public forums held in April 2007 provided an opportunity for the public to obtain information, ask questions, and learn more about the MSHCP. As shown in Table 4-

1, approximately 496,400 acres are existing conservation lands within the Plan Area as of 1996. As a result of acquisitions for the MSHCP as well as complementary conservation, the MSHCP Reserve System would include 747,400 acres. This is approximately 68% of the 1.1-million-acre Plan Area.

**S-13** Figure 2-1 of the Final Recirculated Plan shows the land ownership within the Plan Area as of November 2006. Figure 2-4 shows “Existing Public and Private Conservation Lands,” which is the same as the map used at the April 2007 public forums to identify “environmentally controlled” lands.

The commenter states confusion regarding the acreage of the Salton Sea within the Plan Area and Figure 4-4 of the Plan.

The only mention of the Salton Sea in the Executive Summary is “Of the remaining land in the Plan Area, 4.0% is covered by the Salton Sea” (page ES-2).

The Plan Area border at the Salton Sea is the Riverside County boundary, so only a portion of the Salton Sea is within the Plan Area. Table 2-1 of the Plan shows figures for existing land uses, with “Lakes” comprising approximately 43,500 acres; almost all of this is the Salton Sea. Footnote 1 of this table states that the 43,500 acres of Lakes “Includes the Salton Sea and other natural water bodies. Approximately 19,200 acres of land under the Salton Sea are Indian reservation lands. These are not included in the total of Indian reservation lands reported in the second to the last line of the table.” That footnote is the only mention of approximately 19,000 acres with regard to the Salton Sea in the Plan document. The Salton Sea is not within a Conservation Area of the MSHCP and is not included in acreage totals for the Conservation Areas. Management of the Salton Sea is not under the control of the Permittees and therefore is not considered to be conserved under the MSHCP.

Figure 4-4 of the Plan depicts the areas currently owned by Permittees that will be formally conserved under the Plan. This is only land currently owned by the Permittees, not all the land currently under some type of conservation ownership or management within the Plan Area. Land owned by public agencies and private conservation groups is shown in Figure 2-2, Current Land Ownership in the Plan Area. See Figure 2-4, Existing Public and Private Conservation Lands. There is a map for each of the 21 Conservation Areas that shows Conservation and Land Use within that Conservation Area that details conservation status. The assembly of the Plan Reserve System is detailed by acres and ownership in Section 4 of the Plan. See Table 4-1, MSHCP Reserve System Assembly (in acres), for overall figures. The ownership and acreages listed in Table 4-1 is broken down in detail in Table 4-2, State and Federal Existing Conservation Lands; Table 4-3, Local Permittee Existing

- Conservation Land; and Table 4-4, Non-Profit Organization Existing Conservation Lands. These tables detail conservation and land use for each of the individual Conservation Areas.
- S-14** The statement that the Plan “allows the blow-sand to fill in the Salton Sea” is inaccurate. No data or evidence are provided to support this claim. The location of blowsand areas within the Conservation Areas is 22 miles from the Salton Sea, too far for quantities of sand that could “fill up” the Salton Sea to reach it. The Thousand Palms Preserve is 17,651 acres, as stated on page 8-10 of the Plan. The 20,000 acres referred to in the comment encompasses all of the Coachella Valley Preserves (Thousand Palms, Willow Hole, and Whitewater Floodplain). The Plan proponents do not plan to develop any acreage within the Plan Area.
- S-15** The commenter has requested and has been provided with the PowerPoint presentation from the April 12, 2007, public forum. CVAG does not have a recording of the forum as it was not a formal public hearing.
- S-16** The commenter has submitted Public Records Act requests and CVAG has responded to these requests consistent with the legal requirements of the Act. The requested information has been provided to the commenter.
- S-17** See response to Comment S-16.
- S-18** The CVAG deadline for receipt of comments was May 30, 2007. The date for comments on the federal EIS as published in the Federal Register was May 29, 2007. CVAG accepted all comments on the MSHCP, including the Supplemental EIS, through May 30, 2007. This allowed commenters to avoid the potential inconvenience resulting from the Memorial Day holiday.
- S-19** See response to Comment S-18 regarding the comment period closing date. Kay Hazen is a consultant who assisted CVAG in the presentation at the public forums.
- S-20** See response to Comment S-16.
- S-21** See response to Comment S-7.
- S-22** As noted in Section 9.2.2.2 of the Plan, the Coachella Valley milkvetch depends on the sand dune ecosystem, including sand dune habitat and the associated sand transport system. Section 9.3.1.5 of the Plan identifies the significance of blowsand when it states “the active blowsand areas preferred by the Coachella Valley giant sand-treader cricket will not persist in the absence of an intact sand transport corridor system.” For the flat-tailed horned lizard, Section 9.6.3.3 describes Core Habitat for

this species as having “intact processes, including sand source and sand delivery systems; while this species may not depend on active blowsand areas, long-term maintenance of the sand dunes and sand fields where it occurs was considered essential.” Replenishment of sand needed for Coachella Valley fringe-toed lizard habitat is associated with major floods, including 100-year events. However, sand replenishment can occur during lesser events).<sup>55</sup> The Conservation benefits of the Plan are not overestimated. For example, approximately 3,600 acres of Coachella Valley milkvetch Habitat have been developed since 1996 in the Plan Area (based on GIS analysis using the most current aerial imagery available, September 2005); almost all of this disturbance occurred outside the Conservation Area boundaries. Four known locations for Coachella Valley milkvetch, all outside the Conservation Area boundaries, have been developed during this period. Plant species, including the Coachella Valley milkvetch, do not receive Take authorization under FESA. The MSHCP will provide comprehensive conservation that would not be available without the regional conservation planning provided in the HCP and NCCP process. The MSHCP ensures conservation of Coachella Valley milkvetch Core Habitat and other required elements, including Essential Ecological Processes such as sand transport, necessary to ensure the long-term persistence of this species in perpetuity. In addition to Conservation of Covered Species and their Habitat, the Plan also provides for funded long-term monitoring and management to ensure that these species persist. See response to Comment G-8.

**S-23** The definition of a species under FESA includes “any subspecies of fish or wildlife or plants...” (Section 3, Item 16). Subspecies can be listed under FESA.

**S-24** The reference cited by the commenter reports on a study of 22 multi-species habitat conservation plans. However, the Coachella Valley MSHCP was not identified in the study. With regard to the comments made about this study, the Lead Agencies have data to document that all 27 Covered Species occur within the Conservation Areas. The Lead Agencies are confident that the Coachella Valley MSHCP will provide superior conservation and protection for these species than if there were no MSHCP, as described in Section 1.1 of the Final Recirculated EIR/Supplemental Final EIS.

**S-25** See response to Comment S-24.

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<sup>55</sup> Griffiths, P.G., Robert H. Webb, Nicholas Lancaster, et al. US Geological Survey. August 29, 2002.

- S-26** The comment refers to provisions of FESA but gives no specific reference to allow a response to the comment. With regard to landowners, the Plan provides for acquisition at fair market value from willing sellers.
- S-27** As noted in Section 4.4 of the Plan, CVCC will develop an Acceptable Biologist list as part of Plan implementation. This list does not exist at this time. As described in Section 4.4 of the Plan, the CVCC will develop procedures for individual biologists to submit their names for inclusion on the list. The use of this list is limited to implementation of the required avoidance, minimization, and mitigation measures.
- S-28** Comment is noted.
- S-29** Color changes in the Recirculated Draft MSHCP were made to provide additional clarity for the reader.
- S-30** See response to Comment G-3.
- S-31** Based on the statements made in the comment, CVWD did make the documents available to the general public.
- S-32** CVAG has no record of receiving a Public Records Act request dated May 14, 2007, from the commenter. CVAG will comply with the Public Records Act upon receipt of a written request that clearly states the items being requested.
- S-33** Information about the BLM land for sale in the Coachella Valley is available from the BLM website at [www.blm.gov/ca/st/en/fo/cdd/CoachellaValleyLandSale.html](http://www.blm.gov/ca/st/en/fo/cdd/CoachellaValleyLandSale.html). According to information from BLM, the public land proposed for sale is mostly small, 5-acre parcels in the Sky Valley/Indio Hills area. CVCC will purchase lands in the Conservation Areas from willing sellers at fair market value.
- S-34** CVAG cannot provide a response regarding information on The Nature Conservancy website. The commenter would need to contact The Nature Conservancy. The Lead Agencies cannot respond to comments directed to CVWD or ACOE. With regard to the remarks made by the commenter at the CVAG Executive Committee meeting, see response to Comment T-11. Based on the assumption that the map showing one Coachella Valley fringe-toed lizard location is the same map included in Comment S-7, it is important to note that this map is “based on observations during July 1973.” Since 1986, ongoing monitoring of Coachella Valley fringe-toed lizard by The Nature Conservancy and CNLM has documented the presence of Coachella Valley fringe-toed lizard north of Ramon Road in the sand dune areas associated with Thousand Palms oasis and in isolated sand dunes in the Indio Hills. The information about “local sales” is appreciated. Acquisitions within the Conservation Areas to be made

- by the CVCC will be based on fair market value, using comparable sales, as described in Section 5.1.2.1 of the Plan. The current market study includes all comparable sales through August 20, 2006, and includes sales over \$100,000 per acre in Thousand Palms. It should be noted that the market study does not place a value on any particular parcel within the Plan Area. Any acquisitions in the future for the benefit of the Plan will be from willing sellers at fair market value as determined by an appraisal at the time of sale. See response to Comment BM-33.
- S-35** As the comment refers to pending litigation, CVAG is unable to respond to this comment.
- S-36** The commenter apparently refers to the 2001 MOU regarding “Measures to Minimize and Mitigate Take of the Coachella Valley Fringe-toed Lizard” signed by the nine Coachella Valley cities, Riverside County, CVAG, CDFG, CNLM, and USFWS. All of the signatories to the MOU acted under their legal authority. The MOU resulted in an amendment to the Coachella Valley Fringe-Toed Lizard HCP to remove identified sand source areas in the Thousand Palms and Willow Hole areas from Coachella Valley fringe-toed lizard coverage under the HCP. Under the conditions of this MOU, Riverside County was required to “refer all applicants for construction permits... to FWS and CDFG in order to obtain take authorization” for Coachella Valley fringe-toed lizard. Riverside County implemented this provision through the adoption of land use ordinances, a public process which included public hearings and action by the Planning Commission and Board of Supervisors, consistent with all applicable laws.
- S-37** The Coachella Valley fringe-toed lizard was listed as a threatened species by the USFWS and as an endangered species by the State of California in 1980. Comments on the listing status of this species are not within the purview of the MSHCP.

**COMMENTS: MARY JUSTICE ET AL. (LAW OFFICE OF CHRISTOPHER SUTTON)**

Dated: May 29, 2007

- T-1** Commenter summarizes the fact that Desert Hot Springs is no longer an Applicant under the Plan, and a new document which excludes the City has been recirculated. No further response is necessary.
- T-2** Section 9 of the Plan provides an impact analysis for each species proposed to be covered by the Plan. Impact analyses describe the Plan's direct effects on each species and provide measures to avoid, minimize, and mitigate these impacts. Without Incidental Take authority, Development and other activities that would result in Take of listed animal species in the Coachella Valley could be in violation of federal law. Nothing in the documents presumes that the FESA is currently being violated. Project-by-project analysis is taking place. See also responses to Comments G-3 and G-7.
- T-3** Please see Major Issue Response 3, Adequacy of Plan Funding.
- T-4** Please see Major Issue Response 3, Adequacy of Plan Funding. Additional comments do not reflect any environmental issues, and no further response is necessary.
- T-5** Please see response to Comment N-12 and R-16.
- T-6** The Recirculated Draft EIR/Supplemental Final EIS addressed an appropriate range of project alternatives, including an Enhanced Conservation Alternative and a No Project Alternative. The analysis considered the comparative merits and consequences of each and incorporated mitigation measures where feasible and appropriate to reduce impacts below levels of significance. The Conservation Area boundaries were delineated during the reserve design process, which was based on conservation biology principles that include protecting large blocks of Habitat, ensuring intact Essential Ecological Processes, reducing fragmentation and edge effects, and maintaining linkages between Habitat areas. Section 3.2.2.3 of Appendix I of the Plan provides a discussion under the heading of "Sand Source and Sand Transport Processes" about the sand dune system south of Interstate 10 and the reasons it was not included in the Preferred Alternative. The Habitat south of Interstate 10 was not included in the Conservation Areas. This area was judged to be too highly fragmented, with negative impacts of edge effects along the major roadways that now traverse this area. Essential Ecological Processes, including sand

transport, that are important to maintain Habitat for the sand-dependent Covered Species in this area south of Interstate 10 have been compromised.

**T-7** The sand dune Habitats south of Interstate 10 were addressed in the analysis for the Preferred Alternative. The area south of Interstate 10 has been subject to extensive development and now much of it is either developed or planned for development. Much of the land within the area south of Interstate 10 is privately owned. During Plan preparation, private landowners were contacted to request their permission to survey their lands for species proposed for coverage under the MSHCP. Unfortunately, permission to survey these lands was not granted. Information on the presence of sand specialists on the area south of Interstate 10 comes from existing biological surveys and environmental documents prepared for project applicants proposing development there. Impacts to the long-term persistence of this area and its associated species were addressed in the Coachella Valley fringe-toed lizard HCP. TNC (1985, Figure II-6) identified it as a “shielded or stabilized area due primarily to urban development (roads, buildings, canals, dikes).” Presently, the sand transport system is permanently blocked by development upwind, so the region is undergoing the slow process of stabilization. In addition to the lack of an intact sand source, the region is highly fragmented by roads. The largest undeveloped plot that is not divided by two- to four-lane roads contains 273 hectares (674 acres). This area south of Interstate 10 has been degraded by fragmentation, obstruction of sand flow, and ongoing development. As of 2005, very little undeveloped land remains in this area (see Appendix I of the Plan). The Independent Science Advisors confirmed the characterization of the area south of Interstate 10 as shielded sand dunes by agreeing that the sand supply has been cut off. In addition, a significant number of the remaining undeveloped acres within the area are within the Agua Caliente Band of Cahuilla Indian Reservation’s boundary and are therefore not a part of the MSHCP.

The Lead Agencies are familiar with the referenced materials. The concepts in the material: (1) were considered in Plan preparation, (2) do not constitute new information, and (3) do not contain specific comments on the Plan requiring response.

**T-8** The commenter refers to a September 1978 Federal Register notice, which proposed to list the Coachella Valley fringe-toed lizard as threatened and proposed critical habitat. In 1978, available Habitat for the Coachella Valley fringe-toed lizard was much more extensive south of Interstate 10 than it is today. As noted in response to Comment T-7, in 1985 The Nature Conservancy identified the area south of Interstate 10 as shielded and stabilized sand dunes, not suitable for long-term conservation of Coachella Valley fringe-toed lizard Habitat. The commenter’s reference is to an outdated map that does not describe current conditions.



- T-9** Based on the assumption that the map showing one Coachella Valley fringe-toed lizard location is the same map included in Comment S-7, it is important to note that this map is “based on observations during July 1973.” Since 1986, ongoing monitoring of Coachella Valley fringe-toed lizard by The Nature Conservancy and CNLM has documented the presence of Coachella Valley fringe-toed lizard north of Ramon Road in the sand dune areas associated with Thousand Palms oasis and in isolated sand dunes in the Indio Hills. See responses to Comments S-7, S-34, T-6, and T-7.
- T-10** The commenter is referred to Section 4.7 of the EIR/EIS, which provides analysis of the impacts to biological resources, including Covered Species. Section 4.7.3 of the EIR/EIS addresses the correlation between habitat and the species when it states that “...the Proposed Action/Preferred Alternative would result in a net beneficial impact to the Covered Species and natural communities as the Plan would reduce fragmentation, shielding of blowsand habitat, and blocked ecological processes.” Section 4.7.3 also provides a detailed analysis of the impacts on listed species, including the Coachella Valley fringe-toed lizard in the area south of Interstate 10, referred to as the Big Dune: “Although Take in the Big Dune area represents a large acreage of occupied habitat, this region is shielded from sand transport, as it was in 1985. Land values, fragmentation by existing roads and edge effects make this habitat impracticable to conserve or restore for the fringe-toed lizard.” See also responses to Comments G-3, T-6, and T-7.
- T-11** Commenter alleges that the Lead Agencies edited and deleted attachments to comment letters received on the November 2004 Draft MSHCP. This is not correct. No comment statements or letters were edited, changed, or deleted by the Lead Agencies. Due to the enormous volume of attachments received, the attachments were not printed. Attachments were identified in the comment response and all attachments were included in pdf form on the CD version of the Plan for the convenience of the reader of the Response to Comments document. Each response to a comment that had included attachments was followed by a statement that the comment included attachments and that these attachments could be found on the CD accompanying the document. All printed and electronic versions of the document included the attachments in pdf form. All attachments to comments were considered as part of the response to the comment.
- T-12** The discussion of the referenced lawsuit is unclear. The San Diego MSCP referenced in *Southwest Center for Biological Diversity v. Bartel* was invalidated for a number of reasons. Some of these reasons had to do with the process by which the MSCP was created and reviewed. More fundamentally, the court found that the fact that vernal

pool fairy shrimp do not survive transplantation meant that the destruction of vernal pool habitat by development could not be effectively mitigated. This issue is particular to these species and to the San Diego MSCP, and there is not a similar problem with the MSHCP. Consequently, there is no relationship between “south of the freeway” areas in the referenced San Diego MSCP and areas south of the I-10 in the Coachella Valley MSHCP. See also responses to Comments T-6, T-7, and T-10.

- T-13** Please see Major Issue Response 3, Adequacy of Plan Funding. Also refer to Major Issue Response 2. The commenter quotes *Ehrlich v. City of Culver City* (1996) 12 Cal. 4<sup>th</sup> 854 (“*Ehrlich*”) as imposing a requirement that development fees have both an essential nexus between the Permit condition and the public impact of the development, and a rough proportionality between the size of the fee imposed and the effects of the proposed development. Under *Ehrlich* and later case law, legislatively-imposed fees, such as the Local Development Mitigation Fee, must bear a “reasonable relationship” (i.e., nexus) between the impacts of the proposed project and the nature and amount of the fee (*Ehrlich*, 12 Cal 4<sup>th</sup> at 876; *San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal. 4<sup>th</sup> 643, 667). This requirement has been codified in the Mitigation Fee Act (Government Code Section 66000 *et seq.*), which requires local agencies to establish the “reasonable relationship” of a proposed fee with the types of projects to which it will apply.

The requirement under the Mitigation Fee Act for a reasonable relationship (“nexus”) between the impact of new development and the fee was fulfilled by a formal study (MuniFinancial 2007). See also response to Comment X-36 for further discussion of the “Nexus Study.” As a general matter, the cost of the habitat acquisition program is allocated to all 75,000 acres of new development on vacant or partially vacant land within the Plan Area projected to occur in the first 50 years of Plan implementation. All vacant or partially vacant land represents habitat or potential habitat for one or more Covered Species, including vacant or partially vacant land within the urban areas. Loss of all such lands also represents a cumulative loss of habitat for the Covered Species. When habitat conversion takes place anywhere, there is an overall loss to habitat quantity and the quality of the remaining occupied or potential habitat is degraded because these areas may become even more isolated and impede species movement. Thus, all development has a direct, indirect, and/or cumulative impact on the loss of habitat for the Covered Species.

More specifically, each newly developed acre has approximately the same proportionate impact by causing direct, indirect, and cumulative impacts on species and existing or potential habitat and natural communities. New development also causes a need for and benefits from the installation of public infrastructure, which

also impacts habitat and in the Plan Area would often result in Take. As a result, the Financing Plan funds the mitigation of these impacts with a fee imposed per developed acre. The total fee for a specific project is based on its size as measured in acres. This approach ensures a reasonable relationship between the fee for a specific development project and the impact of that project on the need for habitat protection.

With regard to the alternatives suggested by the commenter, a reduced mitigation fee alternative would not add anything to the environmental analysis since the monetary amount of the fee does not result in any environmental impacts, and in any case the level of the fee will likely fluctuate at least every five years through the periodic recommissioning of nexus studies. With regard to the suggested alternatives “wherein the mitigation fees are ... limited by geography or species where they can be spent,” it is unclear exactly how the commenter anticipates such an alternative would function, although the conservation potential of such a limited mitigation fee program would appear limited and therefore unable to achieve the project objectives, including the preservation of the 27 Covered Species and the preservation of Core Habitat and Other Habitat areas.

- T-14** Please see Major Issue Response 2. The “Nollan/Dolan” test mentioned by the commenter references the opinions in *Nollan v. California Coastal Commission* (1987) 483 U.S. 825 (“*Nollan*”) and *Dolan v. City of Tigard* (1994) 512 U.S. 374 (“*Dolan*”). Under *Nollan*, the U.S. Supreme Court required that there must be a nexus (connection) between the nature of the impact of a proposed project and the condition or exaction being placed on that project. (*Nollan*, 483 U.S. at 839). This has come to be known as the “essential nexus” test. In *Dolan*, the Court required that the degree of exaction bear a “rough proportionality” or “reasonable relationship” to the degree of the project’s impact. (*Dolan*, 512 U.S. at 391).

The *Nollan/Dolan* cases concerned exactions in the form of physical dedications. The *Ehrlich* decision, *supra*, applied the *Nollan/Dolan* decisions to the specific circumstance of legislatively-imposed fee programs (such as the Local Development Mitigation Fee), and found that constitutional requirements are met for such fee programs when there is a reasonable relationship between the impact of the project and the fee imposed (both in terms of nature and degree). (*Ehrlich*, 12 Cal 4<sup>th</sup> at 876; *San Remo Hotel L.P. v. City and County of San Francisco* (2002) 27 Cal. 4<sup>th</sup> 643, 667). As discussed in response to Comment T-13, a formal “Nexus Study” was commissioned for the Local Development Mitigation Fee in order to satisfy these constitutional requirements, as also mandated by the Mitigation Fee Act. See response to Comment X-36 regarding the Local Development Mitigation Fee Nexus Study. As repeated throughout the MSHCP and the EIR/EIS, the purposes of the Plan

and the Local Development Mitigation Fee is to mitigate habitat loss impacts as *new* Development occurs. See, e.g., Nexus Study page v. Thus, the commenter's suggestion that landowners are being asked to pay for existing habitat needs is incorrect.

**T-15** The proposed Coachella Valley MSHCP and anticipated permit issuance would not conflict with legal requirements with respect to the method for Take authorization for Covered animal Species. The commenter cites *Arizona Cattle Growers' Association v. USFWS*, (9th Cir. 2001) 273 F.3d 1229 ("ACGA") for the proposition that no Take of a listed species can occur on lands unoccupied by that listed species. The ACGA court analyzed whether the USFWS acted in an arbitrary and capricious manner when it issued several Section 7 Incidental Take Statements ("ITSs") for listed species. (Id. at 1243). The court held that the USFWS's issuance of an ITS must be predicated on a finding of an incidental take and that such a finding may not occur where there is no evidence that the endangered species exists on the land or where there is no evidence that a take would occur if the permit were issued. (Id. at 1243-1251). Where evidence exists for either criterion, the issuance of a Section 7 ITS will be upheld.

The court's conclusions in ACGA are distinguishable because that case was based on a Section 7 ITS. In contrast, the applicants of the MSHCP are attempting to receive a Section 10 Incidental Take Permit covering 1.1 million acres of land over a 75-year period. Take coverage under the MSHCP would be provided for Covered Species based on a regional approach, and considers not only current Habitat for Covered Species, but potential and predicted Habitat over a 75-year period. In other words, Take coverage under this Section 10 permit would recognize that the flat-tailed horned lizard's habitat is likely to change over the next 75 years.

Similarly, one feature that distinguishes a Section 10 Incidental Take Permit from a Section 7 ITS is that the applicant must engage in mitigation measures to offset the impacts that the proposed project will have on the species. (16 U.S.C. § 1539(c)). This requirement is not mirrored in the Section 7 incidental take process; an ITS must minimize impacts but is not expressly required to mitigate them. Under an HCP, mitigation for habitat loss needs to be considered. The USFWS HCP Handbook provides that "[p]otential types of habitat mitigation include, but are not limited to... (3) enhancement or restoration of disturbed or former habitats; ... and (5) creation of new habitats." (United States Fish and Wildlife Service & National Marine Fisheries Service, *Habitat Conservation Planning and Incidental Take Permit Processing Handbook* (Nov. 1996) at 3-21 through 3-22). The Handbook further explains that in some cases "restoring degraded habitat or creating new ones is the best strategy."

(Id.). Thus, the fact that the MSHCP considers potential and predicted habitat is consistent with the purpose and intent of a Section 10 Incidental Take Permit.

**T-16** The commenter incorrectly asserts that there is no flood risk within the Thousand Palms area. The area in question is mapped as a 100-year floodplain by the Federal Emergency Management Agency and has experienced severe flooding several times during the past few decades. Far from concluding that there was no flood risk, the documents cited by the commenter were written to support a proposed levee project that would protect the area from flooding. This levee is a Covered Activity under the MSHCP and has also received a Section 7 consultation. The levee project was similarly designed to maintain the flow of sand into the Preserve while protecting human life and property.

Along with the obvious negative consequences to development and property within this area, these flood events provide sand to the sand dune system on the Coachella Valley Preserve. The commenter is correct that the sand dune system on the Preserve is dynamic and that the sand currently on the Preserve will continue to migrate across the landscape. It is for this reason that the Thousand Palms Conservation Areas was explicitly designed to maintain the ability of new sand to flow into the Preserve. Contrary to the assertion of the commenter, maintenance of this ecological process is essential to persistence of the sand dune species, including the Coachella Valley fringe-toed lizard, which is currently listed as threatened under the FESA and endangered under the CESA. A primary goal of the MSHCP is to maintain or restore viable populations of the Covered Species.

With respect to the sand transport system for the Thousand Palms area, see also response to Comment S-5. The recent studies cited there provided the basis for the reserve design for the Thousand Palms area in developing the MSHCP. In addition to the extensive fluvial transport data collected in recent years, decades of wind data also clearly support the sand source analysis used in developing the MSHCP. While the Thousand Palms Canyon drainage provides a portion of fluvial sand transport for this preserve, it is located too far east to source the western and one of the most critical portions of this preserve.

The commenter incorrectly asserts that future Development will not impact the sand dunes in the Thousand Palms area. In the 1986 Coachella Valley fringe-toed lizard HCP, The Nature Conservancy (1985, figure II-6) identified some sand dunes as “shielded or stabilized area due primarily to urban development (roads, buildings, canals, dikes).” Section 4.7 of the EIR/EIS analyzes this situation. Under the MSHCP, Development is not precluded from sand transport areas. In the fluvial sand transport areas, “the Permittees will require that natural flows onto a parcel on which

Development is proposed shall be conveyed offsite in the natural pre-disturbance direction of flow, and will require that Development on the property shall not impede water-borne sand transport across the parcel in its natural direction of flow.” As described in Section 4.2.2.2.4 of the Plan, Development consistent with ensuring no net loss of fluvial sand transport may occur in these areas.

**T-17** The importance of blowsand in the Thousand Palms area to sand-dependent species on the Covered Species list is well documented in the species accounts and habitat models developed for the Plan, which are based on the best available science regarding these species. The biology of these sand-dependent species is well-known and their general presence and distribution in the Thousand Palms area is well-documented. For these reasons, the commenter’s statement that the Plan is irrational is not correct.

**T-18** Please see response to comment N-12.

**T-19** No features of the Plan would affect or alter the Riverside County General Plan, including the Housing Element. The proposed MSHCP is not an element of the General Plan nor does it need to wait for adoption until the County’s Housing Element is approved. The MSHCP does not have any discriminatory intent; any purported impacts are speculative. CVAG has identified more than 150,000 acres of developable land outside the Conservation Areas; thus, there is ample available land to accommodate the 75,000 acres of new development projected over the next 50 years.

This would allow for approximately a doubling of the current urbanized area in the Coachella Valley. Thus, the MSHCP is not anticipated to have a significant impact on affordable housing. In fact, the MSHCP has the potential to improve affordability by simplifying compliance for housing projects with state and federal species protection laws and environmental review laws as required of all development, regardless of the type of development or where it occurs. A developer could easily incur considerably higher costs to resolve biological resource issues without the implementation of the MSHCP, not including the costs associated with carrying a property while the permitting process is underway. This additional cost would in most cases increase the minimum potential costs above those associated with payment of the MSHCP mitigation fee. It is therefore expected that the impacts associated with the development community would be beneficial overall.

The MSHCP does not create any special circumstances that result in the unfair placement of the MSHCP cost burden on any socioeconomic group, race, or ethnicity. Section 4.8 of the Recirculated Draft EIR/Supplemental Final EIS addresses the issue

- of housing at length and concluded that there would be no significant adverse impacts to housing supply and affordability. Sections 3.15, 3.16, and 4.8 of the Recirculated Draft EIR/Supplemental Final EIS directly address issues of ethnicity, incomes, and affordable housing under the headings of socio-economic resources and environmental justice and children. Trends in employment, income, and housing costs are addressed, as are minorities and minority populations. Native American populations and children as a separate demographic group are also addressed. The potential impacts of the Plan on employment and affordable housing are examined in Section 4.8 of the Recirculated Draft EIR/Supplemental Final EIS, and the Plan's consequences with regard to environmental justice and impacts to children are examined in Section 4.9.8 of the Recirculated Draft EIR/Supplemental Final EIS.
- T-20** No features of the Plan would affect consistency with fair housing requirements. The Plan does not authorize or preclude housing development and does not propose or influence the availability of housing or housing product types. The individual cities and Riverside County retain land use authority within the boundaries of their jurisdictions. See response to Comment T-19.
- T-21** Comment does not provide a specific environmental comment in the context of CEQA or NEPA, and, therefore, no further response is required. It should be noted for the record that the Center for Natural Lands Management acquires land from willing sellers only at fair market value.
- T-22** Comment does not provide a specific environmental comment in the context of CEQA or NEPA, and, therefore, no further response is required.
- T-23** Comment does not provide a specific environmental comment in the context of CEQA or NEPA, and, therefore, no further response is required.
- T-24** Comment does not provide a specific environmental comment in the context of CEQA or NEPA, and, therefore, no further response is required. It should be noted for the record that lands acquired by the CVCC for the MSHCP will be acquired from willing sellers at fair market value.
- T-25** Comment does not provide a specific environmental comment in the context of CEQA or NEPA, and, therefore, no further response is required.
- T-26** This comment does not provide a specific environmental comment in the context of CEQA or NEPA. The comment incorrectly asserts that the Local Development Mitigation Fee is a prohibited special tax. The following response is provided for informational purposes. The Mitigation Fee Act ("Act"), Gov. Code Section 66000 et

al., allows Cities and Counties to charge new Development for the costs of mitigating the impacts of new Development. The Act differentiates a “fee” from a “tax” or an “assessment.” According to section 66000.5(b) of the Act, a “Fee” means a “monetary exaction other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project.” A “development project” is any “project undertaken for the purpose of development” (Gov. Code § 66000.5(a)).

In contrast, California Constitution Article 13C governs taxes. It defines a general tax as “any tax imposed for general governmental purposes” and specific taxes as “any tax imposed for special purposes, including those placed in a general fund.” Article 13D of the Constitution defines an “assessment” as a levy upon real property by an agency for a special benefit conferred on the real property (“only special benefits are assessable”). A “special benefit” is a particular and distinct benefit over and above general benefits conferred on real property.

As stated in Section 5.2.1.1 of the Recirculated Draft MSHCP, the County and Cities would be responsible for adopting a mitigation fee for new Development within the Plan Area. No “special benefits” are conferred on the property through imposition of this fee. No “taxes” are being imposed. The fee imposition falls squarely under the Mitigation Fee Act and does not fall within the scope of Article 13C or 13D of the California Constitution.

**T-27** This comment does not provide a specific environmental comment in the context of CEQA or NEPA. The Market Study (August 2006) and the Nexus Study (January 2007) were updated between the February 2006 Final MSHCP and the February 2007 Recirculated Draft MSHCP to ensure that the most current available data are used in estimating acquisition costs and identifying the Local Development Mitigation Fee amount necessary to generate the funds for the acquisition program. This is in accord with Section 5.2.1.1 of the MSHCP, which states that the fee amount shown in the MSHCP was based on a Nexus Study. Commenter fails to discuss what service will be provided to the property owner through imposition of the mitigation fee. Thus, no further response can be provided regarding the comment’s discussion of Article XIII-D’s applicability. See also response to Comment T-26.

**T-28** CVCC is not adopting or increasing a Development mitigation fee. Sections 11.1.1 and 11.1.2 of the IA provide that this is an obligation of the Cities and the County. The Cities and County are responsible for adopting and adjusting the Local



Development Mitigation Fees. The Cities and County then transfer all received Local Development Mitigation Fees to the CVCC (IA Section 12.2.1). It is not an illegal delegation of the Cities' and County's police power for the CVCC to receive and expend the fees. Contrary to the assertion by the commenter that the CVCC is an administrative agency, it is a legislative body (specifically a Joint Powers Authority). Because the CVCC's member jurisdictions are exercising common powers through the CVCC, the CVCC is authorized to receive fees from its member agencies and spend them on MSHCP implementation (Government Code Section 6502). As noted in response to Comment T-26, since Article XIII-C is inapplicable, commenter's contention that "a few hundred signatures" could repeal the mitigation fee is incorrect.

- T-29** The CEQA Guidelines state that an EIR shall identify and focus on the significant environmental effects of the proposed project (State CEQA Guidelines §15126.2). The Recirculated Draft EIR/Supplemental Final EIS provides a comprehensive assessment of environmental impacts and provides an exhaustive assessment of economic and fiscal impacts associated with the implementation of the Plan. The Lead Agencies believe the mitigation fee will meet the funding requirements of the Plan's impact, and the commenter fails to provide any reason as to why the mitigation fee will be totally ineffective other than various theories as to its supposed illegality. The Recirculated Draft EIR/Supplemental Final EIS is not required to analyze the impacts of the "total ineffectiveness" of the local development mitigation fee as the mitigation fee is part of the project description. Regarding the comment that the fee violates the California Constitution, see response to Comment T-26.

Additionally, the MSHCP provides a process to assess the funding needs of the MSHCP and provides a process if additional funding is required. See Major Issue Response 3, Adequacy of Plan Funding.

The comment ignores or is unaware of the separate and independent HCP being developed by the Agua Caliente Band of Cahuilla Indians Tribe and being processed by the USFWS. The impact fee to be enacted by the Permittees will in no way benefit the Agua Caliente Band of Cahuilla Indians or other Tribe with lands in the Plan Area.

- T-30** Article XVI, Section 6, of the California Constitution prohibits local government agencies from making gifts of public funds. This prohibition does not preclude expenditures or disbursements for public purposes, even if a private entity benefits from such expenditures. (See, for example, *Redevelopment Agency of San Pablo v. Shepard* (1977) 75 Cal.App.3d 453, 457.) The general rule is that a public agency may expend public funds to benefit a private entity only where the expenditure is

supported by “either (1) full consideration or (2) an overriding public purpose for the payment.” (*Green v. Mt. Diablo Hospital District* (1989) 207 Cal.App.3d 63, 72 [citing *California Teachers Assn. v. Board of Trustees* (1978) 82 Cal.App.3d 249, 257]).

Funds expended by the CVCC would not be considered “gifts” because they will be made for a public purpose. Case law under this constitutional provision largely focuses on instances in which a public agency’s expenditure of funds benefits a private party. “[I]f expenditures [a]re made to serve a proper public purpose, they [a]re not a ‘gift’ despite the fact that some private persons may have received special benefits.” (*Wine v. Boyar* (1963) 220 Cal.App.2d 375, 379 [citing *County of San Diego v. Hammond* (1936) 6 Cal.2d 709, 724; *County of Los Angeles v. La Fuente* (1942) 20 Cal.2d 870, 877]). The determination of a public purpose lies with the governing body, and courts will uphold these determinations unless the governing body’s “exercise of judgment or discretion is shown to have been unquestionably abused.” (*Pipes v. Hilderbrand* (1952) 110 Cal.App.2d 645, 649 [emphasis in original]; see also *Manheim v. Superior Court* (1970) 3 Cal.3d 678, 690-691). Commenter does not allege that a private entity received an improper gift, but instead cites to *City of Ceres v. City of Modesto*, (1969) 274 Cal.App.2d 545 to support its argument that, under this constitutional provision, “fees or charges collected within a city may not be expended outside that city.” Not only does this case not support this proposition, but also the Lead Agencies were unable to find a case that stood for such a proposition. In fact, *City of Ceres* supports a completely contrary argument.

In *City of Ceres*, the City of Modesto was in the process of expending funds for the construction of a sewer system outside its boundaries, even though the neighboring City of Ceres was likely to annex the land. The court held that, in that situation, Modesto’s expenditure of funds could be considered a “waste” of funds under section 526a of the Code of Civil Procedure if the taxpayer was allowed to bring the claim. However, in discussing the unrelated issue of whether a LAFCO can determine future boundary lines, the court stated: “A city is constitutionally empowered to furnish... light, water, power, heat, transportation, telephone service or other means of communication to inhabitants outside its boundaries. (Cal Cont., art XI, § 19.)”.

The MSHCP serves to conserve the Habitat of the Covered Species while providing a streamlined approach for certain entities and developers to obtain Take coverage. Contrary to commenter’s assertion that “the cities collecting the fees will receive no benefit from the expenditures outside the city limits,” all cities within the Plan Area will receive the benefits afforded to the Permittees as a result of the land acquisition program that establishes the regional Reserve System and allows the construction of

regional infrastructure. Thus, commenter's argument is incorrect. In addition, Figure 4-1 of the Plan displays the Conservation Areas of the Plan. The Route 10 Freeway bisects the Plan Area. Funds will be collected from development both north and south of Route 10. Commenter's inference that funds will only be collected south of Route 10 and expended north of Route 10 is incorrect.

**T-31** Please see Major Issue Response 3, Adequacy of Plan Funding, and the response to Comment T-29.

**T-32** Comment does not provide a specific environmental comment in the context of CEQA or NEPA, and, therefore, no further response is required. The following response is provided for informational purposes.

Commenter alleges that CVAG's officers, because of their dual association with their respective City and County governing boards, have a conflict of interest. Commenter alleges that "campaign contributions, free travel, expensive meals and other gratuities" received by CVAG board members for their local government elections are now considered "gifts" because their position with CVAG was gained through appointment. Not only does the commenter fail to provide legal citation for this proposition, but commenter's suggestion, that CVAG's officials have accepted inappropriate "gifts" is without any factual support.

It should be noted that for a process such as the MSHCP and its environmental review, CVAG and the USFWS are required to consult with Native American Tribes. It is also relevant that the Agua Caliente Band of Cahuilla Indians Tribe is in the process of drafting and processing its own HCP, which is being reviewed and processed by the USFWS and not CVAG. The MSHCP does not provide Take coverage for the Agua Caliente Band of Cahuilla Indians Tribe, and they are not subject to its provisions nor will they receive funds from the mitigation fee program. If the Tribal HCP is approved by the USFWS, the Permittees will consider an amendment to remove these lands from the MSHCP. The commenter's assertions that high-density Development will occur on Tribal lands and that the Tribe will disproportionately benefit from the Implementing Agreement and the MSHCP due to campaign contributions and gifts to decision-makers are not factually supported and are completely speculative.

**T-33** See response to Comment T-32 regarding allegations of misconduct by Permittee decision-makers. The commenter misapprehends the application of the Local Development Mitigation Fee. The Fee applies uniformly throughout the entire Plan Area, and is only levied at the time land is developed. Thus, it is not in the form of a discriminatory tax on all land south of Interstate 10, to the benefit of all lands north of

Interstate 10. See also response to Comment N-12 regarding the EIR/EIS analysis of socioeconomic impacts.

- T-34** The Recirculated Draft EIR/Supplemental Final EIS fully complies with all the provisions of CEQA and NEPA. The commenter's conclusionary remarks summarize perceived inadequacies for which responses are provided above. The Recirculated Draft EIR/Supplemental Final EIS fully complies with the intent of both CEQA and NEPA in the provisions to ensure decision-makers have sufficient information to make a decision.

**COMMENTER U: GLORIOUS LAND COMPANY**

Dated: May 29, 2007

**U-1** The comment is correct that the Plan does not include any provision for how the 10% take will be allocated within each Conservation Area. Allocation of Take is at the discretion of the Permittees subject to the Plan requirements, including rough step. Section 4.3 of the MSHCP describes Conservation Goals, Objectives, and Required Measures for each Conservation Area, and Section 9 described the Species Conservation Goals and Objectives, including a delineation of acres that need to be conserved and the acres of authorized disturbance. Authorized disturbance is described by natural communities, modeled Covered Species habitat, sand source area, fluvial and aeolian sand transport areas, and Biological Corridors and Linkages.

**U-2** Rough Step is explained in Section 6.5 of the Plan. Rough step is a calculation of the conservation completed and the development approved at any point in time. The Rough Step calculation is performed for every Conservation Objective for each project that undergoes JPR and on an annual basis for the Plan as a whole.

The Rough Step formula 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.

$a_t$  = 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.

$c_t$  = 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.

Please note that the formula above is the correct formula and supersedes the formula in the Recirculated Draft Plan, which contained an error.

As stated in Section 6.4 of the Plan: “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.”

It should be noted that as Rough Step is a calculation of conservation and development within a Conservation Area at any point in time, the calculation will change every time Development is approved and proceeds and every time land is conserved. While the basis of allowed Take is 10% of the acreage of private land within each Conservation Area in 1996, there has been a significant amount of conservation and very little Development within Conservation Areas since 1996. Approximately 25% of the total acreage required by the Plan has been conserved since 1996.

The example presented by the commenter cannot be calculated as all the relevant variables are not supplied. Available Take is allocated by the Permittees, see response to Comment U-1. It is purely speculative to state how any Permittee may allocate Take to any particular project, so the Lead Agencies are not able to respond further on Take allocation.

Like Exchange is one of the Plan’s tools to allowed flexibility to the Permittees. Other such tools include the amendment process detailed in Sections 6.12.3 and 6.12.4 of the Plan, including Transfer of Conservation Objectives. Section 6.6 of the Plan states: “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.”

**U-3** The decision of whether to grant fee credits is determined by individual jurisdictions for individual projects, although the Plan does contemplate fee credits as a potential method to assist in reserve assembly; therefore, the Plan provides the opportunity for fee credits to be granted by jurisdictions, but the decision to do so would be up to individual jurisdictions.

**U-4** With regard to whether the Plan will give credit for open space which may be required under applicable zoning ordinances, each individual local jurisdiction would be responsible for making its own assessments for how each zoning ordinance would be applied.

**U-5** As described in Section 6.12 of the MSHCP, Like Exchanges are not anticipated to occur on a regular basis. Given that the Plan Area is approximately 1,100,000 acres, 354,100 acres of which are not planned for conservation, landowners wishing to utilize the Like Exchange provision in the Plan would be able to choose from this 354,100-acre area, which would allow for opportunities to find possible replacement land. As indicated in Section 6.12, 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 another Conservation Area. A Like Exchange must result in equal or greater benefits to proposed Covered Species and conserved natural communities as compared to those benefits analyzed in the Plan. Due to the perceived rare occurrence of Like Exchange proposals, this provision of the Plan is not anticipated to impact land prices within or outside of the Conservation Areas.

The Desert Mountains Land Trust (now Friends of the Desert Mountains) as well as other conservation organizations are viable entities to assist with securing land for conservation. It would be a decision of the CVCC to use an intermediary land exchange/purchase entity, such as a nonprofit agency. The Plan would not preclude development of such a program in the future if the CVCC determined that it would be beneficial. CVCC staff will be available to provide assistance and technical support to landowners wishing to process a Like Exchange proposal. An artificial increase in price due to competition for Like Exchange property is speculative; it assumes that every project would require the acquisition of Like Exchange property. In reality, the Like Exchange process is one of a number of tools that provides flexibility in meeting the requirements of the Plan. Therefore, demands for Like Exchange property are likely to be less than the commenter assumes.

**U-6** As indicated in Section 6.12.12, Like Exchanges to Conservation Areas, the design of the Conservation Areas focuses on natural communities, Core Habitat for Covered Species, Essential Ecological Processes, and Biological Corridors and Linkages. The Plan acknowledges that these natural communities and Covered Species may also occur outside of the Conservation Areas, and, in some cases, it may be possible to achieve the Plan's Goals and Objectives by removing an area from a Conservation Area in exchange for adding an area to the same or a different Conservation Area. It is imperative to understand that even though an on-the-ground site assessment may result in lack of occupation by specific planning species at the time of the assessment, this does not negate a property's value in the overall Conservation Area. Because a property is devoid of specific species does not mean that the Conservation Area objectives no longer apply to that property. Because each Conservation Area's Goals and Objectives must be met at an ecological scale, removal of a property from the Conservation Area can only occur when a property of equal or greater biological value is replaced in said Conservation Area or another Conservation Area. In order to make such a determination specifically for an area that was not originally contemplated for conservation and therefore was not analyzed to the level of lands included within Conservation Areas, a biological assessment must be conducted.

As noted in Plan Appendix I, Section 3.5.2, an accuracy assessment was completed for the natural communities map, which involved extensive "ground-truthing" of vegetation plots at over 250 random points. As another means of evaluating the natural communities map accuracy, the Center for Conservation Biology at University of California, Riverside, completed an independent field assessment. The results of this analysis were provided to CVAG in an unpublished report, "Report to the Coachella Valley Association of Governments: I – Assessment of Vegetation Map Boundaries" (Allen et al. 2002).

**U-7** Section 5 of the Plan outlines a funding program to ensure that the Conservation Areas are established, monitored, and managed appropriately. The funding program assumes that all funds directed to Plan implementation will be used to purchase land identified for conservation in the Plan, rather than toward land that is not described for conservation. For example, the CVCC could utilize MSHCP Mitigation Fees to buy land that is described for conservation within a Conservation Area, while it would be restricted from purchasing land that is located outside of a Conservation Area, regardless of whether a willing seller has come forward. Should the owner of land outside of a Conservation Area offer his/her land for donation to the CVCC, the CVCC would require a management endowment, as the Plan's management budget was developed assuming a specific quantity and configuration of conservation lands.



Commenter questions why Like Exchange land must be adjacent to an existing Conservation Area.

Section 6.12.2 of the Plan states: “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.” The condition of “equal or greater benefit” must be met at the time of the Like Exchange. Connectivity is a fundamental principle of conservation biology and is a required measure in the JPR process. Any land that is not contiguous to an existing Conservation Area would fail to meet this measure.

The CVCC is responsible for assembly of the Reserve System within the established Conservation Areas. A Like Exchange is the addition to the Conservation Area in exchange for removal of other land from the Conservation Area. While the tool of Like Exchange provides flexibility to the Plan requirements, it is not itself a requirement of the Plan. The fundamental obligation of the Permittees is compliance with the Plan. Whether the Permittees/CVCC would wish to focus their limited resources on Like Exchanges is a policy decision that can only be addressed by the relevant Permittee and CVCC. Nothing would prevent the commenter from pursuing this option with the relevant Permittee and CVCC.

There is no public or private conservation land outside of the Conservation Areas that is expected to be in Conservation in the future. The vast majority of public land adjacent to existing Conservation Areas is under the jurisdiction of BLM. It is expected that all BLM land outside of the Conservation Areas will be sold or exchanged for land within Conservation in the early years of Plan implementation. The Plan does not anticipate these lands being available for Like Exchanges in the future; however, nothing would prevent a private party from obtaining these BLM lands outside the Conservation Areas through purchase\exchange when they become available for use in a Like Exchange.

Whether potential Like Exchange areas adjacent to Conservation Areas will see increases in land valuation in the future due to the Plan is purely speculative. It should be noted that Like Exchanges involving private land adjacent to Conservation Areas have already been completed without the speculative difficulties cited by the commenter.

Finally, the MSHCP neither endorses nor negates prior discussions related to habitat value made between landowners and the Wildlife Agencies. All Like Exchanges must

follow the procedural requirements, including coordination with relevant governmental agencies, outlined in Section 6.12.12 of the MSHCP.

- U-8** For a response to the comment on fee credits for Like Exchange properties, see the response to Comment U-3.

**COMMENTER V: JAMES JOHNSON**

Dated: May 29, 2007

- V-1** Contrary to the comment that the Plan creates redundant bureaucracies, the Plan seeks to reduce bureaucracy. Providing a streamlined regulatory process is one of the primary goals of the MSHCP. See Section 1.2 of the MSHCP.
- V-2** Under the MSHCP, the Wildlife Agencies would no longer have Permit authority over Take authorization for Covered Activities. The MSHCP transfers that Take authority to local jurisdictions. The Wildlife Agencies do have an advisory role in MSHCP implementation. For the majority of landowners, the MSHCP will result in a much shorter timeframe for processing Take authorization. Please also see response to Comment V-1.
- V-3** Section 5 of the Plan provides costs and funding sources for Plan implementation. The projected non-acquisition administrative cost for the 75-year term of the Permits is \$115,414,000. For the 75-year term of the Permits, the total cost of the Monitoring Program is projected to be approximately \$254,294,000; the total expended for the Management Program is projected to be approximately \$221,252,000; and the total set aside for Adaptive Management is projected to be \$14,903,000. Commenter is correct that the term of the Permits is 75 years.
- V-4** Comment does not provide a specific environmental comment in the context of CEQA or NEPA, and, therefore, no further response is required.
- V-5** Comment does not provide a specific environmental comment in the context of CEQA or NEPA, and, therefore, no further response is required.
- V-6** See Major Issue Response 1.
- V-7** The biology of sand-dependent species is well known; thus, the significance of sand transport with respect to the biology of sand-dependent species is well established. For a response to the comment about species modeling, see Major Issue Response 1. For a description of blowsand movement, an essential ecological process, see “Sand Source and Sand Transport Processes” in Section 3.2.2.3 of Appendix I of the Plan. Based on this information, the commenter is incorrect that the Lead Agencies do not understand sand transport.
- V-8** Please see Major Issue Response 1, Use of Best Available Science, and response to Comments J-9 and J-10.

- V-9** Contrary to the comment, Conservation Areas are a system of lands, described in Section 4.3 of the Plan, that provide Core Habitat and Other Conserved Habitat for the Covered Species, conserve natural communities, conserve Essential Ecological Processes, and secure Biological Corridors and Linkages between major Habitat areas. There are 21 Conservation Areas from which the MSHCP Reserve System will be assembled. Contrary to the commenter's allegations, Conservation land will only be acquired from willing sellers at fair market value. In addition, the requirements of the MSHCP apply to all lands within the Plan Area in a fashion fully in compliance with regulatory takings law and constitutional requirements. See also Major Issue Response 2, Regulatory Takings.
- V-10** With respect to item 1, please see Major Issue Response 2, Regulatory Takings. With respect to item 2, land is not held unpermitted for 7 years until landowners capitulate. Rather, the JPR process, as described in Section 6.6.1.1 of the Plan, takes up to 4.5 months, using the maximum time frames for each step in the process. In implementing the JPR process, the Permittees have control over these time frames and may certainly expedite the process as they deem necessary and appropriate. Similarly, the HANS process time frame is discussed in Section 6.6.1.2 of the MSHCP. The length of the HANS process is largely dependent on the value of the land and the ability of the parties to reach agreement on price. For additional comments on the HANS process, see Major Issue Response 5. The conveyance of property will only occur on a voluntary basis. With respect to item 3, the Plan does not charge exorbitant fees for Development permits that reduce land values by adding costs so that developers are willing to pay less for the land. See responses to Comments X-36 and W-21. With respect to item 4, fixed timeframes are established for the JPR process and the process would occur concurrently with the overall project entitlement process and would not extend the normal entitlement process. With respect to item 5, the Covered Species list was developed in concert with stakeholders and is considered to be the appropriate list to achieve Plan goals for providing for growth and development in the Coachella Valley while addressing species issues and establishing a Conservation Area to preserve the rich natural resources heritage of the Valley. All regional multiple species conservation plans include both listed and non-listed species on their Covered Species lists. With respect to item 6, since a specific landowner proposal is not identified, a specific response is not possible. All landowner proposals will be evaluated equally for consistency with the MSHCP. With respect to item 7, all MSHCP fees are subject to being increased or decreased subject to the consumer price index in order to take into account increasing or decreasing costs over time and may fluctuate based upon periodic nexus studies that are required in order to ensure the continual adequacy of funding and constitutionality of the fee program.

**V-11**      Please see Major Issue Response 3, Adequacy of Plan Funding.

**COMMENTER W: HANK HOHENSTEIN**

Dated: May 27, 2007

**W-1** The comment refers to “parameters for Population Viability Analysis” (PVA) but does not identify those parameters or why the commenter considers them important. PVA is based on many assumptions and is but one of many tools to evaluate long-term population persistence. PVA estimates the likelihood of population viability over a determinate time period based on life history variables. As a result of the studies funded by CDFG since 2003, this Plan includes extensive data on valley floor species—occurrence, abundance, and distribution of valley floor species. The data to complete a PVA are available for a number of the proposed Covered Species, including the Coachella Valley fringe-toed lizard and the Peninsular bighorn sheep. While potentially a powerful tool, PVAs require extensive life history data to provide meaningful insight. Such data can require 5 to 25 years (or more) to gather, especially in desert environments where extreme population fluctuations occur, those data should span multiple climatic sequences to be useful. To compute meaningful PVAs for any, let alone all, of the proposed Covered Species in the MSHCP, would be unrealistic given the time and financial constraints of conservation planning. Rather, the Plan took the approach of providing Habitat of sufficient size to allow populations to persist through fluctuations caused by environmental variation and to have a realistic potential for genetic interactions. The area of habitat required to provide for long-term population viability were identified as Core Habitat areas (as long as natural processes that maintain that habitat were also intact). Each Core Habitat area was considered essential, and multiple areas, where available, were considered sufficient to meet the conservation needs for a given species. The volatility of populations in response to dramatically changing resource levels in a desert (largely due to the fluctuations in annual rainfall) add more complexity to estimating the area required for population viability. Thus, the Plan erred on the side of conservative estimates, providing larger Conservation Areas, to provide for long-term population viability. The Plan meets the standard for best available science as described in Major Issue Response 1. The Plan also provides for Adaptive Management to address site-specific threats to population viability.

**W-2** The dimensions of a future flood control facility will be determined by the Riverside County Flood Control and Water Conservation District as they complete a master drainage plan for the area. The final design, construction, operation, and maintenance of the flood control facility will require a Minor Amendment with Wildlife Agency concurrence (see Section 7.3.1 of the Plan). The Special Provisions Area is also designed to allow sufficient area to maintain biological connectivity along Morongo

Wash from Upper Mission Creek to the Willow Hole Conservation Area. Section 2820 of the NCCP Act (2003) requires that the reserve design and conservation measures provide for conservation of the species including under Item 4(E), "...sustaining the effective movement and interchange of organisms between habitat areas in a manner that maintains the ecological integrity of the habitat areas within the plan area." Rough Proportionality refers to an accounting mechanism to ensure that the rate of MSHCP Reserve Assembly is roughly proportional with the amount of Development occurring in the Plan Area designed to meet this requirement and ensure the long-term connectivity along Morongo Wash, as well as provide for a future flood control facility. See also response to Comment E-1. The commenter provides no support for the contention that a facility with a width greater than 300 feet would "lessen the ability to function as intended."

- W-3** The reserve design process for the MSHCP included an analysis of the impacts of the road projects listed as Covered Activities, which includes regional roads in Desert Hot Springs. Core Habitat areas were designed to provide for persistence of Covered Species. In order to maintain long-term viability for these species, connectivity must be ensured. As noted in the discussion of Habitat Fragmentation in Section 3.2.2.3 in Appendix I of the Plan, "if a potential habitat core is insufficient to meet the criterion of viable population size, but can be connected to nearby habitat via a bridge or culvert so that the area in total is sufficient, then the use of culverts and bridges should be considered." This section includes a discussion of edge effects and notes that the reserve design was developed to minimize the impacts of roads and other edge effects. The identification of Covered Activities, including roads and highways, was carefully considered in light of the conservation and reserve design criteria used in the Plan. The impacts of roads and highways and other related facilities were limited during the reserve design process. The Conservation Areas were also evaluated in the reserve design process to ensure that Biological Corridors and undercrossings would be maintained. Regarding the benefits and potential impacts of wildlife underpasses, see Appendix I, Section 3.2.2.3. Regarding potential construction and maintenance associated impacts that roads and underpasses may cause to Covered Species, the MSHCP requires that projects avoid, minimize, and mitigate impacts. Potential impacts to proposed Covered Species associated with construction and maintenance of underpasses would be addressed in individual project environmental review and through the JPR. With regard to safety issues, one of the major benefits of the MSHCP is that it provides for the streamlined construction of safe and efficient roadways and transportation infrastructure. As Lead Agency for the MSHCP, CVAG is a regional transportation agency with many years of experience in the design and construction of safe and efficient transportation systems. Section 7.3.1 of the Plan lists the roads that are Covered Activities under the

Plan; many of these roadways are 100 feet wide or more. As noted, the impacts of these roadways have been analyzed in the context of habitat connectivity.

**W-4** The glossary in Appendix I of the Plan defines edge effect as “the influence of a habitat edge on interior conditions of a habitat or on species that use interior habitat. Greater amounts of edge habitat can often lead to deleterious effects on “interior” target species. The commenter is incorrect in stating that “the management of edge effects is not addressed.” The commenter is referred to Section 3.2.2.3 of Appendix I of the Plan for a discussion of edge effects with respect to reserve design and some of the management issues alluded to in the comment. Section 8.1 of the Plan identifies the need to address edge effects in the introduction to the Monitoring and Management Program. Section 8.2.4.1 on Ongoing Management of the MSHCP Reserve System specifically addresses most of the issues listed as concerns in the comment, as well as other issues related to edge effects. Research being conducted by UCR as part of the Monitoring Program has already identified the impacts of edge effects for some species and has been published in peer-reviewed literature (Barrows, C.W., M.F. Allen, and J.T. Rotenberry. 2006. Boundary processes between a desert sand dune community and an encroaching suburban landscape. *Biological Conservation* 131:486-494). This research has demonstrated that edge effects that have a negative impact on one species do not necessarily have a negative impact on all species. This research also identifies some of the impacts of edge effects and describes potential management considerations and solutions.

The commenter alludes to the “negative impact on land use decisions caused by the edge effects” but provides no explanation or supporting information. The commenter also makes some unsubstantiated claims, apparently about the land use adjacency guidelines. The commenter’s suggestion that “provisions are made to compensate landowners for their inability to utilize these lands” assumes that a landowner would not be able to use lands subject to these guidelines. For any Development project, the potential for adverse impacts on adjoining lands is part of adequate environmental analysis. As described in Section 4.5 of the MSHCP, the purpose of Land Use Adjacency Guidelines is to avoid or minimize indirect effects from Development adjacent to or within the Conservation Areas. Such indirect effects are commonly referred to as edge effects, and may include noise, lighting, drainage, intrusion of people, and the introduction of non-native plants and non-native predators such as dogs and cats. These guidelines are similar to City or County design standards and reviews that are imposed on Development to ensure compatibility of a proposed land use with adjoining lands, whether those adjoining lands are another type of urban use or are conservation lands. The guidelines are meant to protect against inappropriate or mismanaged drainage, toxic and hazardous materials, excessive lighting, noise,



- invasive non-native plants, or human and/or domestic animal encroachment. The Land Use Adjacency Guidelines in Section 4.5 of the MSHCP are measures that shall be considered by the Permittees in their review of individual public and private Development projects adjacent to or within the Conservation Areas to minimize edge effects, and shall be implemented where applicable. The purpose of these guidelines is to avoid or minimize the indirect effects of the Development on land in the Conservation Area.
- W-5** The commenter asserts that the MSHCP will fail as a result of economic, political, and legal reasons. The commenter offered no data or supporting documentation to substantiate the claim. The MSHCP is intended and expected to enhance economic growth and development by providing simplified compliance with state and federal FESA laws, and by simplifying environmental review under CEQA and NEPA. Consistent with the commenter's concerns about scientific rigor, the MSHCP followed the recommendation of the ISA who supported the use of the precautionary principle in cases of high uncertainty and high risk, as is the case in the Coachella Valley. The ISA identified the need to balance the problems of uncertainty about the subject ecological systems and proposed Covered Species. In response to the recommendations of the ISA, additional lands were added to the Conservation Areas in the Preferred Alternative. See also Major Issue Response 1.
- W-6** Please refer to Major Issue Response 1 in regard to the sufficiency-necessity standard. CVAG incorporated available field surveys in the MSHCP database as noted in response to Comments R-7 and R-8. Commenter refers to "many, many field surveys" but provides no specific reference to or identification of these surveys.
- W-7** Long-term climatic change was carefully considered in the reserve design process. The effects of global warming are discussed in terms of climate change in Section 3.2.2.3 of Appendix I of the Plan. It was one of the "key concepts" that was used by the SAC in the reserve design process and ultimately the Plan. The potential for climate change was incorporated in the reserve design process and was considered for each Covered Species. For example, as noted in Section 3.2.2.3 of Appendix I of the Plan, "conserved areas in both the cooler, wetter, western end of the Plan Area, and the hotter, drier, central/eastern end of the Plan Area were included to provide the range of conditions a given species inhabits. Therefore the likelihood is increased that some refugia for each of the species will be maintained if climatic conditions change over time." The results of climate change are also addressed in Section 4 of the Plan describing the Conservation Plan. For example, in the Indio Hills/Joshua Tree National Park Linkage Conservation Area, the description of biological corridors and linkages includes the following statement, "As climate changes over time, the

- availability of this area may be vital for species to adjust to climate-induced shifts in Habitat.” The effects of climate change, including global warming, were carefully considered in the preparation of the Plan. A statement regarding climate change can also be found in Section 3 of the Plan. Major Issue Response 1 references climate change with regard to the input from the ISA.
- W-8** Please refer to Section 3 of the Plan regarding the use of available data. No further response is possible given the general nature of the comment.
- W-9** The MSHCP did not use socioeconomic factors or political factors in the reserve design process, including the development of Habitat information for the Covered Species. Section 3 of the Plan describes the reserve design process. See also Major Issue Response 1 and response to Comment R-16.
- W-10** The commenter refers to inconsistent application of “socioeconomic considerations” but provides no specific information or evidence in this regard. See Major Issue Response 1 and response to Comments R-16 and T-19.
- W-11** The comment provides no evidence or specific information to allow a response regarding the “effectiveness of the system” for Mission and Morongo Creeks. The reference to channelization addresses only the transport of material from the source via fluvial or waterborne processes; however, no supporting data or references are provided to support the claim. The comment does not take into account the importance of aeolian sand transport from alluvial fans adjacent to Morongo Creek and the unchannelized portion of Mission Creek. Nor does it address the habitat connectivity benefits of the Preferred Alternative. See also response to Comment W-2.
- W-12** The determination about including the area south of the I-10 freeway, the so-called Big Dune, in the Conservation Area was based on ecological factors and an evaluation of the Habitat. Impacts to the long-term persistence of this area and its associated species were addressed in the Coachella Valley fringe-toed lizard HCP. TNC (1985, figure II-6) identified it as a “shielded or stabilized area due primarily to urban development (roads, buildings, canals, dikes).” Presently, the sand transport system is blocked by Development upwind, so the region is undergoing the slow process of stabilization. In addition to the lack of an intact sand source, the region is highly fragmented by roads. The Big Dune has been degraded by fragmentation, obstruction of sand flow, and ongoing Development. As of 2007, undeveloped land in the Big Dune area is limited (see Appendix I of the Plan). The reserve design process did not include a “debate about political and economic values”; the commenter must be referring to a debate that was not part of the MSHCP process. The

recommendations of the ISA with regard to the dune systems south of Interstate 10 were incorporated in the reserve design process, in terms of giving consideration to all potential dune system Habitat within the Plan boundary. Section 3.2.2.3 of Appendix I of the Plan provides a discussion under the heading of “Sand Source and Sand Transport Processes” about the Big Dune, the sand dune system south of I-10, and the reasons it was not included in the Preferred Alternative. However, connectivity issues relative to the dunes north of I-10 were addressed in the Preferred Alternative. See also Major Issue Response 1 and responses to Comments G-3, T-6, T-7, and T-10.

**W-13** The commenter fails to provide evidence that the Conservation Areas are concentrated in the western portion of the Plan Area. The Conservation Areas are based on the distribution and occurrence of Covered Species and natural communities to be conserved under the Plan, not on a “concentration of conservation areas in the western portion of the planning area” as suggested by the comment. The Lead Agencies agree that population redundancy is extremely important to prevent extinction of a species. In Section 9.1.1 of the Plan, population redundancy is addressed by the following goal statement, “Conserve, restore, and manage sustainable populations in as many Core Habitat areas as feasible within the Plan Area. The maximum number of Core Habitat areas available is delineated for conservation.” According to the USFWS, “the purpose is to ensure that if something occurs to eliminate one population, at least one other population of the species will still exist and the species will not become extinct.” Providing for this redundancy, by protecting multiple sites for each species, was a central focus of the reserve design process. For most Covered Species, a Conservation Goal addresses this issue: “Protect ... Habitat to provide sufficient area and variety of Habitat types to accommodate population fluctuations ... and to conserve the range of environmental conditions within which this (species) is known to occur.” The basis for the commenter’s concern about “the loss of species population redundancies” is not explained.

**W-14** The commenter refers to “recent land use decisions” but the information given is not specific and is too vague to allow a response. It is unclear what is meant by “the original CVMSHCP.”

**W-15** The commenter makes several inaccurate statements about the conservation planning and reserve design process. As noted in Appendix I, Section 3.5.2, of the Plan, an accuracy assessment was completed for the natural communities map, which involved extensive “ground-truthing” at over 250 random points. The species distribution models were verified by experts and have been validated by data from UCR (see

Major Issue Response 1) and project biologists (see response to Comment R-3). Section 3.1.4 of the Plan describes the quantitative statistical analysis that was part of the reserve design process and development of the conservation alternatives. After the process was complete, the ISA recommendation to apply the SITES model (*SITES V 1.0: an analytical toolbox for designing ecoregional conservation portfolios*, The Nature Conservancy) was followed; the University of California completed an independent quantitative analysis of the reserve design for the MSHCP. Using the SITES program, a reserve design very similar to the Preferred Alternative was selected (Allen et al. 2002). This evaluation is described in Section 3.7.3.3 in Appendix I of the Plan. The commenter provides no support or evidence for the assertions that the “selection process was subjective” or that there was “political or socioeconomic bias.” See also Major Issue Response 1 and response to Comment R-2.

**W-16** Core Habitat is a defined term which appears in the Definitions section at the beginning of the Plan document. The definition of known location can be found in the glossary in Appendix I of the Plan under “element occurrence” as used by the California Natural Diversity Data Base. The term “potential distribution” was used by the ISA in their 2001 report which appears in Appendix I of the Plan, but otherwise was not found in the 2007 Recirculated Draft MSHCP documents. Is it likely that this term may have been used on some of the maps and documents provided to the ISA in 2001 which have since been revised to eliminate this term.

**W-17** The MSHCP does not have a “buffer zone” outside the Conservation Areas. To the extent possible, the Preferred Alternative incorporates additional habitat in the “outer zone” of each reserve area to provide an internal buffer for the MSHCP Reserve System. However, given the pattern of existing development, it was not possible to apply a uniform “buffer zone” to be included in the Conservation Areas. The MSHCP Reserve System was designed to minimize the potential impacts of adjacent Development. The Plan provides for future changes, including Major and Minor Amendments, described in Section 6.12 of the Plan. The Land Use Adjacency Guidelines provide guidance to the Permittees when reviewing Development proposals.

**W-18** It is unclear what is meant by the commenter in this comment. There is no bifurcation of the development of an Adaptive Management Plan from the MSHCP. Adaptive management is a way of implementing conservation strategies (Wilhere, G.F. 2002 *Adaptive Management in Habitat Conservation Plans*. *Conservation Biology* 16(1):20-29). An Adaptive Management Plan is fully integrated into the

implementation program, as described in Section 8 of the Plan. See also Major Issue Response 7.

- W-19** The comments regarding the “conflict of population survival” and “the determination that gene flow is possible” are unclear and therefore no response is possible. With regard to the status of the Coachella Valley fringe-toed lizard, the Lead Agencies are aware of no conclusive evidence that would support a change in its listing status as a full species; see response to Comment J-9. The Palm Springs pocket mouse is a subspecies; see response to Comment R-9.
- W-20** The commenter provides no support for the claim that “land values will always be underestimated” in an urbanizing area like the Coachella Valley. With respect to funding for Plan implementation, see Major Issue Response 3.
- W-21** As stated in Section 6.1.2 of the Plan, the MSHCP acquisition program entails purchase from willing sellers at fair market value as determined by appraisal. The commenter provides no explanation for what is meant by the “sole buyer” principle but implies that the Plan will “drive down land values.” As described in Major Issue Response 1, the suggestion that implementation of the Plan will cause a diminution in the value of private land is not supported. The appraisal process to be used in the MSHCP acquisition program involves determination of fair market value based on comparable sales of like properties. The valuation of lands in this appraisal process is not based on the conservation status of the property, but on the appraiser’s evaluation of comparable properties in terms of proximity to roads and other infrastructure, general plan designation, and other factors. The comparable sales are not limited to lands within the Conservation Areas. The determination of fair market value is not affected by the number of buyers for a property as suggested by the commenter.
- W-22** The funding sources for the land acquisition program are described in Section 5.1 of the Plan, which identifies the projected costs, and Section 5.2 of the Plan, which identifies the funding sources, including Local Development Mitigation Fees. The MSHCP provides for adequate funding for land acquisition, particularly in view of the Plan’s mechanisms for adjusting the fee as needed over the 30-year acquisition period. Changes in land value—whether dramatic or modest—will be taken into account because the CVCC will have a new Nexus Study prepared every 5 years or more often if conditions warrant. With the results of an updated Nexus Study, the Local Development Mitigation Fee can be adjusted as needed to ensure adequate funding for land acquisition. Major Issue Response 3 provides additional information on this issue. The commenter notes that some lands will be developed before the Plan is approved and therefore MSHCP mitigation fees would not be collected on these lands. The 2006 Nexus Study assumed a rate of growth based on the best available

data, primarily California Department of Conservation Farmland Mapping and Monitoring Program GIS data. MuniFinancial, which prepared the Nexus Study, judged 1,500 acres per year to be a reasonable rate of land consumption to project over the 50-year period in which the Local Development Mitigation fee would be collected for purposes of calculating the initial fee. The MSHCP requires the CVCC to prepare a new Nexus Study every 5 years or more often as needed to ensure that the financing plan adapts to changing conditions and ensures that the Local Development Mitigation Fee is adequate to fund the portion of the Local Permittees acquisitions not funded through other sources. It is considered feasible based on the historical rates of development, projected increases in population, and the amount of vacant developable land. Thus, the lands developed before the Plan is approved would not affect the assumptions on which the funding program is based.

**W-23** The comment that “cities with longer development timelines will be subject to significantly higher fees” is not accurate. The Local Development Mitigation Fee is not arbitrary. The fee will increase annually indexed to inflation. Otherwise it can be only raised or lowered as a result of a Nexus Study to ensure compliance with Government Code 66000 et seq. Under this law the amount of the fee cannot generally exceed the reasonable cost of purchasing property under the Plan. The CVCC will have a new Nexus Study prepared every 5 years or more often as warranted by changing conditions. Therefore, the fee is essentially indexed to inflation so there is no basis for the commenter’s conclusion that higher fees in the future would “prohibit development.” With regard to socioeconomic impacts, the EIR/EIS discusses these issues in Section 3.15 and 4.8 and concludes that the MSHCP will not have a significant effect on the socioeconomic environment either directly, indirectly, or cumulatively. See also response to Comment R-16.

**W-24** Since release of the Draft MSHCP, a lower court decision overturned the BLM land exchange on which the Eagle Mountain Landfill project depends, raising concern over whether the Environmental Mitigation Trust Fund can be relied upon as a revenue source for MSHCP implementation. As provided in Section 5.2.2.2 of the Plan, the CVCC will annually review funding adequacy and make necessary adjustments to meet its obligations under the Plan. The MSHCP projects Environmental Mitigation Trust Fund revenues becoming available in year 2010, and recognizes that litigation is still pending. It is likely that an appeal will be filed of the lower court’s ruling; thus, the final outcome of the litigation is not likely to be known for some time, but most likely before 2010. For the present, it is reasonable to project the Environmental Mitigation Trust Fund as a revenue source, recognizing that other funding sources could be necessary to offset revenues that might turn out not to be available from the Trust Fund. Potential alternative funding sources have been

identified in Section 5.2.2.4 of the Final Recirculated MSHCP. For example, an increase in the Habitat Conservation Fund tipping fee, which is subject to a vote of the Riverside County Board of Supervisors, would provide more than adequate funding to replace revenues from the Eagle Mountain Environmental Mitigation Trust Fund. See also responses to Comments G-12 and G-13.

- W-25** The comment refers to “Rough Step Proportionality” which presumably combines two separate elements of the MSHCP, the Rough Step provision and Rough Proportionality. See Major Issue Response 4, Rough Step and Rough Proportionality. The commenter appears to conclude that “severe socioeconomic stress” will result from the MSHCP based on the incorrect assumption that the Plan will affect the ability of small landowners to sell their land at a fair price. The provisions of the Plan to assure landowners large and small of a fair price for purchase of their land are described in Major Issue Response 3.

**COMMENTS X: CENTURY VINTAGE HOMES (JACKSON, DEMARCO, TIDUS, PETERSEN, AND PECKENPAUGH)**

Dated: May 25, 2007

- X-1** This comment provides a summary of all comments as outlined on the subsequent 46 pages. Each individual comment is answered below.
- X-2** Commenter asserts that the property in question, owned by Century, is affected by the MSHCP but property location data are not provided and therefore it is not possible to determine the location of the property with respect to the Conservation Area. No further response is possible.
- X-3** The Recirculated Draft EIR/Supplemental Final EIS fully complies with all the provisions of CEQA and NEPA. Commenter's introductory remarks summarize perceived inadequacies for which responses are provided below. The MSHCP would involve acquisition only from willing sellers at fair market value. The EIR/EIS fully complies with CEQA and NEPA and discloses the impacts of the Plan. It should be noted that since 1996, state, federal, and local partners have acquired nearly 60,000 acres of private land from willing sellers.
- X-4** The comment is incorrect. There is no standardized format utilized or mandated for the preparation of Environmental Impact Reports and/or Environmental Impact Statements. The document's Executive Summary and Introduction of the Recirculated Draft EIR/Supplemental Final EIS provide extensive information regarding the purpose of the EIR/EIS, project location, and purpose and need of the EIR/EIS and summarizes the proposed MSHCP, outlines the goals of the MSHCP process, identifies alternatives to the MSHCP and Trails Plan, discusses issues raised during the MSHCP process, and summarizes potential impacts/consequences associated with implementation of the MSHCP. The Recirculated Draft EIR/Supplemental Final EIS includes a summary of potential impacts/consequences and their significance after implementation of the proposed action and each alternative (Table E-1). See Table 2-4 of the EIR/EIS that identifies MSHCP Reserve System lands, Table 4-1 of the EIR/EIS that identifies land use designations on private lands in Conservation Areas, and the analysis in Section 4.8 of the EIR/EIS. Consequently, the EIR/EIS fully disclosed the proposed acquisition of private properties within Conservation Areas from willing sellers. Further information can be obtained from examining the Plan. Because no significant impacts are identified in the EIR/EIS, a mitigation monitoring program under CEQA is not required. However, CVCC is the entity responsible for implementing the Plan's Monitoring and Management Programs. Furthermore, as signatories to the IA, all Permittees are responsible for implementing the



requirements of the Plan, including terms and conditions of the Permits, which serve a similar function as mitigation measures under CEQA. Furthermore, the Plan, which was circulated with the EIR/EIS, clearly identifies CVCC as the entity responsible for implementing the monitoring plan. Alternatives are analyzed at an equal level with the Proposed Action(s) throughout the document. The Draft EIR/S that evaluates the impacts of each alternative and compares them to those of the proposed project. Table E-1 contains a comparison of the environmental impacts of the various alternatives. Additionally, it should be noted that under State CEQA Guidelines Section 15126.6, an “alternatives matrix” is not required, in any case.

The commenter’s statement regarding disclosure of the acreage of private property included in the Conservation Area and targeted for acquisition is unfounded. This information is presented in detail in the Plan and Nexus Study and is summarized in Table 2-4 of the Final Recirculated EIR/Supplemental Final EIS.

**X-5** The commenter generally objects to the inclusion of lands within the Conservation Areas, and states that the Conservation Objectives would apply to private property without “any nexus.”

The Conservation Objectives call for assembly of a multiple species habitat reserve consistent with NCCP and HCP requirements. As noted in Major Issue Response 1, NCCP reserve design tenets call for establishment of large, interconnected reserves assembled and managed for the benefit of Covered Species. It is well-established in conservation biology that such reserves are necessary to ensure persistence of species within reserves in perpetuity and this includes lands that are not currently occupied by listed species. Therefore, it is appropriate to include both occupied and unoccupied habitat lands within the Conservation Areas. Both the federal and state ESAs and state NCCP Act establish public benefits associated with protection of habitat supporting Covered Species. Because there is a public benefit associated with the preservation of such lands, their inclusion in the Conservation Areas satisfies the nexus requirements under regulatory takings law, as documented in the Plan’s nexus study. See response to Comment X-36 regarding fulfillment of nexus requirements.

The commenter also generally objects to the application of various regulations and fees to non-Conservation Area lands. The MSHCP does impose a Local Development Mitigation Fee upon Development on non-Conservation Area lands, the appropriateness of which is established in the Nexus Study, since development of non-Conservation Area lands will still make necessary the development of public facilities that require Take Authorization. See also response to Comment X-36. Additionally, for any development project, the potential for adverse impacts on adjoining lands is part of adequate environmental analysis. As described in Section

4.5 of the MSHCP, the purpose of Land Use Adjacency Guidelines is to avoid or minimize indirect effects from Development adjacent to or within the Conservation Areas. Such indirect effects are commonly referred to as edge effects, and may include noise, lighting, drainage, intrusion of people, and the introduction of non-native plants and non-native predators such as dogs and cats. These guidelines are similar to city or county design standards and reviews that are imposed on development to ensure compatibility of a proposed land use with adjoining lands, whether those adjoining lands are another type of urban use or are conservation lands. The guidelines are meant to protect against inappropriate or mismanaged drainage, toxic and hazardous materials, excessive lighting, noise, invasive non-native plants, or human and/or domestic animal encroachment.

The effects of the Conservation Objectives are clear in the Plan given that the proposed MSHCP is a hardline Plan that clearly depicts the area to be conserved for each of the 21 Conservation Areas and in Section 4.3 of the Plan. While the ultimate consistency of a project with both the Conservation Objectives and the Land Use Adjacency Guidelines cannot be assessed until an actual application for Development is submitted, the commenter cannot maintain that it is unclear whether a property would be subject to the Conservation Objectives, and it should be clear to landowners, based upon adjacency to Conservation Areas, whether Land Use Adjacency Guidelines may apply. Therefore, the commenter's claim that the EIR/EIS contains an inadequate project description is incorrect.

- X-6** The MSHCP does not state that activities on private property in and adjacent to the Conservation Areas would violate the MSHCP. Rather, the MSHCP sets forth Land Use Adjacency Guidelines to be considered in review of individual development proposals to minimize edge effects on the Conservation Areas. Edge effects are clearly defined in Section 4.5 of the Plan and in Major Issue Response 1.

Consistent with the requirements of the HCP handbook, the Plan Area and Conservation Area boundaries are clearly defined within the MSHCP. The land use adjacency guidelines are not an overlay zone to which a specific boundary can be applied. Application of the land use adjacency guidelines depend on specific project design features, such as topography, lighting, and noise. It is not necessary to specify the acreage subject to the land use adjacency guidelines. As a general matter, landowners can judge whether the guidelines are likely to apply based upon the proximity of a proposed project site to a Conservation Area, but in any case, because the guidelines are in the nature of generally applicable development standards designed to protect biological resources, the specific design of a project will have as much of a role in determining consistency as its location.

With regard to the removal of certain language from the previous draft version of the MSHCP, please see response to Comment AF-10. The intent of the MSHCP is to authorize Take for Development, and not to issue post facto Take Authorization for existing uses. Under the MSHCP, existing uses must independently comply with the FESA/CESA, if necessary, which is no different than presently is the case.

- X-7** Please see Major Issue Response 1, Use of Best Available Science, for a discussion of the MSHCP's use of best scientific and commercial data available. Contrary to the commenter's assertion, the precise boundaries of the MSHCP Plan Area are depicted on virtually all of the exhibits in the EIR/S and the Plan. It is not correct to claim that landowners do not have any clear way of knowing whether the MSHCP applies to their property, and impacts of the MSHCP are clearly delineated in this EIR/S.

While the comment claims that the habitat data are "simply insufficient" to establish a MSHCP, the only grounds for this claim are that the data is "inaccurate" and "outdated," with no specific examples as to why this is the case. The comment also summarizes state law; however, the case cited in the comment, *Berkeley Keep Jets Over the Bay Com. V. Board of Port Cmrs* (2001) 91 Cal.App.4th1344, is not instructive in this instance. At the time the EIR at issue in *Berkeley Keep Jets* was written, the 1991 profile was the most recently published profile. After the draft EIR was recirculated for public review and comment, the use of this speculation profile was criticized as "outdated" because the 1991 profile had been replaced by a 1994 speculation profile. Because of the newer information existing prior to the publication of the Draft EIR, the court held that the use of the older profile was inappropriate (Id. At p. 1367). In contrast, the data used in the Recirculated Draft EIR/Supplemental Final EIS for the MSHCP are the most recent and accurate information available for the entire Plan Area and satisfy CEQA's requirement that the Lead Agencies make "a good faith effort at full disclosure." Please see Major Issue Response 1, Use of Best Available Science, for a discussion of the MSHCP's use of best scientific and commercial data available. Furthermore, the level of detail of analysis conducted for the MSHCP and this EIR/S is sufficient to determine the boundaries of the Plan and its constituent parts, as well as to evaluate the nature and extent of its environmental impacts. There is no deferral of analysis in the EIR/S. The referenced monitoring and adaptive management plan is a regulatory requirement for an NCCP/HCP and refers to measuring the effectiveness of the reserve system in meeting Conservation Objectives. It is not necessary to have this information to analyze the environmental effects of the Proposed Action(s). Because the analysis used the best available science in constructing the MSHCP boundaries and assessing its environmental impacts, the project description in the EIR/S is adequate.

**X-8** The commenter alleges that the “MSHCP has significantly underestimated the cost of the MSHCP as well as the amount of land that it may have to acquire. However, the commenter provides no specific examples or reasons for this opinion. In contrast, Section 4 of the MSHCP provides a full accounting of the amount of land that is to be acquired, and Section 5 of the MSHCP also provides a description of the valuation process and the MSHCP’s funding mechanism. Please see Major Issue Response 3, Adequacy of Plan Funding.

It should also be noted that the MSHCP will be in full compliance with takings clause jurisprudence, and thus compensation will not be due to landowners with the MSHCP area simply because of the implementation of the MSHCP. See Major Issue Response 2, regarding Regulatory Takings, and response to Comment X-36 regarding the nexus and proportionality findings of the Nexus Study.

**X-9** Section 6.11 of the MSHCP addresses the relationship of this Plan to existing wetlands regulations. As stated in that section, “current wetland regulatory processes beyond the process described in this section are not relied upon for coverage of species addressed in the MSHCP.” The HCP provisions of the FESA for USFWS and the NCCP Act for CDFG do not provide the authority for wetlands regulation under the Clean Water Act (CWA). The Army Corps of Engineers issuing the Section 404 permit retains its independent authority to impose CWA conservation/mitigation requirements on the project proponent. However, if a Permittee’s project triggers a Section 7 consultation (i.e. through an obligation to obtain a CWA § 404 permit), Section 14.8 of the IA states that the USFWS will impose only measures consistent with, and that do not exceed, the conservation measures required by the MSHCP and the IA. Section 6.11 states that CDFG shall continue to work closely with the ACOE, USFWS, and local jurisdictions to ensure that the California Fish and Game Code Section 1600 et seq. agreements are consistent with the mitigation required for Covered Species.

The commenter’s assertion that the Wildlife Agencies will have “final say” on ministerial and discretionary development projects is not accurate. The Local Permittees have land use authority with respect to project approval. The MSHCP does provide a meet and confer process if CVCC identifies inconsistencies between the proposed project and the Conservation Areas Conservation Objectives. The Local Permittee retains land use authority and makes the final decision on the project.

Section 23.6 of the IA addresses future Section 7 consultations. The MSHCP is intended only to provide take authorization under the FESA and CESA. Other required regulatory approvals, including a Section 404 permit from the U.S. Army Corps of Engineers, a Streambed Alteration Agreement from CDFG, or a Section 401

permit from the applicable Regional Water Quality Control Board, are not covered by the MSHCP and would need to be obtained separately, if applicable. Lack of coverage of these non-FESA or CESA permits/approvals does not render the MSHCP legally deficient, as the MSHCP is intended only to streamline the permitting process with regard to those approvals only; to the extent that there is some overlap between FESA/CESA requirements (and thus of the MSHCP) and these other statutes and regulatory schemes, this overlap would exist with or without the MSHCP. In addition, without the MSHCP, the Wildlife Agencies would have in any case the final say over applications for take authorization, and thus their retention of the ability to object and intercede in specific projects under the MSHCP does not constitute a new opportunity for the Wildlife Agencies to exercise authority. If the Permittees do not comply with requirements set forth in the MSHCP, the Wildlife Agencies have the right to suspend or revoke all or portions of the permits, in accordance with the laws and regulations in force at the time of such revocation or suspension. Such suspension or revocation may apply to the entire applicable Permit, or only to a portion such as specified Conservation Area, specified Covered Species, or specified Covered Activities. Except as otherwise required by law, prior to taking action to revoke or suspend the Permits, the Wildlife Agencies, as applicable, shall: 1) provide thirty (30) day prior written notification to the relevant Permittee(s) and the CVCC of the proposed revocation or suspension, and 2) meet and confer with the relevant Permittee(s) and the CVCC to attempt to avoid the need to revoke or suspend all or a portion of the Permits. The Parties may rely upon the informal meet and confer process set forth in Section 23.6 of this Agreement for disputes concerning potential Permit revocation or suspension.

Lastly, please refer to response to Comment X-6 regarding the deletion of take authorization in the revised MSHCP for the operation of existing land uses. Essentially, existing land uses that engage in the take of listed species should already be permitted under the FESA and CESA, thus, the removal of coverage from the MSHCP should not have a negative or positive effect on these existing land uses, rather, they will continue to be subject to the same statutory requirements that they are subject to now. The MSHCP has no effect on existing land uses with respect to providing or removing Take authorization. Please see response to Comment AG-3.

- X-10** The USFWS must find that the MSHCP complies with the requirements of FESA prior to Permit issuance and release of the Record of Decision. Furthermore, the comment asserts that a landowner is required to obtain a Section 10 Permit for Incidental Take of a listed animal species. The comment is correct, although a landowner may also obtain authorization to take a listed animal species, when a federal nexus exists, through the FESA Section 7 process.

It should be noted that the MSHCP does not prohibit development of 153,000 acres of private property, occupied or not. The MSHCP proposes to acquire about 88,000 acres of private property from willing sellers for inclusion in the MSHCP reserve system. See Major Issue Response 1 and response to Comment X-11.

- X-11** The MSHCP is not intended to comply with CESA requirements but rather to meet the requirements of the NCCP Act as codified in Section 2800 of the California Fish and Game Code. Best available science was used in development of the MSHCP as described in Major Issue Response 1.

Please see Major Issue Response 9 regarding the Plan's compliance with the FESA and CESA, Major Issue Response 1 regarding the use of best available science, and X-36 regarding the satisfaction of nexus and proportionality requirements. The areas within Conservation Areas were determined via the process described in Major Issue Response 1 to be important to the achievement of the objectives and goals of the Plan. As stated in Major Issue Response 1, the MSHCP is an NCCP and is designed to comply with NCCP regulatory requirements and reserve design tenets. These tenets, consistent with the science of conservation biology, call for assembly and management of large interconnected reserve systems supporting the life history requirements of Covered Species and managed for the benefit of those species. A reserve system incorporating such reserve design tenets will incorporate core areas and linkages that may or may not be occupied at all times by Covered Species but are necessary to meet the life history requirements of those species.

- X-12** The commenter is incorrect, as the MSHCP does meet the criteria for the issuance of an incidental take permit. First, the MSHCP is not premised on outdated and inaccurate science. As indicated previously, the MSHCP utilized the best available science and knowledge in its formulation of the MSHCP and its mapping of the Plan Area. See Major Issue Response 1. Second, it should be further noted that in constructing the model used for the MSHCP, vegetation maps from aerial photos were confirmed by on the ground observations made by independent researchers from the University of California, Riverside, and thus the delineation of the Conservation Areas is accurate, as opposed to "overly broad and uncertain." The delineation of the Conservation Areas, as well as other areas of the MSHCP, are shown in Section 4.3 of the MSHCP in all of the exhibits depicting the 21 Conservation Areas with as much precise as is technically possible.

Third, while it is not totally clear why the commenter believes that the MSHCP relies on the "speculative future actions of others" with regard to mitigation of project impacts, it should be noted that the implementation of a monitoring and adaptive management program is a requirement of the MSHCP and of the Implementation

Agreement, and, and that required compliance with the MSHCP and related documents by the Permittees via the Implementing Agreement will be imposed on developers via their own project approval processes. To assume that Permittees would violate the Implementation Agreement and that developers would violate their conditions of approval and risk losing take authorization is actually highly speculative in itself.

Fourth, the species list for the MSHCP is not overly broad, is premised on the best available science, and adequate funding is available to ensure protection of the identified Covered Species is capable of being protected from the standpoint of adequate funding as discussed in Major Issue Responses 1 and 3. The process for developing the Covered Species list is discussed in detail in Appendix I of the Plan and is summarized in Section 2.3 of the EIR/EIS. As discussed, an initial list of 52 species was considered and the final list of Covered Species was based on a determination of those species for which there was sufficient information to proceed with planning and for which Take authorization may be needed in the future to meet the goals of the Plan of accommodating future growth and Development in the Plan Area as anticipated in the general plans of the Permittees.

Fifth, with specific regard to funding, the commenter provides a list of supposed inaccuracies regarding the funding of the MSHCP. However, this list consists of generalized conclusory statements, rendering precise response difficult. In response, it should be noted that Sections 5 of the MSHCP addresses the funding of the project, and explains the amount of acquisition costs deemed likely as well as the amount of land expected to be acquired via landowner dedications or in exchange for incentives. Lastly, the MSHCP also addresses the other sources of funding likely to be used in cases of fluctuations in revenues from the development mitigation fee. Bearing this in mind as well as the lack of any specific examples from the commenter indicating how the funding plans are inadequate, the evidence and analysis in the MSHCP adequately supports the conclusion that the funding for the implementation of the MSHCP will be sufficient. Lastly, the commenter claims that there was no public-private partnership achieved in formulating the MSHCP. However, it should be noted that there has been ample opportunity for stakeholders to participate in various public meetings and stakeholder meetings when the original and revised MSHCP were prepared.

- X-13** The commenter first states that the Plan far exceeds the requirements of the NCCP Act and then goes on to provide reasons why the Plan purportedly does not meet the requirements for an NCCP. The Plan contains all of the information cited in the comment as required in an NCCP and fully meets NCCP requirements. The Plan is

not based on outdated and inaccurate science as noted in Major Issue Response 1. The adaptive management plan is not an improper deferral of analysis but rather a required element of an NCCP for purposes of Plan implementation. Information and analysis developed as part of the adaptive management plan measures and evaluates the effectiveness of preserve management activities in providing benefits for Covered Species. It is not necessary to analyze the effects of the Take authorization which is the action analyzed in the EIR/EIS. Land costs are not underestimated. Indeed, the market study was updated to reflect current information in the Recirculated Draft Plan and Recirculated Draft EIR/Supplemental Final EIS. There is not improper disparate treatment of property owners inside and outside a Conservation Areas. All property owners within the Plan Area are subject to the fee. Lands within the Conservation Areas include biological resources benefiting Covered Species, and the biological resources on those lands would be reviewed by Permittees in conjunction with development proposals with or without the MSHCP. Please see responses to Comments N-5 and V-10.

- X-14** A thorough and accurate baseline is presented in the EIR/EIS. The baseline is comprised of the General Plans of the Permittees and the extensive biological database developed for the Plan. Both are complete and adequate for purpose of a regional, landscape-level planning effort such as the MSHCP. The socioeconomic baseline is based on accepted regional population-based data from CVAG and other regional sources as well as a current market study that was updated for the Recirculated Draft Plan and Recirculated Draft EIR/Supplemental Final EIS.
- X-15** The biological baseline presented in the Final Recirculated EIR/Supplemental Final EIS is complete and accurate for purposes of analysis of the MSHCP. As stated in Major Issue Response 1, the biological baseline uses best available science and is the baseline to be used by the Wildlife Agencies for purposes of permit issuance for the MSHCP.
- X-16** As previously discussed in the response to Comment X-11, the Covered Species list is not overly broad. It was developed together with stakeholders during the long Plan preparation process to meet the broad goals of meeting growth and development goals in the Plan Area while at the same time providing for conservation of biological resources to streamline permitting processes and provide a natural heritage in the Coachella Valley for future generations. The Covered Species list includes listed and non-listed species that may be listed in the future, an approach similar to that taken for all of the regional conservation plans (HCPs/NCCPs) in Southern California. As stated in the Plan, private property would only be acquired from willing sellers. See Major Issue Response 1 regarding use of sound science in development of the Plan.



As also discussed in connection with the other comments in this letter, the data used by the Lead Agencies to formulate the MSHCP and the EIR/S is not inaccurate or out of date, but rather constitutes the best available science, and the vegetation maps produced through the modeling effort were verified by independent observers from the University of California, Riverside.

- X-17** Section 1.5 of the Recirculated Draft EIR/Supplemental Final EIS provides a comprehensive description of the planning and regulatory environment in which the Plan and EIR/EIS were prepared. Section 1.6 provides a 5-page description of the relationship of the MSHCP to other planning documents, including the General Plans of the Cities and County, Bureau of Land Management California Desert Conservation Area Plan, the San Jacinto and Santa Rosa Mountains National Monument Management Plan, as well as planning and land use documents of various state and federal agencies, and the local Native American Tribes. Section 3.2 of the Recirculated Draft EIR/Supplemental Final EIS provides a detailed description of the land use designations established by the local jurisdictions through their adopted General Plans, including providing acreages and statistical summaries by land use categories and mapping. Existing land uses are also described, as are land uses outside the Plan boundaries. Section 4.2 provides a detailed assessment of the potential effects of the MSHCP on land uses. It should be noted that the MSHCP does not regulate the current or future land uses allowed within the Plan Area per se; rather, land use authority (i.e., the authority to set zoning and approve discretionary entitlements such as subdivision maps, conditional use permits, or variances) will continue to rest with the County or the participating cities. The MSHCP only affects Development to the extent that Development must be consistent with the MSHCP in order to receive take authorization under the ESA/CESA, and in any case compliance with the ESA/CESA is already a requirement. Whether any particular land use can be developed is contingent upon whether it complies with the relevant agency's zoning and whether the Development is configured in such a way as to be consistent with the Goals and Objectives of the MSHCP, and because this is by necessity an inquiry requiring the disclosure of specific plans, it is not possible to predict the exact development that will occur under the MSHCP for each individual parcel at this time beyond the characterization of land use impacts contained in the MSHCP sections cited above.

It should be noted that MSHCP requirements will not apply to Development that has already been approved by a Permittee, such as those with vesting entitlements (vesting tentative maps or development agreements). At the same time, these Developments will not receive take authorization via the MSHCP unless applicants for those developments choose to do so or, alternatively, they could receive and will

be required to receive take permits, if necessary, on an individual basis from the Wildlife Agencies. The EIR/EIS presents an accurate environmental setting in that it accurately characterizes existing on-the-ground conditions, as well as potential future conditions based on existing general plans. It is not necessary to document or depict those lands with existing vested rights. Such information is not readily available from the Permittees and there is no guarantee that all projects with vested rights will actually develop or whether or not they will seek Take authorization via the MSHCP.

**X-18** This comment purports to summarize state and federal law, and no further response is required.

**X-19** As stated in Section 4.2.3 of the Recirculated Draft EIR/Supplemental Final EIS, the proposed Plan does not conflict with the existing land use plans of the affected jurisdictions because it does not in any way alter or change existing land use plans or alter the existing land use authority of the Permittees. As stated in the Plan, lands to be included in the Conservation Areas would be purchased from willing sellers. The EIR/EIS does not equate open space zoning with the MSHCP's Conservation Objectives; rather, it simply quantifies acreages of underlying General Plan designations within the proposed Conservation Areas to assess the potential effects of conservation of these lands on existing General Plans. There is no need to compare the Conservation Objectives with land uses allowed under current zoning because the Conservation Objectives will be achieved by appropriately managing and monitoring lands to be included in the MSHCP reserve which will be acquired from willing sellers and managed for the benefit of Covered Species as described in the Plan. The Recirculated Draft EIR/Supplemental Final EIS does not state that the No Project Alternative would have significant effects with respect to physically dividing an established community. Rather, page 4.2-13 of the Recirculated Draft EIR/Supplemental Final EIS states that the No Project Alternative "does not physically divide an established community." The analysis does suggest that a land use pattern of piecemeal open space that may result under the No Project Alternative would be less desirable than an interconnected, consolidated open space system such as is likely to occur under the project as proposed. Section 6 of the Recirculated Draft EIR/Supplemental Final EIS does not conclude that land use compatibility impacts would be significant and unavoidable. Rather, page 6-3 of the Recirculated Draft EIR/Supplemental Final EIS states that land use compatibility impacts would be "below any reasonable level of significance for CEQA analysis purposes." The commenter refers to the heading, which provides additional analysis of certain areas of controversy. Thus, there is no requirement that mitigation measures be imposed.

**X-20** The biological resources analysis is not flawed and is based on best available science as described in Major Issue Response 1. The database is complete and adequate for purposes of a regional planning effort such as the MSHCP. Specifically, with respect to the Whitewater Floodplain Conservation Area, recent data are available and were used in Plan preparation. As described in Major Issue Response 1 and in Section 8.0 of the MSHCP, there are ongoing surveys being conducted by UCR as part of the Monitoring Program from 2002 to the present; UCR has established transects for Covered Species surveys within the Whitewater Floodplain Conservation Area that have been visited throughout the year since 2002. In addition, a long-term research program conducted by the UC Deep Canyon Desert Research Center includes study plots on the Whitewater Floodplain Conservation Area, which have been sampled from 1985 to the present. The data from these surveys and ongoing studies were used in the development of the MSHCP Conservation Areas. With respect to the Santa Rosa and San Jacinto Mountains Conservation Area, the MSHCP is supported by data from ongoing monitoring of Peninsular bighorn sheep by CDFG and other cooperators as described in Section 8.0 of the MSHCP. As noted in Plan Appendix I, Section 3.5.2, an accuracy assessment was completed for the natural communities map, which involved extensive “ground-truthing” of vegetation plots at over 250 random points. Additionally, the natural communities mapping and modeling was confirmed via independent observers from the University of California, Riverside. As another means of evaluating the natural communities map accuracy, the Center for Conservation Biology at University of California, Riverside, completed an independent field assessment. The results of this analysis were provided to CVAG in an unpublished report, “Report to the Coachella Valley Association of Governments: I – Assessment of Vegetation Map Boundaries” (Allen et al. 2002). See also response to Comment X-7.

Page 4.7-4 of the Recirculated Draft EIR/Supplemental Final EIS correctly states that conservation measures for Covered Species as described in the Plan would not occur under the No Project Alternative. The referenced page also correctly notes that continued loss of habitat and species would be anticipated under the No Project Alternative as occurs under existing conditions. The EIR/EIS acknowledges that individual projects would continue to be subject to CEQA review under all alternatives, including the No Project Alternative.

Section 6.0 of the EIR/EIS concludes that no significant unavoidable impacts to biological resources would occur, contrary to the commenter’s statement.

Lastly, the commenter’s references to “the County” in regard to data and information presented in the Plan is unclear. CVAG is the Lead Agency for the MSHCP.

- X-21** The statement that there is more developable land inside the Conservation Areas than outside is not correct. Total developable lands inside and outside the Conservation Areas are fully quantified in Section 4.8 of the EIR/EIS in Tables 4-10 through 4-23. For each jurisdiction more developable land is located outside the conservation area than within it. These tables present the detailed information requested in the comment. The discussion on page 4.8-15 of the EIR/EIS does not state that the environmental constraints would preclude development of land zoned open space whether the MSHCP is approved or not. It indicates that lands identified as desirable for conservation within Palm Springs are primarily within the Conservation and Desert general plan land use categories and that these categories provide for limited development due to density designations of 1 dwelling unit per 20 acres or 1.5 to 3.5 dwelling unit per acre and the potential for sensitive environmental resources on those properties. The EIR/EIS does not identify socioeconomic impacts as significant and unavoidable. In fact, the document states that no such impacts will occur (EIR/EIS, page 6-6.)
- X-22** The Recirculated Draft EIR/Supplemental Final EIS does not “admit that the MSHCP conflicts with certain roads in the County that could be precluded by Reserve Assembly.” Rather, a key element of the MSHCP is that it includes the circulation elements of the Permittees as Covered Activities. The referenced text from pages 4.3-7 and 4.3-14 of the Recirculated Draft EIR/Supplemental Final EIS refers to a single collector road that is not a circulation element road. It is not known whether the alignment for this roadway includes occupied habitat and whether Take authorization would be required to construct the roadway. No features of the MSHCP would preclude the ability to construct the roadway, and no further analysis is needed.
- Page 6-4 of the EIR/EIS states that no significant unavoidable impacts to traffic and circulation would occur.
- X-23** The EIR/EIS does analyze the potential effects of intensification of development outside the Conservation Areas in Sections 4.2 and 4.8, land use and socioeconomics. It is not necessary to analyze these potential effects with regard to the other cited environmental categories because the project would not result in any development, ground disturbance, or land use shifts that would have direct or indirect effects, as described in Sections 3.1, 3.4, 3.5, 3.6, 3.9, 3.11, 3.13, 3.14, 3.16, and 3.17 of the EIR/EIS. Impacts to environmental justice and children were effects found not to be significant as described in Section 4.9.8 of the EIR/EIS. The commenter’s statement that “the Draft EIR concludes that the relocation and intensification of development outside the Conservation Area will be significant for other impacts” is both unclear and incorrect, in light of the above-cited EIR/EIS analysis. Furthermore, CEQA

allows the preparation of an Initial Study for the purpose of focusing an EIR; however, an Initial Study is not required if the Lead Agency determines that it is not clearly required for the Agency to prepare an EIR (State CEQA Guidelines Section 15060). The Recirculated Draft EIR/Supplemental Final EIS makes use of this provision according to State law and therefore an Initial Study was not prepared; rather, the analysis to determine which impacts are less than significant and do not warrant further evaluation is contained in the EIR/EIS.

The State CEQA Guidelines section cited in the comment does not prohibit deferral of analysis. It states that the “degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.” The level of analysis that was conducted for the preparation of the MSHCP and EIR/S is sufficient to characterize the nature and magnitude of the impacts of the proposed project. It is not clear in which way or how this deferral of analysis is occurring; however, it should be noted that all direct and indirect impacts of the project that are capable of being characterized at this point in time have been analyzed in the EIR/EIS. Site-specific impacts of individual development projects are not part of the proposed project and, in any case, cannot be characterized until an application is submitted for them.

The commenter also alleges that the conclusions of the EIR/S analysis are not supported by substantial evidence. The EIR/S contains a full discussion of the proposed project’s impacts, see Sections 4.0 through 9.0 of the EIR/S, and the commenter does not indicate in what respect the analysis is not supported by substantial evidence, except for an allegation that the impacts associated with the purported intensification of development outside of Conservation Areas. However, as discussed above, those impacts were addressed in the EIR/S.

The Lead Agencies anticipate that most, if not all in the case of the County, ministerial permits are exempt from the provisions of the MSHCP. Only limited City ministerial approvals that could have impacts on Covered Species will be subject to the MSHCP. It should be noted that the FESA/CESA do not have exceptions to the prohibition against unpermitted Take for projects that only involve ministerial permits; in other words, if a Take would occur, FESA/CESA Take coverage or compliance is required regardless of whether the MSHCP is in effect or not. The commenter is therefore incorrect to assume that the MSHCP would result in the diversion of resources away from public services and infrastructure in order to cover processing costs and that housing costs would be increased due to permit delays. The impact from the application of the MSHCP to limited classes of ministerial permits would be less than significant.

**X-24** The cumulative analysis presented in the Recirculated Draft EIR/Supplemental Final EIS is adequate and properly focuses on the effects of the proposed action(s)—issuance of HCP/NCCP permits for Take of Covered Species. Since the proposed actions would not result in development resulting in ground disturbance or population growth, no features of the project would result in aesthetics, cultural resources, geology and soils, hazards and hazardous materials, hydrology and water quality, noise, transportation and circulation, public services, utilities, or environmental justice impacts. With respect to the accuracy of the biological database, refer to Major Issue Response 1. Also refer to responses to Comments N-14, BM-55, BM-61, and BM-62., which show that the data used in MSHCP and EIR/S preparation is not outdated but rather constitutes the best available science, resulting, among other things, in an accurate delineation of the areas for which inclusion in a Conservation Area, Core Areas, and linkages is justified. Furthermore, impacts from the potential shifting of development from Conservation Areas to areas outside of Conservation Areas (in terms of increasing density above that allowed currently) were assessed in the EIR/S and determined to be less than significant, see response to Comment X-23

Lastly, the Plan is inherently self-mitigating by its nature. No significant cumulative impacts from the Plan were identified in the EIR/EIS, and thus no mitigation measures are required.

**X-25** The growth-accommodating impacts of the MSHCP are fully discussed in Section 9 of the Recirculated Draft EIR/Supplemental Final EIS. The EIR/EIS recognizes that, if Development cannot occur where it is currently proposed or at levels currently permitted by the County and local municipalities, such growth must be accommodated elsewhere. Section 9 of the document describes that the MSHCP would remove an impediment to growth by authorizing Take of Covered animal Species; thus, the MSHCP is growth-accommodating, versus growth inducing. The Plan would also encourage greater land use efficiencies, which would allow continued growth but with fewer of many of the adverse effects typically associated with it. Lastly, as described in response to Comment X-23, impacts due to the potential redirection of growth away from Conservation Areas to non-Conservation Areas would also be less than significant.

**X-26** The comment makes a blanket statement that the Recirculated Draft EIR/Supplemental Final EIS fails to identify necessary mitigation measures but makes no specific reference to discussions where impacts are significant and are inadequately mitigated. However, because no significant impacts are identified in the EIR/EIS, it is not necessary to identify mitigation measures. Please see EIR/EIS Sections 4.7, 5.3, and 9.8 regarding biological resources impacts. CEQA allows Lead

Agencies to adopt project requirements to be implemented after completion of further studies and evaluations of the requirements, provided that performance standards are specified. In addition, the commenter seems to imply that studies that are required by developers under the MSHCP should be done by the Lead Agencies prior to MSHCP approval. The commission of these studies after MSHCP approval is not improper deferral but rather establishes procedures to obtain information and ensure mitigation as projects are brought forward for Development. It is infeasible for a Plan of this size to do the analysis called for in the comment and also inefficient because it is too speculative to determine when and where Development will occur. Additionally, the Lead Agencies did utilize the best available science in preparing the MSHCP and the EIR/S, as demonstrated in Major Issue Response 1, and scope of the analysis conducted is sufficient to characterize the nature and magnitude of impacts for the purposes of CEQA and NEPA.

With regard to the commenter's assertion that conservation requirements placed on privately owned property would not be in compliance with constitutional requirements, please see Major Issue Response 1, regarding the methods by which the Conservation Areas were determined, and Major Issue Response 2, regarding regulatory takings. As noted elsewhere, the private property included within the Conservation Areas is not barred from Development as long as proposed projects are consistent with the Conservation Objectives. The Conservation Objectives are directed at mitigating the biological resources impacts of Development on lands within the Conservation Areas while still allowing Development to occur, and thus satisfy constitutional requirements regarding the presence of a nexus and rough proportionality. Also, response to Comment X-36 contains a discussion regarding the nexus and proportionality requirements for the Local Development Mitigation Fee, the substance of which would be similar to the application of the Conservation Objectives on land within the Conservation Areas.

With regard to the commenter's concern regarding application of the MSHCP to ministerial permits, see response to Comment X-23. The FESA/CESA currently apply to actions that could result in Take, including ministerial permits potentially, and the MSHCP would not alter this. Please see also response to Comment X-36 regarding the satisfaction of nexus and proportionality with regard to the Local Development Mitigation Fee.

- X-27** The EIR/EIS does not defer analysis or development of mitigation measures. The proposed action is a conservation plan geared toward preservation and management of biological resources. The EIR/EIS concludes that features are incorporated in the project that avoid and minimize impacts to biological resources such that they would

not rise to a level of significance and therefore no mitigation is required. These features include assembly and management of a reserve system that will support the life history requirements of Covered Species and habitats that support them.

The commenter's assertion that the data the EIR/EIS relies on are inaccurate and out of date and will not be updated until a property owner comes forward with project-specific biological information is not correct. As stated in Major Issue Response 1, the best available data have been used in development of the Plan. In addition, the Plan does not rely on project-specific data provided by private property owners to update that information. Rather, the Plan includes an adaptive management and monitoring program, as called for in the NCCP and HCP regulations, and implementation of that program will result in regular updating of the biological database for the MSHCP reserve system. The fact that updated biological data will be provided as part of the adaptive management and monitoring program does not constitute deferral of analysis. The information assembled from that program will be used to evaluate the effectiveness of the reserve system and associated management in meeting the Goals and Conservation Objectives of the Plan and is not necessary to analyze the environmental impacts of the Proposed Action(s).

**X-28** The commenter states that all alternatives were incorrectly analyzed with regard to the level of conservation to occur under existing law. However, the commenter only indicates why this is the case for the No Project Alternative. Contrary to the commenter, the No Project Alternative is considered in detail throughout the Recirculated Draft EIR/Supplemental Final EIS and was not dismissed from further consideration. The referenced discussion on page 2-64 of the Recirculated Draft EIR/Supplemental Final EIS identifies alternatives considered and rejected, and the No Project Alternative is not identified as an alternative considered and rejected. Furthermore, the analysis of this alternative accurately described the level of protection for listed species that would occur via continuation of existing conditions, i.e., the permitting of take on a piecemeal, project-by-project basis. This would result in some conservation for Covered Species, but not "the landscape level of conservation" as provided under the Preferred Alternative, which is a comprehensive, regional conservation plan. Furthermore, the EIR/S correctly notes that under the No Project Alternative, non-listed species would continue to experience a continued loss of habitat. See EIR/S, page 4.7-4.

Connectivity with existing HCPs and NCCPs was not used as a basis for rejecting alternatives, and this concept is not referenced in Section 2.10 of the EIR/EIS, Alternatives Considered and Eliminated from Further Review. Since a specific reference is not provided in the comment, a more specific response is not possible.



As noted by the commenter, the alternative without the City of Palm Springs is not included in the Recirculated Draft, and analysis of this alternative is therefore not required.

The No Project Alternative does not meet project objectives nor do other alternatives that it appears the commenter regards as “less intrusive.” With respect to accuracy of the biological database, refer to Major Issue Response 1. See also Major Issue Response 8 regarding the general sufficiency of the alternatives analysis.

**X-29** The commenter asserts that the MSHCP does not meet the stated objectives but does not state in what way the objectives are not met. The proposed MSHCP does meet the stated objectives. Permit issuance would occur following review and approval of the final MSHCP by the Wildlife Agencies, and Permits are expected to cover the identified 27 Covered Species. The Plan also provides for a streamlined regulatory process by providing local control for permitting and providing for local Covered Activities. The Plan would also meet the objective of assembly of a permanent reserve with public access to protect the natural heritage of the Coachella Valley for future generations.

**X-30** The MSHCP provides for streamlining and standardization by providing local control for permitting and applying Plan-wide Conservation Objectives and Required Measures consistently throughout the Plan Area. In providing local control for permitting, the administrative burden for Covered Species permitting will shift from the Wildlife Agencies to the Permittees. Reviews of Development projects for consistency with the MSHCP will occur concurrently with overall entitlement reviews and would not substantially increase administrative burdens. Refer to response to Comment X-16.

See Major Issue Response 1 regarding the sufficiency of the information used to delineate the boundaries of Conservation Areas, which determines whether the Conservation Objectives apply. It is not possible to guarantee a result for the various review processes of the MSHCP, such as HANS or JPR, because these are project-specific reviews that will depend upon the details of the particular project proposed.

See response to Comment X-23 regarding the applicability of the MSHCP to ministerial permits. Also note, CUPs are almost always considered to be discretionary, and not ministerial, actions.

With regard to the JPR process, such a process is only necessary for development proposals within the identified Conservation Areas. Outside the Conservation Area, payment of the Local Development Mitigation Fee will be all that is required, thereby

streamlining the review process. The JPR process would occur concurrently with the project entitlement process. Therefore, the commenter is incorrect to characterize the JPR process as creating an additional layer of bureaucracy and requirements that did not exist beforehand.

It should be noted that originally over 50 species were projected to be included as Covered Species but this was narrowed to the present list of 27 species, since the Permittees and Wildlife Agencies wish to only include those species for which there is enough scientific knowledge and information to allow Conservation Areas to be delineated. Regarding unlisted species being included as Covered Species, HCPs may be developed for listed, proposed, candidate, or unlisted species. (Section 10 Handbook, pp. 4-1 *et seq.*). “The decision about what species to include in the HCP is always the applicant’s.” (Section 10 Handbook, p. 1-16, 4-1 [emphasis added]). However, “[t]he Services should explain to any applicant the benefits of addressing unlisted species in the HCP and the risks of not doing so, and should strongly encourage the applicant to include as many proposed and candidate species as can be adequately addressed and covered by the permit.” (HCP Handbook, p. 4-1 [emphasis added]). As stated in the Section 10 Handbook, “There are also advantages in addressing unlisted species in the HCP (proposed and candidate species as a minimum), particularly those that are likely to be listed within the foreseeable future or within the life of the permit. Doing so can protect the Permittee from further delays—e.g., having to revise the HCP and amend the permit—should species that were not listed at the time the original HCP was approved subsequently become listed. In addition, the ‘No Surprises’ policy ... applies to listed as well as unlisted species if they are adequately addressed in the HCP.” (Section 10 Handbook, p. 3-7; see also, p. 4-1.).

Lastly, it is misleading of the commenter to characterize the monitoring and adaptive management component of the Plan as “experimental” in the sense that it is totally speculative whether it will work. Rather, the monitoring and adaptive management program is experimental in the sense that it will use scientific investigative methods (i.e., experimentation) to continually evaluate and improve the performance of the Plan and its Reserve System.

- X-31** The MSHCP would not create a super-bureaucracy. As stated in the Plan, no features of the MSHCP would alter the exiting land use authority of the Permittees, and it should be noted that the Wildlife Agencies already are involved in a significant number of development application processes within the Coachella Valley because take authorization is required regardless of whether the MSHCP is approved or not. The MSHCP seeks to achieve compliance with the ESA and CESA in a more

systematic manner than the current piecemeal, project-by-project approach, thereby achieving a more rational and planned system of conservation areas designed to optimize the chances of species survival. Additionally, the MSHCP will greatly simplify attainment of ESA and CESA clearance for large portions of the developable lands within the Coachella Valley that are outside the Conservation Areas through the payment of a single mitigation fee, with no JPR process required. Projects within the Conservation Areas are subject to the JPR process, as described in Section 6.6.1.1, which must be completed within a specified time period. While some projects will be subject to this latter process, this is because they involve sites that are more critical to achieve species survival in a more planned and rational manner than the current ad hoc incidental take permit regime. Lastly, it should be noted that the commenter does not indicate that the administrative process to which it objects in this comment in any way results in an adverse physical impact on the environment; rather the comment is a policy disagreement over the manner in which the MSHCP is proposed to be implemented.

**X-32** Refer to Major Issue Response 5 regarding the HANS process. For analysis of Rough Step and Rough Proportionality, see Major Issue Response 4.

This comment also relies on *First Evangelical Lutheran Church v. County of Los Angeles* (1987) 482 U.S. 304 for the proposition that “[i]t is well settled that a governmental entity is liable for a taking, even if the taking is only ‘temporary’.” This comment misinterprets the rule formulated by the *First Evangelical* Court. In *First Evangelical*, a church operated a facility known as “Lutherglen,” which was located on the banks of a river. Runoff from a storm flooded Lutherglen, destroying its buildings. In response to this flood and for the immediate preservation of the public health and safety of the flooded area, the County of Los Angeles passed an ordinance prohibiting construction of any building or structure within a designated flood protection area. The church filed a complaint alleging that the ordinance deprived it of all use of Lutherglen. When the case reached the Supreme Court, the issue of whether a regulatory taking existed had been disposed of. Assuming that the regulation denied the owner all use of his land and resulted in a taking, the Court focused instead on whether a subsequent action by the government could relieve it of its obligation to compensate the landowner. (*First Evangelical*, at 317-18, 321). The Court held that “where the government’s activities have already worked a taking of all use of property, no subsequent action by the government can relieve it of the duty to provide compensation for the period during which the taking was effective.” (*Id.* at 321). The Court expressly limited its holding to this issue, stating that it was not to extend to certain land-use regulations.

The Supreme Court expressly reaffirmed that the *First Evangelical* case was limited to situations in which a taking has already occurred. (*Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency* (2002) 535 U.S. 302). For analysis of *Tahoe-Sierra*, see Major Issue Response 2.

Thus, the commenter's reliance on *First Evangelical* for the assertion that a government entity is liable for a temporary taking is misplaced.

The MSHCP will not violate Government Code Section 65858, which limits moratoria to a maximum two-year period and requires a four-fifths vote of the local agency's legislative body, because the HANS process is not a moratorium. A moratorium is defined by Government Code Section 65858 as an interim ordinance prohibiting uses of land which may conflict with a general plan, specific plan, or zoning proposal that the local agency is considering implementing, without following the procedures otherwise required for the adoption of a zoning ordinance. The MSHCP is not the sort of temporary freeze as is described by Section 65858, for the purpose of studying of alternatives to the general plan. As such, the requirements of this code section do not apply.

**X-33** No features of the MSHCP Adaptive Management Program would affect the location of development. The Adaptive Management Program describes management measures to be implemented within those portions of the identified Conservation Areas to be included within the MSHCP reserve system. See also Major Issue Response 7.

The rough step proportionality requirements are not at odds with the MSHCP goals to obtain certainty for economic development in the Plan Area. Refer to Major Issue Response 4. As stated in Sections 5.2.2.3 and 6.5 of the Plan, substantial acquisition has already occurred within the Plan Area and it is not anticipated that the Plan will be out of rough step proportionality, so conservation is already "ahead of the development curve" in the Conservation Areas. Additionally, conformance with rough step is reviewed on a project-by-project basis by JPR process and the funding plan regularly reviews conformance. These features of the Plan will provide advance notice of any potential issues with respect to achievement of rough step goals and will provide ample time to make adjustments to acquire with rough step requirements. In the highly unlikely occurrence that rough step goals are not able to be achieved, the IA includes remedies, such as meeting and conferring with the Wildlife Agencies and Permit revocation, in all or part.

The Major and Minor Amendment processes would not impede development because it is contemplated that most development will not require amendment of the Plan. The

Major and Minor Amendment processes are intended to be used for modifications to the Plan dictated by the needs of science and concerns over the efficiency of meeting the conservation goals, and not for the convenience of meeting development objectives of individual landowners. Hence, the process for implementing the Plan is not likely to be a factor in entitling individual projects.

The MSHCP is not a coercive system in which property owners must comply or lose the ability to develop their property; rather, landowners outside the Conservation Areas have no requirements to comply with the MSHCP, except for paying the fee for which a nexus study has been prepared. Within the Conservation Areas, the MSHCP provides for a streamlined approach to MSHCP consistency analysis with JPR occurring concurrently with the entitlement process for individual projects. Commenter states that the Permit Streamlining Act provides 180 days to act on the project following acceptance of the application. In fact, Government Code Section 65952(a) states that the public agency shall approve or disapprove the project within whichever of the following periods of time is longer: (1) Within 180 days from the date on which the lead agency has approved the project, or (2) Within 180 days of the date on which the completed application for the development project has been received and accepted as complete by that responsible agency. The JPR and HANS processes will not interfere with these time frames. See Major Issue Response 5.

**X-34** Refer to Major Issue Response 2 with regard to regulatory takings, and Major Issue Response 5 with regard to the HANS process. Furthermore, see response to Comment X-32 regarding temporary takings and the non-applicability of statutes concerning moratoria.

**X-35** Refer to Major Issue Response 2.

The designation of land in a Conservation Area does not automatically trigger a complete restriction on development. The HANS and JPR processes discussed in Section 6 of the MSHCP set forth the process for development in the Conservation Area. See further analysis of HANS, see Major Issue Response 5.

This comment further cites *Klopping v. City of Whittier*, (1979) 8 Cal. 3d 39, to support its contention that government activities to depress the value of property before condemning it are unconstitutional. In *Klopping*, the city initiated condemnation proceedings against the subject properties and parcels owned by third persons. A year and a half later, the city dropped the condemnation proceedings, but stated that it intended to reinstitute the proceedings in the future. Plaintiffs then initiated an inverse condemnation proceeding based on the original intent to condemn

and on the abandonment. In determining the proper baseline date to establish fair market value of the taking, the court stated in footnote number one:

“To allow recovery in every instance in which a public authority announces its intention to condemn some unspecified portion of a larger area in which an individual’s land is located would be to severely hamper long-range planning by such authorities.... On the other hand, it would be manifestly unfair and violate the constitutional requirement of just compensation to allow a condemning agency to depress land values in a general geographical area prior to making its decision to take a particular parcel located in that area.” (*Klopping* 8 Cal. 3d, n.1).

Commenter presumably relies on the latter half of this footnote for its assertion. The footnote does not support commenter’s contention for several reasons. First, the issue presented in *Klopping* was which date should be used as baseline for determining “just compensation.” *Klopping* was concerned only with the amount of the compensation after a taking has occurred, not whether agencies may undertake land use decisions. Thus, because no taking will occur as a result of Plan implementation, *Klopping* is inapposite. As further discussed in Major Issue Response 2, CVAG disagrees that applying the Plan will depress land values.

**X-36** Refer to Major Issue Response 3. The Nexus Study, entitled “Local Development Mitigation Fee,” dated January 15, 2007, and prepared by MuniFinancial, details the manner in which the nexus requirements are satisfied with respect to the Local Development Mitigation Fee. To summarize, the Fee is for the purpose of providing a funding source from new Development for the acquisition of Habitat and related costs to mitigate development impacts and to carry forward the purposes and objectives of the MSHCP, i.e., funding Habitat conservation. Local Development Mitigation Fee revenue will be used to provide community amenities by funding acquisition of land for the conservation of Habitat, and will facilitate public and private project compliance with federal and state endangered species laws. All Development in the Plan Area burdens biological resources either directly or indirectly by the public facilities it requires, and the conservation of biological resources will conversely benefit the entitlement of that Development. Lastly, the amount of the Fee has been calibrated to the proportion of a Development’s impact in the Nexus Study. Consequently, all constitutional requirements for the implementation of a mitigation fee have been satisfied.

**X-37** The Lead Agencies disagree with the comment that they are “turning the environmental review process into the sort of ‘post hoc rationalization’ that the Supreme Court disapproved of in *Laurel Heights*.” Despite the Planning Agreement and the MOU, the discretion of the decision-making bodies of these public agencies

remains intact, and they may opt to deny the MSHCP. For instance, the City of Desert Hot Springs, an original participant in the planning process, opted not to participate in the MSHCP in June 2006.

CEQA requires environmental document preparation and review to be coordinated in a timely fashion with the existing planning, review, and project approval processes being used by each public agency. Environmental review for the MSHCP has been integrated into the project planning and is thorough, complying with all applicable laws. Moreover, the USFWS has not signed the IA and will not do so until all of the required documents and findings have been prepared. The MSHCP process has effectively integrated environmental analysis into project planning. Furthermore, the commenter's claim that the MSHCP was already a "done deal" at the time the Lead Agencies and Permittees entered into a Planning Agreement and Memorandum of Understanding ignores the fact that these were actions necessary to initiate the planning and preparation of an MSHCP for consideration and approval later. Environmental review cannot occur until there actually is a project, and these actions simply began the process for formulating a *proposed* MSHCP so that there actually is a project to analyze in a meaningful sense within an EIR/S. See State CEQA Guidelines §15004(a) (requiring environmental review to occur late enough to provide meaningful information for environmental assessment); see also State CEQA Guidelines §15004(d) (environmental documentation preparation and review to occur concurrently, and not consecutively, with project planning and approval processes.)

- X-38** State CEQA Guidelines Section 15088.5(a) states that, "[a] lead agency is required to recirculate an EIR when significant new information is added to the EIR." However, "information added to an EIR is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement" (*Ibid.*). Further recirculation is not required when the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR (State CEQA Guidelines Section 15088.5). The Lead Agencies are not aware of any facts that require revision or recirculation of the Recirculated Draft EIR/Supplemental Final EIS. Nor does the commenter suggest any additional feasible mitigation measures or alternatives considerably different from others previously analyzed that would require recirculation under Section 15088.5. Although some minor modifications and clarifications to clarify the Recirculated Draft EIR/Supplemental Final EIS are being made, these changes are not significant new information requiring recirculation. The MSHCP is a feasible and cost-effective plan that fully complies with both state and federal laws.

**X-39** Please see response to Comment X-38, as well as the responses to the other comments in this Comment Letter alleging deficiencies in the EIR/EIS.

**X-40** It should be noted that, under FESA, subspecies and “distinct population segments” of vertebrate fish or wildlife are recognized and can be listed with the same protection under the law afforded a species. See response to Comment J-10. The comment does not take into account the substantial benefits of an HCP process, and the associated NCCP process for the State of California, that provide an opportunity for an ecosystem approach, which will provide for the conservation of both listed and unlisted species through protection and management of the natural communities in which they occur. The intent of this approach is to avoid the need to list currently unlisted species. The MSHCP includes unlisted species consistent with the HCP handbook and NCCP Act. Unlisted species are treated in the Plan as though they were listed species in order to receive the benefits and protections the Plan provides for Covered Species. See response to Comment R-8.

Section 3 of the Plan provides the reason for inclusion of the 27 Covered Species. Section 9 of the Plan provides specific information for each Covered Species, including the listing status. See Major Issue Response 2 regarding regulatory takings. See responses to Comments X-30 and AA-2 and Major Issue Response 1.

With respect to the specific issues for the species listed under Comment X-40, the following responses are provided. Species 1: The Plan includes Peninsular bighorn sheep as a Covered Species because it is recognized as a distinct population segment under FESA. It is not within the purview of the Plan to judge the genetic uniqueness of this species. Species 2: The Coachella Valley fringe-toed lizard is a Covered Species because it is recognized under CESA and FESA as a species. See response to Comment J-9. Species 3: See response to Comment R-9 regarding the Palm Springs pocket mouse. Species 4: The Coachella Valley round-tailed ground squirrel is a Covered Species because it is identified as a candidate for listing by USFWS.

With respect to the comment that the MSHCP does not provide meaningful protection for plant and animal species, the benefit of the Plan for all the groups of species listed at the end of the comment is that it provides long-term Conservation for Covered Species and natural communities, Monitoring and Management to ensure the effectiveness of that Conservation, and a funding program to ensure that habitat acquisition and long-term management will occur. These meaningful protection measures are not available in the absence of the MSHCP.



**COMMENTER Y: GLENDA VANCE**

Dated: April 9, 2007

**Y-1**      Commenter states her opposition to the Plan. Comment is noted.

**COMMENTER Z: STEPHEN BAYRD**

Dated: April 3, 2007

- Z-1**      LAFCO approved the annexation of lands designated for the Palmwood project to the City of Desert Hot Springs on April 26, 2007. On July 12, 2007, LAFCO overturned its decision on the Palmwood annexation and voted to deny the annexation. No changes to the Plan or EIR/EIS are required.

**COMMENTER AA: ROB ROY RAMEY II, PHD (RAMEY AND BROWN)**

Dated: May 28, 2007

**AA-1** Major Issue Response 1 addresses the use of best available science in the MSHCP. Major Issue Response 7 addresses the Adaptive Management process that will be used to, among other things, identify threats to Covered Species and will provide an objective decision-making process to address those threats. Section 9 of the MSHCP provides a qualitative and quantitative analysis of the impacts of the Plan on Covered Species, including listed species. This analysis includes the benefits of the MSHCP for each Covered Species and describes the conservation measures. Lastly, the MSHCP is not a recovery plan, as seemingly assumed by the commenter. (See *Spirit of the Sage Council v. Kempthorne*, 2007 U.S. Dist. LEXIS 63684, \*29 (“the ESA does not require [Incidental Take Permits] to promote or maintain the recovery of species.”).)

**AA-2** The FESA not only deems it appropriate to include listed, proposed, candidate, and unlisted species in an HCP, FESA actually encourages such inclusion (Section 10 Handbook, pp. 4-1 et seq.). (“The Service should explain to any applicant the benefits of addressing unlisted species in the HCP and the risks of not doing so, and should strongly encourage the applicant to include as many proposed and candidate species as can be adequately addressed and covered by the permit.”) The Lead Agencies disagree with the commenter’s suggestions that “endangerment and federal listing can be expected.” The benefit of an HCP process, and the associated NCCP process for the State of California, is that it provides an opportunity for an ecosystem approach, which will provide for the conservation of both listed and unlisted species through protection and management of the natural communities in which they occur. The intent of this approach is to avoid the need to list currently unlisted species. A review of the list of species proposed to be covered under the Plan, provided in Table 3-1 of Section 3.2.1, indicates that most of the unlisted species are closely associated by their habitat affiliations with one or more listed species. Habitat conservation for the federally listed species will benefit unlisted species, as is the case for the five riparian bird species, two of which are federally listed. The ecosystem approach used in this Plan provides for long-term conservation for habitat that will benefit both listed and unlisted species. Please also see Major Issue Response 1, Use of Best Available Science. The 12 years of research, vegetation mapping, and peer review demonstrate that the EIR/EIS is supported by factual evidence and is not solely a conclusory document.

**AA-3** Please see Major Issue Response 7, Monitoring and Management Programs, regarding Adaptive Management Plans and their scientific bases.

**AA-4** Personnel involved in implementation of the Management and Monitoring Programs will be selected for their experience in the relevant field and a demonstrated ability to complete the functions described in the Plan. The Monitoring Program will be supervised by a community ecologist and overseen by a Monitoring Program Administrator who is responsible for the scientific integrity of the process. Section 8.2.2 of the Plan describes the organizational structure for the Monitoring and Management Programs, and Figure 8-1 illustrates the decision process and ongoing interface between the Reserve Management Unit Committees, Reserve Management Oversight Committee, Land Manager, Monitoring Program Administrator, and the CVCC. These committee meetings, which are open to the public, provide an opportunity for public comment. There is also a role for Independent Science Advisors described in this section.

**AA-5** The decision-making methods used were consistent with recommendations of the ISA. The Adaptive Management approach described in Section 8 of the Plan will, through question-based analyses and testable hypotheses, evaluate threats to Covered Species. Please see Major Issue Response 1, Use of Best Available Science.

**AA-6** Section 8.6.1.3 addresses the data availability for the Plan. The CVCC will be the point of contact for available data. Since the inception of Plan development, CVAG has maintained a policy of making data available to the extent possible. Section 8.6.1.3 of the MSHCP states that biological data used for management decisions will be considered public information and will be made available to the public. The commenter also expresses his concern over the lack of availability of raw data from private parties. During Plan implementation, data availability for contractors working with and providing data to the CVCC will be consistent with the provisions of Section 8.6.1.3.

The comment provides an example, using the Peninsular Bighorn Sheep Recovery Plan and Critical Habitat designation, to address concerns about data availability. It should be noted that the Recovery Plan for bighorn sheep in the Peninsular Ranges (“bighorn sheep recovery plan”) is an advisory document. The Recovery Plan underwent a separate public comment process, and addressed all relevant issues prior to its approval in October 2000. See also responses to Comments BL-2 and BM-11.

**AA-7** Please see response to Comment AA-6.

**COMMENTS AB: SUZANNE SLOANE, MARY JUSTICE ET AL.**

Dated: May 29, 2007

- AB-1** The comment expresses concerns about the appraisal review process. All MSHCP acquisitions will be only from a willing seller. To protect the rights of the landowners and ensure a fair appraisal process, the CVCC adopted a Land Valuation Conflict Resolution Policy on May 11, 2006, that allows up to three separate appraisals at the request of the landowner. This policy provides adequate protection for landowners, especially when one considers that they must be willing sellers and have potential to develop their property within the Plans' Goals and Objectives.
- AB-2** With respect to the habitat issues identified in the comment, Coachella Valley fringe-toed lizard still can be found north of Ramon Road in Thousand Palms in locations where suitable blowsand habitat is present. See responses to Comments S-5 and S-34.
- AB-3** The comment refers to unspecified Community Council meetings which are not scheduled by CVAG. CVAG notified all landowners of record in the Conservation Areas that their land is included in the proposed Conservation Areas during the recirculation process for the MSHCP.
- AB-4** Contrary to the commenter's assertion that the MSHCP will be paid for by depriving landowners of the value of their land, MSHCP implementation will be paid for with a combination of Local Development Mitigation Fees, Measure A funds, other transportation and regional infrastructure mitigation funds, and tipping fees, as described in Section 5 of the Plan. See also Major Issue Response 3.
- AB-5** There is only one Local Development Mitigation Fee for all Covered Species and natural communities under the MSHCP. The Coachella Valley fringe-toed lizard Permit will be relinquished and that fee will no longer exist. Other than an annual increase indexed to inflation, the Local Development Mitigation Fee can only be raised or lowered as a result of a Nexus Study to ensure compliance with Government Code 66000 et seq. Under this law, the amount of the fee cannot generally exceed the reasonable cost of purchasing property under the Plan. The CVCC will have a new Nexus Study prepared every 5 years or more often as warranted by changing conditions. See Major Issue Response 3, Adequacy of Plan Funding.
- AB-6** CVAG has identified more than 150,000 acres of developable land outside the Conservation Areas; thus, there is ample available land to accommodate 75,000 acres of new development over the next 50 years. This would allow for approximately a

doubling of the current urbanized area in the Coachella Valley. Thus, there is no support for the commenter's suggestion that the Plan "makes land scarce."

- AB-7** Comment is noted. It should be noted that the state and federal governments have a history of extensive acquisitions in the Plan Area. For example, since 2000, more than \$48 million in state bond funds has been expended or appropriated to acquire land within the Conservation Areas. Federal funding for acquisitions of land in the Conservation Areas has totaled more than \$22 million to the BLM, U.S. Forest Service, and USFWS in the last 10 years for acquisitions in the Conservation Areas.
- AB-8** The comment implies that trails under the MSHCP are being "closed and rationed" to save money. However, as the Trails Plan described in Section 7.3.3.2 of the Plan, the only closures in the proposed Trails Plan occur on CDFG land. These trails are and will be closed regardless of whether the Trails Plan is in effect. The only seasonal closures are during the summer months when daily temperatures average over 100 degrees in the Coachella Valley and there is virtually no hiking activity. Section 8 of the Plan describes funding for the Trails Plan.
- AB-9** The MSHCP does not preclude all development in the Conservation Areas and provides for just compensation when land is purchased from willing sellers; thus, the value of private land is not reduced to "nothing," as asserted by the commenter. The commenter speculates that the MSHCP will require "a cast of thousands" to "manage, inspect, enforce and litigate to be sure owners are not 'misusing' their land." The MSHCP does not involve any such managing, inspecting, enforcing, and litigating directed at private landowners in the Conservation Areas; thus, there is no "cast of thousands" required to implement the MSHCP. See also response to Comment X-31.
- AB-10** The commenter asserts that the MSHCP will result in economic loss and states that the Recirculated Draft EIR did not analyze this impact. The commenter offered no data or supporting documentation to substantiate the claim. The MSHCP is intended and expected to enhance economic growth and development by providing simplified compliance with state and federal ESA laws and by simplifying environmental review under CEQA and NEPA.
- AB-11** Cameron Barrows is no longer the director of the Coachella Valley Fringe-Toed Lizard Preserve; Dr. Barrows is an employee of the University of California, Riverside.
- AB-12** The MSHCP allows for up to 10% authorized disturbance within the Conservation Areas, consistent with the Plan's Conservation Goals and Objectives. Projects under

- the Local Permittees' jurisdiction in any Conservation Area will go through a JPR process (see Section 6.6.1.1 of the Plan) to determine consistency with the MSHCP.
- AB-13** The CNLM does not receive funding under the MSHCP. The CVCC will send out a Request for Proposals in order to retain a Land Manager for the Reserve System lands conserved by the Permittees. CNLM may submit a proposal if it chooses, but nothing in the MSHCP guarantees CNLM the position. The commenter states that monitoring and management costs a significant amount of money. In Section 5 of the Plan, the MSHCP acknowledges and provides funding for the significant costs of monitoring and land management. In Section 5 of the Plan, the MSHCP also identifies the costs of and funding for the land acquisition component of the MSHCP. See also Major Issue Response 3, Adequacy of Funding. By granting the Local Permittees Take Authorization and thus reducing its direct involvement in Take authorization, the USFWS should in fact reduce the amount of staff necessary to address endangered issues in the Coachella Valley.
- AB-14** See Major Issue Response 3. It is assumed that the referenced January 28, 2005, letter is a comment letter on the 2006 draft Plan and EIR/EIS. That letter (Letter Z02) and the responses to it are included in the 2006 Final EIR/EIS.
- AB-15** The comment alleges that the MSHCP is designed to foster "environmental profiteering" by forcing landowners to sell at reduced value and then allowing the subsequent sale or lease of the land "at a huge profit when they claim it is 'no longer needed.'" The MSHCP requires that the land acquired in the Conservation Areas to assemble the Reserve System be conserved in perpetuity; thus, the commenter's scenario would be a violation of the MSHCP and Take Permits. The commenter goes on to speculate about "a coercive scam" and related concerns. These comments are noted, but no response is possible given the general nature of the comments.
- AB-16** The comment speculates about the potential costs of lawsuits against federal agencies. These comments are noted, but no response is possible given the general nature of the comments.
- AB-17** The commenter further speculates about potential lawsuit costs and "intentional malice, oppression, and fraud" being "rampant among public employees promoting this MSHCP." These comments are noted, but no response is possible given the general nature of the comments.
- AB-18** See response to Comment AB-17.

- AB-19** The economic impact analysis requested by the commenter is included in Sections 3.15, 3.16, and 4.8 of the Recirculated Draft EIR/Supplemental Final EIS. The EIR/EIS provides a detailed discussion of the socio-economic environment in the Plan Area, including a contextual discussion of trends in population, ethnicity, jobs by sector, household incomes, agricultural production, tourism, and retail trade (see Section 3.15 of the Recirculated Draft EIR/Supplemental Final EIS). Section 4.8 of the EIR/EIS also provides additional information on assessed valuations of property in the Plan Area, as well as information on housing prices, taxable sales, employment and jobs, amount of developable lands (both within and outside Conservation Areas), and agricultural lands. Potential impacts to the local economy were also detailed for residential, commercial, and industrial development potential. Impacts to the ability of the cities and the County to provide affordable housing are detailed in Section 4.8.3.E of the EIR/EIS and clearly demonstrated that the Plan will have no meaningful effect on the future provision of affordable housing. The Plan's potential impact on the potential of the local economies to generate new jobs was also analyzed. The Recirculated Draft EIR/Supplemental Final EIS concluded that the Plan will not adversely affect the Coachella Valley economy. The commenter is also referred to Recirculated Draft EIR/Supplemental Final EIS Appendix J, Fiscal Impact Analysis Summary Report, which demonstrates that no significant socio-economic imbalances will result from implementation of the MSHCP.
- AB-20** The commenter asserts that the MSHCP is “anti-democratic and elitist” and will lead to lawsuits by landowners. The commenter describes various actions by planners and environmentalists intended to lower property values and refers to “huge monetary settlements in the upcoming lawsuit explosion.” The MSHCP states explicitly that acquisitions will be only from willing sellers at fair market value as determined by appraisal.
- AB-21** The comment provides information from a USFWS brochure about private landownership within the Coachella Valley National Wildlife Refuge. As this comment does not address the environmental issues associated with the Plan, no further response is necessary. Acquisitions of private land within the MSHCP Conservation Areas will be from willing sellers at fair market value as described in Section 6.1.2 of the Plan.



**COMMENTER AC: FARMERS IN THE COACHELLA VALLEY (13 SIGNATURES)**

Dated: May 15, 2007

**AC-1** As noted in the comment, fees would be imposed as part of regular entitlement processes for discretionary actions under the land use authority of the Permittees. Fees would not be imposed until lands are approved for conversion to Development and would not be imposed on ongoing agricultural operations. The fee study prepared for the Plan evaluated the nexus between benefits afforded by the Plan and imposition of the fee for discretionary actions under the purview of the Permittees. The analysis concluded that the fee approach proposed by the Plan satisfies nexus requirements.

Many years ago, a decision was made to pursue a Plan that relied on habitat models and not on project-specific surveys. This allows for the majority of landowners in the Coachella Valley to pay a mitigation fee and develop their property. Others in Conservation Areas can still develop their properties, but there are additional restrictions. The commenter's suggestion to change to a mitigation fee for project-specific issues is contrary to the overall structure of the Plan and the financing and cannot be implemented within the existing structure, nor would that structure meet the requirements for an NCCP.

**COMMENTS AD:    MARY JUSTICE**

Dated: May 30, 2007

**AD-1**     The comment provides information from a USFWS brochure about private landownership within the Coachella Valley National Wildlife Refuge. As this comment does not address the environmental issues associated with the Plan, no further response is necessary.

**AD-2**     Whenever a project in these areas is presented to the County, the USFWS is requested to review the proposal and make a finding that it does not interfere with the ecological processes for the Coachella Valley fringe-toed lizard or make suggestions to the landowner regarding what would be needed to minimize the impacts to the ecological processes. Projects throughout the area have received letters from the USFWS to County regarding the review of impacts.

**AD-3**     The commenter asserts that she and other landowners have received conflicting information regarding the value of her property. Specific documentation was not provided to support this assertion. Appraisals have been conducted in the area in conjunction with acquisitions by the state and nonprofit organizations. The appraisers were instructed to base the valuation on highest and best use of the property without regard to the proposed Conservation Area boundaries.

The sand source areas of Thousand Palms and Willow Hole are not covered by the existing Coachella Valley Fringe-toed Lizard Habitat Conservation Plan, Therefore, the County of Riverside requires documentation that Development in these areas is proceeding in accordance with state and federal law. The MSHCP will alleviate the need for individual projects to get authorization from the Wildlife Agencies. The Wildlife Agencies have issued such authorizations in these areas. While these areas are within Conservation Areas of the MSHCP, Development is allowed consistent with the Goals and Objectives of the MSHCP. The process for determining consistency with the MSHCP is under the control of the Local Permittees, not the Wildlife Agencies.

**AD-4**     The commenter refers to Chase School Road being extended to Ramon Road. Table 7-10 in the Plan states that the Chase School Road extension of Cook Street to Ramon Road will be realigned outside the Conservation Area to avoid impacts to the Conservation Area. This is also stated in Required Measure 9 in Section 4.3.11 of the Plan. The MSHCP does not propose a new Visitor Center or a relocation of the existing Visitor Center.

- AD-5** The MSHCP does not propose a new Visitor Center or a relocation of the existing Visitor Center. The area identified in the comment is important for the Coachella Valley fringe-toed lizard because it is part of the sand-transport system. See response to Comment AD-6.
- AD-6** The Wildlife Conservation Board (WCB) acquires habitat conservation land from willing sellers on behalf of the California Department of Fish and Game. WCB uses funds from Proposition 12 and Proposition 40 and Section 6 funds from the USFWS, which were allocated to it by the voters for the purpose of acquiring lands for habitat conservation. Lands acquired by WCB are held by CDFG and are managed to conserve the species and habitat values that occur there, not as a park. With regard to the definition of Conservation Area, please see Section 4.3 of the Plan.
- AD-7** The commenter asserts that development restrictions in Section 8 have coerced landowners into selling their land. No documentation was provided.
- AD-8** See responses to Comments AD-5, AD-6, and J-9.
- AD-9** CVAG is confident that all public meetings, hearings, and forums have been adequately noticed as required by law. Letters were sent to all landowners in the Conservation Areas notifying them of the public comment period; in addition, a notice was placed announcing the public review period for the Recirculated Draft MSHCP and the public forums in the *Desert Sun* newspaper on March 24, 2007.
- Regarding meetings to take public comments on the November 2004 Draft Plan DEIR/EIS: There were four public meetings to take oral public comment on the November 2004 Draft MSHCP originally scheduled. A fifth public meeting was held before the CVAG Executive Committee on January 24, 2005. A notice of this public hearing was published in the *Desert Sun* on January 14, 2005, and was announced on the CVAG and CVMSHCP websites. Contrary to the commenter's statement, this meeting was very well attended, with over 180 people attending the meeting and 57 people making oral comments on the November 2004 Draft Plan DEIR/EIS. All of these comments were considered and responded to as part of the February 2006 Final EIR/EIS. As there is no requirement to take oral public comments on an EIR, these meetings further demonstrate CVAG's efforts to provide the public with information and an opportunity to comment.
- AD-10** The comment refers to scoping meetings that were not scheduled by CVAG and were not part of the EIR/EIS process.

- AD-11** The comment refers to incidents that apparently took place in the 1980s and up to 1992, prior to initiation of the MSHCP. The incidents do not appear to relate to the MSHCP.
- AD-12** It is assumed that the referenced letter from Supervisor Larson is the one reproduced as Comment AD-37. This letter was drafted in 1992, prior to initiation of the MSHCP. The referenced HCP Agreement appears to be to the fringe-toed lizard HCP, not the currently proposed MSHCP. With respect to an estimate of alleged damages related to litigation associated with the MSHCP, such an analysis is not necessary for inclusion in the EIR/EIS.
- AD-13** It is uncertain what MOU and attachments are referenced in the comment, and it is not possible to specifically respond to the comments regarding those items.
- AD-14** There is no lack of meaningful economic analysis in the Plan and EIR/EIS. The recirculated documents include an updated market study reflecting current information regarding land values and sales, and this information was used to establish the proposed MSHCP fee. See response to Comment AD-6.
- AD-15** The comment objects to inclusion of specified property in the Conservation Area. CVAG considered the request to have the property removed from the Conservation Area but does not believe it is appropriate to do so based on the principles of Reserve design described in MSHCP Section 3.7.2.2 and the Plan's Goals, sufficiency criteria, and the conservation approaches for Conservation Areas, proposed Covered Species, and natural communities described in Sections 3.1, 3.4, 4.3, 9.1.1, and 10.1.1. The SAC recommended inclusion of this area in the Conservation Area in order to ensure that the Plan provided for adequate conservation of listed species that could enable the USFWS and CDFG to issue Take Permits to the Plan's Applicants. Please see Major Issue Response 3 with respect to adequacy of funding.
- AD-16** Please see Major Issue Response 3 with respect to adequacy of funding.
- AD-17** The comment is noted. It does not address environmental issues related to the adequacy of the EIR/EIS, and further response is not necessary. The CVMC can only buy land in mountainous areas. The mission and goals of the CVMC are not exclusively to acquire land for the MSHCP.
- AD-18** The importance of Linkages or Corridors connecting Core Habitat areas or core areas of high biological value is well established in the conservation biology literature and is an integral component of the NCCP reserve design tenets used in development of

the Plan. See Major Issue Response 1 for additional discussion of the NCCP reserve design tenets.

- AD-19** Wolves, mountain lions, and bears are not Covered Species under the MSHCP, and the MSHCP reserve system is not designed to support those species. Refer to response to Comment AD-18 and Major Issue Response 1 regarding the importance of Corridors or Linkages in MSHCP reserve system design. The Schweik study was not instrumental in arriving at the conclusion that the sand area in the Thousand Palms area of the Coachella Valley Fringe-Toed Lizard preserve was not adequate.
- AD-20** Please refer to responses to Comments AD-14 through AD- 18.
- AD-21** Neither the Plan nor the EIR/EIS propose to allow public entities to violate the SCAQMD PM<sub>10</sub> rules. Please see responses to Comments S-5 and BM-62.
- AD-22** No features of the Plan would alter existing conditions with respect to blowsand, and no features of the Plan would violate SCAQMD rules. Please see responses to Comments AD-21, BM-61, and BM-62.
- AD-23** Please refer to responses to Comments AD-20 and AD-22.
- AD-24** The comment is noted. The proposed MSHCP would not affect ongoing lawsuits related to Critical Habitat. To the contrary, upon Permit issuance, the USFWS would commit to not designating any additional Critical Habitat within Plan Area boundaries and to reassess any existing Critical Habitat designations. (See Implementing Agreement, Section 14.9.)
- AD-25** Please refer to response to Comment AD-14. Please see Major Issue Response 3 with respect to adequacy of funding.
- AD-26** The Plan calls for acquisition of private lands from willing sellers at fair market value. The property owners referred to in this comment received letters of compliance from the USFWS after being referred to the USFWS by the County as is prescribed in the MOU for the Coachella Valley fringe-toed lizard. Suggestions were made to the landowners that allowed for compliance with the MOU and allowed for development of their properties. Please see Major Issue Response 3 with respect to adequacy of funding.
- AD-27** No features of the MSHCP suggest using scare tactics to encourage landowners to sell their land. Please refer to responses to Comments AD-15, AD-26, and Major Issue Response 2.

**AD-28** There is no expectation that land not needed for conservation would be acquired then sold at a profit by CVCC, and there is nothing in the Plan that would indicate this is the case. Specifics are not provided regarding the reference to “Oceanside with the gnatcatcher” and a specific response cannot be provided. Please refer to response to Comment AD-27.

**AD-29** Need for additional housing in the Coachella Valley is acknowledged, and the proposed MSHCP is expected to be a tool to help accommodate growth projected in the Plan Area in the general plans of the Permittees.

**AD-30** The commenter asserts that the MSHCP’s requirement for the use of “approved” biologists (the term in the MSHCP is “Acceptable Biologist”) creates a conflict of interest for the “approved” biologists since their income depends on the MSHCP proponents. The intent of requiring that surveys be conducted by Acceptable Biologists is to ensure that only biologists with adequate qualifications with respect to specific species conduct the surveys required in Section 4.4 of the Plan. The requirement for qualifications does not create a conflict of interest.

It is important to note that the list of Acceptable Biologists is for the purposes of conducting surveys of Covered Species only for the Required Avoidance, Minimization, and Mitigation Measures described in Section 4.4 of the Plan. These measures are pre-construction surveys that would only apply after a project has been approved. These measures do not apply to single-family homes, emergency response activities, and any non-commercial accessory uses and structures including but not limited to second units on an existing legal lot. No surveys are required for the JPR process.

The Plan does not contemplate a list of “approved” biologists. The Plan does cite the use of an “Acceptable Biologist” to be a biologist whose name is on a list maintained by CVCC who is acceptable to CVCC, CDFG, and USFWS for purposes of conducting surveys of Covered Species as described in Section 4.4 and only for avoidance, minimization, and mitigation measures. It is understood that private property owners may retain independent biologists to conduct biological studies on their property when Development is proposed.

**AD-31** A caste system based on insider privileges is not proposed or contemplated. Refer to response to Comment AD-30.

**AD-32** No features of the MSHCP would alter existing federal, state, or local regulations regarding flood protection, and the CVCC would not be involved in reviewing

- individual development proposals with respect to this issue. Such review authority would remain with the Permittees.
- AD-33** See response to Comment S-36.
- AD-34** The comments appear to reference the fringe-toed lizard HCP, not the currently proposed MSHCP. Please refer to responses to Comments AD-21 and AD-22 regarding blowsand and responses to Comments S-5 and S-6 regarding the Coachella Valley fringe-toed lizard.
- AD-35** The Cook Street interchange project is an improvement to existing Cook Street interchange on Interstate 10, which is not in an Conservation Area. The commenter's attachment refers to Chase School Road/Cook Street. If Chase School Road is extended, it will be realigned outside of the Conservation Area. See response to Comment AD-4.
- AD-36** The comment relates to ACOE projects and not the MSHCP. ACOE projects would undergo separate environmental review. Further response is not necessary.
- AD-37** The comment relates to a CVWD flood control project and not the MSHCP. The project has completed a Section 7 consultation and is a Covered Activity under the MSHCP. Further response is not necessary.
- AD-38** The MSHCP maps are current as of November 2006. Figure 2-1 of the Final Recirculated Plan identifies land ownership, including lands owned by BLM and various conservation groups, within the Plan Area. See response to Comment S-13. The inclusion of lands in the Conservation Area are based on the principles of reserve design. See Major Issue Response 1. Private lands would only be acquired from willing sellers.
- AD-39** The importance of blowsand for sand-dependent species is well established in the scientific literature and in the species accounts for these species in the MSHCP. With respect to the status of the fringe-toed lizard, see response to Comment J-9. The commenter provides no evidence for the claim that the water table in Thousand Palms has dropped.
- AD-40** It is assumed that the reference to Alternative One is to the Public Lands Alternative. As noted in Section 2.6 of the EIR/EIS, this alternative would not conserve Biological Corridors and Linkages, would not conserve biological cores, and would not provide for maintenance of sand transport, watershed, or other ecological processes. This alternative would not meet project objectives to conserve species on the Covered Species list.

- AD-41** It is not the goal of the MSHCP to tie up land for 30 years. The Plan acknowledges, however, that it will take time to acquire lands needed for the MSHCP reserve system and assemble funds needed to acquire and manage those lands. Development is not precluded within Conservation Areas so landowners are not deprived of all use of their property. It is very unlikely that all landowners would wish to sell immediately upon issuance of the permits for the MSHCP. Many would likely prefer to Develop their land consist with the MSHCP either now or in the future or wait to see where the market takes real estate prices in the future. Refer to responses to Comments AD-27 and AD-41 and Major Issue Response 3 with respect to adequacy of funding.
- AD-42** The commenter is correct that federal, state, and local actions will be necessary to approve and implement the MSHCP. The socioeconomic, fiscal, and market studies completed for the Plan are adequate to meet federal, state, and local requirements. Rather than adversely affecting the local economy, the MSHCP is intended to have beneficial effects by streamlining permitting for local development projects.
- AD-43** The EIR/EIS is not deficient and conforms with the requirements of CEQA and NEPA. Refer to responses to Comments AD-40 and AD-42.



**COMMENTER AE: FARMERS IN THE COACHELLA VALLEY (16 SIGNATURES)**

Dated: May 15, 2007

**AE-1** Please see response to Comment AC-1.

**AE-2** Please see response to Comment AC-1.

**AE-3** Please see response to Comment AC-1.

**COMMENTER AF: WIND ENERGY PARTNERSHIP, L.P.**

Dated: May 23, 2007

- AF-1** Commenter states that better maps of wind energy potential than those given in the Recirculated Draft EIR/Supplemental Final EIS are available and cites two websites for better maps; however, neither of these websites are valid URLs. Exhibit 4-3 of the Recirculated Draft EIR/Supplemental Final EIS represents the best information available. Comments that were submitted on the MSHCP draft were addressed in those responses to comments, and the Lead Agencies direct Wind Energy Partnership and other readers to refer to responses to Letters D10, E10, F10, B12, C12, N04, D07, D12, and E12 published in February 2006 rather than reiterating them in this document.
- AF-2** Comment is noted. The purpose of the MSHCP is to obtain an Incidental Take Permit for currently listed animal species and animal species likely to become listed during the 75-year Permit term, not to analyze wind energy resources. The Lead Agencies believe that, for the purposes of this analysis, the EIR/EIS properly depicts wind energy resources.
- AF-3** The purpose of the MSHCP is to obtain an Incidental Take Permit for currently listed animal species and animal species likely to become listed during the 75-year Permit term. In addition, as stated in the Recirculated Draft EIR/Supplemental Final EIS, there are currently no large-scale solar energy developments in the Plan Area, so the Development of such projects is speculative. While Development within Conservation Areas is limited, Development of any type, including solar energy, is certainly not precluded. Overall Development within the Plan Area is benefited by the regulatory streamlining the Plan provides.
- AF-4** Comment is noted. The Final MSHCP will be corrected to modify the statement outlined by the commenter. This statement would be modified to read as follows: "Over the past 20 years, economically developable wind resources in the Plan Area have been developed. As indicated in the May 23, 2007, Wind Energy Partnership, L.P. letter to James Sullivan, CVAG (Re: Recirculated Draft Coachella Valley MSHCP), although not currently being processed through the local land use planning process, the wind energy industry collectively has approximately 256 MW of new wind energy facilities planned for location within the Plan Area." That stated, the conclusion that future wind energy Development would not be hindered by the proposed MSHCP is correct, as provisions of the Plan allow for Development of new land uses, wind farms included, within Conservation Areas. As stated above, page 4.4-5 of the Recirculated Draft EIR/Supplemental Final EIS clarifies that wind farm

- Development, like any other commercial or residential Development, would be subject to applicable Conservation Goals and Objectives of each Conservation Area. Like other types of Development, the MSHCP would not preclude Development of future wind farm facilities but instead attempts to streamline the overall Development/listed species permitting process.
- AF-5** Please see responses to Comments AF-2 and AF-4.
- AF-6** See responses to Comments AF-2 and AF-4.
- AF-7** See responses to Comments AF-2 and AF-4.
- AF-8** See responses to Comments AF-2 and AF-4.
- AF-9** See responses to Comments AF-2 and AF-4.
- AF-10** The removal of the sentence “Operation and maintenance of existing legal private uses as of the date of Plan” on Recirculated Draft Plan page ES-25 and on page 7-16 was an attempt to clarify the limits of Take covered by the Plan and associated state and federal Take Permits. The clarification in the Recirculated Draft Plan on page ES-25 and page 7-16 clarifies that any existing legal land use that may result in Take of a listed species without prior authorization granted by state and federal Wildlife Agencies does not automatically receive Take coverage per the Plan. Since the extent of operation and maintenance of existing legal private uses, and associated impacts, are not identified and quantified, these uses within the Conservation Areas could not be sufficiently analyzed as Covered Activities, and therefore these uses were not Covered by the Plan. Take authorization or exemption under FESA is only necessary when operations or maintenance result in incidental Take of listed animal species. If an individual or agency has received prior authorization from state and federal Wildlife Agencies for an existing legal land use, the Plan would not supersede those preexisting authorizations from the Wildlife Agencies. Existing operations would not require a Certificate of Inclusion.
- AF-11** See response to Comment AF-10. The commenter is correct in stating that the Plan will not eliminate the need for non-Permittee federal agencies (e.g., U.S. Army Corps of Engineers (ACOE), Federal Energy Regulatory Commission) to consult with the USFWS per Section 7 of the Endangered Species Act prior to authorization of any federal action. As outlined in Section 6.9, “Application of Certain FESA Requirements,” the 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. Section 6.11 of the Plan outlines that the

ACOE shall continue to consult with the USFWS pursuant to Section 7 of the FESA on projects that may affect federally listed species.

**AF-12** See Major Issue Response 5 and responses to Comments AF-2, AF-4, and AF-10.

**AF-13** See response to Comment X-29.

**AF-14** See Major Issue Response 5. As outlined in MSHCP Section 6.6.1, “Obligations of the Local Permittees,” a Development application would be reviewed for consistency with the MSHCP at the local planning level rather than being submitted for approval to state and federal agencies for listed species Take authorization. Section 6.6.1 spells out a streamlined review process beginning first at the Local Permittee level, then moving to the CVCC for concurrence and finally to the Wildlife Agencies for review. This process and associated review and/or concurrence abilities is meant to streamline the listed species review process for all projects within the Plan Area.

**AF-15** See Major Issue Response 1.

**AF-16** Biological information will be gathered as part of the adaptive management and monitoring program to measure the effectiveness of the MSHCP reserve system in meeting the Plan’s Conservation Objectives. See also Major Issue Response 1.

**AF-17** Third parties seeking Take authorization through the Plan would include non-Permittee public entities such as utility districts and water districts. These entities would need to demonstrate consistency with the MSHCP in order to utilize the Participating Special Entity Provision described in Section 7.4 of the Plan. The commenter is correct in stating that a public entity seeking third-party Take authority would not have the ability to modify the Plan. Instead, such an entity would be required to demonstrate consistency with the Plan or approach the CVCC for assistance with processing of a Plan amendment to better accommodate their needs as a participating special entity. Depending on the specifics of the proposed amendment, an applicable amendment process (e.g., Major Amendment, Minor Amendment) described in the Plan would be followed to accommodate such an action.

Any individual landowner or representative seeking Take authorization through the Plan would be required to work within the local land use planning context of the relevant City or County. The Like Exchange program described in Section 6.12 has been developed to allow a landowner, working with the local jurisdiction and CVCC, the opportunity to modify the conservation scenario outlined in the MSHCP in exchange for conservation of land of equal or greater biological value not already identified for conservation. While location of replacement land would not be the

responsibility of the CVCC, the CVCC's role as an oversight entity will result in its knowledge of available land for sale, of similar or greater biological value, that could assist a landowner in identifying candidate replacement parcels.

**AF-18** The MSHCP does not preclude future use of land within Conservation Areas for wind farm facilities. Like any other Development project, future wind farm energy facilities would need to demonstrate consistency with the Plan during the local Development review process. As stated in Section 7.3.1 of the Plan, new ground disturbance associated with repowering, or Development of new wind energy facilities shall be treated as a Covered Activity similar to Development projects permitted or approved by Local Permittees. Within each Permittee's jurisdiction, existing wind turbines may be replaced with new turbines. If old turbines are removed and the former impact area is restored to a natural condition, an equal new area may be disturbed without counting toward the calculation of net disturbance. These Covered Activities, along with all others outlined in the MSHCP (e.g., roads, Development consistent with the MSHCP), must go through the consistency determination process to ensure and document such consistency with the Plan.

Because impacts in the Recirculated Draft EIR are less than significant, there is no obligation to include the proposed revisions.

**COMMENTS AG: WINTEC ENERGY, LTD.**

Dated: May 29, 2007

**AG-1** See responses to Comments AF-2, AF-4, and AF-10.

**AG-2** See response to Comment AF-10.

**AG-3** See response to Comment AF-10. The MSHCP does not provide nor affect Take authorization of pre-existing uses. Such uses are subject to all applicable local, state, and federal laws separate and apart from the MSHCP. Therefore, with regard to existing uses, property owners would be in the same situation whether or not the MSHCP is approved. The referenced language in the February 2006 Final MSHCP was removed from the Recirculated Draft MSHCP because it appeared to provide Take authorization for existing uses without further action by those landowners. Since the Plan cannot grant Take authorization for existing uses, this language was deleted.

**AG-4** The commenter is correct in stating that, outside of Conservation Areas, repowering activities would be subject to local land use planning parameters and would not be subject to the JPR process. The commenter is also correct in stating that, within the Conservation Areas, any project, including new wind energy facilities or repowering projects, would be subject to MSHCP consistency review, including the JPR process. As outlined in Section 6.6.1.1, “Joint Project Review Process within Conservation Areas,” specific timelines have been identified to streamline the process as much as possible. Furthermore, assuming a project applicant has prepared all of the relevant project review materials and the project is consistent with the MSHCP, completion of the JPR process should occur quickly and, if deemed appropriate by the local land use authority, can be processed concurrent with other local Development application review processes.

MSHCP Section 7.3.1, “Covered Activities (within Conservation Areas),” states that, within each Permittee’s jurisdiction, existing wind turbines may be replaced with new turbines. If old turbines are removed and the former impact area is restored to a natural condition, an equal new area may be disturbed without counting toward the calculation of net disturbance.

As stated in Section 7.3.1 of the Plan, existing wind turbines may be replaced with new turbines. If old turbines are removed and the former impact area is restored to a natural condition, an equal new area may be disturbed without counting toward the calculation of net disturbance. This activity would constitute a Covered Activity. All

- Covered Activities in the Conservation Areas are required to go through the JPR process to allow a determination of project consistency with the Plan.
- AG-5** The Implementation Manual is currently being prepared. It is not included in the Plan but, as is typical of other similar regional HCPs/NCCPs, is proposed to be developed as an implementation tool for Permittees following Permit issuance. A committee has been assembled by CVAG for preparation of the Implementation Manual, and CVAG can be contacted regarding status of the manual during the preparation period.
- AG-6** All Covered Activities within the Conservation Areas (including roads, Development consistent with the Plan, and wind energy facilities consistent with the Plan), regardless of their potential for impacts to wildlife or plant species, must be reviewed for consistency with the MSHCP. It would be inappropriate for the Local Permittees, CVCC, and all stakeholders to exempt, through modified Plan language, certain Covered Activities from the JPR process based on an assumption that said Covered Activity use would have minimal or no impacts to sensitive biological resources. The MSHCP does not discourage wind energy development.
- AG-7** Similar to any other proposed Covered Activity within Conservation Areas, such as a road or residential Development, the proposed future facilities outlined by Wintec must be analyzed for consistency with the MSHCP. This consistency determination would proceed in accordance with Section 6.6.1, “Obligations of the Local Permittees,” which specifies that Local Permittees participate in the JPR process. Because the Recirculated Draft Plan has not identified and the Recirculated Draft EIR/Supplemental Final EIS has not analyzed all future wind energy projects, which would be purely speculative and far exceed the scope of these documents, a statement that such a future project can be automatically “exempted” from the requirements of the MSHCP is not possible or appropriate. Land acquisition will be only from willing sellers. The area described by the commenter is considered a “non-acquisition area” under the Plan. Edge effects are addressed in responses to Comments R-6, W-4, and X-6. The purpose of the Conservation Area described by the commenter is fluvial sand transport. The Plan does not restrict Development as long as it is consistent with the Conservation Objectives. The only Conservation Objective for this area is maintaining fluvial sand transport.
- AG-8** See response to Comment AF-2 and AF-4.
- AG-9** See response to Comment AF-4.
- AG-10** The EIR/EIS is consistent with the requirements of CEQA Guidelines Appendix F since, as noted by the commenter, it addresses the effects of the Proposed Action(s)

on energy resources. The Plan is not actively hostile to wind energy resources but rather provides a mechanism for Take authorization if needed for ground disturbance activities associated with repowering as noted in responses to Comments AG-3 through AG-7.

**AG-11** See response to Comment AF-2 and AF-4. The MSHCP does not allow or approve any Development. It should be noted that the impacts of specific Development projects or regional planning programs (e.g., a General Plan Update) would necessitate a detailed air quality impact analysis, which is beyond the scope of the EIR/EIS. Analysis beyond that in the documents provided would be speculative at this time.

**AG-12** See response to Comment AF-2, AF-4, and AF-18.



**COMMENTS AH:    WIND ENERGY PARTNERSHIP, L.P.**

Dated: May 29, 2007

**AH-1**        See all responses to Comment Letters AF and AG.

**COMMENTER AI:      SUNCAL COMPANIES**

Dated: May 23, 2007

**AI-1**      Comment is noted. CVAG appreciates the commenter's submittal and clarifications regarding the revised Citrus Ranch Land Use Plan (which is subject to an existing, approved Like Exchange, as noted in Section 6.12.2 of the MSHCP). CVAG has incorporated the new boundaries for the Citrus Ranch project into the GIS database. These changes are too small to be seen on the scale of Plan maps. The changes do not alter the analysis or conclusions presented in the Recirculated Draft EIR/Supplemental Final EIS and no changes to the EIR/EIS are necessary.

**COMMENTS AJ:     LEONARD COYLE (BY ROSENTHAL & ASSOCIATES)**

Dated: May 29, 2007

- AJ-1**     Commenter objects to the Riverside County General Plan rezoning of his client's property. This is an issue that the commenter needs to address with the County of Riverside. It is not an MSHCP issue. For a discussion of the adequacy of Plan funding, please see Major Issue Response 3. Please also see response to Comment G-10 regarding the referenced *Southwest Center for Biological Diversity v. Bartel* case.
- AJ-2**     The two parcels referenced in the comment letter are located in the Thousand Palms Conservation Area. Any Development proposed on the parcels would be subject to the JPR process to determine if the proposed Development is consistent with the Conservation Area Conservation Goals, Objectives, and Required Measures identified in Section 4.3 and Species Conservation Goals and Objectives identified in Section 9 of the Plan. If it is, the local jurisdiction may approve the Development. If it is not, the project would need to be revised to become consistent with the Conservation Goals and Objectives, or the CVCC could purchase the property at fair market value if the owner is a willing seller. Final approval of Development is under the jurisdiction of the local agency with land use authority.
- AJ-3**     As described in Section 6.1.2 of the MSHCP, fair market value will be determined by an appraisal process. The appraisal will determine value based on overall market conditions in the applicable portion of the Coachella Valley. With regard to the comment that the Coachella Valley fringe-toed lizard is not a species, please see response to Comment J-9.
- AJ-4**     Comment is noted.

**COMMENTS BY: WES BROWN**

Dated: May 31, 2007

- AK-1** The commenter's properties are included in the Whitewater Floodplain Conservation Area. CVAG considered the request to have the properties removed from the Conservation Area but does not believe it is appropriate to do so based on the principles of reserve design described in Section 3.7.2.2 and the Plan's Goals, sufficiency criteria, and the conservation approaches for Conservation Areas, proposed Covered Species, and natural communities described in Sections 3.1, 3.4, 4.3, 9.1.1, and 10.1.1. The SAC recommended inclusion of this area of the Whitewater Floodplain Conservation Area in order to ensure that the Plan provided for adequate conservation of listed species that could enable the USFWS and CDFG to issue Take Permits to the Plan's Applicants.
- AK-2** Commenter states that a former consultant on the Coachella Valley MSHCP, Bill Havert, supported removal of portions of the property from the Conservation Area. Mr. Havert has submitted a letter stating that he has never supported removal of the subject property from the Conservation Area nor did he make any such remark to the commenter. The boundaries of the Conservation Areas were developed in a very comprehensive process that took into account species habitat, connectivity between populations, and essential ecological processes, such as the sand transport processes mentioned by the commenter. See also Major Issue Response 1. It should be noted that property within the Conservation Areas can still be developed subject to Plan requirements. The Plan provides various tools for flexibility, including the Like Exchange process and the amendment process, as described in Section 6 of the Plan.
- AK-3** Habitat connectivity is one of the most important factors in the design of the Whitewater Floodplain Conservation Area. Contrary to the commenter's assertion that blocking lizards from crossing Gene Autry would be a benefit of unbroken development along this street, blocking lizards from crossing Gene Autry would have a negative effect as this would degrade the ability of the Conservation Area to support the continued persistence of the lizard. The Required Measures for this Conservation Area include maintaining fluvial sand transport and providing for animal movement when Gene Autry is widened to six lanes.
- AK-4** Contrary to the commenter's assertion that blocking sand west of Gene Autry is a goal of the MSHCP, maintenance of fluvial sand transport in the Whitewater Floodplain is a requirement of the MSHCP, including west of Gene Autry.

- AK-5** Section 6, T4S R5E, is not a part of the MSHCP as this section is within the jurisdiction of the Agua Caliente Band of Cahuilla Indians. The Agua Caliente Band of Cahuilla Indians are currently preparing a habitat conservation plan, which will include this section. There is no existing development between Via Escuela and Interstate 10, and if the Plan is adopted and the Take Permits issued, any future development in this area north of Section 6, T4S R5E, would have to be consistent with the Goals and Objectives and Required Measures of the MSHCP and therefore will not affect sand transport as described by the commenter.
- AK-6** Commenter states that Development of the frontage strip for commercial Development is critical to the economic future of Palm Springs. The MSHCP does not preclude Development in Conservation Areas that is consistent with the Conservation Goals and Objectives and Required Measures. Approval of any project is a decision of the City of Palm Springs, who determines how to allocate the available acres of Development in any applicable Conservation Area. See Appendix J of the Final Recirculated EIR/Supplemental Final EIS, which contains the fiscal impact analysis of the MSHCP and demonstrates that there will be no significant fiscal impacts on the City of Palm Springs, even if no Development were to occur on the referenced property.
- AK-7** See response to Comment AK-6 and Major Issue Response 2.

**COMMENTS AL:     ROD AND DEBORAH CHAMBERLAIN**

Dated: May 29, 2007

- AL-1**     The comment refers to an alleged error in the Riverside County General Plan Land Use designation for the property. This is an issue that the commenter needs to address with the County of Riverside. It is not an MSHCP issue. CVAG has no authority or role in either the application of this General Plan land use designation or its removal. CVAG has contacted the relevant County Supervisor's office on the commenters' behalf and informed them of the apparent mistake in the General Plan; however, CVAG has no authority to make the correction to the County's General Plan.
- AL-2**     Landowners in the Plan Area would have obligations placed on them by the MSHCP via either the requirement to pay the Development Impact Fee or the requirement that Development in the Conservation Areas be consistent with the Conservation Objectives. The fee is not a subsidy, as it is related to the impact that would be created from developing within the Plan Area as demonstrated in the nexus study for the MSHCP. Similarly, the requirement to be consistent with Conservation Objectives is not a regulatory taking but rather is the means for achieving a legitimate government purpose. See Major Issue Response 2. No property will be acquired for conservation purposes except by consent of the landowner either as a willing seller or as a project applicant.
- AL-3**     See response to Comment AL-2.
- AL-4**     The commenter's property is included in the Dos Palmas Conservation Area. Comment is noted.
- AL-5**     See response to Comment AL-1. Commenter alleges that the term "willing seller" has been removed from the Coachella Valley MSHCP but does not state where in the document this allegedly occurred. A cursory search of the Plan document shows the term "willing seller" occurs at least 17 times. Purchase only from willing sellers is a fundamental tenet of the MSHCP. As stated in Section 6.1.2, "Acquisitions will be only from a willing seller." Figure 4-24d in the Final MSHCP has been corrected to show the parcel as Conservation Level 4, non-conserved land.
- AL-6**     The comment objects to inclusion of specified property in the Conservation Area. CVAG considered the request to have the property removed from the Conservation Area but does not believe it is appropriate to do so based on the principles of Reserve design described in MSHCP Section 3.7.2.2 and the Plan's Goals, sufficiency criteria, and the conservation approaches for Conservation Areas, proposed Covered Species,

and natural communities described in Sections 3.1, 3.4, 4.3, 9.1.1, and 10.1.1. The SAC recommended inclusion of this area in the Conservation Area in order to ensure that the Plan provided for adequate conservation of listed species that could enable the USFWS and CDFG to issue Take Permits to the Plan's Applicants. That being said, property within Conservation Areas can still be developed provided MSHCP requirements are met.

**AL-7** The commenter's property is within the boundaries of the Dos Palmas (or Salt Creek) ACEC under the BLM CDCA Plan. For that reason, the MSHCP did not describe expanding the ACEC to the west in developing the Conservation Area boundaries. The Conservation Area was expanded to the west with the addition of existing BLM land into the Dos Palmas Conservation Area, as described in Appendix V to the Plan. See also Major Issue Response 1.

**AL-8** The comment refers to an alleged error in the Riverside County General Plan Land Use designation for the property. This is an issue that the commenter needs to address with the County of Riverside. It is not an MSHCP issue.

**AL-9** See response to Comment AL-8.

**AL-10** See response to Comment AL-8.

**COMMENTER AM: PHILIP B. KERR**

Dated: May 29, 2007

**AM-1** Acquisitions will be only from willing sellers at fair market value as determined by an appraisal. For a discussion of the adequacy of Plan funding, see Major Issue Response 3.



**COMMENTER AN:    MARK SCHULTZ**

Dated: May 29, 2007

**AN-1**      Acquisitions will be from willing sellers at fair market value as determined by an appraisal. For a discussion of the adequacy of Plan funding, see Major Issue Response 3.

**COMMENTS AO:    LESLIE PUGET**

Dated: May 28, 2007

- AO-1**      Commenter states that the Plan will cause land values to diminish. The MSHCP will not change the zoning of property, but will only require that Development in the Conservation Areas be consistent with the Conservation Objectives; thus, it is not the case that all Development will be foreclosed. Additionally, an existing residence would not be affected by the MSHCP and thus the MSHCP would not deny this property of all economic uses and severely impact its value. Furthermore, as a general matter and as further discussed in Major Issue Response 2, any fluctuation in the value of land would not represent a regulatory taking and thus would not be unconstitutional. The appraisal process is based on comparable sales of like properties. See Major Issue Response 3 and response to Comment BM-33.
- AO-2**      See Major Issue Response 1.
- AO-3**      The Plan does not require approvals by an outside agency. Land use authority would remain with the Permittees (in this instance the City of La Quinta) as it currently exists. Please refer to response to Comment AC-1 and Major Issue Response 3 regarding the development mitigation fee. Contrary to the comment, the fee applies throughout the entire Plan Area.
- AO-4**      Commenter states her opposition to the Plan and states that property should be acquired for conservation and then the zoning should be changed. CVCC will acquire land from willing sellers at fair market value as determined by an appraisal. Each individual local jurisdiction would be responsible for making its own assessments for how each zoning ordinance would be amended.
- AO-5**      The comment objects to inclusion of specified property in the Conservation Area. CVAG considered the request to have the property removed from the Conservation Area but does not believe it is appropriate to do so based on the principles of Reserve design described in MSHCP Section 3.7.2.2 and the Plan's Goals, sufficiency criteria, and the conservation approaches for Conservation Areas, proposed Covered Species, and natural communities described in Sections 3.1, 3.4, 4.3, 9.1.1, and 10.1.1. The SAC recommended inclusion of this area in the Conservation Area in order to ensure that the Plan provided for adequate conservation of listed species that could enable the USFWS and CDFG to issue Take Permits to the Plan's Applicants. The referenced property is federally-designated Critical Habitat for bighorn sheep.

**COMMENTS AP: DHS DEVELOPMENT (BY NOSSAMAN, GUTHNER, KNOX AND ELLIOTT, LLP)**

Dated: May 29, 2007

**AP-1** The comment is noted. See response to Comment AP-2.

**AP-2** The comment is correct in noting that the City of Desert Hot Springs would not be a Permittee under the Plan and would impose no MSHCP-related requirements in reviewing and approving proposed projects within the City, including within the identified Morongo Wash Special Provisions Area (SPA). As stated in the Plan, the justification for including the Morongo Wash SPA in the Plan is the potential future proposal to include a Covered Activity in this area by a Permittee, Riverside County Flood Control and Water Conservation District. Any conservation that occurs in the SPA would involve conservation of lands purchased from willing sellers or otherwise dedicated or donated. Should conservation not occur within the identified SPA, the Plan includes provisions for conservation elsewhere, outside the City of Desert Hot Springs.

**AP-3** No features of the Recirculated Draft MSHCP would impact the City of Desert Hot Springs directly; as indicated in the EIR/EIS, there are some indirect impacts that are region-wide and could affect the City of Desert Hot Springs but these impacts are considered to be less than significant. The City would not be a Permittee under the MSHCP and would not impose MSHCP-related requirements as part of review of specific projects within the City.

**AP-4** Regarding the land use analysis in the Recirculated Draft EIR/Supplemental Final EIS, no features of the proposed Morongo Wash SPA would physically divide the City. As noted in the response to Comment AP-2, the City of Desert Hot Springs would not be a Permittee under the MSHCP and would not impose MSHCP-related requirements in reviewing land use proposals within the City. The MSHCP would only apply within the Desert Hot Springs portion of the Special Provisions Area if Riverside County Flood Control and Water Conservation District, a Permittee of the Plan, were to acquire the area for flood control purposes. A flood control facility, if proposed for construction in the future in the Morongo Wash SPA, would be subject to separate environmental review. The effects of the project, and any associated conservation requirements, with respect to physically dividing the City or other land use effects, would be evaluated as part of project-specific review of such a facility.

The referenced page in the EIR/EIS that describes lands available for medium density residential use in the City of Desert Hot Springs was in error in the Recirculated Draft

EIR/Supplemental Final EIS and has been corrected in the Final Recirculated EIR/Supplemental Final EIS. There are no developable medium density residential lands within Conservation Areas in the City of Desert Hot Springs. The correction does not alter the analysis or conclusions in the EIR/EIS that socioeconomic impacts from Plan implementation would be less than significant, since there would be less medium density residential lands (0 acres) in the Conservation Area than previously identified with fewer associated impacts. See also response to Comment N-9.

**AP-5** The referenced page in the EIR/EIS that describes lands available for medium density residential use in the City of Desert Hot Springs was in error in the Recirculated Draft EIR/Supplemental Final EIS and has been corrected in the Final Recirculated EIR/Supplemental Final EIS. There are no developable medium density residential lands within Conservation Areas in the City of Desert Hot Springs. The correction does not alter the analysis or conclusions in the EIR/EIS that socioeconomic impacts from Plan implementation would be less than significant, since there would be less medium density residential lands (0 acres) in the Conservation Area than previously identified with fewer associated impacts. See also response to Comment N-9.

The analysis provided in Section 4.8 of the Final Recirculated EIR/Supplemental Final EIS (p. 4.8-22) clearly demonstrates that there would be minimal or no impact to affordable housing in most jurisdictions. In total, Conservation Area lands throughout the Plan Area represent only 5% of the total medium and high density lands available for Development, and residential development may still occur on these lands as long as it is consistent with Conservation Objectives; thus, it would be incorrect to assume that all Development on these lands would be totally foreclosed. No significant impacts with respect to affordable housing are identified in the EIR/EIS. With respect to portions of the comment related to the City of Desert Hot Springs, refer to response to Comment N-9.

**COMMENTER AQ:    CHRISTOPHER HINOJOSA**

Dated: May 25, 2007

**AQ-1**      Acquisitions will be from willing sellers at fair market value as determined by an appraisal. For a discussion of the adequacy of Plan funding, see Major Issue Response 3.

**COMMENTER AR:    PHILIP B. KERR**

Dated: May 29, 2007

**AR-1**        Commenter states his opposition to the MSHCP and the proposed Morongo Wash Special Provisions Area. Comment is noted. Contrary to this comment, the Morongo Wash Special Provisions Area was delineated to address a potential Riverside County Morongo Wash flood control facility and associated habitat corridor within the Morongo Wash portion of the Upper Mission Creek/Big Morongo Canyon Conservation Area. The MSHCP would only apply within the Desert Hot Springs portion of the Special Provisions Area if Riverside County Flood Control and Water Conservation District, a Permittee of the Plan, were to acquire the area for flood control purposes.

**COMMENTER AS:     WILLIAM P. LEWAND**

Dated: May 29, 2007

**AS-1**     All the APNs listed in the commenter's letter are properly listed in the online parcel check database and come up as in the Conservation Area when entered in the correct format, such as 660290012. The instructions to use the online database are clearly posted, and thousands of parcel checks have been successfully completed on this website. APN 660300007 is located in the Whitewater Floodplain Conservation Area. Development of this parcel would need to be consistent with Conservation Objectives; however, the MSHCP would not necessarily foreclose all Development on the property.

The MSHCP has instituted an appraisal process to help ensure that property values will not be diminished by implementation of the Plan. The appraisal will determine value based on overall market conditions in the applicable portion of the Coachella Valley. Furthermore, the appraisal determines value of the subject property as compared to the value of a similar property, excluding consideration of the fact that the subject property is within a Conservation Area.

**COMMENTER AT: LENNAR DESERT LAKES LLP (BY SHEPPARD, MULLIN, RICHTER & HAMPTON, LLP)**

Dated: May 24, 2007

**AT-1** The boundaries of the Conservation Areas were developed in a very comprehensive process that took into account species habitat, connectivity between populations, edge effects, and essential ecological processes, such as the sand transport processes mentioned by the commenter. The Conservation Area boundaries were delineated during the reserve design process, which was based on conservation biology principles that include protecting large blocks of habitat, reducing fragmentation and edge effects, and maintaining linkages between habitat areas. Although site-specific surveys for the MSHCP were not completed on the Desert Lakes property, review and consideration of the habitat within this property was made as part of the reserve design process. Species distribution models were based on surveys and best available science to describe the potential and occupied habitat for the Covered Species in the Plan Area. Surveys were not completed on private land without landowner permission. Commenter states that at least one of the Covered Species currently occupies the property. Thus, the available data from the project biologist as well as the MSHCP database and principles of reserve design used in the MSHCP support the inclusion of the property within the Conservation Areas. See also Major Issue Response 1.

**AT-2** Figure 4-20d has been revised to reflect the current City of Coachella General Plan. The Conservation Areas are not determined by General Plan designations; see response to Comment AT-5. Additionally, the MSHCP does not preclude Development within Conservation Areas. Development permissible under the applicable General Plan, including transportation improvements, may occur if it is consistent with the Conservation Goals and Objectives of the MSHCP. See response to Comment AT-5.

**AT-3** The commenter describes the history of the subject property. The Recirculated Draft MSHCP identified the property as under private ownership. The Plan has been updated to reflect the current City of Coachella General Plan designations. With regard to the concern that the maps do not accurately reflect the right-of-way on the road, this roadway was not identified by the City of Coachella and therefore is not included as a Covered Activity and for that reason was not depicted on MSHCP maps (Section 7.3.1 lists Covered Activities that were identified by the City of Coachella). However, that does not mean that the roadway could not be developed consistent with the Conservation Objectives and the MSHCP maps does not remove it from the City's Circulation Element. With regard to footnote 1, the referenced parcel was



included in the Conservation Area based on the reserve design criteria of the MSHCP; whether or not the land is privately owned or owned by the BLM was not a factor in the determination to include it in the Conservation Area.

**AT-4** The comment summarizes the MSHCP. No further response is required. With regard to footnote 2, Existing Conservation Lands are considered already conserved because of ownership, not land use designations.

**AT-5** The commenter expresses his opinion that the property as described above is not necessary to meet the Conservation Objectives. CVAG considered the request to have the property removed from the Conservation Area but does not believe it is appropriate to do so based on the principles of reserve design described in Section 3.7.2.2 of the Plan and the Plan's goals, sufficiency criteria, and the conservation approaches for Conservation Areas, proposed Covered Species, and natural communities described in Sections 3.1, 3.4, 4.3, 9.1.1, and 10.1.1. The SAC recommended inclusion of this area in the Conservation Area in order to ensure that the Plan provided for adequate conservation that could enable the USFWS and CDFG to issue Take Permits to the Plan's Applicants. See response to Comment AT-1. The acreages for the City of Coachella were inadvertently omitted from Conservation Objectives 2b, 2d, and 2e in the Recirculated Draft MSHCP, although they were correctly identified in Table 4-81a. The Final Recirculated MSHCP has been updated to include the City of Coachella portion in Conservation Objectives 2b, 2d, and 2e, consistent with Table 4-81a of the Plan. Figure 4-20b has been updated to include flat-tailed horned lizard habitat. Footnote 5 refers to conservation for Sonoran creosote bush scrub natural community. The commenter is correct that there is no Conservation Objective in the East Indio Hills Conservation Area for Sonoran creosote bush scrub. Table 4-78 identifies all the conserved natural communities within this Conservation Area, even though there may not be a specific Conservation Objective. However, the commenter's suggestion that creosote bush scrub "has not been found to support species targeted for conservation under the MSHCP" is not accurate. All of the Covered Species referenced in this comment letter will use Sonoran creosote bush scrub if other Habitat conditions (e.g., soil, topography, elevation) are suitable. Sonoran creosote bush scrub will be conserved as a result of achieving the Conservation Objectives for one or more Covered Species or other natural communities (See Section 4.1 and Table A4-3 of Appendix I of the Plan).

**AT-6** See responses to Comments AT-1 and AT-5 and Major Issue Response 1. The comment refers to some parts of the Plan in describing "geographic considerations regarding the property." In addition to connectivity to the Conservation Areas to the west, including the Thousand Palms Conservation Area as noted in the comment, this

portion of the East Indio Hills Conservation Area, including the subject property, is east of Dillon Road and therefore is also in the BLM's Northern and Eastern Colorado Desert (NECO) Plan Area. Efforts were made to be consistent with other regional plans, including the NECO Plan. The subject property is included as Other Conserved Habitat because it meets the definition of Other Conserved Habitat as described on page xxxv of the Plan, "part of a Conservation Area that does not contain Core Habitat for a given species, but which still has Conservation value. These values may include... buffering from edge effects, enhanced species persistence probability in proximate Core Habitat, genetic diversity, recolonization potential, and flexibility in the event of long-term Habitat change." See response to Comment X-5 and Major Issue Response 1.

**AT-7** Whether a species is observed on a parcel during the time that a survey may be undertaken is not the primary determinant of whether or not the parcel has Conservation value for that species. Parcel-by-parcel changes in habitat designations over time are less useful for large-scale conservation planning than the use of habitat models supported by the best available information on the distribution of each species. The lack of observations of Le Conte's thrasher reported by biologists for the Desert Lakes property (J.W. Cornett, August 2005), does not lead to a conclusion that the species could not occur there. Surveys for the Le Conte's thrasher by UCR elsewhere in the Coachella Valley (UCR, Center for Conservation Biology 2004, 2005) found that this species can be difficult to detect. According to survey results reported by UCR (UCR, Center for Conservation Biology, 2005), success rates for detection of Le Conte's thrasher varied from 42% to 75% even under favorable conditions. In some cases, birds were not detected at a given survey location only to be detected at a different time during the year, or in subsequent years. At the low densities at which this species appears to occur in the Coachella Valley, individual Le Conte's thrashers may not sing or respond to a call from another bird (including taped recordings played during thrasher surveys). The results of the UCR surveys also indicate that the population levels for this species may have reached a low ebb during the severe drought of 2002 and are only now beginning to recover; UCR biologists (UCR, Center for Conservation Biology, 2005) have detected birds during 2005 at sites where they had not previously been recorded. With respect to suitable habitat for this species, biologists from UCR (Darrell Hutchinson, pers. comm.) have reported Le Conte's thrasher nests not only in golden cholla cactus described by the commenter but also in indigo bush (*Psoralea schottii*) and cheesebush or burrobush (*Hymenoclea salsola*). In the Coachella Valley, Le Conte's thrashers are apparently widely dispersed. So, while the surveys conducted by biologists for the Desert Lakes property apparently followed standard protocols for Le Conte's

thrasher, these surveys carried out in only one or two seasons cannot be considered as conclusive evidence of the absence of this species.

**AT-8** The parcel identified by the commenter is in modeled habitat for the flat-tailed horned lizard. Figure 4-20b of the Final Recirculated Plan has been revised to show the flat-tailed horned lizard habitat.

The MSHCP is based on conservation planning and reserve design principles to ensure that populations of Covered Species and natural communities can be maintained. The commenter's suggestion that an individual parcel be removed from the Conservation Area because it "represents a very small proportion of the Other Conserved Habitat..." or because "the property is at the extreme edge of the East Indio Hills Conservation Area" is not consistent with these reserve design principles; see also responses to Comments AT-1 and AT-5. With respect to the presence of flat-tailed horned lizards, the individual survey results reported by biologists for the Desert Lakes property (J.W. Cornett, August 2005), do not lead to a conclusion that the species does not occur here or that the property does not have conservation value for this species. Flat-tailed horned lizards were observed in MSHCP surveys of the East Indio Hills Conservation Area west of Dillon Road. The commenter's statement that the East Indio Hills Conservation Area represents the "southernmost and easternmost limits of the flat-tailed horned lizard geographic range" is not accurate. As noted in Section 9.6.3.5 of the Plan, in California, the known range for this species is from Palm Springs south-southeast to the Mexican border. The flat-tailed horned lizard is known to occur in the Dos Palmas Conservation Area, south and east of the Indio Hills. Section 9.6.3.4 of the Plan identifies some of the significant conservation and management issues for this species that relate to the conservation value of the subject property. These issues include the evaluation and management of edge effects,<sup>56</sup> the internal buffering provided within the Conservation Areas, and the potential for restoration and enhancement of degraded Habitat which apparently occurs on the subject property.

**AT-9** The comment indicates that six Coachella Valley round-tailed ground squirrels were observed on the subject property in surveys conducted in 2005. These results are consistent with the survey results for this species reported in Section 9.8.2.3 of the Plan. The commenter's suggestion that, because the property is "at the... edge of the Conservation Area" and "represents a very small percentage of proposed Other

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<sup>56</sup> Barrows, C.W., M.F. Allen, and J.T. Rotenberry, 2006. "Boundary processes between a desert sand dune community and an encroaching suburban landscape." *Biological Conservation* 131:486-494.

Conserved Habitat for the squirrel,” it should be removed from the Conservation Area is not consistent with the reserve design principles used in the MSHCP. The Plan does not require that Other Conserved Habitat areas include all of the elements addressed in the Conservation Goals (presence of Essential Ecological Processes, Biological Corridors and Linkages). The impacts of adjacent development in the East Indio Hills confer even greater benefit from the inclusion of Other Conserved Habitat, including the Habitat present on the subject property, in this Conservation Area. These Other Conserved Habitat areas help reduce the impacts resulting from edge effects and provide the potential for future habitat restoration. It is also important to note that one element of the reserve design in the Plan calls for protection of Other Conserved Habitat from a range of environmental conditions within which this ground squirrel is known to occur. The subject property helps to meet that objective.

**AT-10** See responses to comments AT-1, AT-5, AT-8, and AT-9 and Major Issue Response 1. With respect to the Palm Springs pocket mouse, the commenter’s suggestion that an individual parcel be removed from the Conservation Area is not consistent with the conservation biology principles and reserve design used in the MSHCP. The results of surveys by the project biologist from one or two seasons are not conclusive evidence that this species does not occur on the property. The subject property is within the known range of this pocket mouse in the Plan Area. As described in Section 9.8.3.3 of the Plan, the Palm Springs pocket mouse has been observed in the East Indio Hills Conservation Area, as well as in Thermal Canyon and Shaver’s Valley to the east. The need to reduce edge effects and to include Other Conserved Habitat representing a range of environmental conditions for this species warrants the inclusion of the subject property.

**AT-11** The assumption that the Desert Lakes property was included in the Conservation Area because it is designated as open space in the Coachella General Plan is not correct. As noted in response to Comment AT-1, the Conservation Area boundaries were delineated based on conservation biology principles during the reserve design process. As noted in response to Comment AT-2, Figure 4-20d has been updated to correctly identify the current General Plan designations. The Lead Agencies understand that the property was conveyed by BLM to private ownership and that BLM did not impose any “specific conservation restrictions” on the property. Development within the Conservation Areas can occur, consistent with the Conservation Goals and Objectives; see also response to Comment AT-2. The determination about the development of this property is at the discretion of the City of Coachella, the local land use authority. As a signatory to the Implementing Agreement, the City will submit projects within the Conservation Areas to the JPR process (Section 6.6.1.1 of the Plan) to obtain assistance with determining a project’s

consistency with the MSHCP. See also Section 5 of this Responses to Comments document.

**AT-12** Within the Conservation Areas, authorized disturbance is allocated to each individual jurisdiction as the local land use authority for a given area. In the case of the Desert Lakes property, the City of Coachella has the sole discretion to approve development within its city limits and to determine how much authorized disturbance under the MSHCP would be available to a given project. The MSHCP allows for up to 10% Take within the Conservation Areas, consistent with the Plan's Conservation Goals and Objectives. At such time as a development application is considered, the General Plan designations and the approved project would need to be consistent with the MSHCP Conservation Goals and Objectives. The Lead Agencies appreciate the commenter's efforts to identify solutions to minimize impacts to habitat values.

**AT-13** The MSHCP did not misidentify 62 acres as "open space land not to be developed." The referenced property was misidentified as public land owned by BLM in the February 2006 Final MSHCP. It should be noted that the patent on this property has apparently never been recorded with the Riverside County Assessor's Office, and the property is shown as BLM ownership in the Assessor's Parcel Database as of July 2007. The property was correctly identified in the February 2007 Recirculated Draft MSHCP as private land. The Conservation Areas include private lands and provide for some development on these lands, consistent with the Plan's Conservation Goals and Objectives. Private lands can also be acquired for conservation from willing sellers at fair market value. The determination about whether the "current transportation and land use designations for this property could be accommodated by the MSHCP without compromising the Conservation Goals for this area" would be made through the JPR process, at the request of the City of Coachella. The flat-tailed lizard habitat is shown on Figure 4-20b of the Final Recirculated Plan. The commenter is correct that the habitat is coincident and has a general plan designation of open space.

**COMMENTER AU:    NORMAN K. SOWARDS**

Dated: May 3, 2007

**AU-1**        The commenter offers to sell his property for conservation. Comment is noted.

**COMMENTER AV:    NORMAN K. SOWARDS**

Dated: May 3, 2007

- AV-1**      The comment objects to inclusion of specified property in the Conservation Area. CVAG considered the request to have the property removed from the Conservation Area but does not believe it is appropriate to do so based on the principles of reserve design described in Section 3.7.2.2 and the conservation Plan's Goals, sufficiency criteria, and the conservation approaches for Conservation Areas, proposed Covered Species, and natural communities described in Sections 3.1, 3.4, 4.3, 9.1.1, and 10.1.1. The SAC recommended inclusion of this area in the Conservation Area in order to ensure that the Plan provided for adequate conservation that could enable the USFWS and CDFG to issue Take Permits to the Plan's Applicants.
- AV-2**      See Major Issue Response 2.
- AV-3**      There is no appeal procedure; however, this comment will be submitted to the Lead Agencies for their review prior to taking any action on the MSHCP. However, land is not included in the reserve unless acquired from willing sellers at fair market value, as discussed below. The commenter's property is included in the Thousand Palms Conservation Area. Proposed Development will need to go through the JPR process as described in Section 6.6.1.1. CVCC may seek to purchase the property if the owner is a willing seller. 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 natural communities as compared to those benefits analyzed in the Plan. In addition, the level of Take of Covered animal Species, habitat loss for Covered Species, and/or loss of acres of conserved natural communities must be no greater than that analyzed in the Plan. The criteria and procedures are described in Section 6.12. As stated in Section 4.2.2.2, planning tools may be used such that a parcel may have some Development approved and a portion of it set aside for conservation.

**COMMENTS AW: MARY SUE CHRISTENSEN KEY, STEVEN H. CHRISTENSEN FAMILY**

Dated: May 29, 2007

**AW-1** The comment is a statement of opposition to the MSHCP and expresses that the commenters will not be willing sellers of their property. Comment is noted.

The comment states that the Plan is not adequately funded. For a discussion of the adequacy of Plan funding, see Major Issue Response 3.

The comment states that the Plan hurts property values. For a discussion of the Plan's effect on property value, please see response to Comment AO-1.



**COMMENTS AX: DESERT PACIFIC WETLAND ALLIANCE (BY MIKE MAIER, CONSULTANT)**

Dated: May 24, 2007

**AX-1** The property described is an existing use. The MSHCP does not have any impact on an existing use. The management and maintenance of the property as a “multi-use wetland” has benefits for wildlife habitat as described by the commenter. As described in Section 4.3 of the MSHCP, the Coachella Valley Stormwater Channel and Delta Conservation Area is important for Conservation of wetland Habitat and the Covered Species associated with it. The MSHCP does not preclude Development within Conservation Areas. Development permissible under the applicable General Plan may occur if it is consistent with the Conservation Goals and Objectives of the MSHCP. The County would retain land use authority under the MSHCP and would have discretion to approve any project consistent with the Conservation Objectives of the Plan.

The commenter expresses his opinion that the property should be deleted from the Conservation Area. CVAG considered the request to have the property removed from the Conservation Area but does not believe it is appropriate to do so based on the principles of reserve design described in Section 3.7.2.2 of the Plan and the Plan’s goals, sufficiency criteria, and the conservation approaches for Conservation Areas, proposed Covered Species, and natural communities described in Sections 3.1, 3.4, 4.3, 9.1.1, and 10.1.1.

Acquisitions by the CVCC for the MSHCP will be from willing sellers at fair market value as determined by an appraisal, based on comparable sales and prepared to the Uniform Standards of Professional Appraisal Practice. If the owner were interested, the Plan also provides for the potential acquisition by the CVCC of development rights or a conservation easement from a willing seller. These options could provide benefits to the property owner with an existing use that is compatible with conservation.

**COMMENTS BY: ROY D. MOORE**

Dated: April 8, 2007

**AY-1**      The comment is a statement of opposition to the MSHCP. Comment is noted.

In response to commenter's claim that the list of Covered Species is overly broad, see response to Comment X-12. It is unclear what the commenter means by "common."

The comment states that the Plan hurts property values. For a discussion of the Plan's effect on property value, see response to Comment AO-1.

**COMMENTS BY:     TERESA R. NAVA**

Dated: May 3, 2007

**AZ-1**     Commenter states that she does not wish to sell her land. Comment is noted. Acquisitions will be from willing sellers at fair market value as determined by an appraisal. See Major Issue Response 2.

**COMMENTER BA: DESERT WATER AGENCY**

Dated: April 26, 2007

- BA-1** Some land belonging to Desert Water Agency is included in the Conservation Areas as Public and Quasi-Public Land, which is described in Section 4.2.2.3 of the Plan. Activities on these lands are not subject to MSHCP requirements, nor would Desert Water Agency receive Take Authorization for any activities on its land. Should Desert Water Agency, as a non-Permittee, decide to seek Take Authorization at some future point through the Participating Special Entity provisions of the Plan, the MSHCP assumes that appropriate conservation would occur in conjunction with such Take Authorization. Desert Water Agency could also rely upon the Participating Special Entity provisions of the MSHCP, at its sole discretion.

**COMMENTS BY:     ROBERT SCHIMMICK, SR.**

Dated: April 16, 2007

- BB-1**     Commenter states his opposition to the Plan. Comment is noted. Acquisitions will be from willing sellers at fair market value as determined by an appraisal.
- BB-2**     For a discussion of the adequacy of Plan funding, see Major Issue Response 3. As the Plan is adequately funded, there is no need to reduce the size of Conservation Areas.
- BB-3**     See Major Issue Response 2 and response to Comment BM-91.

**COMMENTS BY:     HUGUETTE RICHARDS**

Dated: April 15, 2007

**BC-1**     Commenter asks to be removed from mailing list. Landowner participation in the MSHCP is not voluntary if the Coachella Valley cities and the County participate.

**COMMENTER BD:    PAO YU LLC**

Dated: April 1, 2007

**BD-1**      Commenter proposes that his property, APN 709440026, become part of a community Development open space or remain an open space with the same zoning. CVAG considered the request to have the property removed from the Conservation Area but does not believe it is appropriate to do so based on the principles of reserve design described in Section 3.7.2.2 and the conservation Plan's Goals, sufficiency criteria, and the conservation approaches for Conservation Areas, proposed Covered Species, and natural communities described in Sections 3.1, 3.4, 4.3, 9.1.1, and 10.1.1. The SAC recommended inclusion of this area in the Conservation Area in order to ensure that the Plan provided for adequate conservation that could enable the USFWS and CDFG to issue Take Permits to the Plan's Applicants.

**COMMENTS BE: CHARLES MACK (MACK REALTY)**

Dated: April 13, 2007

**BE-1** The comment objects to inclusion of specified property in the Conservation Area. The commenter's property is included in the Desert Tortoise and Linkage Conservation Area. CVAG considered the request to have the property removed from the Conservation Area but does not believe it is appropriate to do so based on the principles of reserve design described in Section 3.7.2.2 and the Plan's Goals, sufficiency criteria, and the conservation approaches for Conservation Areas, proposed Covered Species, and natural communities described in Sections 3.1, 3.4, 4.3, 9.1.1, and 10.1.1. The SAC recommended inclusion of this area in the Conservation Area in order to ensure that the Plan provided for adequate conservation that could enable the USFWS and CDFG to issue Take Permits to the Plan's Applicants. It should be noted that a property's inclusion within the Conservation Area does not preclude Development if it is consistent with the Conservation Objectives.

The commenter's offer to sell the referenced property is noted. Acquisition priorities will be determined by the elected officials of CVCC.



**COMMENTS BY: LAURENCE FRIEDMAN (WILDFIRE LIGHTING AND VISUAL EFFECTS)**

Dated: April 13, 2007

**BF-1** See response to Comment BE-1.

**COMMENTER BG: STEVEN AND ROBIN HARRIS**

Dated: April 3, 2007

**BG-1** Commenters state their opposition to the MSHCP and object to inclusion of specified properties in the Conservation Area. The commenters' properties are included in the Desert Tortoise and Linkage Conservation Areas and Joshua Tree National Park Conservation Area. The MSHCP does not affect General Plan designations, and the inclusion of land in a Conservation Area does not automatically trigger a complete restriction on Development. Development may proceed if it is consistent with the Conservation Objectives of the Conservation Area. The JPR process discussed in Section 6 of the MSHCP sets forth the process for Development in the Conservation Area.

**COMMENTER BH:    LESLIE CHOU**

Dated: March 27, 2007

- BH-1**      It is appropriate to include the referenced property in the Conservation Area based on the principles of reserve design described in Section 3.7.2.2 and the conservation Plan's Goals, sufficiency criteria, and the conservation approaches for Conservation Areas, proposed Covered Species, and natural communities described in Sections 3.1, 3.4, 4.3, 9.1.1, and 10.1.1. The SAC recommended inclusion of this area in the Conservation Area in order to ensure that the Plan provided for adequate conservation that could enable the USFWS and CDFG to issue Take Permits to the Plan's Applicants. Inclusion of land in a Conservation Area does not automatically trigger a complete restriction on Development. Development may proceed if it is consistent with the Conservation Objectives of the Conservation Area. The JPR process discussed in Section 6 of the MSHCP sets forth the process for Development in the Conservation Area. The opposition of the commenter to the Plan is noted. With respect to decreasing property values, see Major Issue Response 1.

**COMMENTS BY:     CHRISTIE K. CHAPMAN**

Dated: March 26, 2007

**BI-1**     The commenter offers to sell her property for conservation. Acquisition priorities will be determined by the elected officials of CVCC. Comment is noted.

**COMMENTS BY: MARCELLA BRAYLEY**

Dated: March 25, 2007

**BJ-1** Commenter states that she does not want her property taken. Acquisitions will be from willing sellers at fair market value as determined by an appraisal. . Acquisition priorities will be determined by the elected officials of CVCC. Please see also Major Issue Response 2.

**COMMENTER BK: IAN ROBERTSON**

Dated: May 29, 2007

**BK-1** It is assumed that the commenter's reference to "edge effects" refers not to biological edge effects but rather to the proposed land use adjacency guidelines and the potential effects of those on the use of his property. As discussed in Section 4.5 of the Plan, the land use adjacency guidelines are designed to treat the preserve as a sensitive neighbor such as would occur under existing Development standards of the Permittees and are not intended to impose requirements over and above those the Permittees consider as part of normal land entitlement processes. See response to Comment W-4.

It is appropriate to include the referenced property in the Conservation Area based on the principles of reserve design described in Section 3.7.2.2 and the conservation Plan's Goals, sufficiency criteria, and the conservation approaches for Conservation Areas, proposed Covered Species, and natural communities described in Sections 3.1, 3.4, 4.3, 9.1.1, and 10.1.1. The SAC recommended inclusion of this area in the Conservation Area in order to ensure that the Plan provided for adequate conservation that could enable the USFWS and CDFG to issue Take Permits to the Plan's Applicants.

Commenter incorporates Comment Letter AG by reference. Please see responses to Comments AG-1 to AG-12.

**COMMENTS BY: TIM AND EDRA BLIXSETH (BY JOSEPH A. GIBBS AND ASSOCIATES)**

Dated: May 29, 2007

**BL-1** The commenter summarizes his concern over the costs and goals of the MSHCP. Detailed responses to individual comments are provided below. This comment provides a description of the Blixseth property and its various components.

**BL-2** The commenter purports the Plan uses outdated and inaccurate data by adopting Essential Habitat for bighorn sheep as delineated in the Recovery Plan for Bighorn Sheep in the Peninsular Ranges, California (USFWS 2000). The commenter suggests the Recovery Plan's delineation could be overstated, and offers a later publication (Turner et al. 2004) as an example of an improved approach to describing and delineating bighorn sheep habitat in the Peninsular Ranges. However, the Turner et al. (2004) publication is limited in its applicability and external validity due to inherent spatial and temporal biases. As outlined in Ostermann et al. (2005), approximately 90% of the data points used by Turner et al. were from the northwestern portion of the Northern Santa Rosa ewe group that exhibited atypical behavioral and habitat selection patterns. Indeed, Turner et al. only used a portion of the data available to them, and for unexplained reasons excluded data from other areas. This ewe group had grown accustomed to using urban areas in the Rancho Mirage area and could regularly be found grazing or browsing among the homes. Furthermore, 80% of these locations were concentrated around an artificial water source located adjacent to the homes and were obtained during a 7-year period, 1994-2000.

Secondly, Turner et al. erroneously assumed the density of bighorn sheep locations in a given area accurately indicated habitat quality. It is important to account for sampling biases caused by variations in visibility and monitoring effort. Bighorn sheep frequenting urban areas are much more visible and easily monitored compared to sheep in more remote and rugged areas. Given the variation in sampling intensity across portions of their study area, it is likely Turner et al. incorrectly classified bighorn sheep habitat as "poor quality" or "unoccupied." At best, the Turner et al. model is only valid for a small atypical subpopulation for the years 1994-2000. Afterwards, a fence was constructed along the urban-wildland interface to exclude sheep from residential areas. The Turner et al. model also failed to consider habitat connectivity, and if applied to the greater landscape would result in only small pockets of bighorn sheep habitat being protected, a situation favorable to increased development, but unlikely to ensure the persistence of bighorn sheep in the Peninsular Ranges. See also response to Comment BM-11.

The commenter references the consent decree (*Agua Caliente v. Gale Norton*, Case No. 05-187, August 11, 2006) where the Agua Caliente Band of Cahuilla Indians challenged the designation of critical habitat on tribal lands. The commenter erroneously states the consent decree is “evidence the critical habitat boundary is flawed.” A consent decree is a consensual agreement between opposing parties to avoid expensive litigation and the risk of suffering a total loss. It does not represent a judgment on the merits of either side’s arguments; instead the court ensures the settlement is fair to all parties and that there is no collusion present. The consent decree states on page 7, “A court is mindful that a motion to approve a consent decree is not a dispositive motion on the merits; a court should not “reach ultimate conclusions on the contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual settlements” (*Officers of Justice*, 688 F. 2d at 625). Therefore, the commenter is incorrect in claiming the consent decree represents evidence for a “flawed” boundary. The Tribe’s spokesman, Tom Davis, stated their main reason for pursuing legal action was economic; they feared critical habitat designation would increase the regulatory burden and therefore costs of future development.

The Recovery Team took a long-term view of bighorn sheep recovery and survival when it delineated essential habitat. If bighorn sheep are to persist in perpetuity in the Peninsular Ranges, then they must be given adequate space to adjust to changing environmental conditions, maintain connectivity between subpopulations, and be allowed to expand into suitable unoccupied habitat. Consequently, the Recovery Team chose a relatively simple method of delineating an area that would meet these objectives. Although a more complicated model could have been devised, complicated models are not necessarily better than simple ones. Based upon their collective experience in the Peninsular Ranges and a review of the literature, they found bighorn sheep were usually found on slopes greater than 20%; however, sheep were regularly observed on more gentle terrain sometimes over a mile from 20% slopes. Nevertheless, to remain conservative, they shortened that distance to 0.5 mile in their model.

This simple model captured bajadas and washes that are important to bighorn sheep for travel routes and nutrition. Spring green-up in the desert is short-lived, and plants on the dry, rocky mountainsides “cure out” quickly. Generally speaking, green plants have a higher nutrient content than dry, cured out plants. For example, fresh green growth can contain 20% to 25% crude protein. The same plants, several months later, when dry and brown, may have less than 4% crude protein. Many other nutrients in plants, both micro and macro, follow the same pattern that protein does.



The digestibility of the plants also decreases once they cure out, and this causes a slower passage rate through the ruminant digestive system. Free-ranging ruminants like bighorn sheep may have access to large quantities of forage, but the nutrient content may be below a sustainable level, and they cannot simply compensate for this fact by just eating more. Because they cannot always digest low-quality forage fast enough, ruminants can literally starve to death with a full stomach. There are some plants, such as creosote bush, that remain green and are relatively plentiful, but seldom eaten by sheep. The reason they are common is because they contain secondary plant compounds that make them difficult to digest.

Because groundwater is generally closer to the surface and in greater quantity in washes and on alluvial fans, there is a tendency for plants to remain green longer. Plus, plants at lower elevations generally begin growing earlier in the spring, which coincides with the lambing season, a period of increased nutritional requirements. More importantly, the greater groundwater supports a suite of plant species that are not found on the mountainsides. A number of these wash species, such as palo verde, remain green through the heat of summer and green through all but the toughest droughts. Because, they remain green, they generally contain more nutrients and are more digestible than dry forages found on the mountainsides. Therefore, washes and alluvial fans play an important role in allowing desert bighorn sheep to acquire quality forage during times of drought. The water contained in greener forage also contributes to meeting the water requirements of bighorn sheep, which can be especially important for lactating ewes—they need more water and nutrients while nursing lambs. Bighorns may spend the majority of their time in more rugged terrain to avoid predators, and consequently they may be infrequently observed in washes and bajadas. However, when faced with demanding drought conditions or other periods of increased nutritional requirements, washes and bajadas may provide resources that are critical to the long-term survival of bighorn sheep.

- BL-3** The commenter expresses additional concern over the Plan being based on inadequate data. For a detailed discussion of the methods used during preparation of the MSHCP, as well as a discussion regarding use of the ISA’s review during revisions of the Plan, see Major Issue Response 1, Use of Best Available Science. The reserve design process for the MSHCP was essentially complete in 2003 as the CVAG Executive Committee originally approved the Draft MSHCP for release in December 2003; minor changes to the Conservation Areas have been made since then, primarily those identified in the Recirculated Draft MSHCP of February 2007. Field surveys completed for the MSHCP since 2003 have been used to validate and update the species distribution information and database. The data from field surveys referenced in the MSHCP are maintained in a GIS database by CVAG, which is used to prepare

maps, and all Plan data are derived from this database which is continuously updated. With respect to the references to dates in the MSHCP, dates in Appendix I that did not coincide with dates in the MSHCP regarding when field data were collected have been updated in the Final Recirculated MSHCP and EIR/EIS. These updates include field surveys conducted since 2003. Data from the CNDDDB were obtained over the course of Plan preparation but were completely updated in 2003. The date references have been updated. Survey location information is also maintained in the CVAG database. Contrary to the suggestion of the comment, the MSHCP is based on data that was current as of each stage in the planning process, including data collected to the present.

The commenter references the Independent Science Advisors' (ISA) Report. It is important to note that the document that was reviewed by the ISA was the January 2001 Administrative Review Draft of the Plan and that the ISA report was completed in April 2001. Their comments apply to the 2001 document, not the February 2007 Recirculated Draft MSHCP or the February 2006 Draft MSHCP. As described in Major Issue Response 1, the issues and comments identified by the commenter were addressed and the Plan was revised accordingly prior to release of the Draft MSHCP in 2006. Contrary to the comment, the ISA evaluation of MSHCP in 2001, prior to revisions and improvements made to address their recommendations, stated that "in our view it has no fatal flaws." In fact, in their review of the Plan, dated April 13, 2001 (Noss et al. 2001), the ISA did "commend the Scientific Advisory Committee (SAC) and others who contributed to the Draft Plan for producing what is sure to be one of the most scientifically defensible and thorough HCPs or NCCPs ever developed."

With respect to the question regarding the SAC "redrawing" the Conservation Area boundaries, as noted in Major Issue Response 1 and in Section 3.7.3.3 of Appendix I of the MSHCP, the SITES model analysis resulted in a reserve design very similar to the Preferred Alternative. The SITES analysis supported the Conservation Area boundaries. With respect to the natural communities map, Section 10 of the MSHCP does provide a "cross-walk" between the natural community classification systems of Holland (1986) and Keeler-Wolf (1995) for each natural community. See subsections in Section 10 titled "Comparison with *Manual of California Vegetation*" under "Natural Community Account: Background" for each natural community. The differences in the naming system would not affect the reserve design itself as it is based on the natural community mapping, not the names used. The natural communities map has been assessed for accuracy as described in Appendix I of the MSHCP. See also response to Comments N-1, N-11, and BM-8.

The MSHCP does not preclude Development in Conservation Areas that is consistent with the Conservation Goals and Objectives and Required Measures. Approval of a project on the referenced property is a decision of the County of Riverside; as the land use authority the County determines how to allocate the available acres of Development in any applicable Conservation Area. The determination regarding consistency with the Plan is made through the JPR process. This process is designed to allow flexibility for a project, while ensuring that the Conservation Objectives are met.

In addition, the parcel-based mapping is consistent with the reserve design principles and conservation objectives for the Plan. The boundaries of the Conservation Areas are designed to ensure persistence of the Covered Species populations as identified in the Conservation Objective for bighorn sheep from Section 4.3.21 of the MSHCP to “ensure that ... edge effects from such Development are minimized.” Conservation Objectives for Covered Species throughout Section 4.3 require that the Plan “...minimize fragmentation, human-caused disturbance, and edge effects to Core Habitat...” The Conservation Areas provide for enough Habitat to ensure that these Conservation Objectives can be met.

**BL-4** The species models used in reserve design were developed to include occupied as well as potential habitat to provide flexibility in the face of changing environmental conditions. From the perspective of a comprehensive reserve design process that incorporates the conservation biology principles established for the Plan, the Lead Agencies are confident that the species distribution models are appropriate. See also Major Issue Response 1, Use of Best Available Science. With respect to comments on Habitat for bighorn sheep, as noted in response to Comment BL-3, the boundaries of the Conservation Areas are designed to ensure persistence of the bighorn sheep and to “ensure that ... edge effects from such Development are minimized.” The current Conservation Area boundaries ensure that fragmentation, human-caused disturbance, and edge effects to Core Habitat will be minimized and the Conservation Objectives can be met. See also response to Comment BL-2.

With respect to Le Conte’s thrasher, the lack of observation of these birds does not confirm their absence on the referenced property. Le Conte’s thrashers occur at low densities in the Coachella Valley and can be difficult to detect (UCR, Center for Conservation Biology 2004, 2005). Le Conte’s thrashers in the Coachella Valley are widely dispersed. It is also apparent that the impacts of severe drought in 2002 may have reduced populations of this species within the Plan Area. The Plan is designed to provide Habitat for this and other Covered Species over the 75 years of the permit,

allowing adequate habitat for populations to recover from changing environmental conditions.

**BL-5** It is accurate that the Riverside County Integrated Plan (RCIP) “seeks to integrate and balance the need for community and economic development with permanent multi purpose open space preservation...” as noted in the comment letter. The RCIP language provides for this balance by ensuring that future growth is consistent with conservation goals, including the MSHCP. The comment does not include an important element of the language in the Riverside County General Plan with respect to “new towns and planned communities,” which states, “new towns and planned communities will also play a role in the future development of Riverside County, .... Such development proposals will require rigorous review to ensure that the development that occurs will be... (c) designed to further the goals of the Coachella Valley Multi-Species Habitat Conservation Plan, or, if outside Plan boundaries, designed in a manner that will not obstruct the achievement of conservation goals of state and federal agencies or tribal authorities.” Furthermore, in specific reference to property in Response to Comments Coachella Valley Multiple Species Habitat Conservation Plan the Eastern Coachella Valley, policy ECVAP 2.1 states, “Notwithstanding the Agriculture and Open Space – Rural designations of properties in this area, any proposal to establish a planned community not less than 450 acres in size in the area... shall be exempt from the 5-year limit placed on Foundation Component amendments as described in the Administrative Element, provided that:... b. The project is compatible with the achievement of the goals of the Coachella Valley Multi-Species Habitat Conservation Plan, as determined by the County in consultation with the CVAG, the California Department of Fish and Game, and the USFWS....” The Coachella Valley MSHCP is addressed as part of the RCIP and is consistent with the goals of the RCIP. The MSHCP allows for up to 10% take within the Conservation Areas, consistent with the Plan Conservation Goals and Objectives. The Lead Agencies disagree with the commenter’s assertion that the “draft MSHCP fails to account for the planned utilization of this area...,” since the MSHCP provides for development which is consistent with Conservation Goals and Objectives. See Major Issue Response 3 with regard to Plan funding and response to Comment N-9.

**BL-6** See responses to Comments X-30 and X-31.

**BL-7** The commenter expresses his concern that the project objectives cannot be met based on faulty scientific data and methods, as well as concern over the HANS and JPR processes. Please see Major Issue Response 1, which details the Plan’s reliance on the

- best available science, as well as Major Issue Response 5, which outlines the JPR and HANS processes. See response to Comment N-5.
- BL-8** The commenter expresses his concern that the federal “no surprises” rule will not be met. Please see Major Issue Response 6. The U.S. District Court in Washington, D.C. ruled on August 30, 2007, that the HCP Assurances Rule and the Permit Revocation Rule were valid and consistent with the FESA. Additionally, even if these Rules had been vacated, the balance of the MSHCP would still continue to achieve the project objectives. Thus, there is no need to rewrite the MSHCP to exclude this provision, especially since the current state of the law is that the Rules are in effect.
- BL-9** The commenter expresses his concern that the MSHCP is a taking of lands without adequately compensating the property owner. As outlined in Major Issue Response 2, implementation of the Plan will not result in any regulatory takings. The concern over funding is addressed by Major Issue Response 3.
- BL-10** No features of the MSHCP change or usurp the local land use authority of the Permittees. The JPR process overseen by the CVCC simply provides a mechanism for communication among Permittees regarding plan proposals reviewed for consistency under the MSHCP and occurs concurrently with Permittees review of individual development proposals. See responses to Comments N-5, N-9, and V-10.
- BL-11** The commenter expresses his concern that the EIR too narrowly defines its scope as analysis of impacts of providing Take Authorization. Each individual Permittee that is a Lead Agency is in charge of approving or denying each discretionary action. Through the course of that approval, the Lead Agency shall require the appropriate CEQA process at that time. Any attempt to quantify and analyze impacts outside of the Plan’s authority would be speculative. See response to Comment N-2.
- BL-12** Comment alleges that the project description is inadequate. Please see responses to Comments N-3 and N-4.

Section 1, “Introduction and Proposed Project Description,” provides 20 text pages describing in detail the proposed MSHCP, its objectives and purpose, affected and participating agencies, the Plan’s regulatory environment, its relationship to other plans, and the public participation component of the Plan. Section 2 of the Recirculated Draft EIR/Supplemental Final EIS provides 19 text pages on the Preferred Alternative and 18 pages on the Preferred Trails Plan. Maps of the project alternatives are also included. The Recirculated Draft EIR/Supplemental Final EIS was also accompanied by a compact disc, which included the entire text and technical appendices of the MSHCP and Implementing Agreement, which included the

- referenced Land Use Adjacency Guidelines and all of the Adaptive Management activities. This disc also included detailed aerial and GIS-based mapping of all of the Conservation Areas, detailing land use designations, plant communities, species-specific habitats, and linkages included in the Conservation Areas.
- BL-13** The comment makes the claim that the environmental setting and existing conditions discussion set forth in the Recirculated Draft EIR/Supplemental Final EIS are inadequate and cites biological resources, and traffic and circulation specifically. However, the author provides no specific references to any portion of these discussions, and there is clearly no basis for this statement as the document does set forth the project setting. See responses to Comments BM-78 and BM-79 for responses addressing the commenter's concern regarding the land use and planning setting and the biological resources setting. The claim that the traffic and circulation setting is inadequate is addressed in the response to Comment BM-83. The statement also contradicts other comments in the author's letter. The biological and traffic discussions are reinforced by the various technical appendices found in the Recirculated Draft EIR/Supplemental Final EIS and the MSHCP. See also response to Comment N-6.
- BL-14** Please see Major Issue Response 1 regarding the use of best available science, which was the premise that the Plan is based on. See also response to Comment N-6.
- BL-15** Please see response to Comment R-18. See also response to Comment N-7.
- BL-16** The commenter summarizes his concern regarding analysis of significant impacts. Individual responses to his concern follow. See also response to Comment N-9.
- BL-17** The commenter purports that the Recirculated Draft EIR/Supplemental Final EIS is inaccurate in that the MSHCP conflicts with local land use plans and physically divides an established community. In both cases, the commenter is using the City of Desert Hot Springs as the example. However, in June 2006, the City of Desert Hot Springs made the determination not to approve the Plan, and, therefore, the City is no longer a Permittee of the Plan nor are private lands within the City included in Conservation Areas, with the exception of those lands necessary to provide for flood control and associated habitat conservation along Morongo Wash. West of Highway 62, private lands within the City limits of Desert Hot Springs are not within the land use authority of any Permittee under the Plan; as such, they are not included in the Upper Mission Creek/Big Morongo Canyon Conservation Area. Figure 4-12a of the Plan depicts the exclusion of these private lands. See also response to Comment N-9.

- BL-18** The commenter states the biological resources analysis does not provide adequate information for further evaluation in the Recirculated Draft EIR/Supplemental Final EIS. Due to the length of the duration of the Plan and size of the area, a certain degree of generality was presented; however, the Plan provides a consistent picture of regional conditions. The use of habitat modeling, used in conjunction with extensive field surveys, remote sensing, and other techniques, is considered a state-of-the-art approach to HCP planning and was a sound basis to provide the environmental setting. Please see Major Issue Response 1 and response to Comment N-11.
- BL-19** Section 4.8.3 of the Recirculated Draft EIR/Supplemental Final EIS provides a detailed quantitative analysis of the referenced socio-economic effects set forth in Section 4.8.2. The potential for significant adverse effects on communities located within the Plan Area was analyzed for each Permittee's jurisdiction. The City of Desert Hot Springs would retain its land use authority, and, therefore, the Plan would not have land use impacts to the City. The potential for continuing development of healthy economies was assessed and analyzed for developable acreage outside Conservation Areas by land use type. The Plan's potential impacts to each of these land use categories were also fully assessed. In addition, the analysis provided in Section 4.8 (p. 4.8-22) of the Recirculated Draft EIR/Supplemental Final EIS clearly demonstrates that there would be minimal or no impact to affordable housing in most jurisdictions. In total, Conservation Area lands throughout the Plan Area represent only 5% of the total medium and high density lands available for Development. As with the other land use designations discussed in the Recirculated Draft EIR/Supplemental Final EIS, the individual jurisdictions would continue to have the ability to change their General Plans to accommodate either increased density or increased acreage in more dense land uses to accommodate for this small loss in medium and high density lands, but all changes to General Plans would have to be consistent with the Plan. See also response to Comment N-12.
- BL-20** The Recirculated Draft EIR/Supplemental Final EIS contains adequate cumulative impact analysis. The EIR/EIS uses the summary of projections approach and bases the projections upon the Southern California Association of Governments (SCAG) Regional Transportation Plan (2003). The cumulative impacts analysis fully discusses impacts to land use, transportation, traffic and circulation, mineral, energy and timber resources, agricultural lands and activities, hydrology and water quality, biological resources, cultural resources, parks, trails and recreation, air quality, noise, visual/scenic resources, utilities/public services and facilities, socioeconomic resources, and environmental justice and children. See also response to Comment N-14.

- BL-21** An analysis of any growth-inducing impacts of the MSHCP is fully discussed in Section 9 of the Recirculated Draft EIR/Supplemental Final EIS. The EIR/EIS recognizes that, if Development cannot occur where it is currently proposed or at levels currently permitted by the County and local municipalities, such growth must be accommodated elsewhere. Section 9 of the document describes that the MSHCP would remove an impediment to growth by authorizing Take of Covered animal Species; thus, the MSHCP is growth-accommodating, versus growth-inducing. The Plan would also encourage greater land use efficiencies, which would allow continued growth but with fewer of many of the adverse effects typically associated with it. See also response to Comment N-15.
- BL-22** The Recirculated Draft EIR/Supplemental Final EIS addressed an appropriate range of project alternatives, including an Enhanced Conservation Alternative and a No Project Alternative. The analysis considered the comparative merits and consequences of each and incorporated mitigation measures where feasible and appropriate to reduce impacts below levels of significance. See Major Issue Response 8 and response to Comment N-16.



**COMMENTS BY: PROPERTY OWNERS ASSOCIATION OF RIVERSIDE COUNTY**

Dated: May 28, 2007

**BM-1** This comment is a summary of the more detailed comments that follow in the letter. Responses to individual comments summarized in this comment appear in responses to Comments BM-2 through BM-104.

**BM-2** As stated in Section 6.6.1, the obligation of the Permittees is to conserve 96,400 acres, which includes existing Permittee-owned lands in the Conservation Areas that are not already conserved. The Permittees do not have an obligation to acquire the 51,380 acres mentioned by the commenter. The 51,380 acres reflect a combination of the contribution of the state and federal agencies and projection of Complementary Conservation anticipated to occur in the Plan Area. Because these acres are not a mitigation obligation of the Permittees, there is no “shortfall” created by the fact that state and federal funding is not specifically identified in the MSHCP. Not only are these acquisitions not a Permittee obligation, it is inherent in the state and federal budget processes that appropriations are not committed in advance but rather amounts are appropriated annually. Based on historical levels of state and federal acquisitions in the Plan Area, the acreages projected in the MSHCP for Complementary Conservation and the state and federal contributions are realistic. See Major Issue Responses 2 and 3.

The market study referenced by the commenter was superseded by the September 2006 market study prepared for the MSHCP, which shows all comparable sales through August 2006 in the Conservation Areas. The study was conducted according to the methods described in the market study by a state-certified appraiser. The comment does not provide sufficient detail regarding the claim that the land acquisition value has been greatly underestimated. There is no way for the assumptions used to be verified or reviewed nor are the Lead Agencies able to verify the accuracy of commenter’s computations because underlying data was not provided to CVAG for review. See response to Comment BM-3.

**BM-3** The comment references an exercise undertaken in January 2006 that purports to provide more accurate land values in various areas. The methodology utilized is not provided, nor is any documentation of the information relied upon provided. Thus, the information provided in the comment must be regarded as opinion. The projections in the comment that acquisition costs for the Permittees would be \$2.2 billion are unsubstantiated. The figures cited as supposed “fair market value” for every acre within a Conservation Area are consistently higher than the highest per

acre price ever paid in these areas through August 20, 2006. For example, the commenter cites \$65,000 per acre as the “fair market value” for the entire Desert Tortoise and Linkage Conservation Area, when the most ever paid per acre in this Conservation Area through August 20, 2006, was \$7,500 per acre and the average of all comparable sales in this Conservation Area was \$1,206 per acre. In contrast to the estimates of the commenter, the comparable sales in the MSHCP are completely documented with date of sale and assessor’s parcel number. The MSHCP Market Study used in the fee determination for the Recirculated Draft MSHCP has an effective date of valuation of August 20, 2006. The market study was completed by Michael Scarcella, president of Capital Realty Associates. Mr. Scarcella has over 15 years of appraisal experience in the Coachella Valley. He is a member of the Appraisal Institute - MAI Member Number 11072 and is licensed by the State of California as a “Certified General Real Estate Appraiser,” Office of Real Estate Appraisers, Appraiser Identification Number AG 019463. He is also qualified as an expert witness for United States Bankruptcy Court and Riverside County Superior Court. CVAG has updated the Market Study (September 2006) and the Nexus Study (January 2007) between the 2006 Final MSHCP and the 2007 Recirculated Draft MSHCP to ensure that the most current available data are used in estimating acquisition costs and identifying the Local Development Mitigation Fee amount necessary to generate the funds for the acquisition program. This is in accord with Section 5.2.1.1 of the Plan, which states that the fee amount shown in the MSHCP was based on a Nexus Study. Regarding funding, please see Major Issue Response 3.

**BM-4** The commenter cites information from a San Diego case (*Southwest Center for Biological Diversity v. Bartel*, or “*Southwest Center*”) and purports that it is relevant to the Coachella Valley MSHCP by providing a side-by-side comparison of features of the San Diego MSCP and features of the Coachella Valley MSHCP. The funding plans for the two multiple species plans are very different. The San Diego MSCP relies primarily on exactions for land acquisition and funding, while the Coachella Valley MSHCP is a fee-based program. See Major Issue Response 3 regarding adequacy of funding. See responses to Comments G-10 and T-12.

The following is a row-by-row response to Figure 1 of Comment Letter BM, which is a comparison of the San Diego MSCP and the Plan:

1. The commenter notes that Section 10 of the ESA requires that the Fish & Wildlife Service make a finding that the application will ensure that funding for the plan will be provided, and that Section 10 is applicable to the Plan. No response to this comment is required, as all HCPs are subject to Section 10.

2. The commenter notes that both the San Diego MSCP and the Plan have two general categories of expenses: acquisition costs and administration/maintenance costs. However, this is generally true of all HCPs, and this similarity does not indicate that the Plan suffers from the same relevant deficiencies as the court found in *Southwest Center*.
3. The commenter notes that the San Diego MSCP required the acquisition of 2,400 acres of land from willing sellers, while the Plan requires the acquisition of 90,000 acres from willing sellers. This similarity does not indicate that the Plan suffers from the same relevant deficiencies as the court found in *Southwest Center*.
4. The commenter notes that the San Diego MSCP must have land acquisition completed within 30 years, as does the Plan. This similarity does not indicate that the Plan suffers from the same relevant deficiencies as the court found in *Southwest Center*.
5. The commenter notes that both the San Diego MSCP and the Plan require continuous funding. This similarity does not indicate that the Plan suffers from the same relevant deficiencies as the court found in *Southwest Center*.
- 6.A. The commenter raises concerns that the Eagle Mountain Environmental Mitigation Trust Fund is an “undependable and speculative source” for the funding of the Plan. See response to Comments G-12 and G-13. As stated in Section 5 of the Plan, if funding is unavailable from the Trust Fund, there are a variety of identified sources that could be utilized as replacement funding. An important distinction between the Plan and that in the *Southwest Center* case is that here, the Permittees are obligated by the Implementing Agreement to acquire almost 90,000 acres of land for conservation, whereas in the *Southwest Center* the City of San Diego explicitly refused to guarantee funding (*Southwest Center*, 470 F.Supp.2d at 1156).
- 6.B. The commenter faults the Plan for including in its list of potential replacement funding sources for the Eagle Mountain Environmental Mitigation Trust Fund various sources that may require further action, such as sales tax increases or extensions. These measures are not the primary source of funding; rather, they are several of a list of backup financing options in case the Trust Fund was to be unavailable. According to the interpretation of the commenter, any mention of a voter-approved funding source translates into an HCP being not assured of funding; however, such funding sources are legitimate sources of financing and should be listed for consideration along with other potential sources. The Trust Fund itself is not the only funding source for the Plan, but rather is only one of several, and would not be needed until 2010, by which time the result of the pending litigation should be known. Thus, the

CVCC and/or Permittees would have time to develop additional sources of financing. Lastly, it should be noted that the Permittees and CVCC under the Plan have obligations to ensure the funding of the Plan, and thus the probability of adequate funding here is much higher than in *Southwest Center*, where the City of San Diego made no commitment to financing at all.

6.C. The Permittees and CVCC have an obligation under the Implementing Agreement to acquire almost 90,000 acres of land. Under the Plan, none of this land is to be financed using state or federal funding. See Major Issue Response 3.

With regard to the rest of Comment BM-4, the quantitative analysis is premised upon the Eagle Mountain Environmental Mitigation Trust Fund and all of its potential backup financing sources providing \$0 towards the funding of the Plan. Such an assumption is not justified, however, as discussed above. Given that this fundamental assumption was in error, as was the commenter's confusion regarding the role of state and federal funding in the Plan, the rest of the quantitative analysis is flawed.

In conclusion, the Plan is assured of receiving adequate funding in compliance with Section 10 of the ESA.

**BM-5** Please see response to Comment BM-3 regarding adequacy of plan funding and reliance on an updated Market Study and Nexus Study to determine estimates of Total Acquisition Cost. See also Major Issue Response 3. The comment does not provide sufficient detail regarding the claim that the land acquisition value has been greatly underestimated. There is no way for the assumptions used to be verified or reviewed nor are the Lead Agencies able to verify the accuracy of commenter's computations because underlying data was not provided.

**BM-6** There is no need to estimate the cost of regulatory takings because such takings are not anticipated in conjunction with Plan implementation. See Major Issue Response 2 regarding regulatory takings. Indeed, the Plan anticipates acquisition of land only from willing sellers at fair market value. See response to Comment X-36 regarding the Nexus Study; see responses to Comments T-13 and T-14 regarding the legal requirements applicable to the Local Development Mitigation Fee.

**BM-7** Comments that were submitted under the first MSHCP draft were addressed in those responses to comments, and the Lead Agencies direct the Property Owners Association of Riverside County and other readers to refer to responses to Letters Y02 and Z02 published in February 2006 rather than reiterating them in this document.

See Major Issue Response 1 with regard to the use of best available science. Although studies have been conducted on the impacts of recreation on bighorn sheep and other ungulates, the responses of bighorn sheep to recreational impacts is variable and not currently well understood. Consequently, the literature available to support management recommendations for recreational trails is controversial. Perhaps one of the most controversial aspects of the scientific literature is the extent to which that literature does or does not address the impacts of recreational trail use on bighorn sheep in general and Peninsular bighorn sheep in particular. Despite numerous studies on short-term effects of various types of human disturbance on bighorn sheep, there remains little empirical data regarding the long-term effects of recreational trail use on populations of bighorn sheep. The lack of testing for a causal connection between recreational trail use and long-term impacts to bighorn sheep populations evidences the difficulty of studying large mammal ecology with sufficient sampling intensity and duration to account for potential confounding factors. The literature ranges from published opinions which provide no supporting data to experimental studies that tested a specific hypothesis relevant to bighorn sheep and human disturbance. The lack of focused studies that address the core question of population-level effects of recreational trail use on Peninsular bighorn sheep has allowed a wide range of interpretations of what the literature does and does not say.

Deciding which past work is valid and how to properly interpret and apply it is a challenge. Another major obstacle in understanding the effects of recreational trail use on bighorn sheep is that existing knowledge gaps interject a level of uncertainty into the decision making process. However, one should be prudent in light of the endangered status of Peninsular bighorn sheep and the decline and, in some cases extirpation, of bighorn sheep that have occurred near other growing cities in the desert southwest, including Albuquerque, Phoenix, and Tucson, and major population decline in the mountains north of the Los Angeles basin and San Gabriel Valley. The pattern of population decline adjoining human population centers prompted Krausman et al. (2001) to suggest that it is difficult for bighorn populations to persist in the presence of heavy human activity and that aggressive management is needed, though it is likely that factors beyond human recreation also were involved in these extirpations and declines. Some human activities clearly can be detrimental to bighorn sheep, but it is important to distinguish what is detrimental and what is not. As stated by Miller and Smith (1985) 20 years ago, “in general, the feeling of bighorn managers is that they should act conservatively until there is better information on the actual effects of human activity.”

Given the controversial nature of trails management and the limitations of the scientific literature, the MSHCP will implement an adaptive management approach to

trails whereby information is gathered through management policies that are treated as experiments. This approach will emphasize a research program which, as stated in the Final Plan, “will initially focus on multi-agency scientific data gathering to evaluate the effects of recreational trail use on Peninsular bighorn sheep health, habitat selection, and long-term population dynamics. The overarching goal of this research program is to obtain empirical data from the Plan Area to guide trails management.” This research program will be coordinated with monitoring of human trail use, and will be integrated with educational and public awareness efforts, and other trail management prescriptions.

To ensure that research is focused on the relevant questions, a problem analysis will be prepared as part of the development of a request for proposals for the research program on the impacts of recreational trail use on bighorn sheep. This will involve an objective analysis of the problem that follows a forward logical path. The problem analysis ultimately decomposes a question into components and hypotheses and deduces measurable variables that have bearing on those hypotheses. The logical next step then is to analyze existing data in that context and ask what additional data would be meaningful. In so doing, such an analysis also will determine what the limits of resolution are relative to potential data and conclusions. Part of this process will involve critically examining the literature to distinguish observational studies from ones with experimental designs and critical evaluation of study results. An important element is to evaluate whether studies began with an adequate problem analysis and derived hypotheses and tests in an objective way from that analysis.

The science that formed the basis of the draft Trails Plan reflects the state of the science available on the effects of recreation on bighorn sheep. In developing the draft Trails Plan, it became apparent that most studies of the effects of recreation on wildlife (especially bighorn sheep) were plagued by the common problems associated with recreation and wildlife studies (Knight and Cole 1995; Taylor and Knight 2003): ambiguous terminology, comparisons using inconsistent methodology, inadequate study duration, inadequate controls or replication, and inadequate treatment of potentially confounding factors. For example, in a review of the wildlife literature to describe the behavioral responses of wildlife to recreation, Taylor and Knight (2003) found inconsistencies in the methods used to address specific research questions (e.g., whether animals were approached directly or tangentially, and whether the approach was continuous or interrupted (see Papouchis et al. 2001). These seemingly minor differences in methodology may dramatically influence the selection of analysis techniques as well as the interpretation of study results. In some cases the published article may essentially contain no more than the opinion of the author. Therefore, in reviewing the literature related to recreational trail use and bighorn sheep, it was also

necessary to consider each study's strength of inference, or in other words, the study's ability to provide support for the conclusions it drew. For each study considered, the duration of the study, experimental design, handling of potentially confounding factors, and the use of adequate controls and replication all needed to be evaluated. Ultimately, the available literature was also considered in conjunction with expert opinion to develop the draft Trails Plan.

It is important to realize that although publications regarding the effects of recreation on bighorn sheep extend over the past 70 years, the standards and techniques of wildlife science have improved in recent years, with an increasing emphasis on quantitative, manipulative studies, and decreasing reliance on anecdotal information and observational studies. This is not to discount the value of observational data. Observational data play an essential part of the scientific process, as they provide a means to quantitatively describe a pattern (Manly 1992), which is an important step in developing testable hypotheses (Quinn and Keogh 2002). Natural, but uncontrolled, experiments can provide as useful data as purposeful experiments in some situations. However, when evaluating observational studies, it is essential to consider whether appropriate controls, baseline data, or replication were incorporated into the study, and how these factors may affect the conclusions of the study. The research design should reduce the affect of confounding factors to the extent possible. It is also important to recognize, however, that in field research on ecological systems, controlling for these factors may be difficult or impossible.

The literature reviewed for the draft Trails Plan was not restricted to studies that examined relationships between bighorn sheep and recreational use of trails. In order to glean all information possible from the literature, it is necessary to consider results from studies of similar topics (e.g., various types of human disturbance) and similar species (e.g., other ungulates). However, it is also necessary to critically review study results from other species, study areas, or generalized topics with attention to ecological or geographic differences that are limited in their relevance to bighorn sheep. For example, studies conducted on bighorn sheep in the Sierra Nevada may not be directly applicable to the Peninsular Ranges because of differences in the amount of available escape terrain, limits on human use of trails, trail density, and the juxtaposition of the trails, escape terrain, humans, etc. Still, for example, despite a short study duration and the lack of a control or baseline data, Hicks and Elder (1979) identified several factors that influenced how Sierra Nevada bighorn sheep responded to disturbance and these factors are expected to be similar for bighorn sheep in the Peninsular Ranges. Another example of this principle is the study by King and Workman (1986). These authors compared responses of hunted and unhunted populations of bighorn sheep to intentional human disturbance (hikers and vehicles).

The responses of the hunted population are expected to be more severe (87% of encounters for the hunted population resulted in bighorn fleeing) than the expected response of Peninsular bighorn sheep; however, their data on the unhunted population (43% of encounters resulted in bighorn fleeing) is useful for understanding how Peninsular sheep may respond to disturbance.

A clear cause-and-effect link between trail use and reduced bighorn sheep fitness (defined as survival and reproduction) and population levels does not exist. Studies of appropriate duration and design have not been attempted to establish this link. Nonetheless, the scientific literature does provide some support for the premise that recreational use of sensitive bighorn sheep habitat (particularly during lambing and hot seasons) may negatively affect bighorn sheep (Horejsi 1976; Graham 1980; Stemp 1983; Miller and Smith 1985; Etchberger et al. 1989; Krausman et al. 2001; Papouchis et al. 2001). Researchers have determined that, under certain circumstances, human recreation may temporarily displace bighorn sheep, disrupt foraging which may reduce nutrient acquisition, and cause uncertain levels of stress. However, uncertainty remains where the long-term effects on bighorn sheep populations are concerned. As described in the PBS Recovery Plan (USFWS 2000) for Peninsular bighorn sheep, excessive disturbance may reduce an animal's conception or reproductive abilities indirectly by disrupting optimal feeding and ruminating cycles (Wagner 2000) and consequently reduce the nutritional condition of the animal. Ewes that fail to acquire adequate energy reserves may fail to conceive (Wehausen 1984) or they may produce small offspring with a poor chance of survival (Price and White 1985). Etchberger and Krausman (1999) found that the reproductive success of ruminants was related to the mother's body weight, access to resources, quality of home range, and age. When resources are scarce, ewes have been found to reduce care of lambs to favor their own nutritional requirements over the lamb's development (Fiesta-Bianchet and Jorgensen 1996). The unanswered question is the extent to which these impacts have long-term effects on bighorn sheep populations.

The extent to which recreational use of trails may result in habitat fragmentation or loss in bighorn sheep habitat also needs to be further evaluated. Evidence of bighorn sheep avoiding trails in the northern Santa Rosa Mountains was reported by Ostermann (2001). Etchberger et al. (1989) found that habitat used by desert bighorn sheep in the Santa Catalina Mountains was twice as far from human disturbance as habitat that had been abandoned by bighorn sheep. However, these authors also found that the habitat used by the remaining sheep had characteristics that made it better bighorn habitat and that lack of fires may have been a factor in the habitat selection. The study was not conclusive as to whether interactions with humans played a role in habitat use patterns and the demise of that population. Papouchis et al. (2001) also



documented habitat loss through avoidance behavior in certain situations. For another species, a well-designed experimental study of antelope (*Antilocapra americana*) found groups of antelope were significantly farther from trails in years with recreational use than in the year before recreational use (Fairbanks and Tullous 2002).

In examining the scientific evidence on whether recreation (hiking, mountain biking, horseback riding) is a disturbance to bighorn sheep and what the long-term and population level effects of this disturbance may be, it is critical to recognize the complexity and difficulty of studying and quantifying these effects. Although disturbance from recreation is not generally recognized as a major influence on bighorn sheep population dynamics, many biologists have expressed concern over the effect of recreation in bighorn sheep habitat (Weaver and Light 1973; Stemp 1983; Etchberger et al. 1989; USFWS 2000; Krausman et al. 2001; Papouchis et al. 2003). Even researchers who reported that human recreation was not adversely affecting bighorn sheep in their study area (Hicks and Elder 1979) recommended for the Mt. Baxter area in the Sierra Nevada, that managers “continue current regulations (the maximum Bighorn Zoological Area limit of 25 hikers per day) with increased restrictions on off-trail hiking and alteration of the Baxter Pass trail to route people away from areas intensely used by sheep.” Flather and Cordell (2001) stated, “The fact that outdoor recreation is dispersed over large areas has undoubtedly contributed to the perception that it has little environmental impact compared to extractive uses of natural resources such as timber harvesting or livestock grazing. Given the growing number of outdoor recreationists...the notion that recreation has no environmental impact is no longer tenable.” It is clear that rigorous, scientific investigations of the impacts of recreation on wildlife are lacking (Knight and Cole 1995; Taylor and Knight 2003). However, it is also clear that that human population in the CV is increasing and the number of recreationists will also increase. Developing a logical and biologically meaningful trails management plan for bighorn sheep in any area requires a basic understanding of three key elements. The first is knowledge of the habitat requirements of bighorn sheep in general. The second is knowledge of the habitat and its use as it relates to the requirements of individual male and female bighorn sheep. The third is knowledge of how sheep react or interact with trail users. With these understandings, it is possible to begin to determine how human activity may influence, or at times, disrupt an individual bighorn’s use of its habitat and to what degree that disruption may impact the life cycle of an individual or threaten its existence.

Commenter states that when human disturbance is defined as hikers on trails, available research is limited to five studies, and that all five studies found little to no

impact of hikers upon bighorn sheep. In response to this comment, each of these five studies is summarized and evaluated below.

**Wehausen, J. D., L. L. Hicks, D. Garber, and J. Elder. 1977. Bighorn sheep management in the Sierra Nevada. Desert Bighorn Council Transactions 21:30-32.**

Wehausen et al. reconsidered and refined hypotheses developed by Dunaway (1971) regarding bighorn sheep and human disturbance in the Sierra Nevada. Wehausen et al. tested the hypotheses that (1) bighorn sheep cannot tolerate repeated human presence and abandon use of areas receiving regular human use, and (2) frequent human encounters significantly affect the yearly nutrient budget of bighorn due to disrupted feeding patterns and energy expended in flight. The authors tested these hypotheses by observing bighorn sheep and hiker interactions ( $n = 10$ ) on Baxter Pass, and by monitoring recruitment for 2 years. Results indicated that “[w]hile bighorn activity patterns were clearly influenced by frequent encounters with hikers on Baxter Pass, it is apparent that this influence is not extreme and that no permanent spatial displacement is occurring”, therefore the first hypothesis was rejected. Data obtained on reproductive success suggested that the energetic costs associated with responding to human disturbance did not affect bighorn sheep reproductive success; therefore, the second hypothesis was also refuted. Wehausen et al. cautioned that results from this study could not be extrapolated to a situation of substantial increase in human use of the Baxter Pass area, and it should not be applied to other herds without data suggesting that sheep reactions to humans parallel those of the Baxter herd. In light of the findings of this study, Wehausen et al. concluded that the existing restrictions on public use in the Bighorn Sheep Zoological Areas were not entirely appropriate.

Evaluation:

The paper evaluated the hypothesis that human disturbance has been a significant adverse influence on Sierra Nevada bighorn sheep population. It also described a process of making timely management decisions with respect to bighorn sheep, based on development of a hypothesis, testing of that hypothesis, and altering “management in accordance with the results of such testing” (Wehausen et al. 1977). The Wehausen et al. study did not attempt to present baseline data on bighorn use of Baxter Pass in the absence of human disturbance to conclusively test the hypothesis that bighorn sheep abandon habitat that receives regular human use. As has been shown by Papouchis et al. (2001), not all bighorn sheep within a population respond similarly to disturbance. Whittaker and Knight (1998) cautioned against labeling individuals or populations as habituated based on the behavioral responses of a few animals.

Wehausen et al. were able to demonstrate that human use of Baxter Pass did not cause immediate or complete abandonment of the area by bighorn sheep; however their results were not presented as evidence of “no effect” from hiking, as suggested by commenter. The authors cautioned the reader on the generality of their conclusions. Other factors to consider when interpreting the results of this study are that limits on recreation (a permit system with quotas, no off-trail use) were already in place before the study, and that the topography of Baxter Pass contains much escape terrain. Both MacArthur (1982) and Wehausen (1983) suggested that the slope and/or topography of the habitat influence how bighorn sheep respond to disturbance. As for testing their second hypothesis, Wehausen et al. concluded that human disturbance was not causing any overt decreases in reproductive success. However, the study was of short duration, lacked a control population or scenario for testing this hypothesis and did not account for confounding factors such as climate, nutrition, and predation, which may exert important influences on reproductive success. It should be noted that this study is best viewed as part of the larger picture of research in the Sierra Nevada in that time period. Research in the Sierra Nevada employed a clear problem analysis on the question of behavioral interactions with humans prior to data collection. In a later paper Wehausen (1980) presented data spanning numerous years, including pertinent demographic data and a statistical model that indicated that population dynamics were driven largely by environmental variation.

**Hicks, L. L. and J. M. Elder. 1979. Human Disturbance of Sierra Nevada Bighorn Sheep. *Journal of Wildlife Management* 43:909-915.**

Hicks and Elder conducted this study after Dunaway (1971) concluded that disturbance by humans was the most important factor limiting populations of bighorn in the Sierra Nevada and the California Bighorn Sheep Zoological Area was established in 1971. The purpose of this study was to determine (1) the amount of overlap in current use by humans and bighorn, (2) the nature and extent of the interactions, and (3) whether the interactions have a deleterious effect on bighorn. The study was conducted from May to August 1976 and “coincided with the peak periods of activity of both humans and sheep” (Hicks and Elder 1979). Direct observations of sheep and people, pellet transects and hiker interviews were used to assess overlap in areas of use and the nature of the interactions.

“Our observations of the Mt. Baxter sheep indicate that the herd is not declining due to recreational use of the area....Intrusions into bighorn areas were transitory since the purpose was to travel through the area or see some feature, such as peaks or bighorns, and then depart. Areas of frequent contact were limited to specific areas, such as the Baxter Pass trail; and the bighorn sheep did not seem to be affected

adversely. Bighorns continued to return to Baxter Pass despite repeated encounters with humans, and have become conditioned to hikers on the Baxter Pass trail....The results of this study were based on the current hiker use of the Bighorn Zoological Area limit of 25 per day. Increased recreational use might adversely affect bighorns in the Mt. Baxter area. Light and Weaver (unpublished, USFS, SBNF, California) found that intense recreational activity reduced desert bighorn occupancy of an area in the San Gabriel Mountains of southern California.”

**Evaluation:**

While this study provides useful descriptions of encounters between bighorn and humans, in general the remarks are unsupported by the methodology. The concluding remarks need to be evaluated in the context of the methodology. Hicks and Elder were able to verify that bighorn sheep did not completely abandon Baxter Pass when it was subjected to moderate human use. The study did not account for confounding factors and did not measure bighorn use of this area both with and without human use. The authors did not conclude that human use of the trail had no effect on bighorn sheep but rather that “humans and bighorns in the Mt Baxter summer range usually are separated spatially,” and that “the overall distribution of bighorns was related positively to food resources and not negatively to human presence and use.” They did not discuss the possibility that the observation of spatial separation is evidence that bighorn avoidance/habitat loss had already occurred. As noted above, Hicks and Elder did recommend that current regulations on hiking continue and suggests that “increased recreational use might adversely affect bighorns in the Mt. Baxter area.” The statement that all solitary ewes and 4 of 9 sheep groups “may have left the pass because of disturbance to humans” contradicts the later statement “hiker foot-trails did not affect sheep movements in the summer range.” It important to evaluate this paper and the issues related to impacts to bighorn sheep in the Baxter Pass area in the larger perspective of habitat available to those sheep. It is the only location for that entire summer range where female sheep might encounter people frequently enough to result in permanent displacement. In the final analysis, the facts that sheep were coming to that area regularly despite human use, and that the vast majority of their summer range lacked similar human use, limits the potential for human interactions to have more than a very minor influence on the population, if any. Similar to Hicks and Elder, Leslie and Douglas (1980) documented that some sheep tolerated human disturbance; however, through the use of radio-collared animals Leslie and Douglas also documented an avoidance reaction by a portion of the bighorn population. However, the Leslie and Douglas study involved a sudden change in human activities around a desert water source, thus was not a completely analogous situation.

The authors provided short-term data (high lamb:ewe ratios for the current year and a lack of diseased animals) to support their conclusion that “bighorn-human encounters were limited to specific locations and were not adversely affecting the bighorn population.” Because their study did not incorporate marked animals, Hicks and Elder were not able to determine if a proportion of the bighorn population avoided Baxter Pass.

Data-supported conclusions and information to draw from this study:

1. Distance, herd size, and elevation of humans in relation to sheep were important in determining the reaction of bighorn when approached by people.
2. Groups of rams may react to human disturbance differently than groups of ewes, lambs and yearlings.
3. Hicks and Elder (1979) provide an example of differing bighorn responses to human disturbance with light to moderate human-use (without dogs).
4. Sheep did not completely abandon habitat adjacent to a moderately used human trail, although the study was not able to determine the variation in bighorn sheep responses to trail use. It is unknown whether some bighorn sheep abandoned the area.

Purdy and Shaw. 1981. An Analysis of Recreational Use Patterns in Desert Bighorn Habitat: the Pusch Ridge Wilderness Case. Desert Bighorn Council Transactions 25:1-5.

The objectives of this study were to: (1) Determine numbers and activities of recreators; (2) determine preferences and perceptions regarding resources and management of Pusch Ridge Wilderness (PRW) for individuals using specific areas; (3) estimate numbers of recreators using lower portions of several specific canyons; (4) determine degree of interaction between recreators and bighorn sheep in PRW; and (5) assess recreational impacts on bighorn sheep in PRW and develop management recommendations.

Photoelectric trail traffic counters, unmanned survey stations, self-administered questionnaires, telephone surveys, and direct observations were used to meet the objectives. “...the majority of respondents felt as if their activities in PRW had little, if any, effect on the sheep...[G]iven a hypothetical situation of a declining sheep population...[and] four possible courses of action concerning restrictions of recreational use...[r]esponses indicated a preference for mandatory restrictions of recreational use in specified bighorn habitat areas during certain periods of the

year...The intensities of recreational activities in most lower canyons over the past years have probably precluded bighorn sheep use of these areas...Activities of backcountry users would appear to pose the greatest threats to bighorn...Behavior of bighorn sheep towards humans appears to be a reflection of the way humans behave towards sheep. If disturbances continue, sheep may completely abandon habitat near recreational areas...PRW user-education could be extremely useful for increasing awareness regarding the needs of the bighorn sheep...The major emphasis...should be placed on discouraging the following activities: (1) cross-country travel in backcountry areas, (2) camping near wildlife water catchments, and (3) traveling with dogs in backcountry regions...The long-term future of desert bighorn in PRW is by no means secure. Until a better understanding of the biological parameters of the population is obtained and the effects of increasing human use of its habitat can be determined, management should take basic precautions against recreational overuse of sheep habitat. At this time, stringent restrictive use measures do not appear appropriate. However, the following recommendations are made as safeguards...:

1. Continue to monitor trail traffic... in order to obtain long-term indications of total canyon use.
2. Provide backcountry users...with information...to increase users' level of knowledge of bighorn sheep in PRW... to make visitors aware of the possible consequences of activities in bighorn habitat . . .
3. Enforce existing regulations against camping within ¼ mile of wildlife water catchments...
4. Provide no improvements of backcountry trails... in order to maintain low volumes of backcountry use.
5. Obtain accurate PRW bighorn population data including numbers, health, productivity, lambing areas, distribution, resource utilization, and seasonal movements.
6. Use information from recommendation 5 as data base for monitoring the physiological and behavioral effects of recreational use on bighorn sheep in PRW.

**Evaluation:**

It is important to note that this study was primarily focused on describing and evaluating recreational use of the PRW and attitudes and beliefs of recreational users about the value of bighorn sheep and the impacts of their recreational use on bighorn

sheep. The study also addressed the opinions of trail users regarding recreational use restrictions with a hypothetical declining bighorn population. It was not a study of the impacts of recreational trail use on bighorn sheep. Therefore, this paper could not be used to conclude that there is “little to no impact of hikers upon bighorn sheep” (Comment K02-70). Interestingly, the study found that when respondents were given a hypothetical situation of a declining bighorn sheep population in PRW, “responses indicated a preference for mandatory restrictions of recreational use in specified bighorn habitat areas during certain periods of the year. The second most popular alternative was voluntary restriction.” The authors stated that “[t]he majority of users are lower canyon visitors and appear to present little threat of bighorn disturbances.” The authors did not provide data to support this statement. The authors speculated that “the intensities of recreational activities in most lower canyons over the past years have probably precluded bighorn sheep use in these areas.” Therefore, the authors are suggesting there is little threat of bighorn disturbance in lower canyons because the habitat was probably already abandoned. No data were provided to support the speculations that: (1) habitat was abandoned due to human use, or (2) that lower canyon visitors appear to present little threat of bighorn disturbance. They also stated that “while less than 10% of total users can be considered backcountry visitors, their activities and lengths of stay may pose a greater threat to bighorns.” As stated by the authors in their conclusion, “the results of this study should provide managers with a basic understanding of the recreational uses and users of bighorn habitat in PRW, consequently laying a groundwork for further investigations concerning the physiological/behavioral effects of this use upon bighorn sheep.” The management recommendations they provided (see above) appear to suggest that potential impacts to bighorn sheep should be addressed in part by educational information for trail users and limitations to backcountry access and that further study is needed.

**Hamilton, K., S. A. Holl, and C. L. Douglas. 1982. An Evaluation of the Effects of Recreational Activity on Bighorn Sheep in the San Gabriel Mountains, California. Desert Bighorn Council Transactions 26:50-55.**

Hamilton et al. conducted this study in the San Gabriel Mountains after Light (1971) concluded that heavy human was excluding bighorn from high quality habitat and Weaver and Light (1973) developed a set of guidelines to minimize bighorn/human interactions. Hamilton et al. attempted to test the hypothesis that sheep were abandoning areas of heavy human use by determining (1) whether the presence of people was adversely affecting bighorn use of a point (or localized) resource like a mineral lick, and (2) whether the high number of hikers on foot-trails in sheep summer range caused abandonment of nearby habitat. The authors concluded that “To date there is no evidence that sheep have shifted mineral lick use to a time when

fewer people are in the canyon, nor is there evidence that the duration of a visit to the Narrows lick is less than the duration of lick use per visit at an undisturbed lick. Correlations between the number of people in the canyon and the number of sheep using the lick were insignificant, but the frequency of people traveling in the vicinity of and directly upstream from the lick did have an effect on lick use. It would appear that bighorn have adapted to the presence of people in the canyon by waiting until the lick was free of disturbance before using it, but otherwise were not disturbed by the presence of people.” They did note, however, that “the frequency with which people crossed it (the lick) did have an effect. Bighorn never were observed using the lick when people were at the lick or directly upstream from it.” Also, as described in the Draft Implementation Strategy to Restore the San Gabriel Mountains Bighorn Sheep Population (March 2004, unpublished report CDFG, Los Angeles County Fish and Game Commission, US Forest Service), “Hamilton et al. compared the distribution of bighorn sheep along a heavily used trail (Devil’s Backbone Trail; 6,401 summer visitors) and a lightly used trail (Cucamonga Peak Trail; 24 summer visitors). An evaluation of the distance 36 groups of bighorn sheep was observed from the trails failed to identify a significant difference.” Use of trails in sheep summer range did not appear to cause avoidance of nearby habitat.

Evaluation:

Through simple linear regression analyses, Hamilton et al. found evidence of temporal resource partitioning at the Narrows Lick (i.e., bighorn were never observed using the lick when people were present or for the following 60 minutes after people left the lick area. The frequency of people crossing the lick was negatively correlated with sheep use of the lick). The results of this comparison of the timing of sheep use of two different licks led the authors to conclude that “bighorn did not avoid the lick, they used it only when no humans were in the immediate vicinity.” The study does not provide a completely conclusive test of whether sheep use was altered by human use because the authors did not account for confounding factors (weather, group size, bighorn age/sex, slope, aspect, vegetation, terrain roughness, viewsheds, etc.). The Draft Implementation Strategy for the San Gabriel mountains referenced above concluded from Hamilton et al. and Leslie and Douglas (1980) that “these studies demonstrate that recreation can result in bighorn sheep avoiding these point resources; therefore, disturbance should be avoided or minimized at mineral licks.”

The comparison of sheep distances from the Cucamonga Peak Trail and Devil’s Backbone Trail may not be a valid comparison. The authors described stark differences in terrain/vegetation/visibility surrounding the two trails but did not address the influence of these differences in their conclusion. Given these differences



in visibility, etc., there is no reason to expect bighorn use of habitat surrounding the trails to be similar. Therefore, the authors cannot use a comparison of bighorn use of two trails to conclude that recreational use of trails in sheep summer range did not appear to cause avoidance of nearby habitat. The authors did note, however, that the actual levels of recreational use in the area were probably higher in that estimates of use “were based on records from trail head registers and not everyone using the trail may have registered.” An accurate test of hypothesis 2 proposed by Hamilton et al. would require comparing bighorn use of habitat with and without human presence while controlling or accounting for confounding factors.

Although Hamilton et al. did not discuss the implications of their evidence for temporal resource partitioning; this is clearly a significant finding from their study. Similar evidence of bighorn exhibiting temporal or spatial resource partitioning of a localized resource (water source) in response to human use or disturbance were reported by Jorgensen (1974), Leslie and Douglas (1980), and Campbell and Remington (1981).

Another factor to consider with the San Gabriel Mountains sheep is that this population has declined dramatically in recent years for unknown reasons. It has been hypothesized that fire suppression and increased mountain lion predation are to blame (Holl et al. 2004), but there are no cause-specific mortality data to support this speculation. The indirect effects of heavy human-use of the area should be considered as a potential contributing factor to the population decline. As Stemp (1983) discussed, the consequences of stressing bighorn sheep (e.g., habitat use shifts, reduced fitness, increased susceptibility to disease, etc.) may be delayed.

Data-supported conclusions and information to draw from this study:

7. Hamilton et al. found evidence of bighorn sheep exhibiting temporal resource partitioning of a mineral lick in response to human use of the lick.
8. Sheep did not completely abandon habitat adjacent to a highly used human trail,
9. Additional research would be required to expand on the results of and address the limitations of this study.

**Wehausen, J. 2000. Locations of Human Interface with Sierra Nevada Bighorn Sheep. Unpublished report. 3 pp.**

Mount Langley herd. "...the sheep show a high degree of habituation...and have not been displaced from habitat. The habitat here is very open and sheep are very unlikely to be surprised at short range by humans."

Mount Williamson herd, "In the 1970's I recorded a number of occasions in which the sheep in this herd reacted particularly strongly to my presence...The result is that the initial very restrictive closure of this area to human use has been largely maintained."

Mount Baxter herd. "The original closures were very restrictive and were relaxed as a result of the initial research we did there...There is no evident conflict here, nor was there a problem when the sheep were more numerous."

Wheeler Ridge population. "...these sheep are very habituated to human use there and no conflict exists...Given how readily these sheep habituate to human use that is geographically predictable, it is unlikely that a conflict will develop."

Lee Vining Herd. "The sheep...have shown very high habituation to the frequent human use there."

"The question is whether influences of humans are limiting population growth rates and the ultimate sizes that bighorn populations can reach...A historical perspective is very useful...For instance, the Mount Baxter herd was a large and productive population through the mid 1980s under summer human use similar to and perhaps somewhat greater than at present. It would be difficult to argue that human use is a problem today given this historical information, unless that use has increased or changed in some other meaningful way...Efforts to recover these sheep need to focus on the primary factors affecting population dynamics and not place emphasis on factors like human disturbance that appear to be at most very minor influences. A useful exercise relative to the question of human disturbance would be to map human use patterns by intensity and changes over time to look for areas that might be of concern because of increasing trends."

**Evaluation:**

The reference to and discussion of Wehausen (2000) in the Draft Trails Plan has been removed from the Final Plan. The author has pointed out that this paper was written solely to the Sierra Nevada bighorn sheep Recovery Team and was not intended for use outside that group. It included observations and opinions based on the author's

many years of experience. The paper was not a report on experimental studies and it was not intended to present data or to be considered in the context of a research study. The criteria or methodology for classifying bighorn populations as habituated was not provided. No quantification of human use or bighorn use of trail areas was provided. In this regard, the reference to this paper by several of the comment letters is probably not appropriate in relation to Peninsular bighorn sheep, according to the author (Wehausen, pers. comm., August 2005).

The Trails Plan for the Santa Rosa and San Jacinto Mountains is designed to meet two primary goals as follows:

- Goal 1: Minimize the risk of potential adverse impacts to bighorn sheep from recreational activities.
- Goal 2: Provide recreational opportunities throughout the Santa Rosa and San Jacinto Mountains for hikers, equestrians, and mountain bikers that are consistent with recovery of bighorn sheep.

The approach to trails management in the Final Plan to one of Adaptive Management with a research emphasis, where learning is placed as the highest priority. The draft trails plan emphasizes research on the effects of trail use on bighorn sheep and monitoring of human use on trails and bighorn sheep populations. As stated in Section 7.3.3.2.1 of the Final Plan, “the trails management program in the Santa Rosa and San Jacinto Mountains Conservation Area has adopted an Adaptive Management approach. The Final Trails Plan will initially focus on multi-agency scientific data gathering to evaluate the effects of recreational trail use on Peninsular bighorn sheep health, habitat selection, and long-term population dynamics. The overarching goal of this research program is to obtain empirical data from the Plan Area to guide trails management.” Trails will remain open all year (not including three trails which will be closed during the hot season) except if closed in accordance with the research methodology. The focus of the research program will be on trails which affect bighorn sheep lambing habitat; this list of trails may be adjusted as the research study design is developed. This research may include manipulation or limitation of use levels or closures on selected trails as an element of the study design to address specific hypothesis-based research questions.

- BM-8** The commenter lists a number of biological reports and anecdotes submitted with comments on the November 2004 Public Review Draft MSHCP. The fundamental basis for inclusion of a property in a Conservation Area is the principle of conservation biology. See Major Issue Response 1 for details of the reserve design process. Each of the commenter’s cited letters are addressed below.

**Timothy and Edra Blixseth, March 4, 2005**

The Essential Habitat boundary for Peninsular bighorn sheep includes potential, as well as occupied, habitat. Because bighorn sheep may not have used the property in recent years does not mean they have not used it in the past, or might not use it in the future. Areas at or near the toe of the slope, including Section 31, do provide suitable habitat for bighorn sheep. Bighorn sheep have been recorded in close proximity to the boundary of Section 31. As identified in Figure 10 of the Desert Ranch Biological Assessment, bighorn sheep have been observed within 0.5 mile of the Desert Ranch property. The sheep observation data provided are based on a limited sample. A more complete sampling of this ewe group would likely include observations of sheep within the Desert Ranch property, at least prior to construction of a perimeter fence. The use of this habitat does appear to be at low frequency compared to the core habitat in the Santa Rosa Mountains to the west. Bighorn sheep use alluvial fan habitat at critical times of the year seeking extra nutrients when nutritious forage is scarce. While such habitats may not be used frequently, when they are used, they can be very important to bighorn sheep. For example, these areas may be used by ewes during late gestation under circumstances when nutritious forage is scarce (J. Wehausen, pers. comm., July 15, 2005). Rams, in groups or alone, will cross broad flat plains and valleys between mountain ranges (Bleich 1993) and will forage up to a mile away from escape terrain (McCarty and Bailey 1994). Ewes also cross flats between mountain ranges on a regular basis (J. Wehausen, pers. comm., December 4, 2003)

The Recovery Plan (USFWS 2000, Appendix B, page 158) states, “washes and alluvial fans often support a higher diversity, quality, and quantity of forage species than less productive rocky slopes (Leslie and Douglas 1979), seasonal and perennial water sources (Wilson et al. 1980, Holland and Keil 1989), bedding and thermal cover (Andrew 1994), alternative forage sources in times of drought, resource scarcity, and stress (Leslie and Douglas 1979, Bleich et al. 1997), and a source of forage with higher nutritional value during the lambing and rearing season (Hansen and Deming 1980). Plant species that are preferred by bighorn sheep (J. Wehausen, pers. comm., July 15, 2005), such as catclaw acacia (*Acacia greggii*) were reported on the Desert Ranch property by Arnold et al. (January, March 2005) and Arnold (January 2005). Since temperature varies inversely with elevation, the earliest winter forage growth occurs at lower elevations (Wehausen 1980, 1983), and sheep often seek this early source of nutrients. The critical importance to bighorn of access to a variety of feeding habitats was demonstrated in the Whipple Mountains when reintroduced sheep were confined to an enclosure containing what was considered ample forage. At lambing time, both ewes and their new lambs began dying of

malnutrition (Berbach 1987), apparently because they were not free to seek out habitats containing more nutritious forage.

With respect to Le Conte's thrasher, it is also true for this species that lack of observation of these birds does not confirm their absence on the Desert Ranch property. Surveys for the Le Conte's thrasher by UCR elsewhere in the Coachella Valley (UCR, Center for Conservation Biology 2004, 2005) found that this species can be difficult to detect. In some cases, birds were not detected at a given survey location only to be detected at a different time during the year, or in subsequent years. At the low densities at which this species appears to occur in the Coachella Valley, individual Le Conte's thrashers may not sing or respond to a call from another bird (including taped recordings played during thrasher surveys). The results of the UCR surveys also indicate that the population levels for this species may have reached a low ebb during the severe drought of 2002 and are only now beginning to recover; UCR biologists (UCR, Center for Conservation Biology 2005) have detected birds during 2005 at sites where they had not previously been recorded. The lack of observations of Le Conte's thrasher reported by biologists for the Desert Ranch property (Arnold et al. 2005), does not lead to a conclusion that the species could not occur here. With respect to suitable habitat for this species, the *Birds of North America* species account for Le Conte's Thrasher, authored by Sheppard in 1996, states "substrates typically sandy and rarely composed of large proportions of rock >2-4 cm. across ... requires accumulated leaf litter under most plants as diurnal cover for most arthropod prey." The Desert Ranch property is relatively rocky by comparison to areas on the valley floor where this species has been observed but does provide areas of potentially suitable substrate. Given the relative richness of the area in terms of plant density and diversity, accumulated leaf litter is adequate, especially for a well drained wash. The density and diversity of cactus species, a preferred nesting site for Le Conte's thrasher (including *Opuntia acanthocarpa* and *Opuntia ramosissima*), is comparable to other areas in the Coachella Valley where this species is known to occur. The report by Arnold et al. (17 January 2005) suggests that 85% of Le Conte's thrasher nests occur in big saltbush (*Atriplex lentiformis* ssp. *lentiformis*) or buckhorn cholla. Although no citation is given, it is likely that this percentage represents a significant proportion of nest sites from the San Joaquin Valley, which differs from the Coachella Valley in terms of Le Conte's thrasher habitat. Biologists from UCR (Darrell Hutchinson, pers. comm.) have reported Le Conte's thrasher nests in indigo bush (*Psoralea schottii*) and cheesebush or burrobrush (*Hymenoclea salsola*); these plant species are both reported as common on the Desert Ranch property in Table 2 on page 21 of the Arnold et al. (January 2005) report. In the San Joaquin Valley, densities of Le Conte's thrasher may reach 10 adults per square kilometer (Sheppard 1996). However, in the Coachella Valley, Le Conte's thrashers

are much more widely dispersed. At the low densities at which they appear to occur, Le Conte's thrashers may vocalize less because intensive territorial defense is not as necessary (UCR, Center for Conservation Biology, 2005). Portions of the Desert Ranch property, including Section 31, essentially a broad alluvial fan, would appear to be consistent with the descriptions of potential habitat for this species provided by Arnold et al. (page 54, 17 January 2005 report), "...although many broad canyons with large flood plains and poorly vegetated sides are acceptable ... Narrow, boulder-strewn canyons with little or no sand deposition area are used infrequently. Le Conte's thrashers commonly use small arroyos, depressions, or streambeds..." So, while the surveys conducted by biologists for the Desert Ranch property apparently followed standard protocols for Le Conte's thrasher, these surveys carried out in only one year cannot be considered as conclusive evidence of the absence of this species. According to survey results reported by UCR (UCR, Center for Conservation Biology, 2005) success rates for detection of Le Conte's thrasher varied from 42% to 75% even under favorable conditions.

The commenter noted that the Desert Ranch property has been designated as "actual or potential habitat for endangered species or species of special concern." It should also be noted that Arnold et al. (January 2005) reported "signs at discrete locations within the study area denoting habitat for desert tortoise (*Gopherus agassizii*) in Section 31.... " Desert tortoise is a Covered Species under the MSHCP and a state and federal Threatened species. The biological assessment report (Arnold et al. March 2005) also reported the observation of burrowing owl (*Athene cunicularia*) on Section 16 of the Desert Ranch property. Burrowing owl is a Covered Species under the MSHCP and is a California Species of Special Concern, as designated by CDFG.

#### **Wind Energy Partnership, March 1, 2005**

The report cited in the comment does state that a burrowing owl was found on site and that desert tortoise has the potential to occur on site. Both of these are Covered Species under the MSHCP.

#### **Kent Seatech, March 7, 2005**

The CVSC and Delta Conservation Area boundaries were intended to exclude the area west of Highway 86. At the time the boundaries were originally developed, the new Highway 86 had not been constructed. The boundary was mapped along what the available information indicated was the alignment of the highway. That boundary has proved to be incorrect. The Final Recirculated MSHCP shows the correct boundary.

**Bruce Nott, February 17, 2005**

The “General Biological Resources Assessment” conducted by Mr. Cornett, which was attached to the commenter’s letter, acknowledges that the property is occupied by the alkali scrub community (referred to in the MSHCP as the desert sink scrub natural community). This is a rare community in the Plan Area, with only 9,535 acres occurring overall in the 1.1 million acre Plan Area. It is thus rarity in the MSHCP Area that causes this natural community to be included in the Plan to ensure that the MSHCP meets the objectives of the Natural Community Conservation Act of 2002.

**A-1 Aggregates, January 15, 2005**

The A-1 Aggregates letter of January 15, 2005 did not state that in the course of biological surveys of the adjacent BLM parcel focused on Coachella Valley fringe-toed lizard, flat-tailed horned lizard, and Coachella Valley milkvetch, none of these species were determined to be on the site, nor was there an indication that this area is habitat for the Palm Springs pocket mouse. The actual surveys were not provided by the commenter nor were any evidence produced that surveys for the Palm Springs pocket mouse were conducted.

**Galway Trust, February 3, 2005**

The biological reference in the Galway Trust letter of February 3, 2005 is “Despite the claim that the property is big horn sheep habitat, there is no evidence presented in the MSHCP which would substantiate that my clients’ property is utilized by any of the Covered Species, including big horn sheep. Furthermore my client’s on the ground observation of the property would indicate the same, that that is, that the property is not utilized by big horn sheep or any of the Covered Species.”

The letter provides no document or substantiation of any sort. The property in question is within both federally designated Peninsular bighorn sheep critical habitat and essential habitat as determined by the Peninsular bighorn sheep Recovery Plan. There are known locations of radio-collared PBS within less than 0.5 mile of the property and known location of Coachella Valley milkvetch on the property. The property contains active desert dunes, which is an extremely rare natural community with just over 500 acres within the Plan Area. It is this rarity in the MSHCP area that causes this natural community to be included in the Plan to ensure that the MSHCP meets the objectives of the Natural Community Conservation Act of 2002.

**BM-9** The MSHCP is not a recovery plan. Recovery of listed species is not a direct requirement of the HCP process but is indirectly involved through the “no jeopardy”

standard required by Section 7(a)(2) of the Act and by the permit issuance criteria found at Section 10(a)(2)(B). That is, the survival and recovery standards are invoked because USFWS issues an “internal” biological opinion in conjunction with issuing a Take Permit for an HCP. Under these mandates, the USFWS must ensure that issuance of an ITP does not “reduce appreciably the likelihood of the survival and recovery of the species in the wild.” In other words, an HCP cannot preclude or appreciably reduce the recovery prospects of affected species. However, Section 3(B)(3)(a) of the USFWS Handbook states that an HCP is not required to “recover listed species, or contribute to their recovery objectives outlined in a recovery plan. This reflects the fact that HCPs were designed by Congress to authorize incidental take, not to be mandatory recovery tools.” Please see Major Issue Response 1, Use of Best Available Science.

**BM-10** Please see Major Issue Response 1.

**BM-11** The Turner *et al.* (2004) analysis is seriously flawed (Ostermann *et al. in press*). Of the nine ewe groups in the Peninsular range, Turner *et al.* analyzed data for only one and a half ewe groups (Figure 5 of USFWS 2000; Figure 1 of Turner *et al.* 2004). The majority of the data points (90%) were from a single ewe group. That ewe group was heavily monitored due to its abnormally high use of urban areas and high levels of urban-related mortality (DeForge and Ostermann 1998; Ostermann *et al.* 2001). Since the construction of a sheep exclusion fence along the urban essential habitat interface in 2002, no urban-related mortalities have been reported and the ewe group has doubled in size (Bighorn Institute 2004). The bias generated by the overrepresentation of the single ewe group, the abnormal behavior exhibited by this ewe group, and analytical problems associated with the Turner *et al.* (2004) analysis (Ostermann *et al. in press*) indicate that there may be considerable reason not to extrapolate the findings by Turner *et al.* to the other eight ewe groups in the range. Given the success of the exclusionary fence, it is likely that the overrepresented ewe group in the study by Turner *et al.* has changed its habitat selection behavior since 2002, which would render the findings of Turner *et al.* inapplicable even to that ewe group. Commenter makes reference to “metadata files from California Department of Fish and Game regarding Peninsular Bighorn Sheep”. The reference is too vague to allow a response.

**BM-12** The comment asserts the Coachella Valley fringe-toed lizard is not a subspecies or distinct population segment and therefore should be de-listed as a species. With regard to the status of the Coachella Valley fringe-toed lizard, the Lead Agencies are aware of no conclusive evidence that would support a change in its listing status as a full species; see response to Comment J-9. Please see Major Issue Response 1, Use of Best Available Science.



- BM-13** Comment allegedly restates California law. See Major Issue Response 3 and responses to Comments BM-02 and BM-03.
- BM-14** See Major Issue Response 1. CDFG will make its independent determination as to whether the MSHCP meets all the requirements of the NCCP Act of 2002, as amended.
- BM-15** Comment restates the specific purpose and the primary goals and objectives of the Plan. Regarding the commenter's assertion that the project description in the Recirculated Draft EIR/Supplemental Final EIS does not adequately describe the project objectives because the Plan is alleged to be inadequately funded and therefore fails to advance a legitimate state interest, thereby rendering the project description inadequate, note that in the referenced section of the comment letter, the commenter cites the project's objectives as generally stated in the Recirculated DEIR/EIS. Thus, the commenter does not dispute that project objectives are provided. Rather, the commenter claims that inadequate funding renders them incapable of being met and, therefore, allegedly inadequate. Major Issue Response 1 addresses the assertion of inadequate funding. CVAG believes that the Plan is adequately funded; thus, the project objectives and project description are not inadequate.
- BM-16** The commenter asserts that the project description in the Recirculated Draft EIR does not adequately describe the project objectives because the Plan is alleged to be inadequately funded and therefore fails to advance a legitimate state interest, thereby rendering the project description inadequate. The commenter claims that inadequate funding renders the objectives incapable of being met and, therefore, allegedly inadequate. Major Issue Response 3 addresses the assertion of inadequate funding. CVAG believes the Plan is adequately funded; thus, the project objectives and project description are not inadequate.
- BM-17** Comment is correct in that insufficient conservation of lands may lead to all or partial Permit revocation. However, the Lead Agencies believe that Plan funding is sufficient and meets state and federal issuance criteria. For discussion regarding the comment's allegation that the MSHCP provides inadequate funding, please see Major Issue Response 3 and responses to Comments BM-2 and BM-3.
- BM-18** As long as the Permittees remain in compliance with the Implementing Agreement, MSHCP, and the Permit, there would be no permit revocation. If the Permittees are out of compliance and Permit revocation occurred, projects needing Take Authorization would be in the same situation as they are in now. Thus, the MSHCP has no adverse effect on "business planning." To the contrary, the MSHCP provides substantial benefit for business planning by providing Take Authorization for private

Development and public infrastructure projects for the next 75 years and greatly simplifies compliance with FESA, CESA, and CEQA. This confers an important level of certainty for projects, which is of great value for business planning. See responses to Comments BM-19 through BM-24.

- BM-19** The comment letter includes Figure 2, which purports to identify the lengths of time for the JPR and HANS processes. It should be noted that the figure prepared by the commenter presents a worst-case scenario for the JPR process of 4.5 months, by using the maximum time frames for each step of the process. In implementing the JPR process, the Permittees have control over these time frames and may certainly expedite the process as they deem necessary and appropriate. Similarly, the HANS process time frame depicted assumes the maximum time for each step in the process, as well as the worst-case scenario of acquisition of the most costly category of property. The HANS process is discussed in Section 6.6.1.2 of the MSHCP. The length of the HANS process is largely dependent on the value of the land and the ability of the parties to reach agreement on price. For additional comments on the HANS process, see Major Issue Response 5. The commenter also states that there is no assurance that funds would be available for acquisition. Major Issue Response 3 describes the adequacy of the overall funding of the MSHCP. See responses to Comments W-4, X-30, and X-31.
- BM-20** A function of the CVCC is to facilitate and monitor implementation of the MSHCP. To do so, the CVCC will assist the Local Permittees in meeting the Conservation Goals and Objectives of the Plan for both the Conservation Areas and Covered Species. As stated in Section 6.6.1.1, “CVCC shall have neither jurisdiction over land use decisions by Permittees nor authority to prevent a Permittee from approving a project.” The Wildlife Agencies may, but are not required to, submit comments on proposed projects in the Conservation Areas through the JPR process. If a Permittee approves a project that does not meet Conservation Objectives or Required Measures, the Wildlife Agencies may initiate Permit suspension or revocation proceedings pursuant to IA Section 23.5 because the Permittees would then be out of compliance with the IA, MSHCP, and the Permits. While the JPR process for private projects and public infrastructure projects in Conservation Areas does create a new review process, this applies only within Conservation Areas and provides a very short time frame. Outside Conservation Areas, the MSHCP will significantly simplify the project review process by local jurisdictions.
- BM-21** The comment mischaracterizes the MSHCP and is inaccurate in asserting that the MSHCP makes the “Wildlife Agencies the ultimate land use authority in the Coachella Valley.” Through CEQA and NEPA, state and federal ESAs, and the

Section 7 process, the Wildlife Agencies currently have a role in reviewing infrastructure projects. The MSHCP reduces that role for projects outside the Conservation Areas, thereby greatly simplifying project review. Projects that border the Conservation Areas will need to adhere to the Land Use Adjacency Guidelines in Section 4.5 of the Plan and be in compliance with the Goals and Objectives for the Ecological Processes that may affect the Conservation Areas. In the Conservation Areas, the role of the Wildlife Agencies is limited to providing comments. It should be noted that, as a result of the MSHCP, Take Authorization is granted to the Permittees, resulting in less project-level involvement from the Wildlife Agencies when the Plan is being implemented consistent with the MSHCP, IA, and Permits. The unsubstantiated assertion in the comment that the “project review process constitutes an enormous overreach by the Wildlife Agencies to acquire power over local governments” is not supported by the facts. See also response to Comment BM-20.

**BM-22** See Major Issue Response 4, Rough Step and Rough Proportionality. It should be noted that approximately 25% of the gross acreage has already been completed and therefore the Permittees will have, at permit issuance, already far exceeded the acreage required in year five of Plan implementation.

**BM-23** This comment fails to recognize that the MSHCP provides Take for projects which otherwise would have to obtain individual Take Permits or authorization under FESA or CESA through other means and/or undergo review by the Wildlife Agencies. The MSHCP thereby confers a significant benefit for infrastructure projects. Also, see responses to Comments BM-17 and BM-19 and Major Issue Responses 3 and 4.

**BM-24** For discussion of the No Surprises Rule, see Major Issue Response 6.

**BM-25** The comment expresses concern that “the Plan restricts access into Joshua Tree National Park Conservation Area...” The references to Sections 4.1.1 and 7.3.3 are unclear, as these sections do not include any statements about restricted access in the Joshua Tree National Park Conservation Area. Section 4.1.1 refers to existing management plans and states that biological resource values within the Park will be managed consistent with the MSHCP. The portions of Section 7.3.3 regarding trails only apply to the Santa Rosa and San Jacinto Mountains Conservation Area. It should be noted that the MSHCP does not apply to federal lands; in the National Monument, BLM and the USFS are responsible for public use and trails management. However, the Trails Plan provides for close coordination with these agencies and with the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee. The commenter is apparently referring to the guidelines in Section 7.3.4.2 for public access and recreation on Reserve Lands, including guideline #13 for hiking, which

states that “hikers must stay on designated trails...to prevent trampling of vegetation and erosion.” This is a general guideline; the National Park Service is responsible for management within the Joshua Tree National Park Conservation Area, including designations regarding trail use. With respect to other issues relative to trail use restrictions, goals of the Trails Plan are to minimize the risk of potential adverse impacts to bighorn sheep from recreational activities and provide recreational opportunities throughout the Santa Rosa and San Jacinto Mountains that are consistent with the recovery of bighorn sheep. Debate remains regarding the effects of recreation activities on bighorn sheep. To date, there has not been a study conducted with the purpose of testing the hypothesis that recreation results in population level consequences for Peninsular bighorn sheep; however, several populations of bighorn sheep inhabiting mountain ranges adjacent to fast-growing urban areas have gone extinct as human activity increases within their habitat. The Plan provides for monitoring and research to determine how recreation may affect bighorn sheep. Please see responses to Comments M-1 through M-20.

- BM-26** See Major Issue Response 2, Regulatory Takings.
- BM-27** See Major Issue Response 2, Regulatory Takings.
- BM-28** See Major Issue Responses 2, Regulatory Takings, and 3, Adequacy of Plan Funding.
- BM-29** The Plan is related to a legitimate government interest of protecting the environment while accommodating planned growth and development, and no due process issues are identified or anticipated. A nexus study has been completed, and appropriate nexus for the fee has been identified.
- BM-30** In an area of over 1.1 million acres, it is not feasible to conduct actual surveys or other “field work” on every acre to precisely delineate the habitat for each Covered Species. It is appropriate to use habitat models to delineate potential habitat areas in a regional conservation plan such as this one. The models are based on actual known locations as well as other pertinent information regarding habitat characteristics, such as soils, vegetation type, and slope. As described in Section 3.6.4 of Appendix I to the MSHCP, at each step of the model development process, members of the SAC and other biologists with knowledge of a given species were consulted. Draft species distribution maps were prepared and reviewed by these individuals in a series of workshops hosted by the SAC. In September 1997, a workshop was held to receive input on draft species distribution models. The species habitat distribution maps used in the Site Identification process were developed to represent both the known and potential habitat for the Covered Species. In some cases, modifications were made to the models based on the recommendations of an individual scientist with expertise on

a given species. Updates and corrections to the models continued to be made. In November 1999, modifications to the models were made based on input received from USFWS and CDFG biologists and the SAC. These updated models were submitted to the USFWS and CDFG as part of a review process in a report entitled “A Biological Analysis of Three Conservation Alternatives” (CVAG 2000). Additional recommendations for final modifications to the habitat distribution models were received in October 2000 from USFWS and CDFG biologists; habitat distribution models were further refined in January 2001. These modifications were made only after careful research and documentation was completed to support each recommendation. To incorporate independent peer review of the species distribution models, knowledgeable individuals with expertise on one or more target species were asked to review, critique, and sign a written endorsement of habitat distribution models for these species.

The commenter suggests that the occurrence of a particular species on a specific parcel should be the basis of reserve design. Such an approach would be contrary to the fundamental principles of conservation biology which as the basis for reserve design in the MSHCP. General principles of conservation biology are captured by the reserve design tenets described in the NCCP General Process Guidelines and NCCP Act (CDFG 1998). These reserve design tenets provided a framework for the conservation planning process. They can be summarized as follows: conserve focus species and their Habitats throughout the Plan Area conserve large habitat blocks conserve habitat diversity keep reserves contiguous and connected protect reserves from encroachment and invasion by non-native species The theoretical and empirical underpinnings of the NCCP reserve design tenets can be found in the conservation biology literature, of which key concepts are summarized here. Although many factors can be incorporated into reserve design and selection, diversity, rarity, naturalness, size and representativeness are the most widely used (Margules et al. 1988). Other considerations include island biogeography design principles of MacArthur and Wilson (1963 and 1967): (1) area effect - the larger the preserve, the greater the species richness (*i.e.*, species area relationship) and the greater the chances of long-term viability of populations (more individuals); (2) isolation or distance effect - the less the distance between reserve units, the greater the opportunity for gene flow, colonization, and rescue effect (e.g., also see Brown and Kodric-Brown 1977); (3) species equilibrium - the number of species that an area can support is determined by a balance between colonization and extinction; and (4) Edge Effect - the larger the ratio of reserve area to reserve perimeter, the lesser the Edge Effect.

An Edge Effect is defined as a change in the "conditions or species composition within an otherwise uniform habitat as one approaches a boundary with a different habitat (Ricklefs 1993)" Edge Effects at the boundary between natural lands and human-occupied lands ("urban edge effects") arise due to human-related intrusions such as lighting, noise, invasive species, exotic predators (dogs, cats, and opossums), hunting, trapping, off-road activities, dumping, and other forms of recreation and disturbance. Although some species are in some ways unaffected by edges [*e.g.*, reproductive output of the rufous-crowned sparrow (Morrison and Bolger 2002), distribution of arthropod species (Bolger *et al.* 2000)] or even show preferences for edges (*e.g.*, indigo buntings and northern cardinals in Woodward *et al.* 2001), human-induced edge effects are generally unfavorable to native species. Another important feature of reserve design is the spatial arrangement of Biological Corridors and Linkages. At this point it is useful to contrast Biological Corridors with Linkages. Biological Corridors are often linear and facilitate efficient movement by providing adequate cover and lack of physical obstacles for movement (Beier and Loe 1992). Biological Corridors do not necessarily Habitat for species. In general, Linkages are large enough to include adequate Habitat to support small populations of the species and, thus, do not require that an individual of the species transit the entire Linkage to maintain gene flow between populations. What functions as a Linkage for one species may provide only a Biological Corridor or no value for other species. Connectedness through Linkages and Biological Corridors is important because habitat fragmentation and isolation lead to extinction of local populations and are the most serious threats to biological diversity. Bolger *et al.* (1997) found fewer rodent species in fragments isolated for longer periods of time and by greater distances. Lower arthropod diversity was also observed by Bolger *et al.* (2000) in older and smaller habitat fragments. The probability of extinction becomes greater as immigration and emigration are impeded by conversion of natural Habitat between occupied or potential habitat patches to inhospitable land covers. Linkages, therefore, serve to ameliorate habitat fragmentation and isolation by permitting the following: (1) the travel, migration and meeting of mates for wide-ranging animals; (2) plant propagation; (3) interchange of genetic material; (4) movement of populations in response to environmental changes and disasters; and (5) colonization of available Habitat by individuals (Beier and Loe 1992).

Empirical evidence exists to support the utility of Linkages and corridors. In a study by Beier (1995), radio-tagged mountain lions never crossed into urban areas; individuals used defined movement corridors for dispersal and for traveling between areas comprising their home ranges. Beier and Noss's (1998) review of thirty-two empirical studies pertaining to the utility of wildlife corridors supported the idea that corridors are "valuable conservation tools." Price *et al.* (1994) also encourage the

consideration of connectedness, particularly for endangered species such as the Stephens' kangaroo rat. Habitat connections are particularly important to the persistence of metapopulations which comprise this species' populations. Using the available data, the five tenets listed at the beginning of this section were incorporated in the conservation planning process. The species list developed early in the planning process, as described in Section 3.2 of this document, along with the species occurrence database and input provided by local biologists and the information assembled for the species accounts provided guidance for the overall species needs that would need to be met within the conserved areas.

Based on the ecosystem, coarse-filter approach used to achieve adequate conservation, individual parcels may not necessarily provide habitat at the present point in time for a Covered Species. The parcel could, however, be part of an important ecological process, a Biological Corridor or Linkage, or one of the natural communities conserved in recognition that the MSHCP is a NCCP under state Ia. In addition, the parcel may be habitat under some conditions, just not current conditions, for one of the Covered Species. Finally, parcels may also be included in a Conservation Area if their location is such that Development would cause fragmentation of habitat in the Conservation Area or result in significant edge effects. The multiple species concept in the MSHCP embraces the need to go beyond the habitat needs of a single species to look at other levels of biological organization at which targets for conservation could occur. In their handbook on ecoregional conservation planning, TNC (2000) emphasizes the importance of planning at multiple spatial scales and multiple levels of biological organization. This Plan incorporates these three levels of biological organization: species, terrestrial ecological communities, and ecological systems. The identification of these levels is central to the coarse-filter approach discussed below. For this conservation plan, the term “natural communities” is used to describe terrestrial ecological communities; these natural communities are named based on plant community types defined at the “plant association level” (Nature Conservancy 2000; Sawyer and Keeler-Wolf 1995). The ecological systems, or landscape-level element of this Plan is perhaps its most significant feature, in that this is the level at which ecosystem processes are incorporated. The Planning Team identified ecological system elements including both biotic (e.g., individual species life history characteristics) and abiotic (particularly sand source/sand transport and hydrological processes) components as targets for conservation. This emphasis on natural community and ecosystem-level planning is consistent with the theoretical basis for the NCCP program (Noss et al. 1997) and the NCCP element of this Plan. The planning process used a coarse-filter approach as explained in Section 3.2.2.2 of Appendix I of the MSHCP. The “coarse-fine filter strategy” is described as a working hypothesis that assumes that

conservation of multiple, viable examples of all coarse-filter targets (communities and ecological systems) will also conserve the majority of species (TNC 2000). To work as coarse filters, ecological communities and ecosystems must be conserved as part of dynamic, intact landscapes, with some level of connectivity between them, and be represented across environmental gradients to account for ecological and genetic variability. The fine-filter approach focuses on those species, such as very rare, extremely localized, or narrowly endemic species, that cannot be reliably conserved with the coarse-filter approach (TNC 2000). The SAC adopted this strategy early in the process as part of a general approach for conservation planning. The adoption of this strategy was based on several considerations, notably that the coarse filter would better incorporate the ecological processes and landscape-level features that are significant to the target species and that limitations on data would make it difficult to accomplish fine-filter planning for many of the species. The Planning Team recognized that conserving adequate portions of natural communities, including the ecological and physical processes that sustain them, would reduce the need for detailed studies and population viability analyses for individual species. The process of designating areas of high biological value that were incorporated into the reserve design process, and ultimately into the conservation plan, was based on a number of key concepts identified by the SAC. These key concepts were used to identify and to evaluate potential areas for conservation. These concepts are explained in detail in Section 3.2.2.3 of Appendix I to the MSHCP.

Existing records of species' locations were used by the SAC in developing the species habitat distribution models and in reserve design. This information was also reviewed by the ISA in their assessment of the conservation plan. The modeled habitat is shown within each Conservation Area in Section 4.3 of the MSHCP. This, rather than the known locations of the species, is the crucial information in the MSHCP; thus, the modeled habitat is shown but not the individual occurrences. This information is on file at CVAG and available to anyone who wishes to view it. See Major Issue Response 1, Use of Best Available Science.

- BM-31** The designation of land in a Conservation Area does not automatically trigger a complete restriction on Development. The HANS and JPR processes discussed in Section 6 of the MSHCP set forth the process for Development in the Conservation Area. For further analysis of HANS, see Major Issue Response 5. This comment further cites *Klopping v. City of Whittier* (1979) 8 Cal. 3d 39 to support its contention that government activities to depress the value of property before condemning it are unconstitutional. In *Klopping*, the City initiated condemnation proceedings against the subject properties and parcels owned by third persons. A year and a half later, the City dropped the condemnation proceedings but stated that it intended to reinstitute



the proceedings in the future. Plaintiffs then initiated an inverse condemnation proceeding based on the original intent to condemn and on the abandonment. In determining the proper baseline date to establish fair market value of the taking, the court stated in footnote number one:

“To allow recovery in every instance in which a public authority announces its intention to condemn some unspecified portion of a larger area in which an individual’s land is located would be to severely hamper long-range planning by such authorities...On the other hand, it would be manifestly unfair and violate the constitutional requirement of just compensation to allow a condemning agency to depress land values in a general geographical area prior to making its decision to take a particular parcel located in that area” (*Klopping* 8 Cal. 3d, n.1).

Commenter presumably relies on the latter half of this footnote for its assertion. The footnote does not support commenter’s contention for several reasons. First, the issue presented in *Klopping* was which date should be used as baseline for determining “just compensation.” *Klopping* was concerned only with the amount of the compensation after a taking has occurred, not whether agencies must undertake land use decisions. Thus, because no taking will occur as a result of Plan implementation, *Klopping* is inapposite. As further discussed in Major Issue Response 2, CVAG disagrees that implementing the Plan will depress land values.

**BM-32** See response to Comment AF-10.

**BM-33** Commenter states that the Plan document should contain all details of Uniform Standards of Professional Appraisal Practice (USPAP) and explicitly state that the location of land within Conservation Areas not be consideration in the appraisal. To protect the rights of the landowners and ensure a fair appraisal process, the CVCC adopted a Land Valuation Conflict Resolution Policy on May 11, 2006 that allows up to three separate appraisals at the request of the landowner. This policy provides adequate protection for landowners especially when one considers that they must be willing sellers and have potential to develop their property within the Plans’ Goals and Objectives. Details of the USPAP are not appropriate in the overall Plan document not only because of its length, but also because it is subject to change from time to time, and the Plan, which is a 75 year plan, should not be construed as restricting appraisers to using the current version of USPAP.

**BM-34** The commenter is correct in that each City must make findings that the MSHCP is consistent with the General Plan. Future changes to General Plans would have to be consistent with the Plan. Section 13.2(A) of the Implementing Agreement states that the County and the Cities shall “[a]dopt and maintain ordinance or resolutions as

necessary, and amend their general plans as appropriate, to implement the requirements and to fulfill the purposes of the Permits, the MSHCP and this Agreement for private and public projects.”

**BM-35** CVAG believes the MSHCP is consistent with the General Plan of each jurisdiction.

Regarding the cited comment in Section K, the MSHCP does not change existing General Plan land use designations and does not require conservation of all lands within the Conservation Areas.

Regarding the commenter’s assertion that some Cities would need to amend their General Plans to bring the land uses in their land use elements into consistency with land uses allowed by the MSHCP before adopting the MSHCP, the MSHCP does not change any General Plan land use designations. Therefore, the action suggested by the commenter is not required. All changes to General Plans would have to be consistent with the Plan. Section 13.2(A) of the Implementing Agreement states that the County and the Cities shall “[a]dopt and maintain ordinance or resolutions as necessary, and amend their general plans as appropriate, to implement the requirements and to fulfill the purposes of the Permits, the MSHCP and this Agreement for private and public projects.”

**BM-36** Section 4.8.3 of the Recirculated Draft EIR/Supplemental Final EIS provides a detailed quantitative analysis of the referenced socio-economic effects set forth in Section 4.8.2. The potential for significant adverse effects on communities located within the Plan Area was analyzed for each jurisdiction. The potential for continuing Development of healthy economies was assessed and analyzed for developable acreage outside Conservation Areas by land use type. The Plan’s potential impacts to each of these land use categories were also fully assessed.

**BM-37** Section 4.8.3 of the Recirculated Draft EIR/Supplemental Final EIS provides a detailed quantitative analysis of the referenced socio-economic effects set forth in Section 4.8.2. The potential for significant adverse effects on communities located within the Plan Area was analyzed for each individual jurisdiction. The potential for continuing development of healthy economies was assessed and analyzed for developable acreage outside Conservation Areas by land use type. The potential for residential, commercial, and industrial development was quantified in terms of commercial and industrial square footage and acreage, and residential dwelling units and acreage for each jurisdiction. The Plan's potential impacts to each of these land use categories were also fully assessed.

The potential effects of the Plan on the long-term fiscal health of each jurisdiction were also assessed. As discussed in Section 4.8.3.A of the Recirculated Draft EIR/Supplemental Final EIS and as presented in detail in Appendix J, impacts to the budgets of each City and the County are analyzed, with the result that the inclusion of lands in Conservation Areas will result in net cash flow improvements upon buildout for all but two jurisdictions (the City of Palm Springs and Riverside County).

The buildout analysis for Palm Springs considered the effects of the recently instituted development tax applied to all new construction, which would have the potential to generate \$434,137 annually for the City throughout the buildout period. This tax is further augmented by a City-adopted utility users tax, which if assumed to be still in place upon City buildout, results in a positive cash flow to the City of \$706,686 in the last buildout year. However, after buildout, when the new development tax would no longer be collected, the City would experience a positive cash flow of \$272,549 from Development in the Conservation Areas primarily due to the ongoing imposition of the utility users tax on Development within the Conservation Areas. The net loss (\$272,549) represents 0.6% of the City's operating revenues annually. If the utility tax, which has been applied as an interim revenue-generating measure, is no longer in effect at buildout, the fiscal impacts of the Plan to the City would be substantially less than the modest impacts cited in the analysis.

The fiscal impact analysis set forth in the Recirculated Draft EIR/Supplemental Final EIS and Appendix J assumes a total 150,270.79 acres of unincorporated lands in conservation, which could theoretically generate 11,856 residential units, 662,776 square feet of commercial space, and 9,491,984 square feet of industrial space. In addition to the potential revenues generated by the lands within the Conservation Areas, the County would also lose portions of the property tax and property transfer tax generated within the Cities' Conservation Areas. Assuming buildout of all proposed conservation lands, the County portion of these taxes generated by Cities would exceed \$6,000,000. In addition, the square footage that could be generated by the commercially designated lands in the Conservation Areas has the potential to generate approximately \$1,218,476 annually at buildout. Overall, the County could experience as much as \$22,100,100 in positive cash flow at buildout of the unincorporated lands within the plan boundary. This represents about 2% of the County's General Fund Revenues annually. As noted in Section 4.8.3.B of the Recirculated Draft EIR/Supplemental Final EIS, the lion's share of potential County revenues, which could be theoretically precluded, are associated with development of industrial lands. The Plan would place 9% of lands designated for industrial or business park development in a Conservation Area. While this may seem a significant effect, it is important to note that approximately 6,464.87 acres of potentially

developable lands designated for industrial uses would remain available to the County. This is a significant development potential that may never be realized within the context of overall economic development potential of the Coachella Valley and the substantial contributions that local Cities will also make to industrial development. In this context, the loss of 641 acres would not significantly impact the potential for County revenues or job generation on these lands. Based on this analysis, therefore, it appears there are sufficient potentially developable industrial lands available in the Plan Area to provide the County with future industrial development opportunities.

- BM-38** Commenter references a “Table 4-27 EIR/EIS Section 4.15.3 p. 4-231.” No such table appears in the Recirculated Draft EIR/Supplemental Final EIS, and, therefore, no further response is possible.

Reference is made to the Ritz-Carlton Golf Course (now abandoned and originally planned in both Cathedral City and Rancho Mirage) being approved without the Plan in effect. The commenter implies that this project did not incur significantly more costs or impacts than would have occurred under the Plan. This is, in fact, not correct. One of the authors of the MSHCP Draft EIR/EIS was also the environmental planner for this project. The costs associated with mitigating impacts to bighorn sheep and other species, and securing nonjeopardy biological opinion letters and associated permits were substantially greater than would have been the case under the proposed MSHCP.

- BM-39** The commenter references many pages not found in the February 2007 Recirculated Draft MSHCP and Recirculated Draft EIR/Supplemental Final EIS. Many of the references to acres proposed for conservation are also incorrect. The commenter may not be referencing the most recent version of the EIR/EIS and, therefore, making meaningful response to this comment difficult.

As discussed in Section 3.6 of the Recirculated Draft EIR/Supplemental Final EIS, irrigated acres increased from about 23,000 in 1948 to 72,800 acres in 1999. It is also noted that the number of farms in Riverside County decreased by about 21.3% between 1987 (3,874) and 1997 (3,048). As shown on Table 3-23 of the Recirculated Draft EIR/Supplemental Final EIS, the hired farm labor payroll fell from \$133,587,000 in 1992 to \$128,522,000 in 1997. As shown on Table 3-24, the gross value of agricultural production in the County has varied substantially, for instance falling by 12% in 2000 compared to 1998 values.

The MSHCP has a very limited and less than significant impact on the agricultural industry, and thus on the ability for this industry to generate jobs. The industry is

being affected by a wide range of changing circumstances, including relatively high costs of production and falling competitiveness compared to producers elsewhere. The implementation of the MSHCP will not have a significant effect on the agricultural industry or associated employment either directly, indirectly or cumulatively.

As discussed in the Recirculated Draft MSHCP and Recirculated Draft EIR/Supplemental Final EIS, and as further clarified above, developable lands located outside Plan Conservation Areas total 155,431 acres (see Recirculated EIR/EIS Tables 4-1 thru 4-24), of which 111,086.76± acres are designated or allow residential development, 8,297.95± acres are designated for or allow commercial development, and 14,010.73± acres are designated for industrial and business park development. As noted in the referenced tables, residential lands proposed for placement in Conservation Areas have a theoretical potential to support a maximum of 27,186± dwelling units. Given the relative isolation of much of these lands, the aforementioned physical constraints to development and desirability, and the lack of infrastructure, actual densities that would be expected to be realized on these lands is significantly less.

The Recirculated Draft EIR/Supplemental Final EIS also notes that residential development densities have been low in the Coachella Valley, being affected by low density golf course development. It is envisioned and is already being seen in portions of the Plan Area, that increasing land use efficiencies will occur, as exemplified by the University Park planning area of Palm Desert, where higher density residential development is being planned in conjunction with other, complementary uses, providing an enhanced quality of life while realizing a full range of environmental and socio-economic benefits.

Also important to note is that lands generally planned for conservation have the lowest development potential in the Plan Area, both in terms of General Plan land use designations and natural constraints (flooding, blowsand, seismic, utility availability). Agricultural lands are already subject to urbanizing pressure and are not significantly impacted by the Plan. The potential for continued economic development in the Plan Area is also not significantly constrained by the Plan.

As explained in the Recirculated Draft MSHCP, the Recirculated Draft EIR/Supplemental Final EIS, and the above discussion, implementation of the MSHCP will not significantly affect land use development patterns in the Plan Area or significantly shift the burden of accommodating future urban development to agricultural lands.

The comment that land use adjacency guidelines included in the Plan would curtail agricultural activities in the Plan Area since the adjacency guidelines would limit or preclude use of agricultural chemicals is not correct. With respect to toxics, Section 4.5.2 of the Plan simply indicates that land uses adjacent to the reserve system shall incorporate measures to ensure that applications of chemicals that may be detrimental to wildlife do not result in discharge to the adjacent Conservation Area.

**BM-40** As discussed in Section 4.5 of the Recirculated Draft EIR/Supplemental Final EIS, the MSHCP has very limited and less-than-significant impact on the agricultural industry and thus on the ability for this industry to generate jobs. The industry is being affected by a wide range of changing circumstances, including relatively high costs of production and failing competitiveness compared to producers elsewhere. The implementation of the MSHCP will not have a significant effect on the agricultural industry or associated employment or socioeconomic environment either directly, indirectly, or cumulatively and the commenter fails to provide any data or evidence to the contrary.

**BM-41** The assertion is made in comments that the analysis applied to the significance thresholds for impacts to agricultural lands/activities is inappropriate. CVAG in most instances relied upon the thresholds provided in Appendix G of the State CEQA Guidelines, which it did for the analysis of impacts to agriculture. The Recirculated Draft MSHCP and the Recirculated Draft EIR/Supplemental Final EIS demonstrate that agricultural lands that are prime, unique, or of statewide importance will not be significantly impacted by the Plan. Furthermore, only 1,120 acres of the 84,900 acres in active agricultural use would be included in a Plan Conservation Area, and said activity could continue indefinitely. Nor will the Plan impact any current Williamson Act contracts nor will it preclude entering into such contracts in the future on lands that are currently in active agriculture whether such lands are located within or outside of a Conservation Area. Finally, the Plan will not result in any changes in the physical or regulatory environment that would significantly impact farmland or result in the conversion of farmland to non-agricultural uses.

**BM-42** The assertion is made that the analysis applied to the significance thresholds for impacts to agricultural lands/activities is inappropriate. However, no specific examples are provided. The Recirculated Draft EIR/Supplemental Final EIS, utilizing the thresholds of significance from Appendix G of the State CEQA Guidelines, demonstrates that agricultural lands that are prime, unique, or of statewide importance will not be significantly impacted by the Plan. Nor will the Plan impact any current Williamson Act contracts nor will it preclude entering into such contracts in the future lands that are currently in active agricultural use whether such lands are located

within or outside of a Conservation Area. Finally, the Plan will not result in any changes in the physical or regulatory environment that would significantly impact farmland or result in the conversion of farmland to non-agricultural uses. Each significance threshold was analyzed fully.

**BM-43** See responses to Comments BM-40 through BM-42. The cited Government Code Section 65561 states, in relevant part:

The Legislature finds and declares as follows:

(a) ...

(b) That discouraging premature and unnecessary conversion of open-space land to urban uses is a matter of public interest and will be of benefit to urban dwellers because it will discourage non-contiguous development patterns which unnecessarily increase the costs of community services to community residents.

(Gov. Code § 65561.)

Nowhere in this passage is there a *requirement* to avoid or minimize impacts to agricultural lands. While the quoted provision shows an intent to discourage leapfrog development, it does not indicate that any and all conversion of agricultural land is undesirable or prohibited. In fact, the Open Space Lands Act does not require the conservation or preservation of any land in particular; rather, it requires the inclusion of local open-space plans within a local agency's general plan. The Act does not impinge upon the discretion of a local agency to decide the degree of conservation to achieve and the means of reaching these goals. Thus, the commenter's allegation that the MSHCP violates the Open Space Lands Act is premised on the incorrect assumption that the Act actually has requirements that mandate preservation of agricultural lands. Furthermore, as discussed in responses to Comments BM-39 to BM-42, impacts from the MSHCP on the conversion of agricultural lands are expected to be less than significant.

**BM-44** The MSHCP does not violate the legislative objectives of the Williamson Act. The provision to which the commenter references, Government Code Section 51220, is a statement of legislative intent and purpose. Such broad statements of legislative intent do not give rise to any statutory duty (*Toward Responsibility in Planning v. City Council* (1988) 200 Cal.App.3d 671, 677-678). The selection of property to be included in the reserves will be determined by the CVCC and the Local Permittees, and the potential for a conflict with existing farming operations on neighboring

property will be considered. Even if the boundaries of certain reserve lands abut lands that are under Williamson Act contract, the MSHCP does not violate the Williamson Act. The MSHCP does not impose any requirements on agricultural land owners that are inconsistent with the Williamson Act or any other state law nor does the commenter provide any evidence to support his claim.

**BM-45** The commenter has raised concerns that the proposed Plan may be inconsistent with the County’s right-to-farm ordinance (Ordinance 625.1), which is, in part, intended to preclude agricultural land from being declared a nuisance if it has been in operations for more than 3 years and has not been declared a nuisance during that time. As discussed previously, the Plan does not identify agricultural land as a nuisance but does recognize that agriculture (and other land uses) does have a potential for impacting vegetation and wildlife beyond the bounds of agricultural activity. As demonstrated in the prior responses to this comment letter, the Plan does not restrict existing agricultural uses nor does it prohibit or unreasonably restrict activities essential to irrigation, pest control, equipment operation, cultivation, or the raising of farm animals. The Plan does not affect activities, which, as stated in County Ordinance 625.1, are conducted in a manner consistent with proper and accepted customs and standards. The Land Use Adjacency Guidelines do not apply to agricultural activities as these are not subject to the MSHCP; nor do agricultural activities receive Take Authorization through the MSHCP.

**BM-46** The Per Capita Multiplier Method is an accepted method for the analysis of government costs. It is prescribed in the Riverside County Guide to Preparing Fiscal Impact Analysis, which was the basis for the development of the model. The per capita method is conservative but does not overstate costs, particularly since local jurisdictions include public safety costs in their General Funds. As the single largest cost associated with providing services, public safety service levels are directly tied to population growth and are impacted by it. The costs associated with more minor government costs, including as mentioned by the commenter the City Clerk and Council expenses, represent only a small portion of the per capita costs.

The Comparable City Method or Service Standard Method cited by the commenter would assume that all Cities provide the same level of service for all services. In the Coachella Valley, this is clearly not the case. The method used in the analysis directly relates to each City’s annual budget for specific expenditures and is reflective of existing conditions in each City. Given the limited Development projected for Conservation Areas in most Cities in the Plan Area, the buildout of these areas would not generate the “significant change in population size or growth rate” cited by the commenter. Since most of the lands included in the Conservation Areas are open



space and very low-density residential lands, which will generate relatively small populations, the per capita method used is appropriate for the analysis.

**BM-47** The annual growth projections are from the Nexus Study (MuniFinancial 2007). Growth projections were based on an extrapolation of prior trends based on an analysis of information from the California Department of Resources Farmland Mapping and Monitoring Program and building permit data conducted by CVAG. The estimate of acres developed per year was based on historical development during the period of 1988 to 2004 for the Plan Area. This time period is a reasonable basis for projection purposes because it captures the volatility of development during periods of recession and expansion. The Plan Area analyzed excluded Indian Reservation land.

Geographical Information System (GIS) coverages of Riverside County by the California Department of Resources Farmland Mapping and Monitoring Program provided data for the 1988 to 2002 period. These data show different types of agricultural uses as well as developed areas. These data were not available for the period since 2002. For the 2002 to 2004 period, CVAG staff estimated developed acreage based on residential building permit data provided by Wheeler's Publishing. First, the average number of developed acres per residential permit for the period 1990 to 2002 was calculated. This amount was multiplied by the number of residential building permits in 2002 and 2003 to estimate developed acreage as of 2004.

Based on the analysis described above, CVAG estimated that the rate of development in the Plan Area excluding Indian Reservation land has averaged 1,500 acres per year.

The comment made regarding the revenue-generating potential of residential development is incorrect and unsubstantiated. The Fiscal Impact Report cites the median home price for homes within each of the jurisdictions analyzed and is based on the "Inland Empire Quarterly Economic report" as cited in the fiscal impact report. As noted in the report and the Recirculated Draft EIR/Supplemental Final EIS, these values served as the basis for the fiscal impact analysis, which was prepared in accordance with the "Riverside County Guide to Preparing Fiscal Impact Reports."

**BM-48** The Fiscal Impact Analysis in the Recirculated Draft EIR/Supplemental Final EIS does utilize a cumulative impact analysis approach. As discussed in Section III of the report, the analysis was divided into 5-year buildout phases, allowing an incremental approach to the fiscal impacts analysis. Lands within City spheres-of-influence are examined within the analysis conducted for Riverside County unincorporated lands. The Fiscal Impact Report and EIR/EIS fully analyze the potential revenue streams

that could flow to each jurisdiction from the Development of lands included in the Conservation Areas.

**BM-49** The purpose of the MSHCP is to obtain Take Permits for currently listed species and species likely to become listed during the term of the 75-year Permit. Whether or not implementation of the Plan would result in the conservation of more lands than would be required under current regulations is unknown. The MSHCP is a regional conservation plan that benefits Development by simplifying compliance with state and federal endangered species protection laws through establishing a comprehensive reserve system. The use of habitat modeling used in conjunction with extensive field surveys, remote sensing, and other techniques is considered state-of-the-art approach to HCP planning. Please also see Major Issue Response 1, Use of Best Available Science. Finally, the provision of Biological Corridors and Linkages is integral to the assurance of a healthy ecosystem, which also includes the movement of predators across Conservation Areas.

**BM-50** The only closures in the proposed Trails Plan occur on DFG land. These trails are and will be closed regardless of whether the Trails Plan is in effect. The only seasonal closures are during the summer months when daily temperatures average over 100 degrees in the Coachella Valley and there is virtually no hiking activity.

In addition, evidence suggests that the availability of hiking opportunities in the Coachella Valley is not yet a prime factor for tourists considering it as a vacation destination. On May 29, 2005, *The Desert Sun* compared the attractions of four desert tourist destinations: Palm Springs, Las Vegas, Phoenix, and Tucson. Hiking, horseback riding, or mountain biking were not mentioned at all in the profile for Palm Springs. When comparing a typical tourist's day in Palm Springs to that in Tucson, *The Desert Sun* reported that it consisted of "golf, spa, nap" in the former versus "golf, spa, hike" in the latter. Therefore, it is reasonable to conclude that adverse effects to the tourism economy resulting from trail use restrictions imposed by the Preferred Alternative Trails Plan are considerably overstated. See also Major Issue Response 1, Use of Best Available Science and response to Comment BM-25.

**BM-51** The Recirculated Draft EIR/Supplemental Final EIS analysis includes potential Plan impacts to both commercial and industrial land uses and its future growth. Impacts are limited due to the limited acreage in these land use categories included in the Conservation Areas. The employment associated with these lands is also limited and will not be significantly impacted by loss of commercial or industrial lands to conservation. Neither commercial nor industrial Development, nor their associated employment, will be significantly impacted by implementation of the MSHCP.

Finally, such projects will be able to go forward as property not required for conservation since Take Authorization will be provided under the Plan.

Commercial Development generates sales and use tax and potentially transient occupancy tax for local jurisdictions in addition to property tax. Industrial Development generally only generates property tax. Both commercial and industrial Development are low-impact users of governmental services and therefore can provide significant revenues to local jurisdictions, without significantly impacting government costs. The loss of 3% of all commercial lands and 7% of all industrial lands will not significantly impact the travel industry in the valley.

**BM-52** The statement in the Fiscal Impact Analysis was correct at the time it was written, when a 50-year life was contemplated. The statement has no bearing on the analysis contained in the Fiscal Impact Analysis, which is not triggered by the Plan's life but rather linked buildout of lands in the area, regardless of Plan implementation.

**BM-53** The Fiscal Impact Analysis demonstrates the cumulative costs and revenues associated with Development within the Conservation Areas. The Fiscal Impact Analysis shows what the costs and revenues will be for each jurisdiction at buildout of lands within the Conservation Areas. This document is not the appropriate location for CEQA-mandated cumulative impact analysis. That analysis is included in Section 9.0, pages 9-5 and 9-10, and in the individual impact sections of the Recirculated Draft EIR/Supplemental Final EIS.

**BM-54** Agriculture acreages in the Recirculated Draft Plan and Recirculated Draft EIR/Supplemental Final EIS are clearly identified as being either acres in active agriculture or acres that have a general plan designation for agricultural use. An acre that has a general plan designation for agricultural use is not necessarily being used for agriculture. Active agriculture is the existing land use, while a general plan designation is the underlying land use regulation. Hence, there is no inconsistency between agricultural acreage figures.

**BM-55** The cumulative analysis in the Recirculated Draft EIR/Supplemental Final EIS properly addresses the effects of the proposed actions—Permits to allow Take of Covered animal Species. The proposed actions analyzed in the Recirculated Draft EIR/Supplemental Final EIS do not preclude or authorize development that would affect the environmental categories noted in the comment: air quality, biological resources, cultural resources, environmental justice, hazards, hydrology, land use, minerals, energy, timber resources, noise, parks, trails, population and housing, soils and geology, transportation, utilities, and visual resources. The commenter indicates that the cumulative analysis does not adequately analyze indirect effects of the

proposed actions on the environmental categories noted due to potential changes in the distribution, density, and pattern of growth and development. The Recirculated Draft EIR/Supplemental Final EIS quantitatively analyzes these effects in the appropriate sections of the document (e.g., land use, population/housing) and properly concludes that effects would not be significant. Cumulative effects with respect to these potential indirect effects of the MSHCP are therefore not regarded as significant.

- BM-56** The commenter asserts that growth in the next 25 years will be at densities consistent with growth in the past in the Coachella Valley. This assumption cannot be made, particularly in light of changes to City General Plans in the last several years and the progressive implementation of “Smart Growth” strategies, which are encouraging more efficient use of land, transportation systems, and other infrastructure. Development patterns locally have resulted in the Development of approximately 1,500 acres annually over the last 15 to 20 years. Development in the future is not expected to significantly increase, when averaged over the long term. The expected increases in density cited by the commenter are stated in the Recirculated Draft EIR/Supplemental Final EIS as being minor and not expected to significantly impact land use patterns in each jurisdiction, particularly considering the trend in these jurisdictions in the last several years, which have resulted in increases in base densities for residential Development. As a minor increase to densities in the area, it is not anticipated that any mitigation measures will be required to offset land use intensifications. Rather, these intensifications, if they occur, are likely to result in more efficient land use, fewer and shorter vehicle trips per household, and reductions in mobile and stationary emission of pollutants.
- BM-57** The analysis provided in Section 4.8 (p. 4.8-22) of the Recirculated Draft EIR/Supplemental Final EIS clearly demonstrates that there would be minimal or no impact to affordable housing in most jurisdictions. In total, Conservation Area lands throughout the Plan Area represent only 5% of the total medium and high density lands available for Development. As with the other land use designations discussed in the Recirculated Draft EIR/Supplemental Final EIS, the individual jurisdictions would continue to have the ability to change their General Plans to accommodate either increased density or increased acreage in more dense land uses to accommodate for this small loss in medium and high density lands.
- BM-58** The commenter lists multiple species plans from throughout Southern California and argues that the combined effects of all of these plans should be analyzed in the cumulative analysis in the EIR/EIS. This is an inappropriate interpretation of the requirements for a cumulative analysis in the EIR/EIS. The EIR/EIS properly

identifies the cumulative study area for analysis to be the MSHCP Plan Area and confines the analysis to that cumulative study area.

**BM-59** This comment fails to recognize that the MSHCP provides Take for projects which otherwise would have to obtain individual authorization under CESA and FESA through other means and/or undergo review by the Wildlife Agencies. The MSHCP thereby confers a significant benefit for infrastructure projects. See Major Issue Response 3.

**BM-60** The commenter's assertion regarding the Recirculated Draft EIR/Supplemental Final EIS's failure to analyze impacts to traffic congestion resulting from Plan adoption is based on an erroneous premise that the Plan will lead to traffic congestion. In fact, the MSHCP provides Take Authorization for Caltrans projects for the next 75 years, the regional road network (CVAG TPPS projects), as well as the roads identified in City and County General Plan Circulation Elements. Thus, the Recirculated Draft EIR fully complies with CEQA.

**BM-61** The commenter provides background information regarding PM<sub>10</sub> and states that sensitive receptors are not properly identified in the EIR/EIS. As stated in the EIR/EIS and in responses below, no features of the proposed actions would affect existing PM<sub>10</sub> levels in the Plan Area, and no potential impacts are identified requiring quantitative analysis of effects of PM<sub>10</sub> on sensitive receptors. See also responses to Comments S-5 and BM-62.

**BM-62** The Plan does not propose actions that would increase windblown dust in the Plan Area. The Plan proposes conservation measures for sand-dependent species to maintain, existing aeolian (wind-blown) and fluvial (water-borne) sand transport systems. These features of the Plan seek to maintain existing conditions for sand-dependent species but would not have a measurable effect on increasing PM<sub>10</sub> in the Plan Area. In addition, some existing blowsand areas are located outside the Conservation Areas and would not be preserved.

It should be noted that fine sand, silt, and clay are all well above the 10-micron size limit for PM<sub>10</sub>, and PM<sub>2.5</sub> is even smaller. In an arid, desert-type environment, wind-blown transport and deposition typically produces a WELL SORTED sand material with very small, if any, percentage of fines such as silt and clay, which do not even qualify as PM<sub>10</sub>. Aeolian transport in the desert, assuming the absence of earthmoving activities which could disturb deeper earth deposit deposits, would therefore typically only entrain clean sands. Consequently, the MSHCP will not result in any significant air quality impacts from particulate matter. See response to Comment S-5.

- BM-63** See responses to Comments BM-61 and BM-62. The air quality analysis in the EIR/EIS adequately analyzes the effects of the proposed actions.
- BM-64** The Plan's use of data is not biased. Conservation measures are included in the Plan to protect bighorn sheep habitat in the Santa Rosa and San Jacinto Mountains in a manner that also maintains recreational use in these areas. Likewise, conservation measures are proposed to maintain aeolian and fluvial sand transport in habitat for sand-dependent species in a manner that also allows continued human use in these areas. It is not contradictory to state that urbanization has exacerbated fugitive dust problems in the Coachella Valley while at the same time patterns of urban development have restricted sand transport for sand-dependent species. Both statements are accurate.
- BM-65** The commenter cites case law and rulemaking activities but does not relate them to specific features of the Plan or EIR/EIS. Further response is not necessary.
- BM-66** The commenter provides his comments concerning background on the geophysical and climatic setting of the Coachella Valley but does not relate the background information to specific features of the Plan or EIR/EIS. Further response is not necessary.
- BM-67** The analysis in the EIR/EIS concludes that the proposed actions would not result directly or indirectly in substantially increased intensification or densification of development. It is not necessary to analyze air quality effects of an impact that has not been identified.
- BM-68** The EIR/EIS concludes that implementation of the proposed actions would not result in substantial changes in patterns of development, including provision of affordable housing. Effects on environmental justice and children are addressed in Section 4.9.8 of the EIR/EIS. See responses to Comments T-19 and T-20.
- BM-69** See responses to Comments S-5, BM-62, BM-67, and BM-68.
- BM-70** The commenter vaguely references but has not provided a copy of public opinion surveys cited in the comment. The MSHCP does not propose a local tax increase to purchase conservation lands nor will it result in adverse impacts to the ability to provide affordable housing. The referenced RCTC study is not provided nor is it likely to be an effective measure of local opinion about the importance of the proposed MSHCP. The comment also claims that the MSHCP will result in the spending of Development fees on the least important issue to County residents (i.e., acquiring wildlife habitat). No supporting information was provided, and the

comment ignores the significant potential adverse socio-economic effects on continued piece-meal conservation and state and federal wildlife regulations. See response to Comments BM-68 and BM-69.

**BM-71** See response to Comment BM-70. Though under no legal obligation to do so, CVAG has sent a number of notices to landowners in Conservation Areas inviting them to inquire about the MSHCP and to comment at meetings. In March 2007, CVAG sent letters to all landowners in the Conservation Areas inviting them to contact CVAG about the MSHCP. CVAG responded to every landowner inquiry resulting from this mailing, totaling approximately 200 calls.

**BM-72** The commenter makes the claim that the biological resources analysis is flawed because it relies on outdated data. The commenter is incorrect in that while certain lands may have been disturbed in the intervening time period, the Plan provides a consistent picture of regional conditions. It is incorrect that the MSHCP and associated analysis were based on outdated and/or inaccurate data and information. The commenter's referenced claims that the MSHCP uses "outdated and inaccurate data" are thoroughly addressed in responses to Comments BM-7 to BM-12. Please also see, generally, Major Issue Response 1, Use of Best Available Science. The comment provides neither basis nor citations for this statement.

Lastly, the commenter's citation to *Half Moon Bay Fisherman's Marketing Ass'n v. Carlucci* (9<sup>th</sup> Cir., 1988) 857 F.2d 505,510 ("*Half Moon Bay*"), does not provide any support for his position. In *Half Moon Bay*, the final supplement to an EIS did not contain *any* information as to the physical, chemical, or biological oceanography of the area surrounding a proposed disposal site for dredged material, and the court opined in dicta that this would have been fatal to the final supplement to the EIR (the court found that subsequent action by the EPA saved the validity of the document). (*Half Moon Bay*, 857 F.2d at 510-511.) Here, a thorough review of all relevant environmental information, including that pertaining to biological resources, has been conducted for the EIR/EIS, and the biological resources data was at the heart of the formulation of the MSHCP. As described above, the MSHCP and EIR/EIS utilize the best available science, and thus the commenter's comparison to *Half Moon Bay's* EIS, which had substantial holes and omissions in it, is not valid.

**BM-73** The commenter is correct that CVAG and USFWS are the Lead Agencies and that the Local Permittees would be responsible agencies. They would be required to make certain findings. The Recirculated Draft Plan and Recirculated Draft EIR/Supplemental Final EIS do provide the basis for and analysis of potential Plan impacts to the various jurisdictions. The Plan provides detailed mapping of jurisdictional boundaries for each Conservation Area, as well as mapping of existing

uses, local land use designations, and areas included in the Conservation Areas. These highly detailed maps also identify such environmental features and constraints as major highways, floodplains, active earthquake faults, and sand source and sand transport areas.

In several impact analysis categories, jurisdiction-specific issues were identified, including potential Plan effects on land uses and circulation, mineral and energy resources, and agricultural lands. The regional socio-economic environment and potential effects of the Plan on the affected Cities and Riverside County were also examined individually. Section 3.15 of the Recirculated Draft EIR/Supplemental Final EIS provides detailed information on a variety of socio-economic categories and trends for each jurisdiction, including population, ethnicity, employment, median household income, agricultural production and tourism. Section 4.8 of the Recirculated Draft EIR/Supplemental Final EIS provides additional information on each jurisdiction, including total assessed valuation, developed and vacant lands, as well as a summary of development potential and fiscal impacts associated with the placement of lands in Conservation. Potential impacts to residential (including affordable housing), commercial, and industrial lands were also assessed by jurisdiction. Finally, Appendix J of the Recirculated Draft EIR/Supplemental Final EIS provided a detailed summary of the comprehensive Fiscal Impact Analysis prepared on a jurisdictional basis for the MSHCP. In summary, the Recirculated Draft EIR/Supplemental Final EIS is fully compliant with CEQA Guidelines Sections 15091 and 15096, as well as Section 21167.3 of the California Public Resources Code.

**BM-74** Please see response to Comment BL-12.

**BM-75** Please see Major Issue Response 1 regarding the use of best available science used in the MSHCP.

**BM-76** Please see responses to Comments BM-15, BM-16, and BM-74.

**BM-77** The comment makes the claim that the regional environmental setting and existing conditions discussion set forth in the Recirculated Draft EIR/Supplemental Final EIS are inadequate and cites land use, biological resources, and traffic and circulation specifically. However, the author provides no specific references to any portion of these discussions, and there is clearly no basis for this statement as the document does set forth the project setting. See responses to Comments BM-78 and BM-79 for responses addressing the commenter's concern regarding the land use and planning setting and the biological resources setting. The claim that the traffic and circulation setting is inadequate is addressed in the response to Comment BM-83. The statement



also contradicts other comments in the author's letter. The biological and traffic discussions are reinforced by the various technical appendices found in the Recirculated Draft EIR/Supplemental Final EIS and the MSHCP.

**BM-78** The commenter states the biological resources evaluated in the Recirculated Draft EIR/Supplemental Final EIS are not the same as conditions that existed at the time the Notice of Preparation was transmitted. While certain lands may have been disturbed in the intervening period, the Plan provides a consistent picture of regional conditions. The comment also faults the use of habitat modeling, although this approach, used in conjunction with extensive field surveys, remote sensing, and other techniques, is considered a state-of-the-art approach to HCP planning. Please see Major Issue Response 1 and response to Comment BM-8.

**BM-79** The commenter makes the claim that the Recirculated Draft EIR/Supplemental Final EIS does not consider potential conflicts between the MSHCP and applicable land use plans, policies, or regulations of other jurisdictions affected by the project. No specific examples of this failure are cited, and this statement is unfounded as no type of Development is prohibited from the Conservation Areas. Limits on Development within Conservation are limits on the number of acres that may be disturbed. These acreage limits are not by project or type of Development. Section 1.5 of the Recirculated Draft EIR/Supplemental Final EIS provides a comprehensive description of the planning and regulatory environment in which the Plan and EIR/EIS were prepared. Section 1.6 of the Recirculated Draft EIR/Supplemental Final EIS provides a 5-page description of the relationship of the MSHCP to other planning documents, including the General Plans of the Cities and County, Bureau of Land Management California Desert Conservation Area Plan, the San Jacinto and Santa Rosa Mountains National Monument Management Plan, as well as planning and land use documents of various state and federal agencies, and the local Native American Tribes. Section 3.2 of the Recirculated Draft EIR/Supplemental Final EIS provides a detailed description of the land use designations established by the local jurisdictions through their adopted General Plans, including providing statistical summaries by land use categories, and mapping. Existing land uses are also described, as are land uses outside the Plan boundaries. Section 4.2 of the Recirculated Draft EIR/Supplemental Final EIS provides a detailed assessment of the potential effects of the MSHCP on land uses.

**BM-80** The comment alleges that the Recirculated Draft EIR/Supplemental Final EIS's conclusions regarding project impacts are unsupported by the facts and analysis, due to the use of outdated and inaccurate scientific data. See Major Issue Response 1, Use of Best Available Science. Mitigation measures for the Preferred Alternative were

- unnecessary due to the extensive self-mitigating and environmentally beneficial provisions of the MSHCP. The MSHCP will result in very limited opportunities for the generation of adverse impacts. The Recirculated Draft EIR/Supplemental Final EIS and related documents support the less than significant conclusion.
- BM-81** As cited in previous responses and in Major Issue Response 1, it is incorrect that the MSHCP and associated analysis were based on outdated and/or inaccurate data and information. The comment provides neither basis nor citations for this statement.
- BM-82** The population and housing analysis in the EIR/EIS is adequate. It properly analyzes land use designations in general plans of jurisdictions within the Plan Area and quantifies lands inside and outside the Conservation Area per land use designation. As discussed in Section 4.8 of the EIR/EIS, the vast majority of lands within the identified Conservation Areas are designated for low density or rural residential development. In addition, Development is allowed within the Conservation Areas subject to provisions in the Plan. The EIR/EIS appropriately concludes that any land use shift associated with Plan implementation would be minimal and not result in significant impacts.
- BM-83** Please see response to Comment R-18.
- BM-84** The EIR/EIS does not conclude that implementation of the proposed actions would result in “impacts on the Coachella Valley’s economy from loss of its third-largest industry.” It is not necessary to analyze effects of such loss because this loss has not been identified as an effect of the proposed actions analyzed in the EIR/EIS. There is no evidence provided that the MSHCP would prohibit the expansion of agriculture in the Coachella Valley. Please see responses to Comments BM-39 through BM-43.
- BM-85** The comment states that the adoption of the MSHCP will result in a “...vast conversion of agriculture.” The commenter provides no analysis or documentation to support the assertion that the MSHCP will result in vast conversion of agriculture. Please see responses to Comments BM-39 through BM-43.
- BM-86** The commenter states that incorrect CEQA thresholds of significance were used in the Recirculated Draft EIR/Supplemental Final EIS, although these are taken directly from the State CEQA Guidelines, Appendix G. Citing a “certainty standard,” the author makes no reference to other thresholds or criteria that should have been applied. In fact, CEQA does not dictate which thresholds should be used. As discussed in detail, the MSHCP will not have a significant impact on prime or other important farmlands, will not impact lands under a Williamson Act contract, nor will it induce any changes to the environment due to the proximity of Conservation Area

lands to agricultural lands. Please see responses to Comments BM-39 through BM-43.

**BM-87** See responses to Comments BM-39 through BM-42, and BM-86.

**BM-88** Section 9.1 of the Recirculated Draft EIR/Supplemental Final EIS cites relevant portions of NEPA and CEQA regarding the analysis of growth-inducing and cumulative effects. This is followed by a detailed discussion of the Development context on a qualitative and quantitative basis, including future Development potential within the Plan Area, which facilitates the cumulative and growth-inducing impact assessment. Future land conversions, growth in housing and population, future traffic and trip generation potential, and flooding and hydrology are analyzed. The Recirculated Draft EIR/Supplemental Final EIS describes how the possibility of intensified land use would actually enhance land use efficiencies and the cost-effectiveness of infrastructure construction, possibly reduce miles traveled and pollutants emitted, and potentially provide other positive effects. However, it is noted in the Recirculated Draft EIR/Supplemental Final EIS that the intensification of land use is not a foregone conclusion and that such intensification, if it occurred, would be subject to full CEQA (and, where appropriate, NEPA) review. Therefore, the Recirculated Draft EIR/Supplemental Final EIS contains the analysis requested by the comment. The commenter fails to provide what “feasible mitigation” he believes is available for cumulative impacts.

**BM-89** The comment makes a blanket statement that the Recirculated Draft EIR/Supplemental Final EIS fails to identify necessary mitigation measures but makes no specific reference to discussions where impacts are significant and are inadequately mitigated nor are potentially feasible mitigation measures provided by the commenter. Therefore, the Lead Agencies do not have sufficient information upon which to submit a reasoned response to this comment. (Laurel Heights. *supra*, 47 Cal.3d. at 376; San Franciscans for Reasonable Growth v. City and County of San Francisco, IS] Cal.App.3d. 61, 79 (1984)). Additionally, the EIR/EIS does conclude that there will be intensification of Development.

**BM-90** The comment alleges that the Recirculated Draft EIR/Supplemental Final EIS defers discussion and development of suitable mitigation until a later date but makes no reference to any specific issue or portion of the draft document. Therefore, the Lead Agencies do not have sufficient information for which to submit a response to this comment. Additionally, the commenter fails to explain why he believes mitigation is being deferred until Development is proposed. The MSHCP requirements are clearly spelled out.

- BM-91** The Recirculated Draft EIR/Supplemental Final EIS addressed an appropriate range of project alternatives, including an Enhanced Conservation Alternative and a No Project Alternative. The analysis considered the comparative merits and consequences of each and incorporated mitigation measures where feasible and appropriate to reduce impacts below levels of significance. See Major Issue Response 8.
- BM-92** See Major Issue Response 1 and response to Comment S-24.
- BM-93** The comment alleges that the Recirculated Draft EIR/Supplemental Final EIS fails to provide sufficient information to enable informed decision-making by the decision-makers and the public and fails to satisfy CEQA requirements. However, the comment provides no basis for this conclusion. In fact, the Recirculated Draft EIR/Supplemental Final EIS provides detailed information on all potential impact areas, provides a full range of mitigation measures where necessary, provides a discussion of existing conditions, impacts, and mitigation, and fully elaborates on the alternative projects considered. The comment fails to provide detail on this issue and, therefore, the Lead Agencies do not have sufficient information for which to provide additional response to this comment.
- BM-94** The commenter states that mandatory findings of significance must be made with respect to air quality effects of blown sand and alteration of Development plans in the Coachella Valley. Significant effects have not been identified with respect to these issues. See responses to Comments R-17, T-19, X-23, BM-67, and BM-68.
- BM-95** Comment concludes that “CVCC cannot adopt or increase a Development mitigation fee.” CVCC is not adopting or increasing a Development mitigation fee. As the commenter recognizes, Sections 11.1.1 and 11.1.2 of the IA provide that this is an obligation of the Cities and the County. The Cities and County are responsible for adopting and adjusting the Local Development Mitigation Fees. The Cities and County then transfer all received Local Development Mitigation Fees to the CVCC (IA Section 12.2.1). It is not an illegal delegation of the Cities’ and County’s police power for the CVCC to receive and expend the fees. Contrary to the assertion by the commenter that the CVCC is an administrative agency, it is a legislative body (specifically, a Joint Powers Authority). Because the CVCC’s member jurisdictions are simply exercising common powers through CVCC, the CVCC is authorized to receive fees from its member agencies and spend them on MSHCP implementation (Government Code Section 6502). Commenter cites Government Code Sections 66001(d), 66001(e), and 66006 of the Mitigation Fee Act to support its contention that expenditure of the fees outside the City’s jurisdiction are illegal. Contrary to the comment, the cited Government Code provisions do not prohibit the Cities and the

County from expending fees outside their jurisdiction. Section 66001(d) requires the City to make certain findings with respect to unexpended funds. Section 66001(e) requires the local agency to identify an approximate date by which the construction of the public improvement project will be commenced. Section 66006 simply addresses commingling of funds.

Commenter also concludes that each City would need to establish its own separate interest-bearing account/fund for the Local Development Fee to be collected and expended by each City. Section 66006 of the Mitigation Fee Act requires that all fees received in connection with the approval of a Development project be deposited in a capital facilities account so as to avoid commingling with other funds.

The Lead Agencies do not agree that the decision to appoint representatives to the CVCC is an administrative decision. Typically, a city council will take an action appointing members to Joint Powers Authorities and other regional entities.

**BM-96** With regard to the commenter's assertion that the funding for the Plan is inadequate, please see the responses to the comments in this letter that more specifically address funding adequacy, as well Major Issue Response 3, Adequacy of Plan Funding. The commenter's citation to *Anderson First Coalition v. City of Anderson* is misplaced. There, aside from computational areas with regard to the amount of an impact fee owed, the primary inadequacy of the mitigation proposed is that the mitigation measure simply required payment of a fair share fee, without indicating what fee program this money was to be paid to or indicating whether the fee program currently covered the improvements needed (it did not; as stated in staff reports, the City was to attempt to amend the program in the future). This is in contrast with the situation here, where the Local Development Mitigation Fee is a proposed program that is clearly designed to fund the acquisition of conservation lands. Additionally, the Permittees, through their execution of the Implementing Agreement, will be obliged to adopt the Local Development Mitigation Fee. Thus, the impact fee program is not vague and uncertain such as was the case in *Anderson First Coalition*.

**BM-97** The fee provides a benefit to all new Development, not only with regard to direct impacts to Covered Species on a property but also biological coverage under CEQA and coverage of public infrastructure. New development has both direct and cumulative impacts on the need for habitat conservation. Direct impacts occur from the Development of vacant and partially vacant land within the Plan Area because these lands contain habitat for Covered Species. Cumulative impacts occur as a result of Development over time and across the Plan Area by reducing the total amount of available habitat and thus the viability of Covered Species. Thus, there is a reasonable relationship between the impact of Development of all lands within the Plan Area (in

and out of the Conservation Areas) in compliance with the Mitigation Fee Act, as demonstrated by the Nexus Study prepared for the Local Development Mitigation Fee. See response to Comment X-36 regarding the Nexus Study; see responses to Comments T-13 and T-14 regarding the legal requirements applicable to the Fee. See also generally Major Issue Response 2, regarding regulatory takings.

**BM-98** See response to Comment BM-97. Responses to comments T-13 and T-14 specifically state that *Ehrlich v. City of Culver City* (1996) 12 Cal. 4<sup>th</sup> 854 interpreted the application of the *Nollan/Dolan* test to legislatively-issued fee programs, and these requirements are included within the Mitigation Fee Act. As discussed in those responses to comments and response to Comment X-36, the Nexus Study commissioned for the Local Development Mitigation Fee demonstrates the fulfillment of these requirements.

**BM-99** The MSHCP will not violate Government Code Section 65858, which limits moratoria to a maximum 2-year period, because the HANS process is not a moratorium. A moratorium is defined by Government Code Section 65858 as an interim ordinance prohibiting uses of land which may conflict with a general plan, specific plan, or zoning proposal that the local agency is considering implementing, without following the procedures otherwise required for the adoption of a zoning ordinance. The MSHCP is not the sort of temporary freeze as is described by Section 65858, for the purpose of studying alternatives to the general plan. As such, the requirements of this code section do not apply.

**BM-100** The HANS and JPR processes will not prevent the Cities or County from complying with the terms of the Subdivision Map Act. It is anticipated that for a majority of Development applications, the applicant will wait no longer than 104 days from the date of submittal to the Local Permittee before a determination is made to either purchase the property or determine whether the application is consistent with the Plan. When the application is deemed complete by the City or County, the timelines established by the Subdivision Map Act will be triggered, including the requirements of Section 21151.5 of the Public Resources Code. Thus, the processes and time frames established by the Subdivision Map Act will not be violated by the MSHCP. Finally, the Lead Agencies believe that the MSHCP is consistent with all federal, state, and local laws and that no evidence has been submitted that alters this conclusion.

**BM-101** In adopting the Permit Streamlining Act (PSA), the Legislature declared that “there is a statewide need to ensure clear understanding of the specific requirements which must be met in connection with the approval of Development projects and to expedite decisions on such projects” (Govt. Code 65921). The JPR and HANS processes have

been adopted in part in order to assist the Local Permittees in meeting the Conservation Goals and Objectives of the Plan. In furtherance of the goal announced in Section 65921, the Lead Agencies have specified the procedure for the JPR and HANS processes in Section 6.6 of the MSHCP. No statutory time frames will be circumvented and the PSA will not be violated. Finally, in contrast to the commenter's assertion that a detailed list is not provided, the JPR process provides a detailed list in Step 1 (MSHCP Section 6.6.1). The HANS process also provides a list at MSHCP Section 6.6.1. See response to Comment BM-100.

**BM-102** LAFCOs are administrative bodies created pursuant to the Cortese-Knox-Herzberg Local Government Reorganization Act of 2000 (Act) to control the process of municipality expansion. The Act promotes expansion be undertaken by those agencies that can best provide government services (Govt. Code 56001). Section 56375 governs the powers and duties of a LAFCO and states that a commission shall not impose any conditions that would directly regulate land use density or intensity, property Development, or subdivision requirements. Commenter states that Section 11.4 of the Implementing Agreement is in conflict with this provision because "LAFCO will be forced to violate the [Act's] prohibition against regulating land uses by illegally approving or denying annexation proposals based on compatibility with the MSHCP." In other words, commenter alleges that LAFCO's hands are tied. However, Section 11.4 of the IA states that, when LAFCO is involved in an annexation proceeding, the Parties shall seek to enter into an agreement with LAFCO. If no agreement can be reached, or if the MSHCP requirements are not imposed as a condition of annexation by LAFCO, then the annexed land will simply not receive Take Authorization. The IA does not tie LAFCO's hands but rather seeks to work with LAFCO within the framework of the Act.

**BM-103** The commenter claims that the MSHCP fails to meet the requirements of the Federal Data Quality Act with regard to quality, utility, and objectivity. The commenter does not, however, explain why and how the MSHCP fails to meet these requirements, except by referencing comments made earlier in his letter. Please see responses to Comments BM-7 to BM-12 regarding his statement that the Plan fails to use the best scientific data available, responses to Comments BM-39 to BM-45 regarding his statement that the Plan uses the wrong methodology in its fiscal impact analysis, and responses to Comments BM-61 to BM-66 regarding his statement that the Plan maintains a biased approach in its use of data. As demonstrated in these responses, these statements are incorrect, and the Plan and EIR/EIS comply with all analytical requirements.

**BM-104** This comment raises concerns about equal protection issues. Commenter points to no authority for the claim that the Plan violates the equal protection clause under the Constitution. To successfully assert an equal protection claim, a plaintiff must first identify a suspect classification. Suspect classifications include age, alienage, disability, gender, illegitimacy, poverty, racial status, and homosexuality. A court will vary its judicial scrutiny of the government's rationale for not treating two parties equally depending on the classification identified. In a situation such as this, where no suspect classification has been identified or even inferred, a court would give substantial deference to legislative judgment upon an assertion of a violation of the equal protection clause. Because the HANS process is rationally related to a legitimate governmental purpose, there are no violations of the equal protection clause.



**COMMENTS BY: JON GORDON**

Dated: June 4, 2007

- BN-1** The commenter expresses his concern regarding taking land without compensation. Please see Major Issue Response 2, Regulatory Takings, for a thorough discussion of the MSHCP and its legal framework.
- BN-2** The commenter summarizes his understanding of the *Southwest Center for Biological Diversity v. Bartel* case and speculates that it will occur in Coachella Valley. No further response is necessary.
- BN-3** The commenter alleges that the plan is not adequately funded. Please see Major Issue Response 3, Adequacy of Plan Funding.
- BN-4** The commenter states that the publicly held forums were not well attended. No further response is necessary.
- BN-5** The comment is noted. No features of the MSHCP would change existing zoning on property anywhere in the Plan Area. Refer to responses to Comments N-12, R-16, T-19, BL-19, and BM-57 regarding effects of the MSHCP on affordable housing.
- BN-6** See response to Comment BN-6. The MSHCP has no relationship to the referenced 2003 General Plan Amendment and would not alter existing land use designations and zoning, nor would it adversely affect affordable housing.
- BN-7** As discussed in the MSHCP, lands for conservation would only be acquired from willing sellers. Refer to Major Issue Response 2 regarding regulatory takings.
- BN-8** The comment is noted. It does not relate to the analysis and conclusions in the EIR/EIS and further response is not necessary.
- BN-9** Refer to responses to Comments BN-5, BN-6, and BN-7.
- BN-10** The comment is noted. The MSHCP would not affect funding or implementation of the referenced CVWD flood plan. CVWD would be a Permittee under the Plan and the flood plan, if proposed in the future, would likely be a Covered Activity under the Plan.
- BN-11** PM<sub>10</sub> windbreaks are not proposed as part of the project. Protection of sand sources for sand-dependent species as described in the Plan would not represent a substantial change from existing conditions with respect to windblown sand. See also responses to Comments S-5 and BM-62.

**BN-12**    The comment is noted. Refer to Major Response 3 regarding adequacy of funding.

**COMMENTS BO: OFFICE OF PLANNING AND RESEARCH, STATE  
CLEARINGHOUSE, STATE OF CALIFORNIA**

Dated: July 31, 2007

- BO-1** The State Clearinghouse provides a comment letter from the Colorado River Board of California received on July 31, 2007, after the close of the Recirculated Draft EIR public comment review period, which ended on May 9, 2007. The Colorado River Board of California expresses support of the proposed project and has no further comment. Comment is noted.

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