Attachment B – Annexation Agreement for San Marcos Highlands

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Office of the County Counsel
County of San Diego
1600 Pacific Highway
San Diego, California 92101

THIS SPACE ABOVE FOR RECORDER'S USE

ANNEXATION AGREEMENT FOR SAN MARCOS HIGHLANDS

This Annexation Agreement for San Marcos Highlands (Agreement) is made and entered into as of the _____ day of _____, 2019, by and among the City of San Marcos (City); the County of San Diego, a political subdivision of the State of California (County); the United States Fish and Wildlife Service, an agency of the U.S. Department of the Interior (USFWS); the California Department of Fish & Wildlife, a subdivision of the California Resources Agency of the State of California (CDFW), and Vista San Marcos, LP (VSMLP), a California Limited Partnership (herein collectively referred to as the Parties). The Agreement defines the Parties' responsibilities and obligations and provides a common understanding of actions that will be undertaken for the conservation of the proposed Covered Species in the Draft North County Multiple Species Conservation Plan (NC MSCP), as defined herein, and their habitats during the construction, development, and operation of the approximately 293.3-acre residential project known as San Marcos Highlands (Project).

RECITALS

WHEREAS, VSMLP proposes to develop an approximately 293.3-acre Project site commonly known as "San Marcos Highlands" that will include 187 cluster single-family residential lots and conserved open space;

WHEREAS, an approximately 141.14-acre portion of San Marcos Highlands is located in the City, at the northern terminus of Los Posas Road on the western edge of the City (College Community Planning Area), and an approximately152.16-acre portion of San Marcos Highlands is located in the unincorporated County, all as depicted in Exhibit A;

WHEREAS, approximately 124.69 acres of San Marcos Highlands is located within the City's sphere of influence and is proposed to be annexed from the unincorporated County into the City of San Marcos;

WHEREAS, the Project proposes to preserve approximately 210.8 acres within a Natural Open Space Preserve (as that term is defined in Section 1.O below).

WHEREAS, VSMLP has also committed to preserve an approximately 6.5 acres located adjacent to the Natural Open Space Preserve ("Additional 6.5 Acres"), as depicted in

Exhibit B-3 hereto. VSMLP has also committed to an openness ratio of 2 for the Street A Culvert. Implementation of these measures will maintain wildlife connectivity across the site.

WHEREAS, a portion of San Marcos Highlands is within the geographic area proposed to be addressed in the County's Draft NC MSCP and the County, USFWS, and CDFW entered into a *Planning Agreement Regarding the North and East County Multiple Species Conservation Program Plans, Natural Community Conservation Program Plans and Habitat Conservation Plans*, as revised and amended May 12, 2014 (Planning Agreement);

WHEREAS, Section 6.7.3 of the Planning Agreement provides that "In … the event land that is within the County's jurisdiction is proposed to be annexed into another jurisdiction, the County shall request that [San Diego Local Agency Formation Commission (LAFCO)] impose a requirement on the annexing jurisdiction to enter into an agreement between the County, the annexing jurisdiction, USFWS and CDFW as part of the annexation process to ensure that the annexation would only occur when the annexation would not jeopardize the buildout of the preserve or the coverage of species or compromise viable habitat linkages within the proposed preserve.";

WHEREAS, the City has certified an Environmental Impact Report ("EIR" City ER 15-001, SCH 1999071007); adopted a mitigation, monitoring, and reporting program (MMRP); and approved a Specific Plan (San Marcos Highlands Specific Plan, SP13-001), General Plan Amendment (GPA) (Resolution 15-002 GPA), Pre-zone and Annexation (Ordinance PZ 14-001), Tentative Subdivision Map (TSM 13-001), and ROZ 14-001 Ridge Line Protection Ordinance (collectively, the "Entitlements");

WHEREAS, the United States Army Corps of Engineers (ACOE) has issued a Provisional Clean Water Act (CWA) Section 404 ACOE permit (SPL-2001-00479) and consulted with the USFWS pursuant to Section 7 of the Federal Endangered Species Act (Biological Opinion No. 1-6-05-1668 dated April 8, 2005, and amended December 7, 2005) on issuance of the permit [collectively, Federal Approvals (Exhibit F)];

WHEREAS, the Regional Water Quality Control Board (RWQCB) has issued a CWA Section 401Water Quality Certification (Order No. R9-2005-0272), and CDFW has issued a 1600 permit (1600-2015-0122-R5) [(collectively, State Approvals (Exhibit F)];

WHEREAS, approval by LAFCO of the annexation of the San Marcos Highlands into the City, as a condition of approval of the annexation, requires that an annexation agreement such as this Agreement be executed by the Parties;

WHEREAS, this Agreement describes VSMLP's obligation under the Entitlements and Federal and State Approvals to implement specific conservation, biological mitigation, and take minimization measures, as further set forth in this Agreement that will preserve and enhance habitat on site as well as a linkage between undeveloped land and preserved areas of coastal sage scrub to the southeast and northwest of the Project site;

WHEREAS, prior to issuance of a grading permit for San Marcos Highlands, VSMLP, its successors or assigns shall record this Agreement in the County recorder's office.

This Agreement shall run with the land and is enforceable against and binding upon VSMLP in its capacity as the owner of the San Marcos Highlands Project site and any successor or assign in interest to VSMLP; and

WHEREAS, the Parties desire to enter into this Agreement consistent with the Planning Agreement and specifically to assure that the Project footprint/design and associated biological mitigation requirements are imposed upon VSMLP and any successors and assigns.

NOW, THEREFORE, the Parties enter into this Agreement on the terms and subject to the conditions as set forth herein.

AGREEMENT

SECTION 1. DEFINITIONS

A. "ACOE" means the Army Corps of Engineers.

B. "CDFW" means the California Department of Fish and Wildlife.

C. "CEQA" means the California Environmental Quality Act, Public Resources Code, Section 21000, *et seq*.

D. "CESA" means the California Endangered Species Act, California Fish and Game Code, Section 2050, *et seq*.

E. "City" means the government of the City of San Marcos.

F. "County" means the government of the County of San Diego.

G. "Covered Species" means those listed and non-listed species the County is proposing to include in the NC MSCP.

H. "Effective Date" means that date by which all Parties to this have signed it.

I. "ESA" means the Federal Endangered Species Act, 16 United States Code Section 1530, *et seq*.

J. "Habitat Manager" means the person/entity responsible for implementing the Long Term Management Plan (LTMP) and will carry out the LTMP's requirements and objectives. Selection of the Habitat Manager shall be subject to the approval of the Parties.

K. "Habitat Management Plan" or "HMMP" means the Habitat Mitigation and Monitoring Plan prepared for the Project by Everett and Associates Environmental Consultants (2019), which will be approved by CDFW, USFWS, and City.

L. "Long Term Management Plan" or "LTMP" means the long-term management plan for the Natural Open Space Preserve to be approved by CDFW, USFWS, County, and City.

M. "MMRP" refers to the mitigation, monitoring, and reporting program adopted by the City as part of the EIR process.

N. "MSCP" means Multiple Species Conservation Program.

O. "Natural Open Space Preserve" means the approximately 210.8 acres of San Marcos Highlands that will be preserved as a conservation area as reflected in Exhibit B-1. Following annexation, the Natural Open Space Preserve will include the following components depicted on Exhibit B-2 attached hereto: " Conservation Easement 1" containing approximately 183.31 acres located within the City's jurisdiction, "Conservation Easement 2" containing approximately 4.7 acres to remain within the County's jurisdiction, and " Conservation Easement 3" containing approximately 22.79 acres to remain within the County's jurisdiction, all as shown in Exhibit B-2 hereto.

P. "Parties" includes the City, County, CDFW, USFWS, third-party beneficiary, and VSMLP.

Q. "Planning Area" means the geographic area proposed to be addressed in the NC MSCP.

R. "Planning Agreement" is the agreement signed by the County, CDFW, and the USFWS that defines the goals and obligations in the development of the NC MSCP.

S. "Project" means the San Marcos Highlands Project as described in the approved San Marcos Highlands EIR, Tentative Subdivision Map, and Specific Plan, General Plan Amendment, Pre-zone, and Annexation.

T. "RWQCB" means the Regional Water Quality Control Board.

U. "Take" and "Taking" shall have the meanings provided by ESA and CESA.

V. "USFWS" means the United States Fish and Wildlife Service.

W. "VSMLPC" means Vista San Marcos, LP, its successor or assigns.

SECTION 2. PURPOSES

The purpose of this Agreement is:

A. To ensure that the annexation will not jeopardize the buildout of the preserve or the coverage of species within the NC MSCP Planning Area or compromise viable habitat linkages within the NC MSCP Planning Area. **Exhibit "E"** attached hereto describes how the annexation meets these criteria of Section 6.7.3 of the Planning Agreement and is consistent with the overall biological goals and objectives outlined in Sections 3 and 5 of the Planning Agreement.

B. To set forth the resulting responsibilities for ongoing maintenance and enforcement of the terms of the resulting conservation, biological mitigation, and take minimization measures needed to ensure consistency with the Planning Agreement.

SECTION 3. REPRESENTATIONS AND WARRANTIES

A. COUNTY.

(i) County agrees that the annexation and development of the Project is consistent with Section 6.7.3 of the Planning Agreement provided the conservation, biological mitigation, and take minimization measures imposed on VSMLP for the Project under the Entitlements, Federal and State Approvals, conservation of the additional 6.5 acres for wildlife connectivity, and this Agreement are implemented by VSMLP.

B. CITY.

(i) City approved the Project and authorized issuance of the Entitlements pursuant to the resolutions identified above that impose biological mitigation measures as described in the Final EIR and the MMRP.

(ii) City will not impose or seek to impose any additional biological mitigation or take minimization measures on VSMLP in connection with implementation of the Project beyond those set forth in this Agreement and those already imposed by the City's approval of the Project above through any means, unless it is compelled to do so as a matter of law.

(iii) City acknowledges that VSMLP is required to implement the provisions of the Federal and State Approvals as well as conserve the additional 6.5 acres for wildlife connectivity and represents that City possesses the authority under state and local law to compel VSMLP to implement the provisions of the Agreement.

(iv) City commits to not issue a grading permit until the mitigation and other biological conservation measures described in this Agreement are implemented.

(v) If, or when, Las Posas Road is extended to the north, beyond the edge of development, the City shall require a structure with a dedicated wildlife undercrossing and an openness ratio sufficient to facilitate the passage of large mammals will be included in the roadway designs and specifications (similar to what is being provided for Street A culvert). The final design shall be reviewed and approved by CDFW and USFWS.

C. VSMLP

(i) VSMLP has the full right, power and authority to convey, or cause to be conveyed, the fee simple title to the lands described in this Agreement. VSMLP shall only transfer an interest in these lands consistent with the terms of this

Agreement, unless it abandons the Project as evidenced by termination of the Entitlements.

(ii) VSMLP shall fully implement the provisions of the Entitlements, Federal and State Approvals, and conserve the additional 6.5 acres for wildlife connectivity in connection with its development of the Project.

(iii) VSMLP acknowledges that the City has authority to enforce all of the mitigation and other biological conservation measures required of VSMLP pursuant to this Agreement.

(iv) VSMLP acknowledges that the ACOE has authority to enforce all of the mitigation and other biological conservation measures required of VSMLP pursuant to CWA Section 404 ACOE permit (SPL-2001-00479) and the associated Biological Opinion (1-6-05-F-1668), as amended.

(v) VSMLP acknowledges that the State has the authority to enforce all of the mitigation and other biological conservation measures required of VSMLP pursuant to RWQCB CWA Section 401Water Quality Certification (Order No. R9-2005-0272) and the CDFW 1600 permit (1600-2015-0122-R5).

(vi) VSMLP agrees to fully fund each of the mitigation and biological conservation measures provided in this Agreement through the mechanisms set forth therein.

D. CDFW

(i) CDFW agrees that the annexation and development of the Project is consistent with Section 6.7.3 of the Planning Agreement provided the conservation, biological mitigation, and take minimization measures imposed on VSMLP for the Project under the Entitlements, Federal and State Approvals, conservation of the additional 6.5 acres for wildlife connectivity, and this Agreement are implemented by VSMLP.

E. USFWS

(i) USFWS agrees that the annexation and development of the San Marcos Highlands Project is consistent with Section 6.7.3 of the Planning Agreement provided the conservation, biological mitigation, and take minimization measures imposed on VSMLP for the Project under the Entitlements, Federal and State Approvals, conservation of the additional 6.5 acres for wildlife connectivity, and this Agreement are implemented by VSMLP.

SECTION 4. BIOLOGICAL MITIGATION

A. OBLIGATIONS WITH RESPECT TO VSMLP

(i) VSMLP, successors or assigns shall assure the conservation of the Natural Open Space Preserve consisting of approximately 210.8 acres of habitat located within the Project site (Exhibit B) as follows:

(a) Before obtaining a grading permit for the Project, VSMLP shall:

(i) Establish a conservation easement over the Natural Open Space Preserve, as depicted in Exhibit B and more particularly described in Exhibit C[1], to City, the County, or to an entity satisfactory to the Parties. The conservation easement shall identify a CDFW-approved third party and the County (if it is not the easement grantee) as a third-party beneficiary with the right of access to the property and a right to enforce the terms of the conservation easement.

(ii) Obtain approval from CDFW, USFWS, County, and the City on the LTMP for the Natural Open Space Preserve.

(iii) Fund a permanent endowment for the Habitat Manager in an amount sufficient to fund perpetual maintenance and monitoring of the Natural Open Space Preserve as required by the HMMP and the LTMP, as established by a Property Analysis Report and approved by all Parties

(iv) Contract with a Habitat Manager acceptable to the Parties to manage the Natural Open Space Preserve consistent with the LTMP.

(v) Enter into an Open Space Maintenance Agreement with the Habitat Manager and County to set forth their respective rights and obligations with regard to the Habitat Manager's obligations to maintain the Natural Open Space Preserve and VSMLP's obligation to pay for the implementation of the LTMP.

(ii) Prior to obtaining a grading permit, VSMLP shall assure the conservation of the Additional 6.5 Acres by establishing a conservation easement over the Additional 6.5 Acres to City, the County or to another CDFW-approved entity selected by VSMLP that is experienced in the holding of conservation easements, funding a permanent endowment in an amount sufficient to fund perpetual maintenance of the Additional 6.5 Acres as open space, as established by a Property Analysis Report prepared for VSMLP and using commercially

[1] Exhibit C is in draft form and will be finalized during recordation of the final map.

reasonable efforts to cause a habitat manager to manage the Additional 6.5 Acres as open space.

(iii) VSMLP shall design the culverts in a manner that provides for wildlife passage, including features to facilitate small animal movement and features to facilitate medium and large animal movement. The features include: brushed concrete surface throughout the culvert, as well as on a minimum 5-foot wide path for wildlife-exclusive ingress and egress to the culvert; a 1-foot wide ledge with a 10-inch high vertical curb on the west side of the culvert; rip-rap placed at the inlet and outlet of the culvert; and fencing to direct wildlife to the undercrossing. Following restoration of the channel only periodic, temporary ingress/egress for culvert maintenance will be permitted. All recreational access or other trails are prohibited. Habitat and species disturbances will be spatially and temporally minimized to the greatest extent feasible during all maintenance activities. To prevent recreational access, any habitat disturbances associated with temporary maintenance ingress/egress will be immediately restored.

(iv) Through compliance with Section 4(A)(i), (ii), and (iii) VSMLP shall assure the linkage between undeveloped land and preserved areas of coastal sage scrub to the southeast and northwest of the Project site is maintained for wildlife.

(v) VSMLP, successors or assigns shall ensure compliance with Take Authorizations and mitigation measures outlined in the EIR, MMRP, Entitlements, State and Federal Approvals.

(vi) VSMLP, successors or assigns shall ensure that the Natural Open Space Preserve shall be protected and managed in perpetuity consistent with the policies expressed in the Planning Agreement (as outlined in Exhibit "E"), Entitlements, and Federal and State Approvals to maintain conservation values. This shall be accomplished as follows:

(a) VSMLP, successors or assigns shall manage or cause the Habitat Manager to manage the Natural Open Space Preserve above consistent with the LTMP.

SECTION 5. RECORDATION

Upon the Effective Date, VSMLP shall cause this Agreement to be recorded with the San Diego County Recorder's Office.

SECTION 6. FORCE MAJEURE

In the event that VSMLP is wholly or partially prevented from performing obligations under this Agreement because of unforeseeable causes beyond the reasonable control of and without the fault or negligence of VSMLP ("force majeure"), including, but not limited to, acts of God, labor disputes, sudden actions of the elements, or actions of federal or state agencies or other local jurisdictions, VSMLP shall be excused from whatever performance is affected by

such unforeseeable cause to the extent so affected, and such failure to perform shall not be considered a material violation or breach, provided that nothing in this Section shall be deemed to authorize VSMLP, successors or assigns, to violate ESA or CESA, and provided further that:

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

B. Within 2 weeks after the occurrence of the force majeure, VSMLP gives the Parties written notice describing the particulars of the occurrence;

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

D. When the VSMLP, as appropriate, is able to resume performance of its obligations, VSMLP, as appropriate, shall give City written notice to that effect.

SECTION 7. SUCCESSORS AND ASSIGNS

This Agreement and each of its rights, obligations, covenants, and conditions shall be binding on and shall inure to the benefit of the Parties and their respective successors and assigns.

SECTION 8. RECITALS AND EXHIBITS

All Recitals and Exhibits of this Agreement are incorporated herein and are part of this Agreement.

SECTION 9. ATTORNEYS' FEES

If any action at law or equity, including any action for declaratory relief, is brought by City, County, or VSMLP against one another with respect to, or arising out of, this Agreement, each Party to the litigation shall bear its own attorneys' fees and costs. Notwithstanding the foregoing, VSMLP acknowledges that, to the extent permitted by law and pursuant to the conditions of approval set forth in the Entitlements, that VSMLP shall indemnify, defend and hold harmless the City, County, and CDFW, and USFWS for any and all actions, claims, damages, injuries, challenges and/or costs of liabilities arising from this Agreement.

SECTION 10. DUPLICATE ORIGINALS

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

SECTION 11. AVAILABILITY OF FUNDS

A. Federal Funds

(i) Implementation of this Agreement by USFWS is subject to the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The Parties acknowledge that USFWS will not be required under this Agreement to expend any federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

B. State Funds

(i) Implementation of this Agreement by CDFW is subject to the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any money from the Treasury of the State of California. The Parties acknowledge that CDFW will not be required under this Agreement to expend any State of California agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

SECTION 12. NOTICE

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

VSM, LP
27691 Deputy Circle
Laguna Hill CA 92653
Attn: Farouk Kubba

THE COUNTY OF SAN DIEGO
5510 Overland Avenue Suite 310
San Diego, California 92123
ATTN: Director of Planning & Development Services

THE CITY OF SAN MARCOS
1 Civic Center Drive
San Marcos, CA 92069
ATTN: Dahvia Lynch

U.S. FISH & WILDLIFE SERVICE
2177 Salk Avenue Suite 250
Carlsbad, CA 92008
ATTN: Field Supervisor

CALIFORNIA DEPARTMENT OF FISH & WILDLIFE
3883 Ruffin Road
San Diego, CA 92123
ATTN: Regional Manager

SECTION 13. ENTIRE AGREEMENT

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

SECTION 14. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the ESA and CESA and other applicable federal and California laws.

SECTION 15. AFFIRMATIVE OBLIGATIONS

This Agreement does not alter, expand or reduce the existing requirements of law applicable to the Additional Parcels and does not impose any affirmative obligations on the owners of the Additional Parcels, other than the obligations of existing law.

SECTION 16. THIRD PARTY BENEFICIARIES

This Agreement shall not be deemed to confer any rights upon any individual or entity that is not a Party hereto. The Parties hereto expressly disclaim any such third-party benefit.

[Signature Page Follows]

CITY OF SAN MARCOS

By:_____
CITY MANAGER, JACK GRIFFIN

COUNTY OF SAN DIEGO

By:_____
CLERK OF THE BOARD OF SUPERVISORS

UNITED STATES FISH & WILDLIFE SERVICE

By:_____
ACTING FIELD SUPERVISOR, SCOTT SOBIECH

CALIFORNIA DEPARTMENT OF FISH & WILDLIFE

By:_____
REGIONAL MANAGER, ED PERT

VISTA SAN MARCOS, LP

By:_____
MANAGING MEMBER, FAROUK KUBBA

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

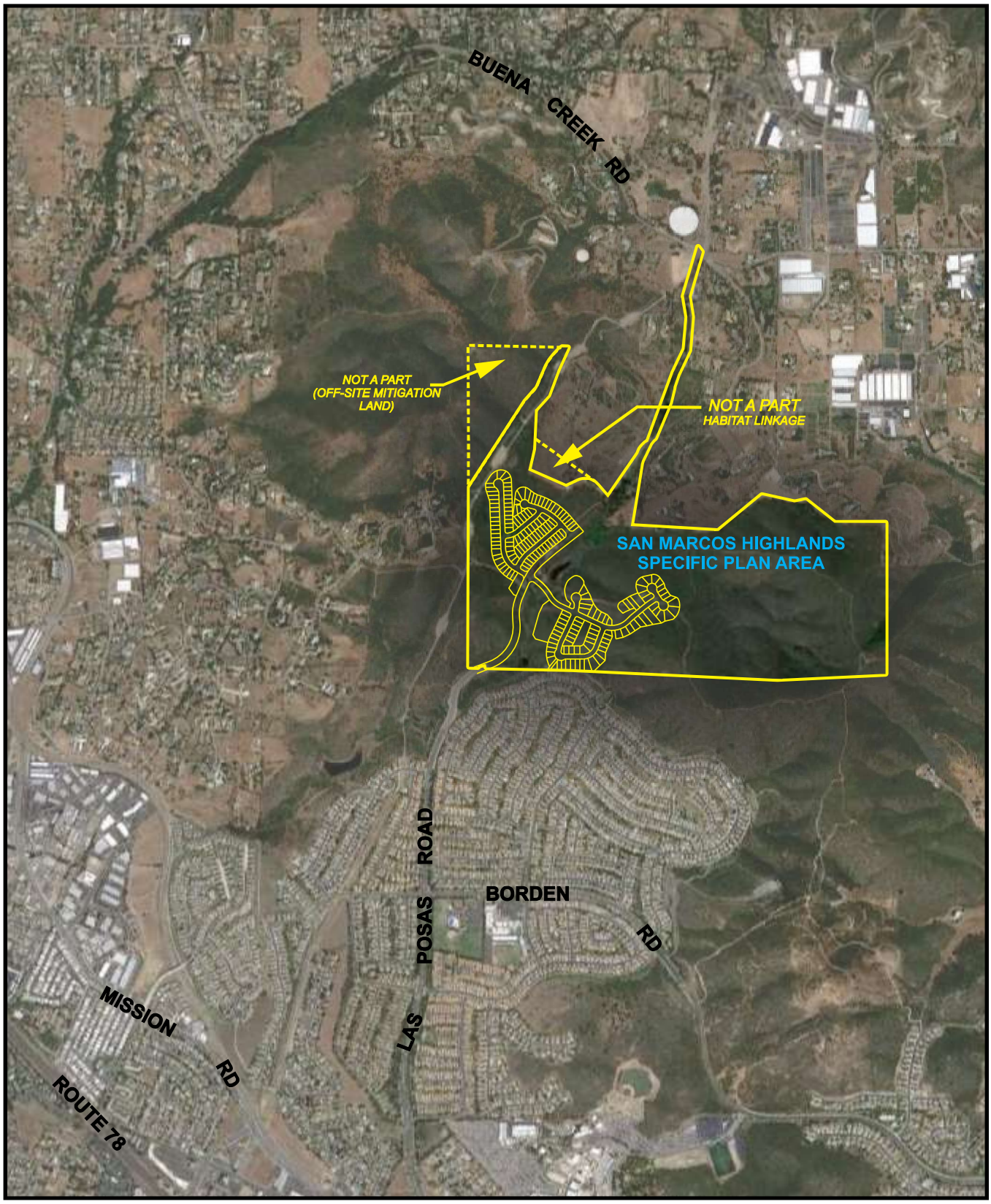
State of California)
County of San Diego)

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____



Project Site Overview

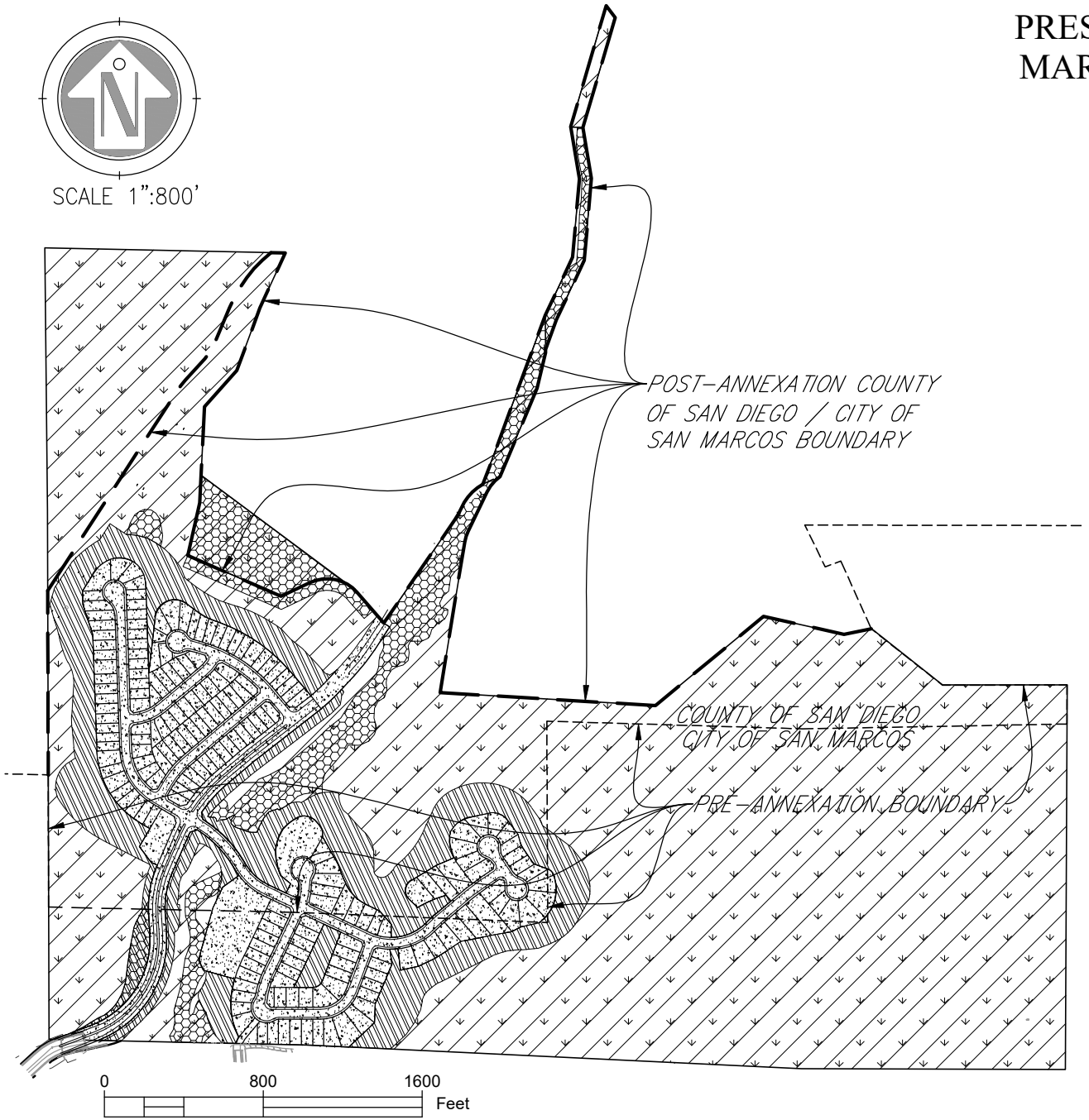
Exhibit A

SAN MARCOS HIGHLANDS

N

NOT TO SCALE

NATURAL OPEN SPACE PRESERVE EXHIBIT FOR SAN MARCOS HIGHLANDS SHEET 1 OF 3



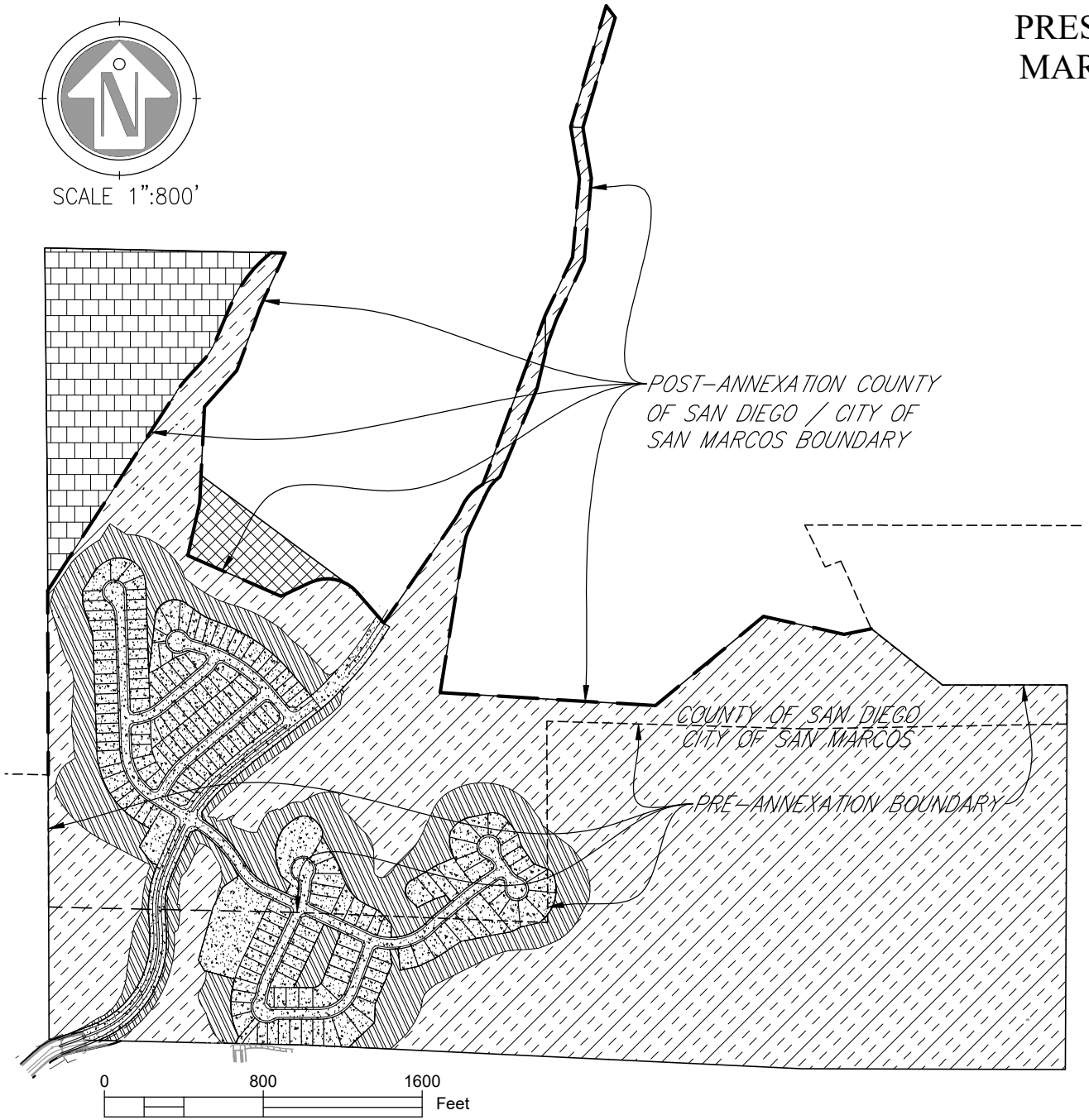
LEGEND

- NATURAL OPEN SPACE PRESERVE–210.8 AC*
- LONG TERM MANAGEMENT PLAN (LTMP)
- HABITAT MITIGATION & MONITORING PLAN (HMMP)
- RESIDENTIAL FOOTPRINT (ROADS & LOTS)–50.04 AC*
- FUEL MODIFICATION AREAS–32.46 AC*
- PRE-ANNEXATION COUNTY OF SAN DIEGO / CITY OF SAN MARCOS BOUNDARY
- POST-ANNEXATION COUNTY OF SAN DIEGO / CITY OF SAN MARCOS BOUNDARY

NOTE:
* AREAS INDICATED ARE APPROXIMATE. FINAL PRECISE AREAS WILL BE PER THE RECORDED FINAL MAP FOR THE PROJECT.

** ALL OF OPEN SPACE 2 IS WITHIN THE NATURAL OPEN SPACE PRESERVE.

NATURAL OPEN SPACE PRESERVE EXHIBIT FOR SAN MARCOS HIGHLANDS SHEET 2 OF 3



LEGEND

Conservation Easement 1

*1–183.31 AC**

Conservation Easement 2

2–4.7 AC **

Conservation Easement 3

*3–22.79 AC**

*RESIDENTIAL FOOTPRINT (ROADS & LOTS)–50.04 AC**

*FUEL MODIFICATION AREAS–32.46 AC**

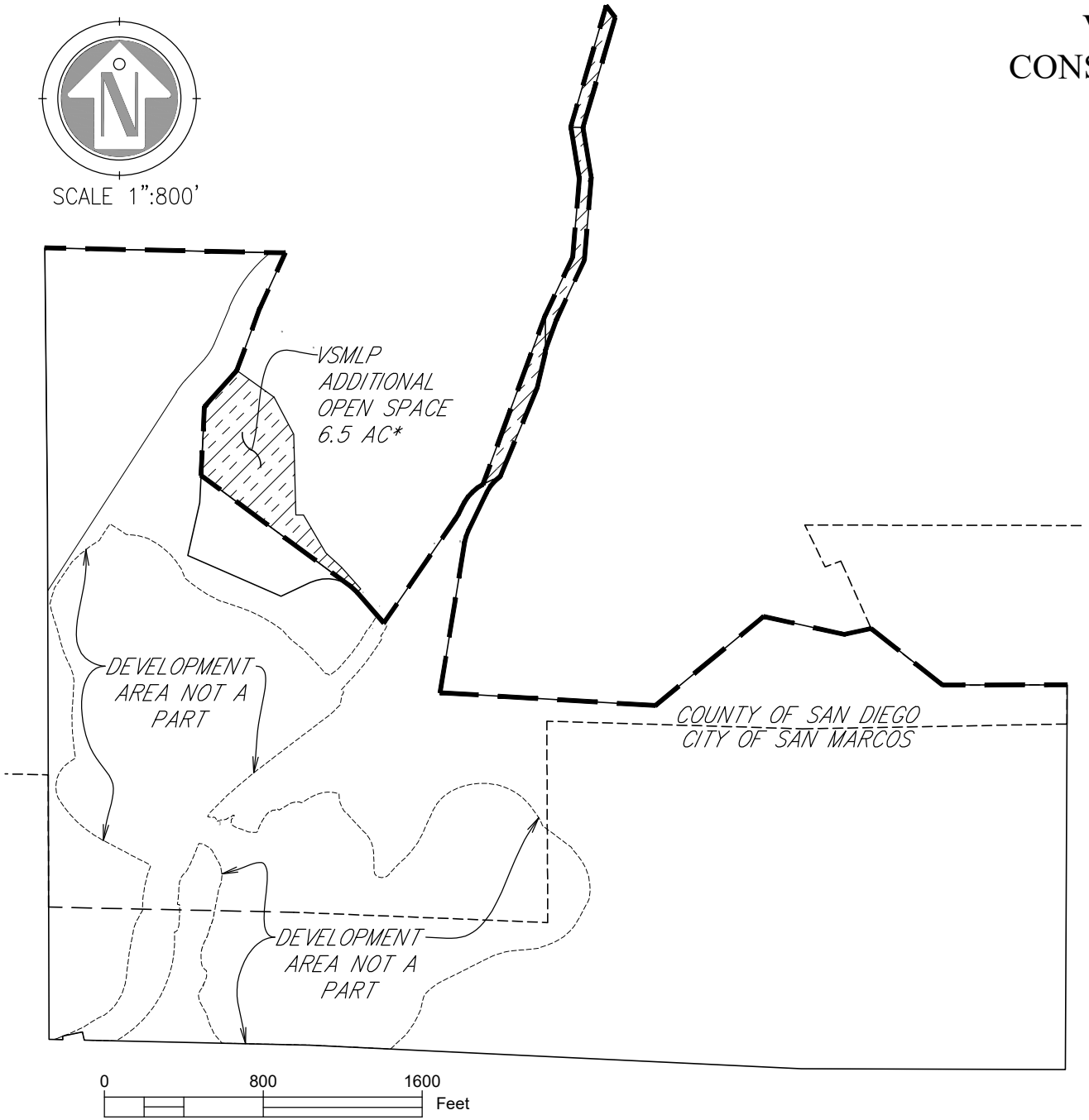
PRE-ANNEXATION COUNTY OF SAN DIEGO / CITY OF SAN MARCOS BOUNDARY

POST-ANNEXATION COUNTY OF SAN DIEGO / CITY OF SAN MARCOS BOUNDARY

NOTE:
** AREAS INDICATED ARE APPROXIMATE. FINAL PRECISE AREAS WILL BE PER THE RECORDED FINAL MAP FOR THE PROJECT.*

*** ALL OF OPEN SPACE 2 IS WITHIN THE NATURAL OPEN SPACE PRESERVE.*

EXHIBIT B3
VSMLP ADDITIONAL CONSERVATION OPEN SPACE
SHEET 3 of 3



LEGEND

VSMLP ADDITIONAL OPEN SPACE 6.5 AC*

OPEN SPACE BOUNDARY

NOTE:
* AREA INDICATED IS APPROXIMATE. FINAL PRECISE AREA WILL BE PER THE RECORDED FINAL MAP FOR THE PROJECT.

ANNEXATION NO. _____

SAN MARCOS HIGHLANDS REORGANIZATION

ANNEXATION TO THE CITY OF SAN MARCOS

GEOGRAPHIC DESCRIPTION

ALL THAT CERTAIN REAL PROPERTY, SITUATED IN A PORTION OF SECTION 34, TOWNSHIP 11 SOUTH, RANGE 3 WEST, SAN BERNARDINO BASE AND MERIDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEGINNING AT THE END OF THE 16TH CALL OF THE ANNEXATION #65-B (PALOMAR ANNEXATION);

THENCE, (1) NORTH 00°09'14" WEST A DISTANCE OF 1592.50 FEET;

THENCE, (2) NORTH 32°56'10" EAST A DISTANCE OF 1192.05 FEET, TO THE BEGINNING OF A CURVE;

THENCE, (3) ALONG A CURVE HAVING A 485.00 FOOT RADIUS CONCAVE TO THE SOUTHEAST THROUGH A CENTRAL ANGLE OF 9°00'37", AN ARC LENGTH OF 76.27 FEET;

THENCE, (4) NORTH 41°56'47" EAST A DISTANCE OF 146.30 FEET, TO THE BEGINNING OF A CURVE;

THENCE, (5) ALONG A CURVE HAVING A 255.00 FOOT RADIUS CONCAVE TO THE NORTHWEST THROUGH A CENTRAL ANGLE OF 19°04'35", AN ARC LENGTH OF 84.90 FEET;

THENCE, (6) NORTH 22°52'12" EAST A DISTANCE OF 199.00 FEET, TO THE BEGINNING OF A CURVE;

THENCE, (7) ALONG A CURVE HAVING A 715.00 FOOT RADIUS CONCAVE TO THE SOUTHEAST THROUGH A CENTRAL ANGLE OF 28°17'09", AN ARC LENGTH OF 352.98 FEET;

THENCE, (8) SOUTH 88°46'55" EAST A DISTANCE OF 71.26 FEET;

THENCE, (9) SOUTH 24°40'40" WEST A DISTANCE OF 305.85 FEET;

THENCE, (10) SOUTH 20°14'42" WEST A DISTANCE OF 334.92 FEET;

THENCE, (11) SOUTH 41°54'12" WEST A DISTANCE OF 245.00 FEET;

THENCE, (12) SOUTH 02°51'57" WEST A DISTANCE OF 485.85 FEET;

THENCE, (13) SOUTH 12°45'34" WEST A DISTANCE OF 271.88 FEET;

THENCE, (14) SOUTH 66°27'27" EAST A DISTANCE OF 512.49 FEET;

THENCE, (15) NORTH 64°40'37" EAST A DISTANCE OF 161.86 FEET, TO THE BEGINNING OF A CURVE;

THENCE, (16) ALONG A CURVE HAVING A 200.00 FOOT RADIUS CONCAVE TO THE SOUTH THROUGH A CENTRAL ANGLE OF 74°17'16", AN ARC LENGTH OF 259.31 FEET;

THENCE, (17) SOUTH 41°02'28" EAST A DISTANCE OF 204.85 FEET;

THENCE, (18) NORTH 34°31'47" EAST A DISTANCE OF 633.45 FEET, TO THE BEGINNING OF A CURVE;

THENCE, (19) ALONG A CURVE HAVING A 329.82 FOOT RADIUS CONCAVE TO THE NORTH WEST THROUGH A CENTRAL ANGLE OF 11°13'29", AN ARC LENGTH OF 64.61 FEET, TO THE BEGINNING OF A CURVE;

THENCE, (20) ALONG A CURVE HAVING A 250.03 FOOT RADIUS CONCAVE TO THE SOUTHEAST THROUGH A CENTRAL ANGLE OF 37°53'43", AN ARC LENGTH OF 165.37 FEET;

THENCE, (21) NORTH 20°13'50" EAST A DISTANCE OF 938.79 FEET;

THENCE, (22) SOUTH 00°30'54" EAST A DISTANCE OF 36.79 FEET;

THENCE, (23) NORTH 24°32'55" EAST A DISTANCE OF 328.98 FEET;

THENCE, (24) NORTH 04°20'38" EAST A DISTANCE OF 396.29 FEET;

THENCE, (25) NORTH 09°55'14" WEST A DISTANCE OF 264.22 FEET;

THENCE, (26) NORTH 15°53'08" EAST A DISTANCE OF 636.12 FEET;

THENCE, (27) SOUTH 36°44'16" EAST A DISTANCE OF 75.50 FEET;

THENCE, (28) SOUTH 15°53'08" WEST A DISTANCE OF 576.54 FEET;

THENCE, (29) SOUTH 09°55'14" EAST A DISTANCE OF 257.98 FEET;

THENCE, (30) SOUTH 04°20'38" WEST A DISTANCE OF 414.52 FEET;

THENCE, (31) SOUTH 24°36'17" WEST A DISTANCE OF 331.62 FEET;

THENCE, (32) SOUTH 21°49'03" WEST A DISTANCE OF 151.23 FEET;

THENCE, (33) NORTH 00°30'54" WEST A DISTANCE OF 27.10 FEET;

THENCE, (34) SOUTH 13°09'15" WEST A DISTANCE OF 235.36 FEET;

THENCE, (35) SOUTH 22°44'26" WEST A DISTANCE OF 482.29 FEET;

THENCE, (36) ALONG A CURVE HAVING A 200.00 FOOT RADIUS CONCAVE TO THE SOUTHEAST THROUGH A CENTRAL ANGLE OF 29°40'13", AN ARC LENGTH OF 103.57 FEET;

THENCE, (37) SOUTH 25°38'21" WEST A DISTANCE OF 218.71 FEET, TO THE BEGINNING OF A CURVE;

THENCE, (38) ALONG A CURVE HAVING A 200.03 FOOT RADIUS CONCAVE TO THE EAST THROUGH A CENTRAL ANGLE OF 16°19'52", AN ARC LENGTH OF 57.01 FEET;

THENCE, (39) SOUTH 09°18'25" WEST A DISTANCE OF 768.91 FEET;

THENCE, (40) SOUTH 86°33'32" EAST A DISTANCE OF 1085.83 FEET;

THENCE, (41) NORTH 50°34'58" EAST A DISTANCE OF 705.69 FEET;

THENCE, (42) SOUTH 77°27'41" EAST A DISTANCE OF 414.84 FEET;

THENCE, (43) NORTH 77°54'36" EAST A DISTANCE OF 139.50 FEET;

THENCE, (44) SOUTH 51°38'43" EAST A DISTANCE OF 458.10 FEET;

THENCE, (45) NORTH 89°54'39" EAST A DISTANCE OF 632.87 FEET;

THENCE, (46) SOUTH 00°02'15" WEST A DISTANCE OF 228.01 FEET;

THENCE, (47) NORTH 89°41'12" WEST A DISTANCE OF 1338.80 FEET;

THENCE, (48) NORTH 88°17'13" WEST A DISTANCE OF 1261.74 FEET;

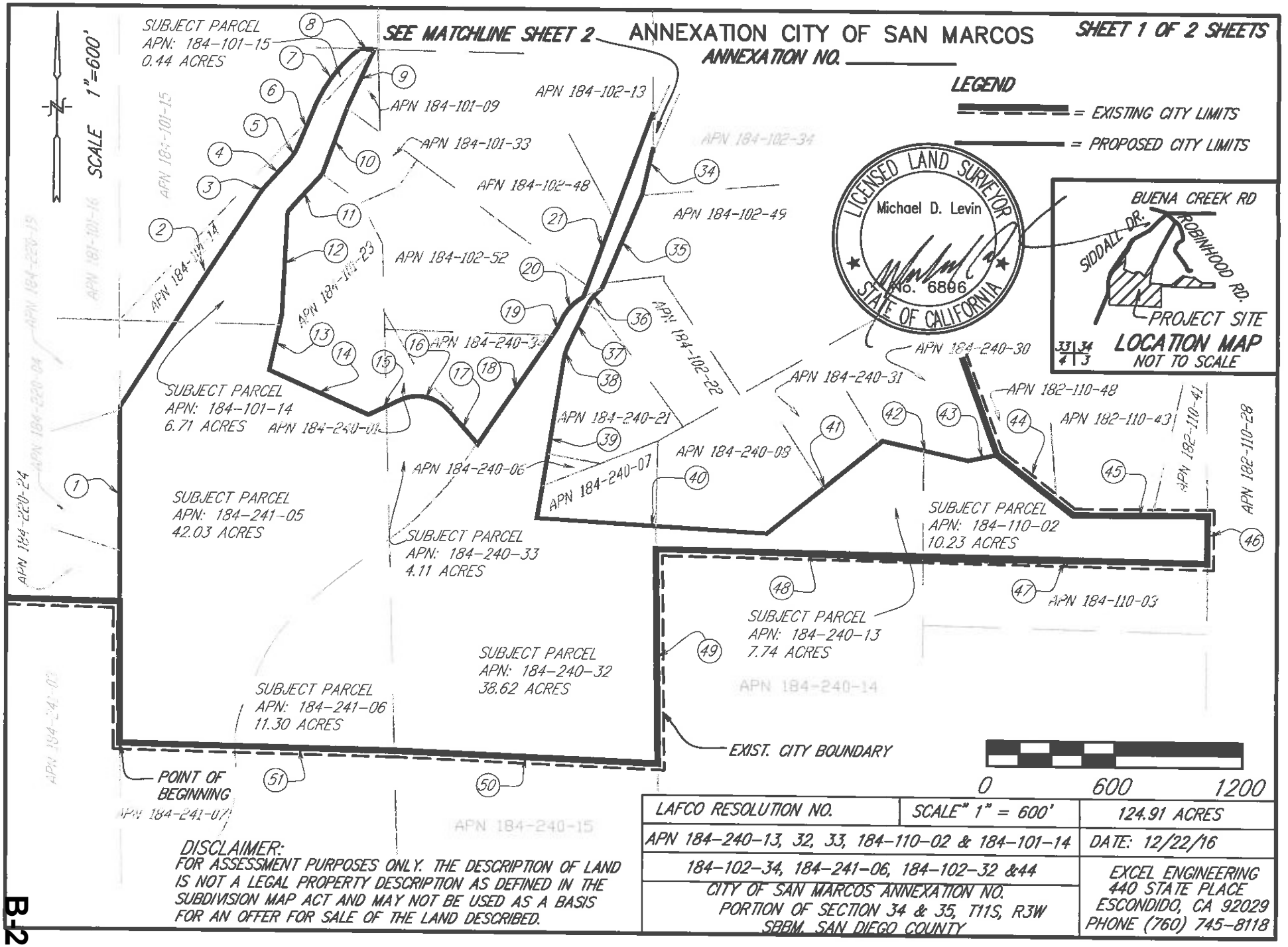
THENCE, (49) SOUTH 00°41'07" EAST A DISTANCE OF 1014.18 FEET;

THENCE, (50) NORTH 87°40'04" WEST A DISTANCE OF 1247.31 FEET;

THENCE, (51) NORTH 88°46'45" WEST A DISTANCE OF 1299.26 FEET TO THE POINT OF BEGINNING.

SAID PORTION OF LAND CONTAINS, 124.91 ACRES MORE OR LESS.

FOR ASSESSMENT PURPOSES ONLY. THIS DESCRIPTION OF LAND IS NOT A LEGAL PROPERTY DESCRIPTION AS DEFINED IN THE SUBDIVISION MAP ACT AND MAY NOT BE USED AS THE BASIS FOR AN OFFER FOR SALE OF LAND DESCRIBED.

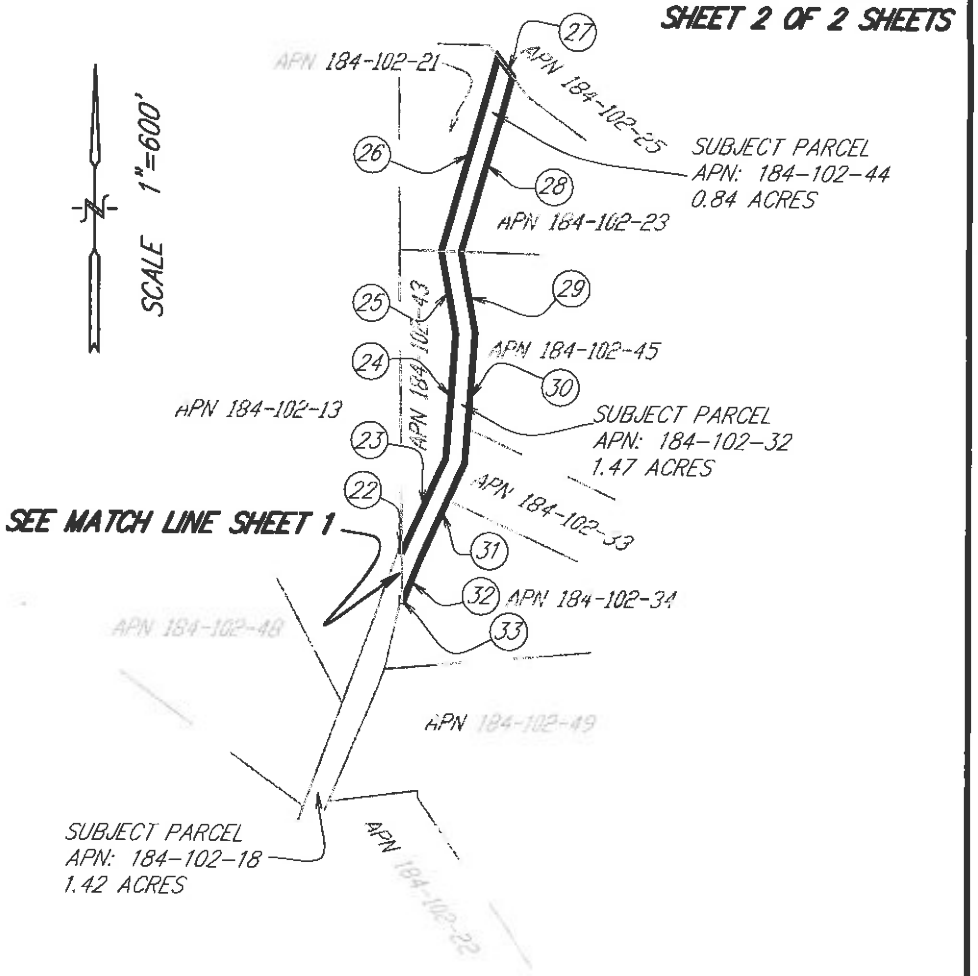


DISCLAIMER:
FOR ASSESSMENT PURPOSES ONLY. THE DESCRIPTION OF LAND IS NOT A LEGAL PROPERTY DESCRIPTION AS DEFINED IN THE SUBDIVISION MAP ACT AND MAY NOT BE USED AS A BASIS FOR AN OFFER FOR SALE OF THE LAND DESCRIBED.

Exhibit C

COURSES

NO	BEARING/DELTA	LENGTH	RADIUS	CHORD
1	N 00°09'14" W	1592.50'	———	
2	N 32°56'10" E	1192.05'	———	
3	09°00'37"	76.27'	485.00'	76.19'
4	N 41°56'47" E	146.30'	———	
5	19°04'35"	84.90'	255.00'	84.51'
6	N 22°52'12" E	199.00'		
7	28°17'09"	352.98'	715.00'	349.41'
8	S 88°46'55" E	71.26'	———	
9	S 24°40'40" W	305.85'	———	
10	S 20°14'42" W	334.92'	———	
11	S 41°54'12" W	245.00'	———	
12	S 02°51'57" W	485.85'	———	
13	S 12°45'34" W	271.88'	———	
14	S 66°27'27" E	512.49'	———	
15	N 64°40'37" E	161.86'	———	
16	74°17'16"	259.31'	200.00'	241.53'
17	S 41°02'28" E	204.85'	———	
18	N 34°31'47" E	633.45'	———	
19	11°13'29"	64.61'	329.82'	64.51'
20	37°53'43"	165.37'	250.03'	162.37'
21	N 20°13'50" E	938.79'	———	
22	S 00°30'54" E	36.79'	———	
23	N 24°32'55" E	328.98'		
24	N 04°20'38" E	396.29'	———	
25	N 09°55'14" W	264.22'	———	
26	N 15°53'08" E	636.12'	———	
27	S 36°44'16" E	75.50'	———	
28	S 15°53'08" W	576.54'	———	
29	S 09°55'14" E	257.98'	———	
30	S 04°20'38" W	414.52'	———	
31	S 24°36'17" W	331.62'	———	
32	S 21°49'03" W	151.23'	———	
33	N 00°30'54" W	27.10'	———	
34	S 13°09'15" W	235.36'	———	
35	S 22°44'26" W	482.29'	———	
36	29°40'13"	103.57'	200.00'	102.41'
37	S 25°38'21" W	218.71'	———	
38	16°19'52"	57.01'	200.03'	56.82'
39	S 09°18'25" W	768.91'	———	
40	S 86°33'32" E	1085.83'	———	



41	N 50°34'58" E	705.69'	———	
42	S 77°27'41" E	414.84'	———	
43	N 77°54'36" E	139.50'	———	
44	S 51°38'43" E	458.10'	———	
45	N 89°54'39" E	632.87'	———	
46	S 00°02'15" W	228.01'	———	
47	N 89°41'12" W	1338.80'	———	
48	N 88°17'13" W	1261.74'	———	
49	S 00°41'07" E	1014.18'	———	
50	N 87°40'04" W	1247.31'	———	
51	N 88°46'45" W	1299.26'	———	

Exhibit C

Invasive Plant Checklist for California Landscaping

2018.05.08

California's Model Water-Efficient Landscaping Ordinance and the CALGreen Building Standards strongly discourage the use of invasive plants in landscaping. This checklist is designed to serve as a reference to help landscape designers in California avoid the use of invasive plants. Three sources are referenced: the California Dept. of Food & Agriculture (CDFA), which regulates plants in the state; the PlantRight initiative, which brings together a diverse range of stakeholders, including the nursery and landscaping industry, to prevent the use of invasive plants in horticulture; and the California Invasive Plant Council (Cal-IPC), which assesses the environmental impact of invasive plants.

The California Dept. of Food & Agriculture has authority to designate noxious weeds in California. These plants are illegal. See www.cdfa.ca.gov/plant/IPC. In general, CDFA is restricted from listing horticultural plants as noxious weeds.

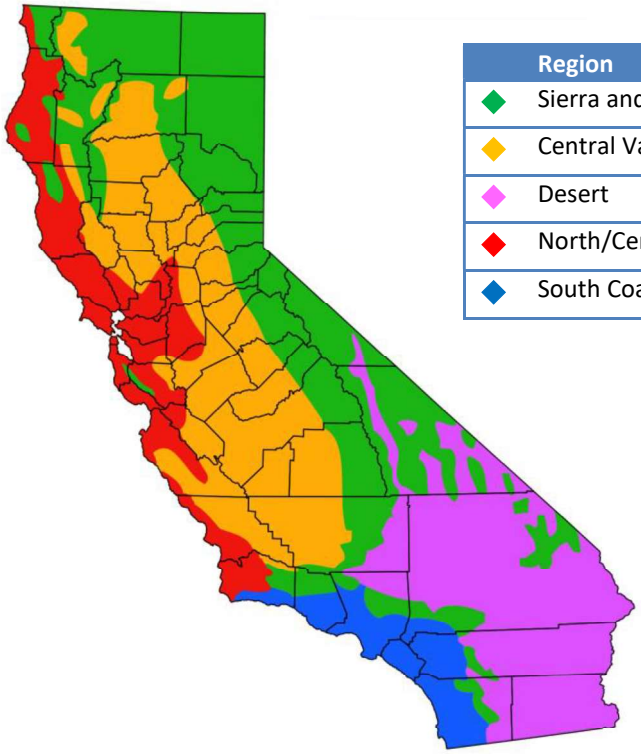
PlantRight is a collaborative, science-based, and voluntary program led by the nonprofit Sustainable Conservation, with a steering committee representing the green industry, agencies, universities and environmental groups. PlantRight's list is entirely voluntary. It includes plants from the Cal-IPC Inventory that all stakeholders agree should not be used in landscaping in regions where they cause environmental damage. See www.plantright.org.

The California Invasive Plant Council is a nonprofit organization that maintains a list of environmentally harmful plants based on a transparent science-based criteria system. Cal-IPC supports land managers working to stop the spread of invasive plants, but also supports landscape professionals in preventing horticultural introductions of invasive plants. Cal-IPC listing is for informational purposes and carries no any regulatory authority. See www.cal-ipc.org.

The following checklist includes all plants from each list that are known from horticulture. Plants from the CDFA Noxious Weed List are illegal and marked with a red **X**. Plants for which PlantRight has reached

consensus with all partners including the nursery industry are marked with a green **X**. All other species are only listed by Cal-IPC.

Regions based on Sunset Climate Zones were developed by PlantRight (see source online).



Region	Sunset Zones
Sierra and Coastal Mountains	1-3
Central Valley	7-9
Desert	10-13
North/Central Coast and Delta	14-17
South Coast	18-24

Notes		
E	Edible	This plant species has edible fruit and is grown for human consumption. Though birds may spread seeds, these plants can be grown relatively safely if fruit is harvested. Particular care should be taken near riparian areas. Fruitless varieties may be available for landscaping, and can be grown safely.
F	Forage	This plant species is used for forage and is already widespread in California. Additional use is unlikely to increase the plant's spread.
T	Turfgrass	This plant species is used for turfgrass and may be used safely for sports fields and landscaping if properly tended within borders.

Exhibit D

Checklist of Invasive Plants

			Regions
Acacia dealbata	silver wattle		◆◆ ◆◆
Acacia melanoxylon	blackwood acacia		◆◆ ◆◆
Agrostis stolonifera[T]	creeping bentgrass[T]		◆◆◆◆◆
Ailanthus altissima	tree-of-heaven	X	
Arctotheca calendula	fertile capeweed	X	
Arctotheca prostrate	South African capeweed		◆ ◆◆
Arundo donax	giant reed	X	
Asparagus asparagoides	bridal creeper		◆ ◆◆
Asphodelus fistulosus	onionweed	X	
Atriplex semibaccata	Australian saltbush		◆ ◆◆
Briza maxima	big quakinggrass		◆◆ ◆◆
Carpobrotus chilensis	iceplant		◆◆
Carpobrotus edulis	highway iceplant	X	◆◆
Centaurea debeauxii	meadow knapweed	X	
Chrysanthemum coronarium	garland chrysanthemum		◆◆
Cordyline australis	giant draceaena		◆◆
Cortaderia jubata	jubatagrass	X	◆◆◆◆◆
Cortaderia selloana	pampasgrass	X	◆ ◆◆
Cotoneaster franchetii	cotoneaster		◆◆
Cotoneaster lacteus	Parney's cotoneaster		◆◆
Cotoneaster pannosa	silverleaf cotoneaster		◆◆ ◆◆
Cotula coronopifolia	common brassbuttons		◆◆ ◆◆
Crataegus monogyna	English hawthorn		◆◆ ◆
Crocosmia x crocosmiiflora	montbretia		◆
Cynara cardunculus	artichoke thistle	X	
Cynodon dactylon[T]	Bermuda grass[T]		◆◆◆◆◆
Cynoglossum officinale	beggar's-lice		◆
Cytisus scoparius	Scotch broom	X	
Cytisus striatus	Portuguese broom		◆ ◆◆
Dactylis glomerata[F]	orchard grass[F]		◆◆◆◆◆
Delairea odorata	Cape-ivy	X	
Digitalis purpurea	foxglove		◆◆ ◆◆
Dipsacus fullonum	common teasel		◆◆ ◆◆
Echium candicans	pride-of-Madeira		◆◆
Egeria densa	Brazilian egeria		◆◆ ◆

X - illegal per CDFA regulation

X - on PlantRight's voluntary list

E – edible
F – forage
T – turfgrass

	Region	Sunset Zones
◆	Sierra and Coastal Mountains	1-3
◆	Central Valley	7-9
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Prepared by California Invasive Plant Council, www.cal-ipc.org

Exhibit D

Eichhornia crassipes	water hyacinth	X	◆ ◆ ◆
Elaeagnus angustifolia	Russian olive		◆ ◆ ◆ ◆ ◆
Erica lusitanica	Spanish heath		◆
Erodium cicutarium	filaree		◆ ◆ ◆ ◆ ◆
Eucalyptus camaldulensis	red gum		◆ ◆ ◆ ◆
Eucalyptus globulus	Tasmanian bluegum		◆ ◆
Euphorbia esula	leafy spurge	X	
Euphorbia oblongata	oblong spurge	X	
Festuca arundinacea[T]	alta fescue[T]		◆ ◆ ◆ ◆ ◆
Ficus carica[E]	edible fig[E]		◆ ◆ ◆ ◆ ◆
Foeniculum vulgare[E]	fennel[E]		◆ ◆ ◆ ◆ ◆
Gazania linearis	gazania		◆ ◆
Genista monspessulana	French broom	X	
Hedera canariensis	Algerian ivy		◆ ◆ ◆ ◆
Hedera helix	English ivy		◆ ◆ ◆ ◆
Helichrysum petiolare	licorice plant		◆ ◆
Hirschfeldia incana	Mediterranean mustard		◆ ◆ ◆ ◆ ◆
Holcus lanatus	common velvet grass		◆ ◆ ◆ ◆
Hypericum canariense	Canary Island St.	X	
Hypericum perforatum	klamathweed	X	
Ilex aquifolium	English holly		◆ ◆
Iris pseudacorus	yellowflag iris	X	◆ ◆ ◆
Isatis tinctoria	dyer's woad	X	
Kochia scoparia[F]	kochia[F]		◆ ◆ ◆ ◆ ◆
Leucanthemum vulgare	ox-eye daisy		◆ ◆ ◆ ◆
Linaria genistifolia ssp. Dalmatica	Dalmatian toadflax	X	
Linaria vulgaris	yellow toadflax		◆ ◆
Lobularia maritime	sweet alyssum		◆ ◆ ◆ ◆ ◆
Lolium multiflorum[F]	Italian ryegrass[F]		◆ ◆ ◆ ◆ ◆
Ludwigia hexapetala	creeping waterprimrose	X	
Ludwigia peploides	creeping waterprimrose		◆ ◆ ◆ ◆
Lythrum salicaria	purple loosestrife	X	
Marrubium vulgare	horehound		◆ ◆ ◆ ◆ ◆
Mentha pulegium	pennyroyal		◆ ◆ ◆ ◆
Mesembryanthemum crystallinum	crystalline iceplant		◆ ◆
Myoporum laetum	ngaio tree		◆ ◆
Myosotis latifolia	common forget-me-not		◆ ◆
Myriophyllum aquaticum	parrotfeather		◆ ◆ ◆ ◆ ◆
Nicotiana glauca	tree tobacco		◆ ◆ ◆ ◆ ◆

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Prepared by California Invasive Plant Council, www.cal-ipc.org

Exhibit D

Olea europaea[E]	European olive[E]		◆◆ ◆◆
Onopordum acanthium	Scotch thistle	X	
Pennisetum setaceum	green fountain grass	X	◆ ◆◆ ◆
Phalaris aquatic	hardinggrass		◆◆ ◆◆
Phoenix canariensis	Canary Island date palm		◆◆ ◆◆
Phytolacca Americana	common pokeweed		◆◆ ◆◆
Plantago lanceolata	buckhorn plantain		◆◆◆ ◆◆
Poa pratensis[T]	Kentucky bluegrass[T]		◆◆ ◆◆
Polygonum cuspidatum	Japanese knotweed	X	
Prunus cerasifera	cherry plum		◆◆ ◆◆
Pyracantha angustifolia, P. crenulata, P.	firethorn		◆◆ ◆◆
Ranunculus repens	creeping buttercup		◆◆ ◆
Retama monosperma	bridal veil broom	X	
Ricinus communis	castor bean		◆◆ ◆◆
Robinia pseudoacacia	black locust		◆◆◆ ◆◆
Rubus armeniacus	Himalayan blackberry		◆◆◆ ◆◆
Rumex acetosella	sheep sorrel		◆◆ ◆◆
Saccharum ravennae	ravennagrass	X	
Salvia aethiopis	Mediterranean sage	X	
Saponaria officinalis	bouncing-bet		◆◆ ◆◆
Schinus molle	Peruvian pepper tree		◆◆◆ ◆◆
Schinus terebinthifolius	Brazilian pepper tree		◆◆◆ ◆◆
Sesbania punicea	scarlet wisteria	X	
Silybum marianum	milk thistle		◆◆ ◆◆
Spartium junceum	Spanish broom	X	
Stipa tenuissima	Mexican feathergrass	X	◆◆◆ ◆◆
Tamarix parviflora	smallflower tamarisk	X	
Tamarix aphylla	athel		◆◆◆ ◆◆
Tamarix ramosissima, T. gallica, T. chinensis	saltcedar	X	
Tanacetum vulgare	common tansy		◆◆ ◆◆
Triadica sebifera	Chinese tallow tree	X	◆
Verbascum thapsus	wooly mullein		◆◆ ◆◆
Vinca major	bigleaf periwinkle	X	◆◆◆ ◆◆
Washingtonia robusta	Mexican fan palm		◆◆ ◆◆
Watsonia meriana	watsonia		◆◆
Zantedeschia aethiopica	calla lily		◆◆ ◆◆

X - illegal per CDFA regulation

X - on PlantRight's voluntary list

E – edible
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T – turfgrass

	Region	Sunset Zones
◆	Sierra and Coastal Mountains	1-3
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Prepared by California Invasive Plant Council, www.cal-ipc.org

Exhibit D

Record of Changes

2017.09.07 – Corrected *Cordyline australis* regions. Updated Cal-IPC description and logo.

2018 05.08 – Corrected *Crocosmia* regions.

X - illegal per CDFA regulation
X - on PlantRight's voluntary list

E – edible
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	Region	Sunset Zones
◆	Sierra and Coastal Mountains	1-3
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◆	South Coast	18-24

Prepared by California Invasive Plant Council, www.cal-ipc.org

San Marcos Highlands Project (PDS2018-MISC-18-009)

Exhibit E - Consistency Analysis Pursuant to the Planning Agreement

prepared for

County of San Diego

prepared with the assistance of

Rincon Consultants, Inc.
2215 Faraday Avenue, Suite A
Carlsbad, California 92008
County-Approved Consultant: John Dreher, Jr.

August 22, 2019

Rincon Consultants, Inc.
Environmental Scientists Planners Engineers
www.rinconconsultants.com

Introduction

This analysis is provided to support the determination that the San Marcos Highlands Project ("Project") is consistent with the County's *North and East County Multiple Species Conservation Program Plans Planning Agreement* ("Planning Agreement")[1], dated May 12, 2014. The Project proposes development of 187 single family residences on an approximately 293.3-acre site. The Project also includes an approximately 210.8-acre natural open space preserve ("Natural Open Space Preserve") and the conservation of an additional 6.5 acres adjacent to the project site for wildlife connectivity. Approximately 141.14 acres of the Project site are currently located in the City of San Marcos ("City") and approximately 152.16 acres of the Project site are currently located in the unincorporated County of San Diego ("County"). Most of the lands (approximately 183.31 acres) within the County are proposed to be annexed into the City, except that an approximately 22.79-acre Additional Parcel, an approximately 4.7-acre Parcel and an additional 6.5 acres that is adjacent to the Project will remain within the County's territory. These 22.79-acre and 4.7-acre portions of County land will be part of the Natural Open Space Preserve with the remaining acreage of the Natural Open Space Preserve being comprised of lands within the City's post-annexation jurisdiction (183.31 acres). Three conservation easements, will be placed over the Natural Open Space Preserve, as depicted in Exhibit B. The Project site is within the geographic area proposed to be addressed in the North County Multiple Species Conservation Program Plan ("Planning Area").

Exhibit B-1 – Natural Open Space Preserve Exhibit for San Marcos Highlands depicts the areas that will be covered under the Natural Open Space Preserve, Long-Term Management Plan ("LTMP"), Habitat Mitigation and Monitoring Plan ("HMMP"), Residential Footprint (Roads and Lots), Fuel Modification Areas and the Pre- and Post-Annexation County/City Boundaries. Table 1: Conditions of the CEQA-Approved Documents and Permits Relevant to the Project contains relevant conditions of approval assigned to the Project by the applicable Resource Agencies and the Final Environmental Impact Report ("FEIR"). Table 2: Project Impacts and Proposed Mitigation contains the impacted and mitigation acreages as well as mitigation ratios for impacts to coastal sage scrub and herbaceous wetland. The Natural Open Space Preserve will be managed consistent with preservation goals through a HMMP approved by the United States Fish and Wildlife Service ("USFWS"), California Department of Fish & Wildlife ("CDFW"), and City, and the LTMP approved by USFWS, CDFW, County, and City. The HMMP and the LTMP will be finalized prior to grading and will dictate permanent protection measures and restrictions for all future landowners to follow in perpetuity.

Pursuant to Section 6.7.3 of the Planning Agreement, the County requested that the San Diego Local Agency Formation Commission (LAFCO) impose a requirement on the annexing jurisdiction that it shall enter into an agreement between the County, the annexing jurisdiction (the City of San Marcos), the USFWS, and the CDFW as part of the annexation process. This agreement will ensure that the annexation would only occur when it will not jeopardize the buildout of the preserve or the coverage of species within the Planning Area, or compromise viable linkage areas within the proposed preserve. As part of this agreement, any development of the annexed lands will proceed in accordance with the Planning Goals set out in Section 3 of this Agreement and the Preliminary Conservation Goals set out in Section 5 of this Agreement.

[1] Available at: https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=10905&inline

The Annexation Agreement will be entered into between Vista San Marcos LP ("VSMLP"), USFWS, CDFW, the County, and the City (collectively referred to as the "Parties"). The purpose of this document is to demonstrate that annexation of the Project into the City is consistent with Section 6.7.3 of the Planning Agreement and will not jeopardize the buildout of the preserve or the coverage of species within the Planning Area, or compromise viable linkage areas within the proposed preserve.

There are three proposed Covered Species[2] (coastal California gnatcatcher [*Polioptila californica californica*], least Bell's vireo [*Vireo bellii pusillus*] and southwestern willow flycatcher [*Empidonax traillii extimus*]) that have known historical observations on the Project site, and therefore have the potential to be impacted by the Project. Other special status species that may be present in the Project area include various nesting birds. The FEIR also identified additional Covered Species with a low or unknown potential to occur on the site. The Consistency Analysis presented below focuses on those Covered Species with known historical observations (coastal California gnatcatcher, least Bell's vireo, and southwestern willow flycatcher) in the Project area and their protection within the Planning Area. However, all the Covered Species would benefit from a preserve system(s) that will conserve ecosystem functions and values through maintaining contiguous blocks of native habitat and contribute to the recovery of endangered, threatened, and sensitive species and their habitats.

The results of this analysis support that the Project is consistent and does meet the requirements of the Planning Agreement.

Planning Agreement Requirements

As stated in Section 6.7.3 of the Planning Agreement, the following considerations are relevant for a proposed annexation of land within the Planning Area:

- The annexation will not jeopardize the build out of the preserve or the coverage of species within the Planning Area.
- The annexation will not compromise viable habitat linkages within the proposed preserve.
- Development of the annexed lands proceeds in accordance with the Planning Goals set out in Section 3 of the Planning Agreement and Preliminary Conservation Goals set out in Section 5 of the Planning Agreement.
- Identifying the responsible party(ies) responsible for ongoing maintenance and enforcement of the Planning Agreement for the annexed lands.
- Issuance of Take Authorizations to the annexing jurisdiction or amendment of the annexing jurisdiction Take Authorization, in order to authorize Take on the annexed land.

Entitlements and State and Federal Approvals

In addition to the requirements that are specified in the Annexation Agreement, the Project has already gone through the California Environmental Quality Act ("CEQA") process and has obtained entitlements, including State and federal approvals from the USFWS, United States Army Corps of Engineers ("Corps"),

[2] Defined as "those listed species and non-listed species identified in the approved Plans to be conserved and managed consistent with the approved Plans such that, through approval of the Plans, CDFW and USFWS authorize their take under state and/or federal law. A preliminary list of Covered Species is proposed in the Draft North County Multiple Species Conservation Program Plan.

Regional Water Quality Control Board ("RWQCB"), and CDFW. The following entitlements and permitting have been obtained for the Project:

- FEIR for the San Marcos Highlands Specific Plan ("Specific Plan");
- San Marcos Highlands Specific Plan, SP13-001;
- General Plan Amendment (Resolution 15-002 GPA);
- Pre-zone and Annexation (Ordinance PZ 14-001);
- Tentative Subdivision Map (TSM 13-001);
- Ridge Line Protection Ordinance (ROZ 14-001);
- Biological Opinion (FWS Log No. 1-6-05-F-1 668) and Amended Biological Opinion (FWS Log No. 1-6-05-F-1668-R1);
- Clean Water Act (CWA) Section 404 permit (SPL-2001-00479);
- CWA Section 401 Water Quality Certification (Order No. R9-2005-0272); and
- California Fish and Game Code (CFGC) 1600 et seq. Streambed Alteration Agreement (SAA) (1600-2015-0122-R5).

Each of the permits has conditions that must be implemented to keep the Project compliant with State and federal regulations. A copy of all referenced State and federal approvals is attached as Exhibit F to the Annexation Agreement and supports this Consistency Analysis.

The Project is consistent with and meets the requirements of the Planning Agreement. The following sections summarize the Project's consistency with the Planning Agreement items listed above.

Planning Agreement Section 6.7.3 Annexation of Lands

The Annexation Will Not Jeopardize the Build Out of the Preserve

Approximately 71 percent, or 210.8 acres, of the Project site will be maintained as the Natural Open Space Preserve (hereafter, Natural Open Space Preserve). An additional 32.43 acres consisting of fuel modification areas, parks, manufactured exterior slopes, and water quality lots will also provide limited habitat value and buffer the Natural Open Space Preserve from potential edge effects associated with the development.

The Natural Open Space Preserve will not jeopardize the buildout of the preserve system within the Planning Area by ensuring that approximately 93.43 acres of habitat within the County Planning Area, along with the remaining approximately 117.37 acres within the City (together totaling the approximately 210.8-acre Natural Open Space Preserve) will be permanently conserved and managed. The establishment of the Natural Open Space Preserve will ensure that large portions of the Project site remain undeveloped and protected in perpetuity.

Consistent with the objectives of the Planning Agreement, the Project conserves coastal sage scrub in order to maintain habitat for the coastal California gnatcatcher. The project also includes measures to maintaining wildlife connectivity between the habitat on-site to adjacent core areas identified for conservation.

The Natural Open Space Preserve contributes to the preserve system within the Planning Area by: preserving ecosystem functions and values through preserving coastal sage scrub and the headwaters for Agua Hedionda Creek; maintaining the range of natural biological communities and native species within the Planning Area; by maintaining habitat connectivity across the Project area and continuity with

undeveloped County land to the east; providing and maintaining contiguous undeveloped areas of coastal sage scrub; providing and functioning as a stepping stone to other isolated habitats which contributes to the recovery of endangered, threatened, and sensitive species, such as coastal California gnatcatcher; enhancing riparian habitat in the Project area; and preserving a total of approximately 210.8 acres, including approximately 185.83 acres of coastal sage scrub.

The Natural Open Space Preserve is intended for preservation of sensitive biological resources and will not include improvements or encroachments such as buildings, accessory structures, or fuel modification zones. These areas may include minor improvements such as trails or pedestrian paths, directional or informational signage, and scenic lookout areas or rest stops (FEIR pg. 3.13-5) as approved under the LTMP.

Aside from establishing the Natural Open Space Preserve, the Project will also minimize habitat impacts arising from development by implementing mitigation measures and project design features that address potential impacts from new development on biological resources including: unauthorized access, introduction of predators, introduction of nonnative species, illumination, point and nonpoint source pollution and noise (FEIR pg. 3-24; refer to discussion below under "The Annexation Will Not Jeopardize the Coverage of Species Within the Planning Area"). Furthermore, in addition to the Natural Open Space Preserve, 32.43 acres consisting of fuel modification areas, parks, manufactured exterior slopes, and water quality lots will buffer the Natural Open Space Preserve from potential edge effects associated with the development and provide limited habitat value for sensitive biological resources.

Project requirements related to establishing the Natural Open Space Preserve are included in Table 1, Column A.

The Annexation Will Not Jeopardize the Coverage of Species Within the Planning Area

The Natural Open Space Preserve provides conservation and management consistent with the Planning Agreement by preserving coastal California gnatcatcher (Covered Species) preferred habitat (coastal sage scrub), and biological core and linkage areas along Agua Hedionda Creek and coastal sage scrub communities.

During the construction phase of the Project, potential direct and indirect impacts to Covered Species are managed and reduced under the Project's Biological Opinion, SAA, CWA Section 404, and 401 permits, and mitigation measures in the Project's FEIR, including the conditions listed in Table 1, Column B.

Sensitive Plants

Focused surveys for sensitive plant species did not identify any sensitive plant species on the Project site. Therefore, the Project would not directly impact any covered botanical species (FEIR pg. 3.3-15).

Sensitive Wildlife

Three federally or state listed endangered or threatened species have known historical observations on the Project site, and therefore have the potential to be impacted by the Project: coastal California gnatcatcher, least Bell's vireo and southwestern willow flycatcher. These three species are described below. Other special status species that may be present in the Project area include various nesting birds.

Coastal California Gnatcatcher

The only Covered Species identified within the Project site was the coastal California gnatcatcher (at least two adult pairs, one of which was within a family group with at least two juveniles and a nest, were identified during focused surveys in 2019). The area where the nest was identified appeared to be at the northwestern edge of the proposed development area. The second adult pair was observed within the Natural Open Space Preserve (FEIR pg. 303-15).

As depicted in Table 2 below, the Project would impact approximately 77.36 acres of coastal sage scrub. The Project, however, would preserve approximately 185.83 acres of coastal sage scrub as mitigation for this impact. This results in a mitigation to impact ratio of 2.4 to 1.

As further described below, the Project would preserve and enhance a linkage between preserved areas of coastal sage scrub to the southeast and northwest of the Project site (FEIR pg. 3.3-19); graded slopes outside the fuel modification zone adjacent to natural open space areas shall be revegetated with coastal sage scrub species (measure BIO-5b, Table 1) and enhance these linkages.

Least Bell's Vireo and Southwestern Willow Flycatcher

Least Bell's vireo and southwestern willow flycatcher were not observed on the Project site during the most recent biological surveys. The Project site does not currently contain suitable habitat for these species. The last observations of these species occurred in 2002 and 2004, respectively, when there was more suitable habitat on the Project site. The site currently lacks suitable habitat for least Bell's vireo and southwestern willow flycatcher and not surprisingly, those species have not been recently observed on the site. Therefore, the project will have no impact to these species. Previous conditions required in the provisional regulatory permits for the Project included mitigation requiring a pre-construction survey for both of these species. The Project applicant has agreed to still implement these conditions, even though there is not suitable habitat on the Project site (FEIR pg. 3.3-16).

In addition, the Planning Agreement calls for the preservation and enhancement of wetlands, which have the potential to provide habitat for many Covered Species. Preservation and enhancement of the riparian areas is an integral part of the Project. The creek on the Project site will contain a narrow meandering dry riparian scrub habitat. This habitat will be bordered in places by newly created upland coastal sage scrub habitat and the upland habitat will extend a minimum of 100 feet to create a buffer from the riparian scrub, with exception for limited areas where a narrower width is allowed per the existing permits or where there is a road crossing. This buffer would be part of the Natural Open Space Preserve and conserved in perpetuity (FEIR pg. 3.3-18). This buffer affords additional protection to the creek corridor and adds biological resource value to the preserve system by increasing the amount of riparian habitat and corridors in the preserve system available for Covered Species.

Minimization of Direct Impacts to Covered Species

During the construction phase of the Project, potential direct impacts to Covered Species are managed and reduced under the Project's Biological Opinion, SAA, CWA Section 404, and 401 permits, and mitigation measures in the Project's FEIR, including by the conditions listed in Table 1, Column B. These measures require pre-construction surveys, educating construction crews regarding sensitive resources in the project area, delineating work areas, avoidance and minimization of potential impacts from construction activities including project-related ground clearing/grubbing or noise, monitoring of construction activities by a qualified biologist, and reporting as necessary.

Minimization of Indirect Impacts to Covered Species

Indirect impacts could occur to covered wildlife species that were observed and/or have the potential to occur on the Project site. Construction activities adjacent to suitable habitat, including coastal sage scrub and riparian communities, could result in indirect impacts through erosion and intrusion of workers and/or equipment should construction occur during the breeding season, when noise, dust, and lighting could disturb coastal California gnatcatcher. Potential indirect impacts to Covered Species are managed and reduced under the Project's Biological Opinion, SAA, CWA Section 404, and 401 permits, and mitigation measures in the Project's FEIR, including by the conditions listed in Table 1, Column B. Once the Project is developed, there is a potential for indirect impacts to sensitive species from future residents and their pets, pests or exotic species. Below is a description of design measures that reduce future indirect impacts to Covered Species from lighting and glare, recreational use, and other edge effects.

Lighting and Glare

Lighting in the Project vicinity is associated with roadway lighting along Las Posas Road as well as existing residential uses in the area and immediately adjacent to the Project site. Development of the proposed Project would introduce lighting to a site that is currently undeveloped and does not have lighting.

Lighting proposed under the Specific Plan for the Project (the "San Marcos Highlands Specific Plan" or "Specific Plan") would be guided by standards set by the City of San Marcos, which requires downward-directed LED lighting, with the exception of specialized streetscape lighting or architectural detail lighting. These requirements aid in the preservation of dark-sky conditions. Development under the proposed Project would also be required to comply with the City's lighting standards, and the location, type, and direction of the lighting would be reviewed during Improvement Plan review to ensure compliance with City requirements.

Additionally, Chapter 3.B.6 of the Specific Plan includes specific requirements for building lighting. Lighting used to highlight architectural features would be designed so as to not fall on adjacent properties and to minimize visibility to residences adjacent to the proposed Project. Site lighting for streets, walkways and landscaped areas shall be unobtrusive, shielded to prevent glare, and placed in irregular patterns. Per the Specific Plan, over-illumination shall be avoided. Lighting levels would be adequate for safety while minimizing light spillage and point of glare.

The Project does not propose features that would be characterized as creating a new source of glare that would adversely affect daytime or nighttime views in the area. Section 3.G of the Specific Plan details the proposed roof treatments, wall surfaces and architectural details of the homes. The homes would incorporate earth-toned roof tiles and stucco surface that would be in soft earth tones. These roof and wall colors and materials are not reflective and would not create significant sources of glare.

Since the proposed materials to be used in the homes are not glare-inducing, all lighting will be shielded to minimize light scatter and maintain dark sky conditions, and lighting would be required to comply with the lighting standards set forth by the City, impacts resulting from lighting and glare would be less than significant (FEIR pg. 3.1-13).

Recreational Use

The introduction of more people to the Project site increases the potential for inadvertent access to sensitive habitats, including areas to be preserved within the Natural Open Space Preserve. This could

result in trampling of sensitive vegetation and the creation of unauthorized trails. Landscaping associated with future homes could also introduce invasive species to sensitive habitat areas. Mitigation to address these potential impacts is included in measure BIO-8 in Table 1 below. It should be noted that there is currently non-authorized public access on the Project site to access the existing informal non-improved trail network. The construction of new trails and the maintenance of existing trails would encourage recreational trail users onto maintained trails and keep them out of sensitive habitat areas (FEIR pg. 3.3-18). In addition, indirect impacts to sensitive habitats and species in the Natural Open Space Preserve are further reduced through the responsibilities of the Homeowner's Association (HOA) and conservancy as described in measures BIO-4a through BIO-4d, included in Table 1 below.

Edge Effects

The LTMP for the Natural Open Space Preserve will include details for the ongoing maintenance requirements, success criteria, and monitoring requirements for the areas to be conserved. Maintenance activities include weed eradication and general maintenance such as trash removal and pest eradication (FEIR pg. 3.3-23). This will include but is not limited to the following measures to reduce edge effects (currently consistent with the FEIR and HMMP):

- All sensitive habitats areas will be fenced to limit entry into these zones. In particular, habitat fencing shall be installed at the interface of fuel modification zones and natural habitats (natural habitats include coastal sage scrub and riparian restoration and preserve areas). Fencing will be placed along the back of lots and roads that are located adjacent to natural areas, including a 6-foot chain-link fence along the eastern and southeastern edge of Las Posas Road up to the existing housing. The fencing in this area and along the backyards of residential lots adjacent to the planned open space will not have gates between development and the open space.
- Minimizing the impact of domestic animals:
    - The covenants, conditions, and restrictions (CC&Rs) for the development will contain wording that addresses potential impacts of domestic animals on wildlife. In particular, an educational program (using that developed by the American Society for the Prevention of Cruelty to Animals), cat control, and habitat fencing (described above) will be implemented. The CC&Rs will also require that homeowners keep cats indoors.
    - Owner's manuals for the residences will provide a discussion of the impacts of domestic animals on the coastal California gnatcatcher and other sensitive species in addition to the impacts of wildlife on domestic animals. Residents will be reminded that the development is adjacent to open space and that encounters with wildlife are highly probable.
- Cowbird trapping will be conducted on an annual basis for three years.
- A system of trails and fences will be constructed to direct walkers to designated areas while discouraging entry into other wildlife areas.
- Erosion and siltation will be minimized. An erosion control plan will be prepared and included in the storm water pollution prevention plan for the site. Erosion control measures may include the installation of silt fencing and/or sandbags downslope of any clearing and/or grading activity.
- All shrubs and trees used in street and public area landscaping will be native to southern California. The CC&Rs will include a condition to encourage the use of native species in landscaping plans and avoid the use of species identified in Lists A and B of the California Invasive Plant Council's list of Exotic Pest Plants of Greatest Ecological Concern in California. Non-aggressive/invasive drought-tolerant landscaping will be used within the housing site.

Caution should be taken that landscaping zones are properly weeded to prevent non-native species from entering high-quality coastal sage scrub adjacent to the Project site. Landscaping palettes will be reviewed by the Wildlife Agencies. Landscape management practices will be incorporated into the CC&Rs that minimize the use of chemical fertilizers, pesticides, and herbicides.

- Maintenance of on-site restored habitats and protection of adjacent natural areas of the on-site preserve and Agua Hedionda Creek shall be overseen by a conservancy or similar entity with approval by the permitting Resources Agencies.
- Public and outdoor lighting, including in residential areas, backyards, and along roadways, will be designed to prevent artificial light from reflecting into adjacent natural areas. Lighting shall be directed downward, rather than upward, and shall be placed or directed away from habitat areas, including Agua Hedionda Creek, the stepping stone linkage along the Project's northern boundary, and the preserved open space east of the development. This condition will be included in the CC&Rs and specific lighting designs will be required in the development plans to achieve this result. The CC&Rs will require that any subsequently installed lighting also meet this result. This condition also applies to street lighting within 500 feet of occupied coastal California gnatcatcher habitat. The Homeowner's Association will regulate this condition and will not allow any future additional lighting to be installed by private homeowners.
- Educational brochures distributed to property owners will include information about reduction of impacts to sensitive habitats and wildlife in the surrounding natural areas.
- Permanent signage adjacent to preserved areas (conservation areas) will be posted.

Implementation of measures BIO-4a through BIO-4d in Table 1, below, would further reduce edge effects of the Project. During the lifetime of the Project, the regulatory-mandated conditions listed in Table 1, Column C would apply to reduce or avoid direct and indirect impacts to Covered Species.

Sensitive Habitat

As depicted in Table 2 below, the Project would impact approximately 77.36 acres of coastal sage scrub. The Project, however, would preserve approximately 185.83 acres of coastal sage scrub as mitigation for this impact. This results in a mitigation to impact ratio of 2.4 to 1. Additionally, the Project would preserve and enhance a linkage between preserved areas of coastal sage scrub to the southeast and northwest of the Project site. Graded slopes outside the fuel modification zone adjacent to natural open space areas shall be revegetated with coastal sage scrub species to enhance these linkages.

As also depicted in Table 2 below, the Project would impact approximately 0.06 acre of herbaceous wetland. The Project, however, would enhance approximately 7 acres of riparian habitat as mitigation for this impact. The resulting mitigation to impact ratio for riparian habitat would therefore be 116:1 overall (for the 7 acres) and 78:1 for the portion of riparian habitat within the conservation easement (4.7 acres). This habitat will be bordered by newly created upland coastal sage scrub habitat and the upland habitat will extend a minimum of 100 feet to create a buffer from the riparian scrub, with exception for limited areas where a narrower width is allowed per the existing permits or where there is a road crossing. This buffer would be part of the Natural Open Space Preserve and conserved in perpetuity. This buffer affords additional protection to the creek corridor and adds biological resource value to the preserve system by increasing the amount of riparian habitat and corridors in the preserve system available for Covered Species.

The Annexation Will Not Compromise Viable Habitat Linkages Within the Proposed Preserve

A wildlife corridor is a linear landscape feature allowing animal movement between two patches of habitat. Connections between extensive areas of open space are integral to maintain regional diversity and population viability. In the absence of corridors, habitats become isolated islands surrounded by development. Fragmented habitats support lower numbers of species and increase the likelihood of local extinction for select species when restricted to small isolated areas of habitat (FEIR pg. 3.3-10).

Areas that serve as wildlife movement corridors are considered biologically sensitive. Wildlife corridors can be defined in two categories: regional wildlife corridors and local corridors. Regional corridors link large sections of undeveloped land and serve to maintain genetic diversity among wide-ranging populations. Local corridors permit movement between smaller patches of habitat. These linkages effectively allow a series of small, connected patches to function as a larger block of habitat and perhaps result in the occurrence of higher species diversity or numbers of individuals than would otherwise occur in isolation (FEIR pg. 3.3-10). The Planning Agreement calls for preservation of wildlife corridors and linkages, which are incorporated into the Project design.

Corridors

On the Project site, the drainage of Agua Hedionda Creek functions as a local wildlife corridor given the highly fragmented nature of the Project site and surrounding habitat, and the lack of connectivity to any large blocks of habitat (FEIR pg. 3.3-20). This corridor allows animal movement from the developed areas north of the Project site through properties to the south and west. Approximately 4,000 feet downstream from the Project site, Agua Hedionda Creek is diverted into an underground conveyance and does not resurface for another mile downstream. Due to the undergrounding, and the lack of viable movement connections to other areas, Agua Hedionda Creek serves only as a minor local corridor (FEIR pg. 3.3-10). The Project as proposed will improve the viability of the riparian corridor by replacing the earthen dam in the creek with an arched culvert and restoring the streambed with riparian vegetation. The portion of Agua Hedionda Creek onsite will be part of the Natural Open Space Preserve to be protected in perpetuity.

The proposed culvert installation and associated streambed and vegetation restoration of Agua Hedionda Creek will help maintain a full complement of mid-level predators necessary to the health of the coastal California gnatcatcher, as well as improve the viability of the riparian corridor. (FEIR pg. 3.3-20). The amendment to the USFWS Biological Opinion for the Project (December 2005, Exhibit F to the Annexation Agreement) indicated the culvert shall be 10 feet high, 12 feet wide, and 159 feet long and allow for the flow of water and wildlife movement. During a July 28, 2005 site meeting conducted as part of the regulatory permitting, it was agreed that a single arched culvert under Street A, per the sizing specifications noted above, would be designed to allow for both water flow and wildlife movement (Table 1, Column C).

Therefore, the Project as proposed contributes to the goals of the Planning Agreement by preserving habitat corridors through inclusion of Agua Hedionda Creek headwaters (approximately 5,300 linear feet) in the Natural Open Space Preserve and protecting it in perpetuity.

Linkages

The Project would preserve and enhance a linkage between preserved areas of coastal sage scrub to the southeast and northwest of the Project site (FEIR pg. 3.3-19). Graded slopes outside the fuel

modification zone adjacent to natural open space areas shall be revegetated with coastal sage scrub species (measure BIO-5b, Table 1) to enhance these linkages. The linkage along the northern portion of the Project site complies with permit requirements: it exceeds 500-feet in width with the exception of one pinch point where the width is 400-feet for a maximum of 500 linear feet (FEIR pg. 3.9-20). The additional 4.7-acre off-site parcel will require removal of exotic species, seeding with native species, and/or spreading of coastal sage scrub duff for preservation that would allow the Project to maintain a minimum 500-foot wide habitat linkage along the northern Project boundary except for a 500-linear foot portion which may have a minimum width of 400 feet. The additional 6.5 acres will add to this width. When the adjacent fuel modification zone is considered, the pinch point has a width of 515 feet (FEIR pg. 3.9-21).

An existing decomposed granite (DG) road is present at the location of the habitat linkage. This road would not split the linkage or present a barrier to wildlife movement as mobile animals typically utilize the easiest and most convenient passages to move from one location to another. The width of the DG road provides an open area for ease of wildlife movement.

The Planning Agreement does not provide guidelines for appropriate widths for either corridors or linkages, since every situation is different and should be evaluated according to its unique situation and its merits. Long-standing policy and practice show that the greater the function and value of a corridor or linkage, the wider the preferred corridor or linkage. The widths of the Natural Open Space Preserve have been determined to be adequate through the entitlements and State and federal approvals/review processes and therefore the approximately 210.8-acre Natural Open Space Preserve preserves and contributes to habitat conservation and linkages.

Isolated and surrounded by long-existing development, the Project area is considered a "stepping stone" habitat for coastal California gnatcatcher. Stepping-stone areas are designed to serve as potential avenues of movement particularly for birds, with the coastal California gnatcatcher being a target species of concern. The Project site is contiguous with other undeveloped (to the north) and preserved (to the west and south) areas of coastal sage scrub and functions as a stepping stone to other isolated habitats located within the dispersal range of the California gnatcatcher, which contributes to the recovery of endangered, threatened, and sensitive species, such as the coastal California gnatcatcher.

As such, the Project is consistent with the intent of the Planning Agreement and will not compromise, but will rather contribute to, viable linkages within the Planning Area through habitat enhancement, perpetual maintenance, and protecting it in perpetuity. Further, the Wildlife Agencies accepted this habitat linkage width, as evidenced by the issuance of regulatory permits for the Project that have listed conditions regarding linkages included in Table 1, Column D.

Responsible Party(ies)for Ongoing Maintenance and Enforcement of the Planning Agreement for the Annexed Lands

The Annexation Agreement to be entered into between the Parties ensures maintenance and enforcement of the goals set forth in the Planning Agreement. The parties responsible for such ongoing maintenance and enforcement will be identified prior to implementation of the Project, as discussed in the Annexation Agreement. The Habitat Manager shall be subject to the reasonable approval of the Parties (Section 1, Item J), whose position shall be funded by an endowment for the perpetual maintenance and monitoring of the Natural Open Space Preserve (Section 4, Item A(i)(a) (iii)), and who will be granted access to implement both the LTMP and HMMP. Three conservation easements will be recorded over the Natural Open Space Preserve prior to issuance of a grading permit to the City, the

County, or to an entity satisfactory to the Parties. The conservation easements shall identify a CDFW-approved third party and the County (if it is not the easement grantee) as a third-party beneficiary with the right of access to the property and a right to enforce the terms of the conservation easements.

Conclusion

With the implementation of the conditions of the entitlements and State and federal approvals listed in Table 1, the proposed annexation will be consistent with section 6.7.3 of the Planning Agreement. The annexation will not jeopardize the build out of the preserve or the coverage of species within the Planning Area, and it will not compromise viable habitat linkages within the proposed Preserve system.

Table 1. Conditions of the CEQA-Approved Documents and Permits Relevant to the Project

Source	Condition	Column A	Column B	Column C	Column D
Column A – Conditions that ensure development of the Project (due to annexation) will not jeopardize the buildout of the Preserve. **Column B –** Conditions that ensure Covered Species will not be jeopardized due to annexation. **Column C –** Conditions that ensure coverage of species within the Planning Area during the lifetime of the Project will not be jeopardized due to annexation. **Column D –** Conditions that ensure viable habitat linkages within the proposed Preserve will not be compromised due to annexation.					
FEIR Specific Plan					
MM-BIO-1a	Prior to project grading, the project applicant shall conduct USFWS presence/absence protocol coastal California gnatcatcher surveys. The surveys shall be conducted within the 12-month period prior to project grading. Pursuant to the Biological Opinion issued by the USFWS, results of the surveys shall be submitted to USACE, the Wildlife Agencies and the City of San Marcos Planning Division Manager. If coastal California gnatcatchers are found to be nesting within the area to be disturbed mitigation measures MM-BIO-1b and MM-BIO-1c shall also be implemented.		X		
MM-BIO-1b	If the preconstruction survey identified nesting gnatcatchers on the project site, clearing and grubbing activity would cease within 300 feet of the nest until such time as the nest is no longer active.		X		
MM-BIO-1c	To reduce potential noise impacts to nesting gnatcatchers, a qualified acoustician would monitor the project site and vicinity for listed birds during initial grading, and on a monthly basis thereafter to determine if any nests are within a distance potentially affected by noise from grading, clearing, or construction activities. If nesting birds are located adjacent to the project site with the potential to be affected by construction activity noise above 60 dBA Leq, a noise barrier would be erected. This noise barrier would consist of a l0-foot-high continuous plywood fence supported by posts or an earthen berm located at the site boundary that abuts potential off-site habitat. If 60 dBA Leq is exceeded the acoustician would require the construction contractor to make operational and barrier changes to reduce noise levels to 60 dBA during the breeding season (February 15 through September 15). Noise monitoring would occur during operational changes and installation of barriers, as needed, to ensure their effectiveness.		X		
MM-BIO-1d	A Wildlife-Agency approved biological monitor shall be present during initial clearing, grading, and construction in sensitive habitat areas and/or in the vicinity of biological open space areas to ensure that conservation measures associated with resource agency permits and construction documents are performed. The biological monitor shall have the authority to halt construction to prevent or avoid take of any listed species and/or to ensure compliance with all avoidance, minimization, and mitigation measures. Any unauthorized impacts or actions in noncompliance with the permits and construction documents shall be immediately brought to the attention of the City, USACE, and the Wildlife Agencies.		X		

Source	Condition	Column			
		A	B	C	D
MM-BIO-2	If construction is proposed during the breeding season (February 15 through September 15), a preconstruction survey shall be performed by a qualified biologist to determine if any birds are nesting within or immediately adjacent to the impact area. The survey must be conducted no more than three days prior to commencing project activities. If surveys show that nesting birds are present, a no-work buffer would be placed around the nest. The buffer size would be determined by a qualified biologist and would vary based on site conditions and type of work to be conducted. The no-work buffer would be maintained until the end of the breeding season or until surveys by a qualified biologist confirm that fledglings are no longer dependent on nest. If no nesting birds are detected during pre-construction surveys, no restrictions would be necessary and construction may proceed as planned.		X		
MM-BIO-3a	The applicant shall designate a USFWS- approved qualified biologist who would be responsible for overseeing compliance with protective measures (e.g., buffers, noise mitigation) for the listed species during construction, including site clearing and grubbing. The biologist would have the authority to halt all associated project activities, which may be in violation of the USFWS Biological Opinion issued for the project. In such an event, the biologist is required to contact the City of San Marcos, USACE and USFWS within 24 hours.		X		
MM-BIO-3b	An employee education program for the construction crew shall be developed and implemented by a qualified biologist. Each employee (including temporary, contractors, and subcontractors) would receive a training/awareness program within two weeks of working on the proposed project. They would be advised of the potential impact to the listed species and the potential penalties for taking such species. At a minimum, the program shall include the following topics: occurrence of the listed and sensitive species in the area, their general ecology, sensitivity of the species to human activities, legal protection afforded these species, penalties for violations of Federal and State laws, reporting requirements, and project features designed to reduce the impacts to these species and promote continued successful occupation of the project area environs.		X		
MM-BIO-3c	Construction work areas shall be delineated and marked clearly, by flagging or temporary orange construction fencing, in the field prior to habitat removal, and the marked boundaries maintained and clearly visible to personnel on foot and by heavy equipment operators. Fencing shall be placed on the impact side to reduce the potential for additional vegetation loss within open space. Fencing placement shall be done by a qualified biologist. All temporary fencing shall be removed only after the conclusion of all grading, clearing, and construction. Employees shall strictly limit their activities and vehicles to the proposed project areas, staging areas, and routes of travel. The project proponent and/or the biological monitor shall contact the City of San Marcos, the United States Army Corps of Engineers (USACE), and USFWS to verify that the limits of construction have been properly staked and are readily identifiable. Intrusion by unauthorized vehicles into the riverbed and outside of construction limits shall be prohibited, with control exercised by an on-site foreman. Access routes to the construction area outside of work hours shall be blocked with physical barriers, such as concrete blocks or large equipment.	X			

Source	Condition	Column			
		A	B	C	D
MM-BIO-3d	The work area shall be kept clean to avoid attracting predators. All food and trash shall be disposed of in closed containers and removed from the project site. No pets shall be allowed on the construction site.		X		
MM-BIO-4a	The applicant would require the Home Owner's Association to implement CC&Rs to regulate property usage, including maintenance of on-site restored habitats, indoor cat policy, and protection of adjacent natural areas of the on-site preserve and the Creek. The applicant would incorporate landscape management practices into the CC&Rs that minimize the use of chemical fertilizers, pesticides, and herbicides. Maintenance of on-site restored habitats and protection of adjacent natural areas of the on-site preserve and the Creek shall be overseen by a conservancy or similar entity with approval by the permitting regulatory agencies. The CC&Rs shall be reviewed by the City Attorney prior to recordation.			X	
MM-BIO-4b	Potential impacts from human and pet intrusion into the on-site open space shall be minimized through a program of education (using that developed by the American Society for the Prevention of Cruelty to Animals), cat control, and habitat fencing as required by the approved HMMP, with no gates between the development and the open space, along the backyards of residential lots adjacent to the planned open space. These requirements would be identified in the CC&Rs. The CC&Rs shall be reviewed by the City Attorney prior to recordation.			X	
MM-BIO-4c	Use of invasive exotic plant species in landscaped areas adjacent to or near sensitive vegetation communities shall be restricted. The applicant shall encourage the use of native species in landscaping plans and would avoid the use of species listed in Lists A & B of the California Invasive Plant Council's list of Exotic Pest Plants of Greatest Ecological Concern in California. This condition shall be included in the CC&Rs for the project. The CC&Rs shall be reviewed by the City Attorney prior to recordation.			X	
MM-BIO-4d	All night lighting within the proposed development area, including streets and backyards, shall be directed away from the habitat areas, including Agua Hedionda Creek, the stepping stone linkage along the project's northern boundary, and the preserved open space east of the development. This condition shall be included in the CC&Rs for the project and the HOA shall regulate this condition and would not allow any future additional lighting to be installed by private homeowners. The CC&Rs shall be reviewed by the City Attorney prior to recordation.			X	
MM-BIO-5a	The direct impact to 77.36 acres of CSS and 1.84 acres of *Baccharis* spp. dominated CSS shall be mitigated at a 2:1 ratio for a total of 158.34 acres. This shall be accomplished through the preservation of CSS within a biological conservation easement on the project site.	X	X		

Source	Condition	Column			
		A	B	C	D
MM-BIO-5b	Graded slopes outside the fuel modification zone adjacent to natural open space areas shall be revegetated with CSS species (specifically, this includes the slope along the western side of the Las Posas Road extension adjacent to Agua Hedionda Creek). In addition, the off-site easement area would require removal of exotic species, seeding with native species, and/or spreading of CSS duff for preservation that would allow the project to maintain a minimum 500-foot wide habitat linkage along the northern project boundary with the exception of a 500 linear foot portion which may have a minimum width of 400 feet.				X
MM-BIO-5c	A monitoring/management plan(s) that is consistent with MHCP guidelines and that addresses both the habitat and the species shall be developed and implemented by the natural lands manager or biological consultant in coordination with the USACE, USFWS and CDFW. The plan shall include management objectives to determine the distribution and abundance of plants and animals found within the on-site and off-site acquisition parcels and build a baseline database from this information. Management will include monitoring specific taxonomic groups to determine whether the project site is functioning naturally or if the biological diversity of the project site is being degraded or diminished. All threats will be monitored and managed appropriately. This plan will be implemented prior to, or concurrent with, the initiation of construction.			X	
MM-BIO-8a	Trails that pass through areas of sensitive habitat shall include City-approved habitat signage to inform users of the sensitive resources and remind the trail user to stay on the established trails. Signage shall be placed in accordance with the Final HMMP and approved by the Planning Division Manager. The Final HMMP shall include a provision to monitor and track usage.			X	
MM-BIO-8b	The western boundary of the riparian corridor shall be enhanced with plant material and fencing barriers to prohibit intrusion into the corridor from the roadway and walkways along Las Posas Road as allowed by the regulatory permits issued by the resource protection agencies and approve Fire Protection Plan.			X	
MM-BIO-8c	Use of invasive exotic plant species in landscaped areas adjacent to or near sensitive vegetation communities shall be restricted. The applicant shall encourage the use of native species in landscaping plans and would avoid the use of species listed in Lists A & B of the California Invasive Plant Council's list of Exotic Pest Plants of Greatest Ecological Concern in California. This condition shall be included in the CC&Rs for the project. The CC&Rs shall be reviewed by the City Attorney.			X	
MM-BIO-13	Prior to project grading, the project applicant shall conduct USFWS protocol least Bell's vireo surveys. The surveys shall be conducted within the 12-month period prior to project grading. Results of the surveys shall be submitted to USACE, the Wildlife Agencies, and the City of San Marcos Planning Division Manager. If least Bell's vireo are found to be nesting within the area to be disturbed, clearing and grubbing activity would not be allowed within 500 feet of active territories until such time as the nest is no longer active. Alternatively, noise mitigation (e.g., berm, temporary barrier) may be implemented to achieve noise levels of 60 dBA or less at the nest.		X		

Source	Condition	Column A	Column B	Column C	Column D
MM-BIO 15	To ensure preservation and management of the proposed preserved areas in perpetuity consistent with MHCP guidelines[3], the following would occur prior to initial vegetation clearing: Conservation easements shall be recorded over the 210.8 acres to be preserved, including the 4.7 acres off site adjacent to the northern property boundary following the purchase from the current owner.	X			
1600 Streambed Alteration Agreement					
Measure 2.1	Seasonal Restrictions - Vegetation Removal. Permittee shall not remove vegetation within the stream from February 15 to September 1 to avoid impacts to nesting birds. However, Permittee may remove vegetation during this time if a qualified biologist conducts a survey for nesting birds within 1 week of the vegetation removal and ensures no nesting birds shall be impacted by the project. If nesting birds are present, no work shall occur until the young have fledged and will no longer be impacted by the project.		X		
Measure 2.4	There shall be no take, incidental or otherwise, of any protected species. Protected species includes: a species fully protected under state law, a species under the California Endangered Species Act and/or Endangered Species Act, a species identified by CDFW as a species of special concern, or any other species for which take is prohibited under state or federal law. No direct or indirect impacts shall occur to any protected species except as may be authorized by a Natural Community Conservation Plan or one or more individual permits that authorize such impacts.		X		
CWA Section 404 Permit SPL-2001-00479					
Special Condition 9	This Corps permit does not authorize you to take any threatened or endangered species, in particular the coastal California gnatcatcher, or adversely modify its designated critical habitat. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g. ESA Section 10 permit, or a Biological Opinion (BO) under ESA Section 7, with "incidental take" provisions with which you must comply). The U.S. Fish and Wildlife Service (FWS) BO (FWS Log No. 1-6-05-F-1668) contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BO. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the attached BO, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit.		X		

Source	Condition	Column A	Column B	Column C	Column D
Biological Opinion (FWS-SDG-1668.10)					
Measure 1	In order to avoid and minimize impacts to nesting birds, including gnatcatcher, no clearing or grubbing activity will occur during the avian breeding season (February 15 through August 31) within the project area, unless pre-construction surveys indicate that active nests are not present on the site or in surrounding areas.		X		
Measure 3	A Service-approved biologist will conduct pre-construction surveys for least Bell's vireo if construction is to occur during breeding season (March 15 through September 30). If vireos are detected, then the applicant will delay construction activities occurring within 500 feet of active territories until after fledglings have left the active territories.		X		
Measure 4	To reduce potential noise impacts to nesting gnatcatcher or vireo, a qualified acoustician will monitor the project site and vicinity for listed birds during initial grading, and on a monthly basis thereafter, to determine if any nests are within a distance potentially affected by noise from grading, clearing, or construction activities. If nesting birds are located adjacent to the project site with the potential to be affected by construction activity noise above 60 dBA L_{eq}, a noise barrier will be erected. This noise barrier will consist of a IO-foot-high continuous plywood fence supported by posts or an earthen berm located at the site boundary that abuts potential off-site habitat If 60 dBA L_{eq}, is exceeded, the acoustician will work with the construction contractor to make operational ' and barrier changes to reduce noise levels during the breeding season. Noise monitoring will occur during operational changes and installation of barriers, as needed, to ensure their effectiveness.		X		
Measure 5	The applicant will designate a Service-approved qualified biologist who will be responsible for overseeing compliance with protective measures for the listed species. The biologist will have the authority to halt all associated project activities, which may be in violation of this biological opinion. In such an event, the biologist is required to contact the Corps and the Service within 24 hours.		X		
Measure 6	The applicant will require the HOA to implement covenants, conditions, and restrictions to regulate property usage, including maintenance of on-site restored habitats, indoor cat policy, and protection of adjacent natural areas of the on-site preserve and the Creek. The applicant will incorporate landscape management practices into the covenants, conditions, and restrictions that minimize the use of chemical fertilizers, pesticides, and herbicides.			X	
Measure 7	Potential impacts from human and pet intrusion into the on-site open space will be minimized through a program of education (using that developed by the American Society for the Prevention of Cruelty to Animals), cat control, and the inclusion of permanent cat-proof fences, with no gates between the development and the open space, along the backyards of residential lots adjacent to the planned open space.			X	

Source	Condition	Column			
		A	B	C	D
Measure 8	Use of invasive exotic plant species in landscaped areas adjacent to or near sensitive vegetation communities will be restricted. The applicant will encourage the use of native species in the landscaping plan and will avoid the use of species listed in Lists A & B of the California Invasive Plant Council's list of Exotic Pest Plants of Greatest Ecological Concern in California as of October 1999. This list includes such species as pepper trees, pampas grass, fountain grass, ice plant, myoporum, black locust, capeweed, tree of heaven, periwinkle, sweet alyssum, English ivy, French broom, Scotch broom, and Spanish broom.			X	
Measure 11	Construction work areas will be delineated and marked clearly, by flagging or temporary orange construction fencing, in the field prior to habitat removal, and the marked boundaries maintained and clearly visible to personnel on foot and by heavy equipment operators. Fencing will be placed on the impact side to reduce the potential for additional vegetation loss within open space. All temporary fencing will be removed only after the conclusion of all grading clearing, and construction. Employees will strictly limit their activities and vehicles to the proposed project areas, staging areas, and routes of travel. The project proponent and/or the biological monitor will contact the Service to verify that the limits of construction have been properly staked and are readily identifiable. Intrusion by unauthorized vehicles into the riverbed and outside of construction limits will be prohibited, with control exercised by an on-site foreman. Access routes to the construction area outside of work hours will be blocked with physical barriers, such as concrete blocks or large equipment.		X		
Measure 15	A greater than 2:1 conservation ratio for permanent impacts to 73.80 acres of coastal sage scrub (CSS) will be accomplished through on-site preservation of approximately 105.7 acres, approximately 4.9 acres of on-site CSS restoration, an easement for off-site preservation of approximately 4.7 acres, and the purchase of approximately 21.9 acres immediately off-site and adjacent to the northwest and another 61.8 acres off-site and contiguous with the eastern project boundary.	X			
Measure 16	Graded slopes outside the fuel modification zone adjacent to natural open space areas will be revegetated with coastal sage scrub species (specifically, this includes the slope along the western side of the Las Posas Road extension adjacent to Agua Hedionda Creek.) The location of this revegetation, totaling 4.90 acres, is shown in Figure 6. In addition, the off-site easement area will require removal of exotic species, seeding with native species, and/or spreading of CSS duff for preservation that will allow the project to maintain a minimum 400-foot wide wildlife corridor.	X			X

Source	Condition	Column			
		A	B	C	D
Measure 18	To ensure preservation and management of the proposed on- and off-site restoration and preserve areas in perpetuity consistent with Multiple Habitat Conservation Program guidelines[4], the following will occur prior to initial vegetation clearing: a. Conservation easements will be recorded over the 110.60 acres of on-site preserve and restoration, as well as the 83.70 acres of off-site acquisition. b. A conservation easement will be recorded on approximately 4.7 acres off site adjacent to the northern property boundary following the purchase by KB Home from the current owner. c. An experienced natural lands manager, approved by the Service and the City, will be designated. A non-wasting endowment will be funded at an amount to be determined through the preparation of a Property Analysis Record (PAR), or similar analysis.	X			
Measure 19	A conceptual monitoring/management plan(s) that is consistent with MHCP guidelines[4] and that addresses both the habitat and the species will be developed and implemented by the natural lands manager or biological consultant in coordination with the Service. The plan will include management objectives to determine the distribution and abundance of plants and animals found within the on-site and off-site acquisition parcels and build a baseline database from this information. Management will include monitoring specific taxonomic groups to determine whether the project site is functioning naturally or if the biological diversity of the project site is being degraded or diminished. All threats will be monitored and managed appropriately. This plan will be implemented prior to, or concurrent with, the initiation of construction. Mitigation will be judged successful if the site achieves a score of 0.8 or greater in 6 out of the following 7 categories: Stream geomorphology, Flood-prone area, Habitat - Vegetation structure, Habitat - vegetation cover, habitat - vegetation diversity, percent exotic/invasive vegetation, biogeochemistry.	X			

[4] As found in Appendix G (Framework Resource Management Plan) of the Draft North County MSCP, within Section 8.9 (San Marcos – Merriam Mountains Core).

Table 2: Project Impacts and Proposed Mitigation

Resource	Project Impacts (acres)	Project Mitigation (acres)	Mitigation Ratios			Actual Project-Achieved Mitigation Ratios
			MSCP	MHCP	FEIR	
Coastal sage scrub	77.36	185.83[a]	1.5:1[c]	1:1[e]	2:1[g]	2.4:1
Herbaceous wetland	0.06	7.0[b]	3:1[d]	No net loss[f]	3:1[h]	116:1 (7 acres) 78:1 (4.7 acres)

Sources: FEIR, County of San Diego Guidelines for Determining Significance and Report Format and Content Requirements for Biological Resources, Draft City Subarea Plan.

a – Preservation of CSS achieved within the conservation easement (FEIR pg. 3.9-21)
b – Enhancement of riparian habitat: 4.7 acres within conservation easement, 2.3 acres within a utility easement (FEIR pg. 3.9-21)
c – Mitigation ratio for impacts to County of San Diego BMO Tier II habitats (including coastal sage scrub) that occur within PAMAs (Draft North County MSCP Section 7.2.1)
d – Draft North County MSCP Section 7.3
e – Mitigation ratio for impacts to coastal sage scrub that occur outside of the FPA, as identified in the Draft City Subarea Plan (pg. 72)
f – Draft City Subarea Plan (pg. 72)
g – MM-BIO-5a
h – MM-BIO-6a

San Marcos Highlands Project
(PDS2018-MISC-18-009)

Exhibit F – State and Federal Approvals

Contents:

- ACOE Section 404 Permit (SPL-2001-00479)
- RWQCB Section 401 WQC
  (Order No. R9-2005-0272)
- CDFW SAA (1600-2015-0122-R5)
- USFWS BO (FWS Log No. 1-6-05-F-1668)
- USFWS Amended BO
  (FWS Log No. 1-6-05-F-1668-R1)

ACOE Section 404 Permit (SPL-2001-00479)

Provisional U.S. Army Corps of Engineers (ACOE) Clean Water Act Section 404 Permit
SPL-2001-00479, September 2005

HOH Permit
ACOE

DEPARTMENT OF THE ARMY
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
SAN DIEGO FIELD OFFICE
6010 Hidden Valley Rd, SUITE 105
CARSLBAD, CA 92011-4213

September 17, 2008

REPLY TO
ATTENTION OF
Office of the Chief
Regulatory Division

Farouk Kubba
Diversified Projects Inc.
2345 Newport Blvd.
Costa Mesa, California 92627

Dear Mr./Ms. Kubba:

Reference is made to your application dated December 19, 2002, for a Department of the Army (DA) Permit to discharge fill into waters of the U.S., in association with the San Marcos Highlands Project. The proposed work would take place within/near the city of San Marcos and the County of San Diego, CA.

Enclosed is a "Provisional Permit." This provisional permit is NOT VALID and does not constitute authorization for you to do work. The provisional permit describes the work that will be authorized, including general and special conditions which will be placed on your final DA permit, if you receive written approval from the City of San Marcos and the County of San Diego. Please submit them to the Corps when these approvals are granted. No work is to be performed until you have received a validated copy of the DA permit.

WHEN YOU RECEIVE THE LOCAL AGENCY APPROVALS, THE FOLLOWING STEPS NEED TO BE COMPLETED:

1. **The owner or authorized responsible official must sign and date both copies of the provisional permit indicating that he/she agrees to comply with all conditions stated in the permit.**

2. **The signer's name and title (if any) must be typed or printed below the signature.**

3. **Both signed provisional permits must be returned to the Corps of Engineers at the above address (Attention: CESPL-RG).**

4. **The written local agency approvals must be sent to the Corps of Engineers with the signed provisional permits.**

5. **When returning the signed provisional permits include a check for the processing fee of $100.00 to the Finance and Accounting Officer USAED LA.**

Should the local agency approval contain conditions which might result in a modification to the provisional permit, by signing and dating both copies of the provisional permit and returning them to the Corps of Engineers (along with the appropriate permit fee and local agency approval), we will assume you agree to comply with the local agency approval conditions which may be added to the provisional permit.

Should the local agencies deny the required approval, then the DA permit is considered denied without prejudice. If you subsequently obtain local agency approval, you should contact this office to determine how to proceed with your permit application.

If you have any questions, please contact Robert Smith of my staff at (760) 602 4831 or via e-mail at Robert.R.Smith@usace.army.mil.

Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at: http://per2.nwp.usace.army.mil/survey.html.

Sincerely,

Mark Durham for

David J. Castanon
Chief, Regulatory Division

Enclosure(s)

Applicant: DPI - Diversified Projects, Inc.	File Number: 200100479	Date: September 16, 2008

Attached is:		See Section below
X	INITIAL PROFFERED PROVISIONAL PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

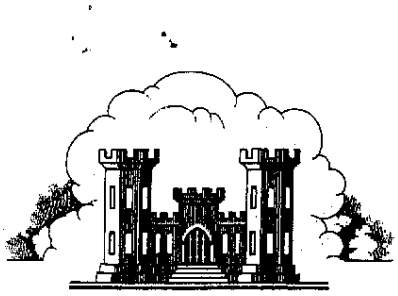
REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

If you have questions regarding this decision and/or the appeal process you may contact:	If you only have questions regarding the appeal process you may also contact:
DISTRICT ENGINEER Los Angeles District, Corps of Engineers ATTN: Chief, Regulatory Branch P.O. Box 532711 Los Angeles, CA 90053-2325 Tel. (213) 452-3425 FAX (213) 452-4196	Douglas R. Pomeroy, Appeal Review Officer U.S. Army Corps of Engineers, CESPD-ET-CO 333 Market Street San Francisco, CA 94015-2195 Tel. (415) 977-8035 FAX (415) 977-8047

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

	Date:	Telephone number:
_____ Signature of appellant or agent.		



LOS ANGELES DISTRICT
U.S. ARMY CORPS OF ENGINEERS

DEPARTMENT OF THE ARMY PERMIT

Permittee: Diversified Projects Inc., Farouk Kubba

Permit Number: SPL-2001-00479

Issuing Office: Los Angeles District

Note: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description: To permanently discharge fill onto .74 acre(s) of waters of the U.S. in association with the 203-acre San Marcos Highlands Project as shown on the attached drawings.

Project Location: In the City of San Marcos, San Diego County, CA.

Permit Conditions:

General Conditions:

1. The time limit for completing the authorized activity ends on September 16, 2013. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification from this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of

what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. A conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished with the terms and conditions of your permit.

Special Conditions:

1. The Permittee shall mitigate for permanent/temporary impacts to 0.80- acre(s) of waters of the U. S., through restoration/creation/enhancement of 2.45 acre(s) of waters of the U.S. as described in the "Habitat Mitigation and Monitoring Plan (HMMP): San Marco Highlands Habitat Mitigation and Monitoring/Water Quality Management Plan (dated October 2005, and prepared by PCR)." The Permittee shall fully implement this HMMP concurrently with impacts to waters of the U.S./within 30 days of initiation of work in waters of the U.S.

2. The Permittee shall implement and abide by the Section 401 water quality certification Order Nos. R9-2005-0272 dated December 15, 2005 as prepared by the California Regional Water Quality Control Board – San Diego Region.

3. Prior to initiation of work in waters of the U.S., the Permittee shall record a Conservation Easement (CE), in a form approved by the Corps, which shall run with the land, obligating the Permittee, its successors and assigns to protect and maintain the 2.45-acre(s) mitigation area (as shown in attached Figure 9 of the HMMP) as natural open space in perpetuity. The CE must include a 3rd party easement holder qualified to hold easements pursuant to California Civil Code section 815.3. The Permittee must provide monies in the form of an endowment (endowment amount to be determined by Property Analysis Record or similar methodology) for the purposes of fulfilling the 3rd party easement holder's responsibilities under the CE. The CE shall preclude establishment of fuel modification zones, paved public trails, drainage facilities, walls, maintenance access roads and/or future easements, except as provided in the Project Description. Further, to the extent practicable, any such facilities outside the CE shall be sited to minimize indirect impacts on the avoided, created, restored and enhanced wetland and non-wetland waters of the U.S. The Permittee shall receive written approval (by letter or e-mail) from the Corps of this CE prior to it being executed and recorded. A recorded copy of the CE shall be furnished to the Corps prior to initiation of work in waters of the U.S.

4. Prior to initiating construction in waters of the U.S., the Permittee shall submit to the Corps a complete set of final detailed grading/construction plans showing all work and structures in waters of the U.S. The plans shall be submitted on paper that is no larger than 11x 17 inches. No work in waters of the U.S. is authorized until the Permittee receives, in writing (by letter or e-

mail), Corps approval of the final detailed grading/construction plans. The Permittee shall ensure that the project is built in accordance with the Corps-approved plans.

5. Prior to initiating construction in waters of the U.S., the Permittee shall post financial assurance ("financial assurance") in a form approved by the Corps for the estimated cost of implementing the approved HMMP (including a 20% contingency to be added to the total costs). The Corps has initially calculated that the performance bond sums to $300,000 but the permittee can resubmit an estimate for review and the Corps shall consider a revised bond amount after considering the new estimate. The purpose of this financial assurance is to guarantee the successful implementation, maintenance and monitoring of the wetland and non-wetland waters creation, restoration, and enhancement work. Our preferred form of financial assurance is a Performance Bond, in which case, you shall post a Performance Bond for 120% of the anticipated cost of the mitigation and monitoring associated with the project, as indicated above. In addition,

A) The bonding company must appear on the Department of Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies. For a current list of Treasury-authorized companies, write or call the Surety Bond Branch, Financial Management Services, Department of the Treasury, Washington DC 20227; (202) 874-6850 or at the following website: http://www.fms.treas.gov/c570/c570.html.

B) The performance bond shall be released only upon a determination by the Corps that successful mitigation has been completed.

C) Alternatively, the Corps will accept an irrevocable letter of credit in the same amount in lieu of a Performance Bond. The terms of the irrevocable letter of credit are subject to Corps approval.

D) The Permittee shall clearly mark the limits of the workspace with flagging or similar means to ensure mechanized equipment does not enter preserved waters of the U.S. and riparian wetland/habitat areas shown on Figure 3,4, and 5 of the HMMP. Adverse impacts to waters of the U.S. beyond the Corps-approved construction footprint are not authorized. Such impacts could result in permit suspension and revocation, administrative, civil or criminal penalties, and/or substantial, additional, compensatory mitigation requirements.

6. The Permittee shall clearly mark the limits of the workspace with flagging or similar means to ensure mechanized equipment does not enter preserved waters of the U.S. and riparian wetland/habitat areas shown on Figures 3, 4, and 5 of the HMMP. Adverse impacts to waters of the U.S. beyond the Corps-approved construction footprint are not authorized. Such impacts could result in permit suspension and revocation, administrative, civil or criminal penalties, and/or substantial, additional, compensatory mitigation requirements

7. Within 45 calendar days of completion of authorized work in waters of the U.S., the Permittee shall submit to the Corps a post-project implementation memo indicating the date authorized impacts to waters of the U.S. ceased.

8. Within 45 calendar days of complete installation of all mitigation, the Permittee shall submit to the Corps two copies of a memo indicating the following:

A) Date(s) all mitigation was installed and monitoring was initiated;

B) Schedule for future mitigation monitoring, implementation and reporting pursuant

to final, Corps-approved HMMP;
C) Summary of compliance status with each special condition of this permit (including any noncompliance previously occurred or currently occurring and corrective actions taken to achieve compliance);
D) Color photographs taken at the project site before and after construction for those aspects directly associated with impacts to waters of the U.S.; and
E) One copy of "as built" drawings for the entire project, including all mitigation sites. The drawings shall be submitted on paper that is no larger than 11x 17 inches.

9. This Corps permit does not authorize you to take any threatened or endangered species, in particular the coastal California gnatcatcher, or adversely modify its designated critical habitat. In order to legally take a listed species, you must have separate authorization under the Endangered Species Act (ESA) (e.g. ESA Section 10 permit, or a Biological Opinion (BO) under ESA Section 7, with "incidental take" provisions with which you must comply). The U.S. Fish and Wildlife Service (FWS) BO (FWS Log No. 1-6-05-F-1668) contains mandatory terms and conditions to implement the reasonable and prudent measures that are associated with "incidental take" that is also specified in the BO. Your authorization under this Corps permit is conditional upon your compliance with all of the mandatory terms and conditions associated with incidental take of the attached BO, which terms and conditions are incorporated by reference in this permit. Failure to comply with the terms and conditions associated with incidental take of the BO, where a take of the listed species occurs, would constitute an unauthorized take, and it would also constitute non-compliance with your Corps permit.

Further Information:

1. Congressional Authorities. You have been authorized to undertake the activity described above pursuant to:

( ) Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measure ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give you favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

PERMITTEE _____ DATE _____

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

David J. Castanon
Chief, Regulatory Division _____ DATE _____

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

TRANSFEREE _____ DATE _____

LOS ANGELES DISTRICT
U.S. ARMY CORPS OF ENGINEERS

NOTIFICATION OF COMMENCEMENT OF WORK FOR DEPARTMENT OF THE ARMY PERMIT

Permit Number: *SPL-2001-00479*

Name of Permittee: *Farouk Kubba*

Date of Issuance: *September 16, 2008*

Date work in waters of the U.S. will commence: _____

Estimated construction period (in weeks): _____

Name & phone of contractor (if any): _____

Please note that your permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to comply with this permit you may be subject to permit suspension, modification, or revocation.

I hereby certify that I, and the contractor (if applicable), have read and agree to comply with the terms and conditions of the above referenced permit.

_____ _____
Signature of Permittee Date

At least ten (10) days prior to the commencement of the activity authorized by this permit, sign this certification and return it using any ONE of the following three (3) methods:

(1) E-MAIL a statement including all the above information to: Robert.R.Smith@usace.army.mil
OR
(2) FAX this certification, after signing, to: Robert Smith, (760) 602-4848
OR
(3) MAIL to the following address:

U.S. Army Corps of Engineers
Regulatory Division
ATTN: CESPL-RG-SPL-2001-00479
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
SAN DIEGO FIELD OFFICE
6010 Hidden Valley Rd., SUITE 105
CARLSBAD, CA 92011-4213

LOS ANGELES DISTRICT
U.S. ARMY CORPS OF ENGINEERS

NOTIFICATION OF COMPLETION OF WORK AND CERTIFICATION OF COMPLIANCE WITH DEPARTMENT OF THE ARMY PERMIT

Permit Number: *SPL-2001-00479*
Name of Permittee: *Farouk Kubba*
Date of Issuance: *September 16, 2008*

Date work in waters of the U.S. completed: _____
Construction period (in weeks): _____
Name & phone of contractor (if any): _____

Please note that your permitted activity is subject to a compliance inspection by an Army Corps of Engineers representative. If you fail to comply with this permit you may be subject to permit suspension, modification, or revocation.

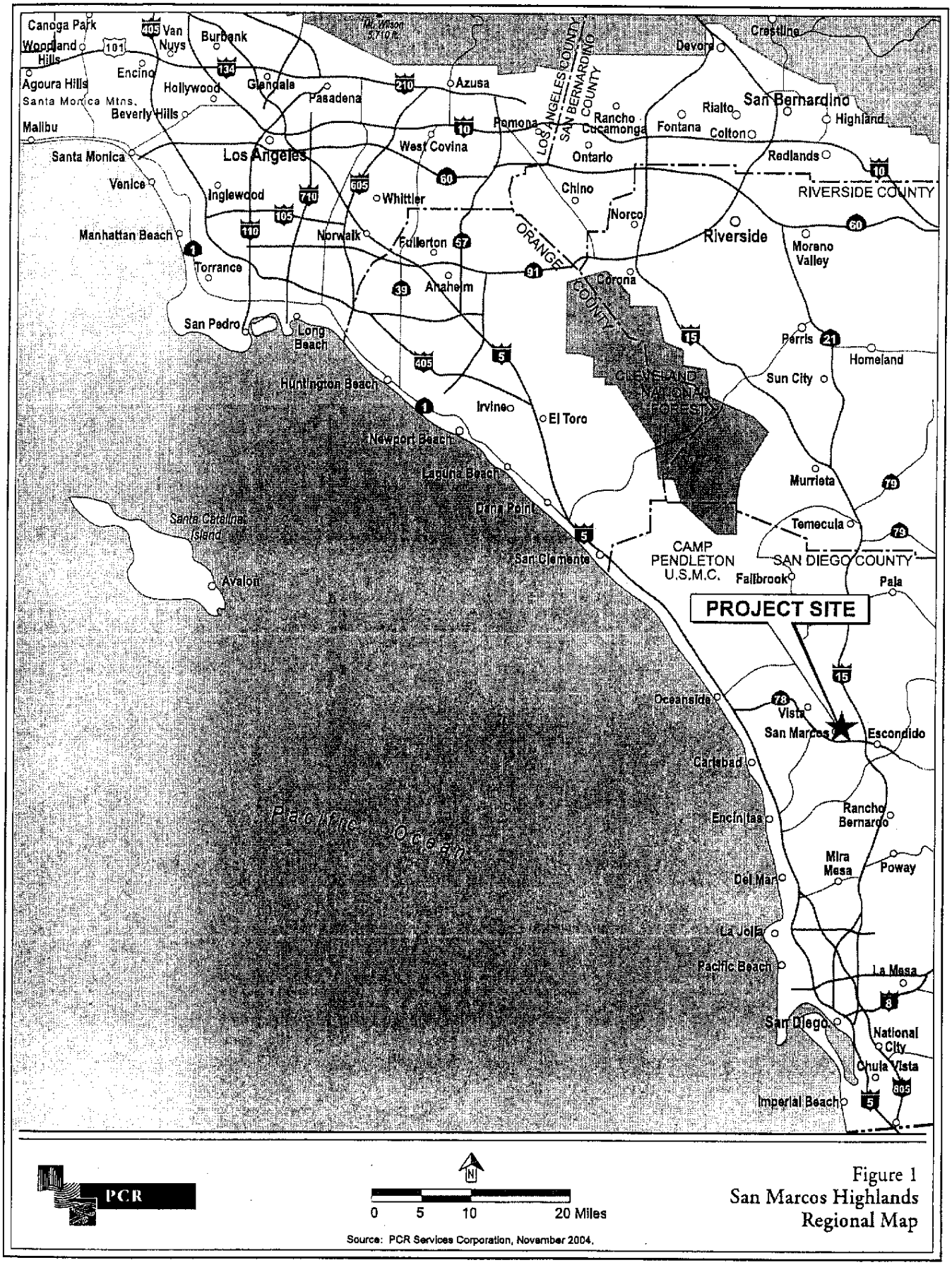
I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of said permit.

_____ _____
Signature of Permittee Date

Upon completion of the activity authorized by this permit, sign this certification and return it using any ONE of the following three (3) methods:

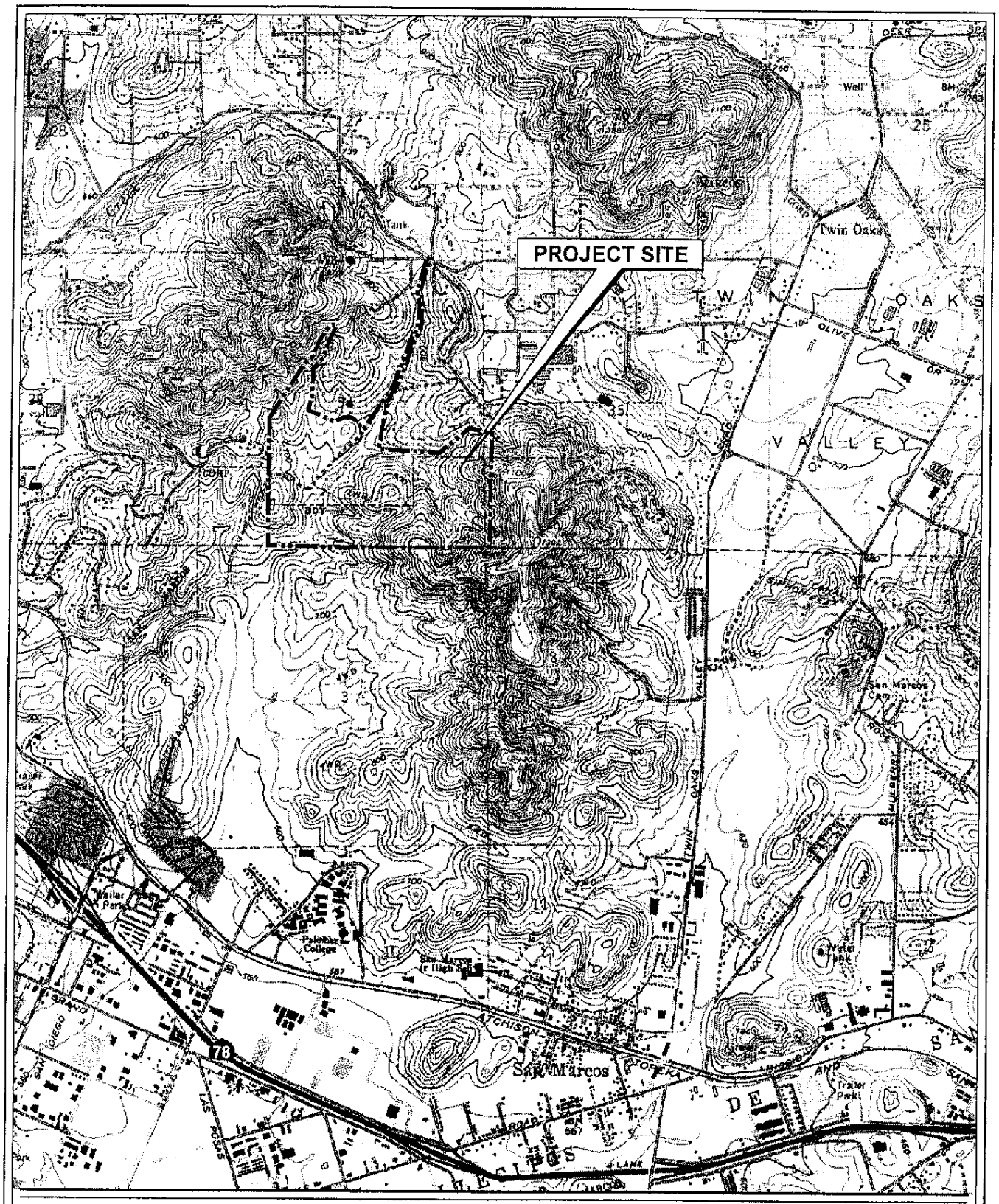
(1) E-MAIL a statement including all the above information to: Robert.R.Smith@usace.army.mil
OR
(2) FAX this certification, after signing, to: (760 602 4848)
OR
(3) MAIL to the following address:

U.S. Army Corps of Engineers
Regulatory Division
ATTN: CESPL-RG-SPL-2001-00479
LOS ANGELES DISTRICT, CORPS OF ENGINEERS
SAN DIEGO FIELD OFFICE
6010 Hidden Valley Road, SUITE 105
CARLSBAD, CA 92011



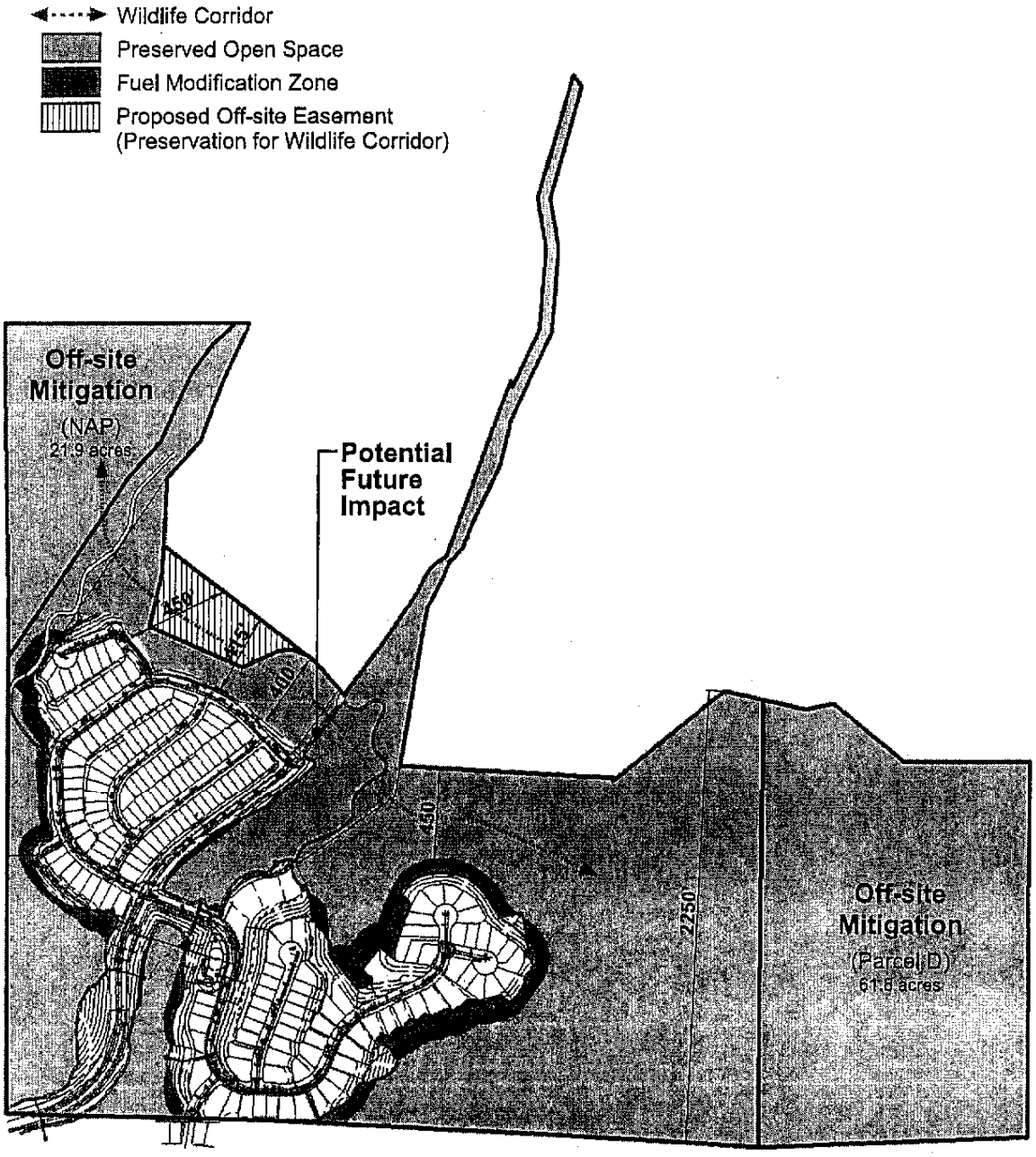
Source: PCR Services Corporation, November 2004.

Figure 1
San Marcos Highlands
Regional Map



Source: USGS Quadrangle San Marcos, California, 1968 and photorevised 1983.

Figure 2
San Marcos Highlands
Vicinity Map



PCR

0 400 800 1600 Feet

Source: Hunsaker, 2005.

Figure 3
San Marcos Highlands
Proposed Development Plan
and Wildlife Corridor

RWQCB Section 401 WQC (Order No. R9-2005-0272)

Regional Water Quality Control Board (RWQCB) Clean Water Act Section 401 Water Quality Certification (WQC)
Order No. R9-2005-0272, December 2005

401 Permit

California Regional Water Quality Control Board

San Diego Region

Alan C. Lloyd, Ph.D.
Secretary for Environmental Protection

Over 50 Years Serving San Diego, Orange, and Riverside Counties
Recipient of the 2004 Environmental Award for Outstanding Achievement from USEPA

Arnold Schwarzenegger
Governor

9174 Sky Park Court, Suite 100, San Diego, California 92123-4340
(858) 467-2952 • Fax (858) 571-6972
http:// www.waterboards.ca.gov/sandiego

CRWQCB

RECEIVED
DEC 19 2005
DIVISION

December 15, 2005

File No. 18-2002144.02

Mr. David Shepherd
KB Home
12235 El Camino Real
San Diego, CA 92130

Subject Site: San Marcos Highlands Project, KB Home, San Marcos, San Diego County, California

RE: Order No. R9-2005-0272 A Resolution Approving Section 401 Water Quality Certification for KB Home, San Marcos Highlands

Dear Mr. Shepherd,

On December 14, 2005, the Regional Board reviewed the Section 401 Water Quality Certification and adopted Resolution No. R9-2005-0272, approving the Water Quality Certification for KB Home, San Marcos Highlands.

Enclosed is Resolution No. R9-2005-0272 and the Water Quality Certification 02C-144.

Copies of the Order No. R9-2005-0272 or additional information can be obtained by contacting Christopher Means, Northern Watershed Unit at (858) 637-55816 or cmeans@waterboards.ca.gov.

Respectfully,

John H. Robertus
Executive Officer

Enclosures:

Resolution No. R9-2005-0272
401 Certification 02C-144

CC (with enclosures):

Mr. Robert Smith
U.S. Army Corps of Engineers
Regulatory Branch
16885 W. Bernardo Dr., Suite 300 A
San Diego, CA 92127
(858) 674-5388 (fax)

Ms. Janet Stuckrath
U.S. Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, CA 92009

Ms. Tamara Spear
California Department of Fish & Game
4949 Viewridge Avenue
San Diego, CA 92123

Ms. Susan Erickson
PCR Services Corporation
One Venture, Suite 150
Irvine, CA 92618

Ms. Stephanie Gasca
PCR Services Corporation
One Venture, Suite 150
Irvine, CA 92618

Ms. Lynne Baker, Esq.
13626 Orchard Gate Road
Poway, CA 92064

Ms. Sandra Farrell
Friends of Hedionda Creek
1900 Esplendido Ave
Vista, CA 92084

State Water Resources Control Board
Division of Water Quality

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION

RESOLUTION NO. R9-2005-0272

A RESOLUTION APPROVING 401 WATER QUALITY CERTIFICATION FOR THE SAN MARCOS HIGHLANDS PROJECT

WHEREAS, Section 401 of the Clean Water Act requires that any person applying for a federal permit or license which may result in a discharge of pollutants into waters of the United States, must obtain a state water quality certification that the activity complies with all applicable water quality standards, limitations, and restrictions. No license or permit may be issued by a federal agency until certification required by Section has been granted.

WHEREAS, on December 23, 2002, KB Home submitted an application for Section 401 Water Quality Certification for the San Marcos Highlands Project.

WHEREAS, the project will not have a significant adverse impact upon water quality standards if the project is constructed and implemented as proposed, and if all technical conditions required by the Section 401 Water Quality Certification are followed.

WHEREAS, this action issuing Section 401 Water Quality Certification does not permit an illegal discharge, and does not preclude the need for permits which may be required by other local or government agencies, and does not preclude the Regional Board from administering enforcement remedies in cases of threatened pollution or nuisance.

WHEREAS, KB Home must comply with the requirements of the State Water Resources Control Board Order No. 99-08-DWQ, the NPDES General Permit for Storm Water Discharges Associated with Construction Activity, and the San Diego County Municipal Storm Water Permit (NPDES No. CAS0108758).

WHEREAS, the Regional board held a public hearing on November 9, 2005 in San Diego and considered all evidence and public comments concerning this matter.

WHEREAS, The City of San Marcos has certified a final environmental impact report for the project in accordance with the California Environmental Quality Act (Public Resources Code Section 21000, et seq.), and the project as approved by the City of San Marcos will not have a significant effect on water quality.

WHEREAS, the issuance of Section 401 Water Quality Certification does not represent a specific position by the Regional Board on the decision by LAFCO regarding the annexation of the County of San Diego portion of the project into the City of San Marcos.

THEREFORE BE IT RESOLVED, that pursuant to Section 401 of the Federal Clean Water Act, the Regional Board hereby issues Section 401 Water Quality Certification, with technical conditions, for the San Marcos Highlands Project.

I John H. Robertus, Executive Officer, do hereby certify the foregoing is full, true, and correct copy of Resolution R9-2005-0272 adopted by the California Regional Water Quality Control Board, San Diego Region, on December 14, 2005.

JOHN H. ROBERTUS
Executive Officer

California Regional Water Quality Control Board
San Diego Region

Internet Address: http://www.swrcb.ca.gov/rwqcb9/
9174 Sky Park Court, Suite 100, San Diego, California 92123
Phone (858) 467-2952 • FAX (858) 571-6972

Alan C. Lloyd, Ph.D.
Secretary for Environmental Protection

Arnold Schwarzenegger
Governor

Action on Request for
TENTATIVE Clean Water Act section 401 Water Quality Certification
and Waiver of Waste Discharge Requirements
for Discharge of Dredged and/or Fill Materials

PROJECT: San Marcos Highlands Residential Development (File No. 02C-144)

APPLICANT: Mr. David W. Shepherd
KB Home
12235 El Camino Real, Suite 100
San Diego, CA 92130

ACTION:

☐ Order for Low Impact Certification

☐ Order for Denial of Certification

■ Order for Technically-conditioned Certification

■ Waiver of Waste Discharge Requirements

STANDARD CONDITIONS:

The following three standard conditions apply to all certification actions, except as noted under Condition 3 for denials (Action 3).

1. This certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to section 13330 of the California Water Code and section 3867 of Title 23 of the California Code of Regulations (23 CCR).

2. This certification action is not intended and shall not be construed to apply to any discharge from any activity involving a hydroelectric facility requiring a Federal Energy Regulatory Commission (FERC) license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to 23 CCR subsection 3855(b) and the application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

3. The validity of any non-denial certification action (Actions 1 and 2) shall be conditioned upon total payment of the full fee required under 23 CCR section 3833, unless otherwise stated in writing by the certifying agency.

ADDITIONAL CONDITIONS:

In addition to the three standard conditions, KB Home shall satisfy the following:

A. GENERAL CONDITIONS

1. KB Home shall, at all times, fully comply with the engineering plans, specifications and technical reports submitted with this application for 401 Water Quality Certification and all subsequent submittals required as part of this certification.

2. KB Home shall comply with the requirements of State Water Resources Control Board Water Quality Order No. 99-08-DWQ, the NPDES General Permit for Storm Water Discharges Associated with Construction Activity.

3. KB Home shall maintain a copy of this certification at the project site so as to be available at all times to site personnel and agencies.

4. Prior to the start of the project, KB Home shall educate all personnel on the requirements in this certification, pollution prevention measures, spill response, and best management practices.

5. KB Home shall permit the San Diego Regional Water Quality Control Board (SDRWQCB) or its authorized representative at all times, upon presentation of credentials:
   a) Entry onto project premises, including all areas on which wetland fill or wetland mitigation is located or in which records are kept.
   b) Access to copy any records required to be kept under the terms and conditions of this certification.
   c) Inspection of any treatment equipment, monitoring equipment, or monitoring method required by this certification.
   d) Sampling of any discharge or surface water covered by this Order.

6. KB Home shall notify the SDRWQCB within 24 hours of any unauthorized discharge to waters of the U.S. and/or State; measures that were implemented to stop and contain the discharge; measures implemented to clean-up the discharge; the volume and type of materials discharged and recovered; and additional BMPs or other measures that will be implemented to prevent future discharges.

7. KB Home shall, at all times, maintain appropriate types and sufficient quantities of materials onsite to contain any spill or inadvertent release of materials that may cause a condition of pollution or nuisance if the materials reached a waters of the U.S. and/or State.

8. This Certification is not transferable to any person except after notice to the Executive Officer of the SDRWQCB. The applicant shall submit this notice in writing at least 30 days in advance of any proposed transfer. The notice must include a written agreement between the existing and new owner containing a specific date for the transfer of this

Certification's responsibility and coverage between the current discharger and the new discharger. This agreement shall include an acknowledgement that the existing owner is liable for compliance and violations up to the transfer date and that the new owner is liable from the transfer date on.

9. In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401(d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.

10. In response to a suspected violation of any condition of this certification, the Regional Water Quality Control Board (RWQCB) may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the RWQCB deems appropriate, provided that the burden, including costs, of the reports shall be a reasonable relationship to the need for the reports and the benefits to be obtained from the reports.

11. In response to any violation of the conditions of this certification, the RWQCB may add to or modify the conditions of this certification as appropriate to ensure compliance.

12. This certification does not address dewatering; separate authorization will be required from the Regional Board for any dewatering impacts.

B. Construction Phase Storm Water Management

1. Construction monitoring reports shall be submitted quarterly during all grading activities associated with the proposed project. Construction monitoring reports shall include, but not be limited to the following:

    a. Names, qualifications, and affiliations of the persons contributing to the report;
    b. Summary of construction activities that include general locations, project component, approximate acreage;
    c. Quantification of impacts to waters of the U.S. authorized under this Order;
    d. Dates, times, and names of qualified biologist(s) onsite;
    e. Diagrams showing location and type of the most recent erosion and sediment control Best Management Practices (BMPs) implemented on site in accordance with the Storm Water Pollution Prevention Plan (SWPPP).
    f. Summary of any problems, resolution, and notification that occurred during this monitoring period; and
    g. Photo-documentation of construction activities.

2. KB Home shall implement the following measures to ensure that the San Marcos Highlands project does not cause a net increase in sediment discharge to Agua Hedionda Creek during the construction phase:

   a. SEDIMENT/SILTATION MONITORING PROGRAM: To assess the effectiveness of the BMPs implemented pursuant to Condition A.2, KB Home will develop and implement a sediment/siltation monitoring plan to measure sediment loads above and below the project site during the construction phase. Sediment/Siltation monitoring shall continue until such a time that a Notice of Termination (NOT) is processed and coverage under Order 99-08-DWQ is terminated. The construction phase sediment/siltation monitoring program shall be developed and submitted to the Regional Board for acceptance prior to initiation of project grading. Upon Regional Board acceptance of the monitoring plan, KB Home shall monitor sediment loading above and below the project as described below:

      i. Samples to be taken upstream of the of the construction areas, and immediately downstream of the last point of discharge from the project.
      ii. Samples to be analyzed for Settleable Solids (mL/L using EPA 160.5) and Total Suspended Solids (mg/L using EPA 160.2).
      iii. Sediment /siltation monitoring to occur after every significant rainfall where storm water runoff discharges from the San Marcos Highlands project into Agua Hedionda Creek. KB Home does not need to perform upstream/downstream sample collection for more than three (3) rain events per month.

   b. BMP EVALUATION AND MAINTENANCE: The applicants shall immediately assess the results of each sampling event, and if the results of the downstream site show an increase greater than 5 percent above background (upstream site) sediment levels, the applicants shall conduct an immediate assessment of erosion and sediment control BMPs being implemented on-site. KB Home shall:

      i. Identify the source of the silt, sediment.
      ii. Repair or replace any BMP that has failed.
      iii. Maintain any BMP that is not functioning properly due to lack of maintenance.
      iv. Evaluate whether additional or alternative BMPs should be implemented to prevent further exceedences of background sediment levels.
      v. Report to the Regional Board within 5 working days the actions taken to remedy the situation.

3. KB Home shall include all data, quality assurance and quality control data from the sediment/siltation monitoring program in reports to be submitted monthly during the rainy season (October 1 through April 30). In months receiving no precipitation resulting in a discharge to receiving waters, no report will be required.

C. MITIGATION

1. Mitigation for permanent impacts to 0.74 acres of jurisdictional Waters of the U.S. (5,558 linear feet of ephemeral streambed and 0.05 acre of wetland Waters of the U.S.) will be achieved at a 3.3:1 ratio, by the restoration of 2.4 acres of riparian habitat, and the removal of 0.2 acre of eucalyptus trees at the headwaters of Agua Hedionda Creek.).05 acre of wetland will be created onsite to ensure "no net loss" of wetlands.

2. Mitigation for temporary impacts to 0.06 acres of jurisdictional waters of the U.S. will be achieved at a 1:1 ratio, by the restoration of all temporary impacts to pre-existing topography and vegetative condition.

3. Mitigation activities shall be conducted in accordance with the October 2005 *Draft San Marcos Highlands Habitat Mitigation and Monitoring/Water Quality Management Plan.* Any changes in mitigation ratios or acreage in the final HMMP/WQMP will require the approval of the SDRWQCB.

4. The enhancement of an additional 2.3 acres of riparian habitat in the "panhandle" portion of the project site will occur, as described in the draft mitigation plan, but will not be counted as mitigation credit due to pre-existing utility easements on that section of Agua Hedionda Creek. If, at a later date, it becomes possible to place any of this area under a conservation easement, KB Homes shall do so in accordance with the requirements contained in Condition C.5.

5. Within 90 days of the issuance of this certification, KB Home shall provide a draft preservation mechanism (e.g. deed restriction, conservation easement, etc.) that will protect <u>all</u> preserved jurisdictional Waters of the U.S./State, mitigation areas and their buffers in perpetuity. The conservation easement or other legal limitation on the mitigation property shall be adequate to demonstrate that the site will be maintained without future development or encroachment on the site or which could otherwise reduce the functions and values of the site for the variety of beneficial uses of waters of the U.S./State that it supports. The conservation easement or other appropriate legal limitation shall prohibit, without exception, all residential, commercial, industrial, institutional, and transportation development, and any other infrastructure development that would not maintain or enhance the wetland functions and values of the site. Other infrastructure development to be prohibited includes, but is not limited to, additional utility lines, paved maintenance roads, and areas of maintained landscaping for recreation. KB Home shall submit proof of a completed preservation mechanism within <u>one year</u> of issuance of this certification.

5. The Final Wetlands Mitigation and Monitoring Plan shall be consistent with the October 2005, *Draft San Marcos Highlands Habitat Mitigation and Monitoring/Water Quality*

Management Plan. (prepared by PCR), and shall achieve the following performance standards:

a. Created, enhanced, and restored wetlands that are installed to compensate for impacts to jurisdictional wetland areas must posses the three criteria (wetland hydrology, hydrophytic vegetation, and hydric soils) necessary to be delineated as a Corps jurisdictional area;
b. All mitigation areas shall be maintained 95 percent free of exotic/nonnative plant species;
c. All mitigation areas must be self-sustaining; and
d. All mitigation areas must exhibit evidence of natural recruitment of native wetland and/or riparian species.

6. Implementation of mitigation shall provide the following functional gains:

a. Habitat function - Creation of structurally and spatially diverse habitat surrounding riparian areas will provide nesting and foraging grounds for birds, amphibians, and other wildlife.
b. Biogeochemical/water quality functions - Restoration of wetland/riparian areas shall increase areas for natural water quality functions, such as microbial action that removes toxins, nitrogen, and other nutrients from runoff.
c. Hydrologic functions - Restoration of wetland/riparian areas will allow greater flood flow attenuation, energy dissipation, and storage during storm events.

7. The Final Wetlands Mitigation and Monitoring Plan shall include construction plans and specifications that include, but are not limited to, the following:

a. Proposed channel designs and earthwork for all mitigation areas, including appropriate cross sections and plan views;
b. A detailed planting plan, including species lists, plant sizes and numbers, and planting designs;
c. Detailed implementations schedule, including but not limited to, dates for initiation and completion of mitigation installation at different on-site and off-site mitigation areas, recordation of conservation easements; initiation of monitoring period; reporting dates, etc.;
d. An irrigation plan;
e. Signage and barrier designs adequate to prevent intrusion into mitigation areas and creek buffer zones;
f. Specific details regarding hydrologic and biogeochemical monitoring, including function-based performance standards, sample locations, periodicity, and qualitative and quantitative indicators; and
g. All other information, as appropriate.

8. The construction of proposed mitigation shall be completed within the same calendar year as impacts occur, or at least no later than 9 months following the close of the calendar year in which impacts first occur (e.g., if impacts occur in June 2007, construction of mitigation for all impacts must be completed no later than September 2008).

9. Mitigation areas shall be maintained free of perennial exotic plant species including, but not limited to, pampas grass, giant reed, tamarisk, sweet fennel, tree tobacco, castor bean, and pepper tree. Annual exotic plant species shall not occupy more than 5 percent of the onsite or offsite mitigation areas.

6. If at any time during the implementation and establishment of the mitigation area(s), and prior to verification of meeting success criteria, a catastrophic natural event (e.g., fire, flood) occurs and impacts the mitigation area, KB Home shall be responsible for repair and replanting of the damaged area(s).

7. Mitigation monitoring reports shall be submitted annually until mitigation has been deemed successful. Monitoring reports shall be submitted no later than 30 days following the end of the monitoring period. Monitoring reports shall include, but not be limited to, the following:

    a) Names, qualifications, and affiliations of the persons contributing to the report;
    b) Tables presenting the raw data collected in the field as well as analyses of the physical and biological data;
    c) Qualitative and quantitative comparisons of current mitigation conditions with pre-construction conditions and previous mitigation monitoring results;
    d) Photodocumentation from established reference points;
    e) Survey report documenting boundaries of mitigation area; and
    f) Other items specified in the draft and final Wetland and Riparian Mitigation and Monitoring Plan.

8. For purposes of this certification, creation is defined as the creation of vegetated or unvegetated waters of the U.S. where they have never been documented or known to occur (e.g., conversion of nonnative grassland to freshwater marsh). Restoration is defined as the creation of waters of the U.S. where they previously occurred (e.g., removal of fill material to restore a drainage). Enhancement is defined as modifying existing waters of the U.S. to enhance functions and values (e.g., removal of exotic plant species from jurisdictional areas and replacing with native species).

9. A qualified biological monitor shall be present at all pre-construction and pre-grading meetings and shall be onsite during all vegetation removal, grading, or filling of any drainage on the project site. Furthermore, the biological monitor shall be present when grading is conducted within 100 feet of any drainage on the property.

D. POST CONSTRUCTION STORM WATER MANAGEMENT

1. All storm drain inlet structures within the project boundaries shall be stamped and/or stenciled with appropriate language prohibiting non-storm water discharges.

2. Post-construction stormwater treatment BMPs that will be implemented to treat and control urban and storm water runoff from the San Marcos Highlands project shall include one vegetated water quality extended detention basin, and 48 drain inlet filter units (Kristar Flo-Gard Plus or equivalent) as proposed in the August 18, 2005, *Storm Water Management Plan for San Marcos Highlands* (prepared by Hunsaker and Associates). The treatment BMPs will be sized in accordance with the volume and flow based sizing criteria contained within the September 2004, *City of San Marcos, Storm Water Standards Manual.*

3. KB Home shall vegetate the proposed water quality basin with native drought tolerant vegetation (e.g., *Distichilis* sp.). The vegetated extended detention basin shall be soft-sided and soft-bottomed. No riprap shall line the bottom of the basin.

4. Maintenance of the vegetated first-flush extended detention basin will be triggered when one foot or more of sediment has accumulated. When cleaned out, the basin should be over-excavated by at least half a foot to extend the interval between necessary maintenance and no more than 50 percent of the vegetation shall be removed during maintenance activities.

5. No low-flow channel, or other structure that would compromise the water purification functions of the basin, shall be constructed in the proposed detention basin.

6. KB Home will be responsible for the proper installation, inspection and maintenance of the structural treatment BMPs implemented onsite (water quality basin, inlet filters), until such a time that the Homeowners Association (HOA) formed for the development has assumed the responsibility, and secured sufficient funding for the inspection and maintenance of the post construction BMPs in perpetuity.

7. KB Home shall, prior to the HOA assuming responsibility for the perpetual maintenance of the post construction treatment BMPs, provide the SDRWQCB with a report providing:

    a. Documentation of the as-built status of the post construction BMPs implemented on site (including photographs).
    b. Copies of the CC&R's for the HOA pertaining to the maintenance of the post construction BMPs implemented on-site.
    c. The name and contact information for the person(s) or entity responsible for inspection and maintenance of the post construction BMPs in perpetuity.
    d. Copies of BMP Maintenance Agreements with Easement and Covenant as outlined in Chapter 10 of the Storm Water Management Plan.

8. All HOA maintained landscaped areas will include rain shutoff devices to prevent irrigation during and after precipitation events. Flow reducers and shutoff valves triggered by pressure drop will be used to control water loss from broken sprinkler heads or lines.

E. RECEIVING WATER QUALITY MONITORING

1. KB Home shall develop and implement a five-year Receiving Waters Monitoring Program in Agua Hedionda Creek to evaluate potential project impacts to the Agua Hedionda Creek watershed for pollutants/stressors contained in the SWRCB's 2002 Monitoring List for Agua Hedionda Creek. The Receiving Waters Monitoring Program shall be developed and submitted to the Regional Board for acceptance prior to impacts to jurisdictional areas. At a minimum, the Monitoring Program shall assess changes in nutrients, pesticides, and benthic community in Agua Hedionda Creek.

2. KB Home, or their designated responsible party shall perform water quality sampling and analysis for nitrogen and phosphorous nutrients (NH3, NO3-N, No2-N, TKN, ortho phosphorous and Total Phosphorous), diazinon, and physicochemical constituents (pH, temperature, electrical conductance, dissolved oxygen). At a minimum, sampling will be conducted monthly for the first year, and quarterly thereafter. Samples shall be taken upstream of the development, and immediately downstream of the last point of discharge from the project.

3. Where procedures are not otherwise specified for the Receiving Water Quality Monitoring Program, sampling, analysis, and quality assurance/ quality control must be conducted in accordance with the Quality Assurance Program Plan (QAPP) for the State of California's Surface Water Ambient Monitoring Program, adopted by the State Water Resources Control Board (SWRCB).[1]

3. The five-year receiving water quality monitoring will begin concurrently with the habitat mitigation program pursuant to Condition C.5of this certification. The receiving water quality data and analysis shall be submitted as part of the required habitat mitigation monitoring reports pursuant to Condition C.5 of this certification.

F. REPORTING

1. All information requested in this Certification is pursuant to California Water Code (CWC) section 13267. Civil liability may be administratively imposed by the Regional Board for failure to furnish requested information pursuant to CWC section 13268.

2. All applications, reports, or information submitted to the Regional Board shall be signed and certified as follows:

[1] The QAPP can be downloaded from the SWRCB web page at http://www.swrcb.ca.gov/swamp/docs/swamp_qapp.pdf.

"I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

3. KB Home shall submit reports required under this certification, or other information required by the Regional Board, to:

   Executive Officer
   California Regional Water Quality Control Board
   San Diego Region
   Attn: 401 Certification; File No 02C-144
   9174 Sky Park Court, Suite 100
   San Diego, California 92123

PUBLIC NOTIFICATION OF PROJECT APPLICATION:

On January 6, 2003, receipt of the initial project application was posted on the SDRWQCB web site to serve as appropriate notification to the public.

REGIONAL WATER QUALITY CONTROL BOARD CONTACT PERSON:

Christopher Means
California Regional Water Quality Control Board, San Diego Region
9174 Sky Park Court, Suite 100
San Diego, CA 92123
858-637-5581
cmeans@waterboards.ca.gov

WATER QUALITY CERTIFICATION:

I hereby certify that the proposed discharge from the San Marcos Highlands project (File No. 02C-144) will comply with the applicable provisions of sections 301 ("Effluent Limitations"), 302 ("Water Quality Related Effluent Limitations"), 303 ("Water Quality Standards and Implementation Plans"), 306 ("National Standards of Performance"), and 307 ("Toxic and Pretreatment Effluent Standards") of the Clean Water Act. This discharge is also regulated under California Regional Water Quality Control Board, San Diego Region, Waiver of Waste Discharge Requirements (Waiver Policy) No. 17. Please note that this waiver is conditional and, should new information come to our attention that indicates a water quality problem, the regional Board may issue waste discharge requirements at that time.

Except insofar as may be modified by any preceding conditions, all certification actions are contingent on (a) the discharge being limited and all proposed mitigation being completed in strict compliance with the applicants' project description and/or on the attached Project Information Sheet, and (b) on compliance with all applicable requirements of the Regional Water Quality Control Board's Water Quality Control Plan (Basin Plan).

_____ _____

John H. Robertus
Executive Officer
Regional Water Quality Control Board

Date

Attachments:

1. Project Information
2. Distribution List
3. Location Map
4. Site Map
5. Mitigation Map

ATTACHMENT 1
PROJECT INFORMATION

Applicant:	Mr. David Shepherd KB Home 12235 El Camino Real, Suite 100 San Diego, CA 92130
Applicant Representatives:	Ms. Susan Erickson PCR Services Corporation One Venture, Suite 150 Irvine, CA 92618
Project Name:	San Marcos Highlands
Project Location:	The San Marcos Highlands project is located partly in the City of San Marcos (southern portion of the site) and partly in unincorporated San Diego County. The project is located north of Highway 78, west of Twin Oaks Valley Road, and south of Buena Creek Road. The property can be found on the U.S. Geological Survey 7.5-minuteSan Marcos quadrangle Sections 34 & 35, T.11S., R.3W.
Type of Project:	Residential housing project
Project Description:	The project consists of the subdivision of approximately 80 acres into 191 single family lots into 191 single family lots, including associated fuel modification zones, graded slopes, minor roads, 4.7 acres for the extension of Las Posas Road and 1 acre for a active use park. Approximately 123.1 acres will be left as open space.
Federal Agency/Permit:	U.S. Army Corps of Engineers Individual 404 permit
Other Required Regulatory Approvals:	California Department of Fish & Game Streambed Alteration Agreement
California Environmental Quality Act (CEQA) Compliance:	The City of San Marcos certified the Environmental Impact Report for the project on July 10, 2002.
Receiving Water:	Agua Hedionda Creek
Impacted Waters of the United States:	The proposed project will result in permanent impacts to 0.74 acres of jurisdictional non-wetland Waters of the U.S.(5,558 linear feet of ephemeral streambed, of which 0.05-acre are wetland Waters of the U.S.)

	The proposed project will also result in temporary impacts to 0.06 acre of jurisdictional waters of the U.S.
Dredge Volume:	N/A
Related Projects Implemented/to be Implemented by the Applicant(s):	none
Compensatory Mitigation:	Mitigation for permanent impacts to 0.74 acres of jurisdictional Waters of the U.S. (5,558 linear feet of ephemeral streambed and 0.05 acre of wetland Waters of the U.S.) will be achieved at a 3.3:1 ratio, by the restoration of 2.4 acres of riparian habitat, and the removal of 0.2 acre of eucalyptus trees at the headwaters of Agua Hedionda Creek.).05 acres of wetland will be created to ensure "no net loss" of wetlands from the proposed project. Mitigation for temporary impacts to 0.06 acres of jurisdictional waters of the U.S. will be achieved at a 1:1 ratio, by the restoration of all temporary impacts to pre-existing topography and vegetative condition. The proposed mitigation will replace a historic earthen dam and pond at the headwaters of Agua Hedionda Creek. The existing pond currently receives all the low flow that comes down the creek, and the earthen dam cuts off hydrologic input to downstream reaches of the stream. The proposed mitigation would restore and enhance the main-stem of the creek and provide flows unimpeded to downstream area of the creek.
Best Management Practices:	During construction, this project will comply with the BMP requirements stipulated in the State Water Resources Control Board Order No. 99-08-DWQ, the NPDES General Permit for Storm Water Discharges Associated with Construction Activity. Post-construction BMPs will be implemented to treat urban runoff generated from the project. Specific BMPs will include: • 1 permanent vegetated water quality basin. • 48 drain inlet filters treating the areas not being served by the permanent water quality basins.
Public Notice:	On January 6, 2003, receipt of the initial project application was posted on the SDRWQCB web site to serve as appropriate notification to the public.

Fees: Total Due: $4500.00
Total Paid (check No. 05301981, 05299468, 05300991): $4,500.00

ATTACHMENT 2
DISTRIBUTION LIST

Mr. Robert Smith
U.S. Army Corps of Engineers
Regulatory Branch
16885 W. Bernardo Dr., Suite 300 A
San Diego, CA 92127
(858) 674-5388 (fax)

Ms. Janet Stuckrath
U.S. Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, CA 92009

Ms. Tamara Spear
California Department of Fish & Game
4949 Viewridge Avenue
San Diego, CA 92123

Ms. Susan Erickson
PCR Services Corporation
One Venture, Suite 150
Irvine, CA 92618

Ms. Stephanie Gasca
PCR Services Corporation
One Venture, Suite 150
Irvine, CA 92618

Ms. Lynne Baker, Esq.
13626 Orchard Gate Road
Poway, CA 92064

Ms. Sandra Farrell
Friends of Hedionda Creek
1900 Esplendido Ave
Vista, CA 92084

State Water Resources Control Board
Division of Water Quality

CDFW SAA (1600-2015-0122-R5)

California Department of Fish and Wildlife (CDFW) Streambed Alteration Agreement (SAA) 1600-2015-0122-R5, 2015

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE
SOUTH COAST REGION
3883 RUFFIN ROAD
SAN DIEGO, CALIFORNIA 92123

STREAMBED ALTERATION AGREEMENT
NOTIFICATION NO. 1600-2015-0122-R5
AGUA HEDIONDA CREEK AND TRIBUTARIES THERETO

DIVERSIFIED PROJECTS, INC.
SAN MARCOS HIGHLANDS

This Streambed Alteration Agreement (Agreement) is entered into between the California Department of Fish and Wildlife (CDFW) and Diversified Projects, Inc. (Permittee) as represented by Farouk Kubba.

RECITALS

WHEREAS, pursuant to Fish and Game Code (FGC) section 1602, Permittee notified CDFW on July 17, 2015, that Permittee intends to complete the project described herein.

WHEREAS, pursuant to FGC section 1603, CDFW has determined that the project could substantially adversely affect existing fish or wildlife resources and has included measures in the Agreement necessary to protect those resources.

WHEREAS, Permittee has reviewed the Agreement and accepts its terms and conditions, including the measures to protect fish and wildlife resources.

NOW THEREFORE, Permittee agrees to complete the project in accordance with the Agreement.

PROJECT LOCATION

The project is located within the bed, channel, and bank of Agua Hedionda Creek and four unnamed tributaries thereto, north of Highway 78, west of Twin Oaks Valley Road, and south of Buena Creek Road, in the City of San Marcos, County of San Diego, State of California; Latitude 33° 10' 17.09" N, Longitude 117° 11' 2.41" W; U.S. Geological Survey (USGS) map San Marcos quadrangle, Section 34, Township 11 South, Range 3 West, SBM; Calwater 4904.320000; Assessor's Parcel Numbers 184-101-14, 184-102-18, 184-240-15, -32, and -33, and 184-241-05, -06, -07, and -08.

PROJECT DESCRIPTION

The San Marcos Highlands Development Project requires several ephemeral stream segments located within the project site be filled using native material, and permanently culverted below ground, to facilitate construction of the proposed project. Project activities occurring within Agua Hedionda Creek include the removal and rebuilding of

an existing earthen dam/road crossing over the Creek, along with impacts to be incurred by the proposed alignment of Las Posas Road. An arch culvert sized approximately 10 feet high, 12 feet wide, and 159 feet long will be constructed over the Creek where the existing dam is located and will serve to allow water flow and movement of wildlife. Grading and reconstruction of natural stream contours will occur within Agua Hedionda Creek as a component of the compensatory mitigation. The project will result in permanent impacts to approximately 5,588 linear feet of streambed, totaling no more than 1.22 acres.

PROJECT IMPACTS

Existing fish or wildlife resources the project could substantially adversely affect include: REPTILES - common side-blotched lizard *(Uta stansburiana)*, western fence lizard (*Sceloporus occidentalis*), gopher snake (*Pituophis melanoleucus*); BIRDS - turkey vulture *(Cathartes aura)*, red-tailed hawk *(Buteo jamaicensis)*, California quail *(Callipepla californica)*, mourning dove *(Zenaida macroura)*, Anna's hummingbird *(Calypte anna)*, Nuttall's woodpecker *(Picoides nuttallii)*, western kingbird *(Tyrannus verticalis)*, western scrub-jay (*Aphelocoma californica*), common raven *(Corvus corax)*, American crow *(Corvus brachyrhynchos)*, bushtit *(Psaltriparus minimus)*, coastal California gnatcatcher *(Polioptila californica californica)*, wrentit *(Chamaea fasciata)*, California thrasher *(Toxostoma redivivum)*, spotted towhee *(Pipilo maculates)*, California towhee *(Pipilo crissalis)*, lesser goldfinch *(Carduelis psaltria)*, house finch *(Carpodacus mexicanus)*; MAMMALS - desert cottontail *(Sylvilagus audubonii)*, California ground squirrel *(Spermophilus beecheyi)*, Botta's pocket gopher *(Thomomys bottae)*, dusky-footed woodrat *(Neotoma fuscipes)*, coyote *(Canis latrans)*; riparian vegetation which provides habitat for those species, and all other aquatic and wildlife resources in the project vicinity.

The adverse effects the project could have on the fish or wildlife resources identified above include: loss of natural bed or bank; change in sediment transport; increased turbidity; short-term release of contaminants (e.g., incidental from construction); disruption to nesting birds and other wildlife; direct take of terrestrial species; disturbance from project activity; and loss of 5,588 linear feet of streambed.

MEASURES TO PROTECT FISH AND WILDLIFE RESOURCES

1. Administrative Measures

Permittee shall meet each administrative requirement described below.

1.1 Documentation at Project Site. Permittee shall make the Agreement, any extensions and amendments to the Agreement, and all related notification materials and California Environmental Quality Act (CEQA) documents, readily available at the project site at all times and shall be presented to CDFW personnel, or personnel from another state, federal, or local agency upon request.

1.2 Providing Agreement to Persons at Project Site. Permittee shall provide copies of the Agreement and any extensions and amendments to the Agreement to all persons who will be working on the project at the project site on behalf of Permittee, including but not limited to contractors, subcontractors, inspectors, and monitors.

1.3 Notification of Conflicting Provisions. Permittee shall notify CDFW if Permittee determines or learns that a provision in the Agreement might conflict with a provision imposed on the project by another local, state, or federal agency. In that event, CDFW shall contact Permittee to resolve any conflict.

1.4 Project Site Entry. Permittee agrees that CDFW personnel may enter the project site at any time to verify compliance with the Agreement.

1.5 Notification Prior to Work. Permittee shall notify CDFW, in writing, at least 5 days prior to initiation of construction (project) activities and at least 5 days prior to completion of construction (project) activities, each time project activities occur. Notification shall be sent to CDFW's South Coast Office at the address above, ATTN: Streambed Alteration Program – SAA # 1600-2015-0122-R5 or to R5LSACompliance@wildlife.ca.gov.

2. Avoidance and Minimization Measures

To avoid or minimize adverse impacts to fish and wildlife resources identified above, Permittee shall implement each measure listed below.

2.1 Seasonal Restrictions - Vegetation Removal. Permittee shall not remove vegetation within the stream from February 15 to September 1 to avoid impacts to nesting birds. However, Permittee may remove vegetation during this time if a qualified biologist conducts a survey for nesting birds within 1 week of the vegetation removal, and ensures no nesting birds shall be impacted by the project. If nesting birds are present, no work shall occur until the young have fledged and will no longer be impacted by the project.

2.2 On-site Biologist with Stopwork Authorization. Permittee shall have a qualified biologist on site weekly during project activity to ensure that Agreement conditions are being met and minimize impacts to fish and wildlife habitat. The biologist shall be authorized to stop construction if necessary to protect fish and wildlife resources.

2.3 Work Area Boundary. Work area boundaries shall be delineated by posting signs, staking, flagging, erecting temporary fencing, or otherwise clearly marking to minimize surface and vegetation disturbance. No paint or permanent discoloring agents shall be applied to rocks or vegetation to indicate limits of survey or

construction activity where any sensitive biological resources occur. All temporary fencing and flagging shall be removed at the conclusion of construction activities.

2.4 Protected Species. This Agreement does not authorize take, incidental or otherwise, of any protected species. For the purpose of this Agreement, "protected species" means the following: a species fully protected under state law; a species listed under the California Endangered Species Act (Fish & G. Code § 2050 et seq.) and/or Endangered Species Act (16 U.S.C. § 1531 et seq.); a species identified by CDFW as a species of special concern; or any other species for which take is prohibited under state or federal law. No direct or indirect impacts shall occur to any protected species, except as may be authorized by a Natural Community Conservation Plan or one or more individual permits that authorize such impacts.

2.5 Leave Wildlife Unharmed. If any wildlife is encountered during the course of construction, said wildlife shall be allowed to leave the construction area unharmed.

2.6 Stream Diversion. When work in a flowing stream is unavoidable, Permittee shall divert the stream flow around or through the work area during construction operations.

2.7 Culvert Alignment. Storm drains lines/culverts shall be adequately sized to carry peak storm flows for the drainage to one outfall structure. The storm drain lines/culverts and the outfall structure shall be properly aligned within the stream and otherwise engineered, installed and maintained, to assure resistance to washout, and to erosion of the stream bed, stream banks and/or fill. Water velocity shall be dissipated at the outfall, to reduce erosion.

2.8 Impairment of Water Flow. Installation of bridges, culverts, or other structures shall be such that water flow is not impaired. Bottoms of temporary culverts shall be placed at stream channel grade and bottoms of permanent culverts shall be placed at or below stream channel grade.

2.9 Authorized Structures. This Agreement does not authorize the construction of any temporary or permanent dam, structure, flow restriction or fill except as described in Permittee's notification.

2.10 Runoff from Steep Areas. Preparation shall be made so that runoff from steep, erodible surfaces will be diverted into stable areas with little erosion potential. Frequent water checks shall be placed on dirt roads, cat tracks, or other work trails to control erosion.

2.11 Erosion Control Measures. Erosion control measures shall be utilized throughout all phases of operation where sediment runoff from exposed slopes threatens to

enter waters of the State. At no time shall silt laden runoff be allowed to enter the stream or directed to where it may enter the stream.

2.12 Operating Equipment and Vehicle Leaks. Any equipment or vehicles driven and/or operated within or adjacent to the stream shall be checked and maintained daily, to prevent leaks of materials that if introduced to water could be deleterious to aquatic life. Permittee shall maintain all vehicles and equipment in proper working condition to minimize fugitive emissions and accidental spills from motor oil, antifreeze, hydraulic fluid, grease, or other fluids or hazardous materials. All fuel or hazardous waste leaks, spills, or releases shall be stopped or repaired immediately and cleaned up at the time of occurrence. Permittee shall be responsible for spill material removal and disposal to an approved offsite landfill and spill reporting to the permitting agencies. Construction equipment shall be stored at designated areas only. Service/maintenance vehicles shall carry appropriate equipment and materials to isolate and remediate leaks or spills. A spill containment kit shall be available onsite for all fueling, maintenance, and construction activities.

2.13 Stationary Equipment. Stationary equipment such as motors, pumps, generators, and welders, located within or adjacent to the stream shall be positioned over drip pans. Stationary heavy equipment shall have suitable containment to handle a catastrophic spill/leak.

2.14 Litter and Pollution Control. Permittee shall comply with all litter and pollution laws. All contractors, subcontractors, and employees shall also obey these laws and it shall be the responsibility of Permittee to ensure compliance.

2.15 Stockpiled Materials. Building materials and/or construction equipment shall not be stockpiled or stored where they may be washed into the water or cover aquatic or riparian vegetation.

2.16 Hazardous Materials. Debris, soil, silt, bark, slash, sawdust, rubbish, creosote-treated wood, raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, wildlife, or riparian habitat resulting from the project related activities shall be prevented from contaminating the soil and/or entering the waters of the State.

2.17 Keep Polluted Water from Entering Stream Zone. Water containing mud, silt, or other pollutants for aggregate washing or other activities shall not be allowed to enter a flowing stream or placed in locations that may be subject to high storm flows.

3. Compensatory Measures

To compensate for adverse impacts to fish and wildlife resources identified above that cannot be avoided or minimized, Permittee shall implement each measure listed below.

3.1 Mitigation for Authorized Impacts. Permittee shall mitigate the impacts to approximately 5,588 linear feet of streambed, totaling no more than 1.22 acres, as described in the *San Marcos Highlands Habitat Mitigation and Monitoring Plan*, revised by William T. Everett, Everett and Associates and dated April 2013 and as follows. Native riparian vegetation shall be established in Aqua Hedionda Creek in zones currently occupied by an artificial pond and by large patches of exotic or ruderal vegetation. Mitigation activities shall consist of 2.6 acres riparian restoration, 1.0 acre riparian enhancement, and 1.1 acre eucalyptus removal. Included within the eucalyptus removal area will be 0.05 acre wetland creation. The 4.7 acres of restoration and enhancement, along with an additional 2.9 acres of existing southern willow scrub, shall be protected in perpetuity through recordation of a conservation easement.

3.2 Additional Enhancement Activities. In addition to the 7.6 acres that will be preserved under a conservation easement, Permittee proposes to conduct 2.3 acres of enhancement within an area occupied by several infrastructure easements which preclude the 2.3 acres from being preserved in perpetuity.

3.3 Time Restrictions and Consequences. All mitigation shall be installed within 9 months of project initiation. Any delay in the installation of mitigation will require an amendment to this Agreement and may result in the application of higher mitigation ratios than are currently required by this Agreement to offset the additional temporal loss of habitat function.

3.4 Success Criteria from Mitigation Plan. Unless other success criteria are agreed to in writing by CDFW, the mitigation site shall meet the success criteria detailed in 7.1 and 7.2 of the *San Marcos Highlands Habitat Mitigation and Monitoring Plan*, revised by William T. Everett, Everett and Associates and dated April 2013 ("Mitigation Plan").

Criteria from 7.1 of the Mitigation Plan include: wildlife use for 2 consecutive monitoring periods; recruitment of native species as indicated by flower/fruit production or presence of seedlings; and sustainability (no significant maintenance required for 2 consecutive years prior to release).

Criteria from 7.2 of the Mitigation Plan are a set of functional evaluations using qualitative observations and quantitative measurements to compare indicators of habitat, hydrology, and biogeochemistry at the mitigation site to a series of reference descriptions scaled from 0.0 (total failure) to 1.0 (complete success).

Mitigation will be judged successful if the site achieves a score of 0.8 or greater in 6 out of the following 7 categories:

Stream Geomorphology (0.8 = Stream channel carries water for extended periods during a typical rainy season.)

Flood-prone Area (0.8 = Site is part of a floodplain which provides an opportunity for overbank flow during moderate flow events. The site is slightly or moderately confined by obstructions or barriers; however the area available for overbank flow is equal to or greater than twice the width of the channel at bankfull conditions.)

Habitat – Vegetative Structure (0.8 = At least 2 strata are represented with each contributing at least 30 percent cover. Patches of unvegetated ground (other than the stream channel) are smaller than 400 square feet.)

Habitat – Vegetative Cover (0.8 = Cover of native riparian vegetation is 70 – 90 percent.)

Habitat – Vegetative Diversity (0.8 = There are 9 – 12 native riparian plant species.)

Percent Exotic, Invasive Vegetation (0.8 = 5 to 19 percent cover of exotic vegetation.)

Biogeochemistry – Detritus Cover (0.8 = Cover of woody debris, leaf litter, or detritus is between 30 and 50 percent.)

3.5 Additional Success Criteria. To ensure a successful revegetation effort, all plants shall be monitored and maintained as necessary for 5 years. At the completion of the monitoring period, the mitigation site shall have received no supplemental irrigation for a period of 2 consecutive years, and the site shall be free of invasive exotic plant species such as tamarisk.

3.6 Written Release from Monitoring Obligation. Permittee shall not be released from these maintenance and monitoring obligations until such time as Permittee has requested and received written concurrence from CDFW that the success criteria have been met.

4. Reporting Measures

Permittee shall meet each reporting requirement described below.

4.1 Mitigation Site As-Built Report. Permittee shall submit a report to CDFW within 90 days of completion of site preparation and planting, acknowledging the completion of the installation phase and documenting the as-built status of the mitigation

project. The report shall include a plan or map diagram showing the mitigation area and the final as-built locations of plantings, irrigation, and other installations. Photographs from representative vantage points shall also be included to document the final site conditions.

4.2 Annual Reports. Permittee shall submit an annual mitigation monitoring report to CDFW by January 1 of each year for 5 years after the mitigation installation. This report shall include an evaluation of the site as compared to the success criteria, the number by species of plants replaced, an overview of the revegetation effort, and the method used to assess these parameters. Photographs from designated photograph stations shall be included.

CONTACT INFORMATION

Any communication that Permittee or CDFW submits to the other shall be in writing and any communication or documentation shall be delivered to the address below by U.S. mail, fax, or email, or to such other address as Permittee or CDFW specifies by written notice to the other.

To Permittee:

Farouk Kubba
Diversified Projects, Inc.
7021 Leonard Street
Carlsbad, California 92011

To CDFW:

California Department of Fish and Wildlife
South Coast Region
3883 Ruffin Road
San Diego, California 92123
Attn: Lake and Streambed Alteration Program
Notification #1600-2015-0122-R5

LIABILITY

Permittee shall be solely liable for any violations of the Agreement, whether committed by Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents or contractors and subcontractors, to complete the project or any activity related to it that the Agreement authorizes.

This Agreement does not constitute CDFW's endorsement of, or require Permittee to proceed with the project. The decision to proceed with the project is Permittee's alone.

SUSPENSION AND REVOCATION

CDFW may suspend or revoke in its entirety the Agreement if it determines that Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, is not in compliance with the Agreement.

Before CDFW suspends or revokes the Agreement, it shall provide Permittee written notice by certified or registered mail that it intends to suspend or revoke. The notice shall state the reason(s) for the proposed suspension or revocation, provide Permittee an opportunity to correct any deficiency before CDFW suspends or revokes the Agreement, and include instructions to Permittee, if necessary, including but not limited to a directive to immediately cease the specific activity or activities that caused CDFW to issue the notice.

ENFORCEMENT

Nothing in the Agreement precludes CDFW from pursuing an enforcement action against Permittee instead of, or in addition to, suspending or revoking the Agreement.

Nothing in the Agreement limits or otherwise affects CDFW's enforcement authority or that of its enforcement personnel.

OTHER LEGAL OBLIGATIONS

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from obtaining any other permits or authorizations that might be required under other federal, state, or local laws or regulations before beginning the project or an activity related to it.

This Agreement does not relieve Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, from complying with other applicable statutes in the FGC including, but not limited to, FGC sections 2050 et seq. (threatened and endangered species), 3503 (bird nests and eggs), 3503.5 (birds of prey), 5650 (water pollution), 5652 (refuse disposal into water), 5901 (fish passage), 5937 (sufficient water for fish), and 5948 (obstruction of stream).

Nothing in the Agreement authorizes Permittee or any person acting on behalf of Permittee, including its officers, employees, representatives, agents, or contractors and subcontractors, to trespass.

AMENDMENT

CDFW may amend the Agreement at any time during its term if CDFW determines the amendment is necessary to protect an existing fish or wildlife resource.

Permittee may amend the Agreement at any time during its term, provided the amendment is mutually agreed to in writing by CDFW and Permittee. To request an amendment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the corresponding amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

TRANSFER AND ASSIGNMENT

This Agreement may not be transferred or assigned to another entity, and any purported transfer or assignment of the Agreement to another entity shall not be valid or effective, unless the transfer or assignment is requested by Permittee in writing, as specified below, and thereafter CDFW approves the transfer or assignment in writing.

The transfer or assignment of the Agreement to another entity shall constitute a minor amendment, and therefore to request a transfer or assignment, Permittee shall submit to CDFW a completed CDFW "Request to Amend Lake or Streambed Alteration" form and include with the completed form payment of the minor amendment fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5).

EXTENSIONS

In accordance with FGC section 1605(b), Permittee may request one extension of the Agreement, provided the request is made prior to the expiration of the Agreement's term. To request an extension, Permittee shall submit to CDFW a completed CDFW "Request to Extend Lake or Streambed Alteration" form and include with the completed form payment of the extension fee identified in CDFW's current fee schedule (see Cal. Code Regs., tit. 14, § 699.5). CDFW shall process the extension request in accordance with FGC 1605(b) through (e).

If Permittee fails to submit a request to extend the Agreement prior to its expiration, Permittee must submit a new notification and notification fee before beginning or continuing the project the Agreement covers (Fish & G. Code, § 1605, subd. (f)).

EFFECTIVE DATE

The Agreement becomes effective on the date of CDFW's signature, which shall be: 1) after Permittee's signature; 2) after CDFW complies with all applicable requirements under the California Environmental Quality Act (CEQA); and 3) after payment of the

applicable FGC section 711.4 filing fee listed at https://www.wildlife.ca.gov/Conservation/CEQA/Fees.

TERM

This Agreement shall expire on November 30, 2020, unless it is terminated or extended before then. All provisions in the Agreement shall remain in force throughout its term. Permittee shall remain responsible for implementing any provisions specified herein to protect fish and wildlife resources after the Agreement expires or is terminated, as FGC section 1605(a)(2) requires.

AUTHORITY

If the person signing the Agreement (signatory) is doing so as a representative of Permittee, the signatory hereby acknowledges that he or she is doing so on Permittee's behalf and represents and warrants that he or she has the authority to legally bind Permittee to the provisions herein.

AUTHORIZATION

This Agreement authorizes only the project described herein. If Permittee begins or completes a project different from the project the Agreement authorizes, Permittee may be subject to civil or criminal prosecution for failing to notify CDFW in accordance with FGC section 1602.

CONCURRENCE

The undersigned accepts and agrees to comply with all provisions contained herein.

FOR DIVERSIFIED PROJECTS, INC.

11/24/2015
Date

Name: FAROUK KUBBA

Title: President

FOR CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE

1/28/16
Date

Gail K. Sevrens
Environmental Program Manager

Prepared November 2, 2015, by Kelly Fisher, Environmental Scientist

USFWS BO (FWS Log No. 1-6-05-F-1668)

U.S. Fish and Wildlife Services (USFWS) Biological Opinion (BO)
FWS Log No. 1-6-05-F-1668, April 2005

CHRON FILE

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road
Carlsbad, California 92009

In Reply Refer To:
FWS-SDG-1668.7

Colonel Alex Dornstauder
District Engineer
U.S. Army Corps of Engineers, Los Angeles District
Regulatory Branch – San Diego Field Office
16885 West Bernardo Drive, Suite 300A
San Diego, California 92127

APR 08 2005

Attn: Robert Smith

Re: Biological Opinion on the San Marcos Highlands Project, City of San Marcos, San Diego County, California (Corps File No. 200100479-SKB, FWS Log No. 1-6-05-F-1668)

Dear Colonel Dornstauder:

This document transmits the U.S. Fish and Wildlife Service's (Service) biological opinion based on our review of the proposed San Marcos Highlands project, located within the City of San Marcos (City), San Diego County (County), California, and its effects on the coastal California gnatcatcher (*Polioptila californica californica*; gnatcatcher) in accordance with section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). We received the request for formal consultation, dated October 4, 2004, in our office on October 7, 2004. We responded with a letter dated November 3, 2004, requesting additional information and recommending that the consultation include the federally listed endangered least Bell's vireo (*Vireo bellii pusillus*; vireo). The additional information was received directly from PCR on November 19, 23, and 24, 2004. Therefore, formal consultation was initiated as of November 24, 2004.

Although this project is not located within designated critical habitat for the gnatcatcher, it is considered important habitat for the gnatcatcher and is included in the Biological Core and Linkage Area (BCLA) of the Multiple Habitat Conservation Program (MHCP) and the Pre-Approved Mitigation Area (PAMA) for the County's draft North County Multiple Species Conservation Program Plan (NC MSCP). The Composite Habitat Value map for the MHCP study area ranks the entire block of habitat on site as having very high habitat value (Figure 2-3, Final MHCP Plan, Volume I), as does the NC MSCP Habitat Evaluation Map. The project site includes the last, relatively undisturbed native vegetation in northwestern San Marcos, as well as

the headwaters of the Agua Hedionda Creek, and provides connectivity with undeveloped areas in the County that are important for the survival and recovery of the gnatcatcher. Although, the San Marcos Highlands project is designated as hard-lined in the City's draft Subarea Plan, the City's proposed preserve design has not been approved by the Service and the California Department of Fish and Game (Department) (collectively, Wildlife Agencies) and is subject to revision. In addition, the NC MSCP assumes 75 percent preservation of lands within the PAMA. Therefore, the San Marcos Highlands project, as proposed, is inconsistent with the NC MSCP because it will achieve only about 60 percent conservation (i.e., approximately 120.8 acres of the 203 acres of vegetation on site) and could negatively affect the County's NC MSCP as a result of habitat loss and constriction of a critical wildlife corridor.

Although the vireo has the potential to occur in the project area, we concur with your determination that the proposed project may affect but is not likely to adversely affect the vireo for the following reasons:

1) One vireo was detected during the final of eight protocol-level surveys conducted by PCR between April 21 and July 26, 2004 (PCR 2004a). This individual was probably a migrant since no other vireos were detected in the area prior to late July.

2) No vireos were detected during protocol-level surveys conducted in 1999 by URS (URS 2001) and 2002 by PCR (PCR 2002a).

3) No ground-disturbing activities or vegetation clearing will be conducted during the avian breeding season of February 15 and August 31.

4) Implementation of additional Conservation Measures within the project description section of this biological opinion will reduce the potential for adverse effects to the vireo.

Protocol-level surveys were conducted for the southwestern willow flycatcher (*Empidonax traillii extimus*; flycatcher) in 1999 by URS (URS 2001), and by PCR in 2002 and 2004 (PCR 2002b, 2004b). A single flycatcher was observed on the project site during the first survey in 2002, conducted May 17, 2002. The individual did not respond to taped vocalizations and no other sightings of flycatcher occurred. PCR concluded that this bird was a transient. The surveys were negative in 1999 and 2004. Therefore, flycatcher are assumed to be absent from the San Marcos Highlands property.

For the above reasons, development of the San Marcos Highlands project is not likely to adversely affect the vireo or flycatcher. However, these species are briefly referenced in the Effects section of this biological opinion. In addition, critical habitat for these species will not be affected because the San Marcos Highlands project is not located within designated or proposed critical habitat for the vireo.

This biological opinion is based on the information from the following sources: 1) the *Biological Assessment* prepared by PCR, dated June 2003; 2) the *Updated Application Attachment for the Proposed San Marcos Highlands Project* prepared by PCR, dated June 9, 2004 (2004c); 3) the *Updated Project Description for the Proposed San Marcos Highlands Project,* prepared by PCR, dated March 15, 2005; 4) the final MHCP Plan, dated March 2003; 5) the *MSCP North County Subarea Plan Working Draft and Surrounding Habitat Conservation Plans* map, version 2, dated January 27, 2003; and 6) information received during meetings and correspondence since 1990.

Consultation History

A complete administrative record of this consultation is on file at the Carlsbad Fish and Wildlife Office.

February 1990	On February 8, a site visit was arranged for representatives from the Service, the City, ERC Environmental and Energy Services Company (ERCE), and Consultants Collaborative. The purpose of the site visit was to discuss the project as described in the Draft Environmental Impact Report (DEIR), dated February 1990. We recommended that the project be redesigned and downscaled, and that the extension of Las Posas Road be relocated to the west of the wetland in order to allow the habitat to continue as a wildlife corridor and maintain connectivity on a regional basis.
April 1990	The Service submitted a comment letter, dated April 9, 1990, to the City of San Marcos (City) on the DEIR (Enclosure 1). We recommended that the Las Posas Road extension be located west of the existing pond and that crossings occur within the least environmentally damaging locations. The Service recommended that the project be redesigned to incorporate a natural open space configuration, which would allow the habitat to continue to be used by a wide diversity of wildlife and to provide connectivity to existing open areas to the north, south, and east of the proposed project. Measures were also recommended to offset impacts to coastal sage scrub from the project and associated fuel modification.
May to September 1990	Various correspondence and meetings among the consultants, the Service, and the City to discuss modifications to the Tentative Subdivision Map.
1991-1997	The Service was not contacted regarding the San Marcos Highlands project.
June 1998	We attended a meeting on June 3, 1998, with the City, the property owner, and various consultants. Issues discussed included permitting alternatives,

	proposed open space, wildlife corridor locations, and the Las Posas Road alignment.
July 1999	On July 20, the Service received, from the City, a Notice of Availability for a Negative Declaration for the San Marcos Highlands project, and on July 22, we received a Biological Resources Report, dated June 28, 1999.
August 5, 1999	The Wildlife Agencies submitted a joint letter to the City commenting on the draft Mitigated Negative Declaration (MND) (Enclosure 2). The Wildlife Agencies requested clarification of the location of the fuel modification zones, that the project be redesigned to provide a wildlife corridor through the development, and that the proposed culvert be large enough to be used by larger native mammals.
August 26, 1999	The Service attended a meeting with the City, Regional Water Quality Control Board (RWQCB), the Department, and the project consultants. Issues discussed included the need to maintain a wildlife corridor, compensation ratios for coastal sage scrub, relocation of Las Posas Road west of the wetlands, City trail requirements, and culvert size.
September 2, 1999	The Wildlife Agencies participated in a site visit with project consultants. The City's trail requirements, culverts, and linkage issues were discussed. The Service again explained the need to maintain north-south and east-west wildlife corridors.
December 9, 1999	The City sent a memorandum to the Service advising us that the project had been removed from the public hearing calendar in an effort to work with the Wildlife Agencies on the wildlife corridor concerns.
December 15, 1999	We received a letter from the property owner requesting the status of the Wildlife Agencies review of the revised Tentative Map.
January 2000	The Service received a letter and a map, dated January 25, 2000, from John Nabors, Real Estate Consultant, regarding revisions to widen the western wildlife corridor. The revised plan proposed a potential corridor for wildlife movement from the open space within the project to open areas located to the southeast and northwest. The Specific Plan Amendment proposed to reduce the number of residential lots from 296 to 238 lots. The revised plan included the relocation of three lots and a street in order to widen the north-south corridor along the western boundary of the property. The letter stated that the proposed wildlife corridor would generally be 500 feet wide. However, the majority of the habitat proposed as a wildlife corridor included private property and the San Diego County

	Water Authority aqueduct located off site to the west. The long-term status of the open space could not be guaranteed.
February 2000	A meeting was held on February 9, 2000, to discuss the wildlife corridor, trails, and the proposed alignment for Las Posas Road. Wetland issues (i.e., the buffer width and the redesign of the park) were also discussed. We recommended that the applicant look into the possibility of purchasing easements on land to the west of the project in order to provide a wildlife corridor. Attendees included the Service, the Department, the City, the property owner and his consultants.
March 2000	The Service attended a meeting on March 23, 2000, with the City, the property owner, and the consultants. Some of the issues discussed included the redesign of the park, the removal of a portion of the trail within the proposed open space, the termination of Las Posas Road at the northern project boundary, and wetland impacts. Permitting alternatives, compensation ratios, and corridor width were also discussed.
May 2000	The Service attended a meeting on May 9, 2000, with the property owner and his consultants to discuss compensation ratios, the trail, and permitting alternatives. The consultant advised the Service that acquiring easements on the land to the west of the project boundary was not workable.
June 2000	John Nabors sent a letter to the Service, dated June 8, 2000, outlining the efforts to acquire easements on the properties to the west and proposing a compensation ratio of 1.8:1 for coastal sage scrub.
November 2000	The Service received a letter from John Nabors, dated October 31, 2000, regarding a tentative agreement on compensation ratios and reflecting the loss of 15 lots along the western boundary of the project.
December 2000	The Wildlife Agencies sent a joint letter, dated December 5, 2000, to the property owner, Farouk Kubba, detailing unresolved issues raised by the Agencies in our California Environmental Quality Act (CEQA) review letter dated August 5, 1999, and making recommendations regarding: 1) wildlife corridor; 2) minimizing wetland impacts; 3) appropriate compensation ratios for coastal sage scrub; and 4) management of conserved lands.
January 17, 2001	The Service participated in a pre-application meeting with the Corps, the Department, RWQCB, the property owner and his consultants. We received a revised map from the consultants showing grading for Las Posas Road ending at the northern boundary of the project and a 12-foot

	wide trail through a park. A 10-foot wide paved trail with an adjacent 10-foot wide dirt trail was proposed for the western portion of the property. The proposed park was moved away from the pond and lots were removed from the western edge of the project to partially address concerns about a wildlife corridor. The consultants indicated that the southeastern development bubble could not be moved to abut existing development to the south due to topographical constraints.
January 22, 2001	We received the MND, dated January 22, 2001, and the Biological Resources Report, dated January 8, 2001, from the City. Due to workload, we did not submit comments.
February 2001	On February 15, 2001, The Service, Corps, Department, City, property owner, and consultant went on site to look at the pond. Issues discussed included vector control and potential for runoff from park flowing into Agua Hedionda Creek. It appeared that heavy equipment had been working at western end of the pond. Permitting options were also discussed.
April 2001	The City issued a Notice of Preparation of a Supplemental EIR, dated April 6, 2001, because of comments received on the MND.
September 2001	The Service received a fax, dated September 9, 2001, from P & D Consultants requesting information on requirements for a Habitat Loss Permit (HLP) exemption for geotechnical work. On September 12, 2001, the Service left a telephone message at P & D requesting additional information on the number of holes, timing, duration, and number of acres of each habitat disturbed.
October 22, 2001	The Service sent a fax, dated October 22, 2001, to the City explaining that because the property was occupied by gnatcatchers, the project was not eligible for a HLP exemption. We did not receive the information requested in our telephone message to P & D on September 12, 2001.
November 2001	We received a draft Supplemental EIR, Specific Plan Modification, and Tentative Subdivision Map from the City.
December 2001	The Service and Department submitted a joint comment letter, dated December 28, 2001, on the draft Supplemental EIR for the San Marcos Highlands project. Issues discussed included: culvert size; preserve design in relation to the NC MSCP, the City's draft MHCP Subarea Plan, and wildlife corridor location; the Natural Communities Conservation Program (NCCP) requirements for in-kind mitigation for the loss of

sensitive habitats; and measures to avoid and minimize impacts to the gnatcatcher.

January 9, 2002 — We received an application via fax to proceed with geotechnical borings on the San Marcos Highlands property. A hard copy was received by mail on January 14, 2002. The borings would impact 0.603 acre of intermediate quality, unoccupied coastal sage scrub habitat. Impacts and compensation would be addressed in the section 7 consultation with the Corps.

January 11, 2002 — The Service received a copy of a County of San Diego letter, dated January 4, 2002, to the City commenting on the Supplemental EIR. The letter outlined several issues that needed to be addressed before the project could proceed, including: 1) the Las Posas Road extension; 2) emergency access; 3) the project exceeded the County's planned dwelling unit density; 4) project impacts to a large block of habitat and a wildlife movement corridor; and 5) the project's inconsistency with the proposed NC MSCP.

January 15, 2002 — The Service attended a meeting with the Corps, the Department, KB Home, the property owner, and PCR and URS, the biological consultants. PCR recommended that the pond be removed and restored to a functional stream as compensation for wetland impacts. Discussion included: 1) culvert size; 2) additional impacts to coastal sage scrub as a result of removing dam; 3) wetland restoration; 4) potential extension of Las Posas Road north of project boundary; 5) feasibility of 500-foot wildlife corridor on property and potential measures to widen corridor. In addition, the Corps agreed to take jurisdiction over the whole project.

March 2002 — On March 5, 2002, the Service, the Department, the Corps, the City, the property owner, and KB Home and their consultants participated in a meeting. The discussion included wildlife corridor alternatives as well as the need to demonstrate that the project had minimized and mitigated to the maximum extent practicable for CEQA purposes. The Wildlife Agencies explained that they the project needed to be consistent with the City's MHCP draft Subarea Plan and that the project could not preclude planning efforts for the NC MSCP.

April 2002 — The Service received a copy of a letter, dated April 2, 2002, from the County to the City stating that the proposed project far exceeded the County's proposed dwelling unit density. Therefore, the project was in conflict with the existing County General Plan and would interfere with the outcome of the General Plan 2020 process. According to the County,

	the annexation of the lands to the City, along with the proposed development, was inconsistent with the proposed NC MSCP.
May 2002	The Service received a copy of the Responses to Comments on the draft Supplemental EIR, dated May 24, 2002, prepared by the Chambers Group, Inc. for the City.
June 2002	The Wildlife Agencies provided a letter, dated June 3, 2002, with recommendations and clarification to the City concerning the Response to Comments on the draft Supplemental EIR. We recommended that the City work with the County to ensure an adequate preserve design for the NC MSCP and clarified our position on compensation required through CEQA for impacts to coastal sage scrub and wetlands.
December 12, 2002	The Service received a letter, dated December 10, 2002, from the San Diego Local Agency Formation Commission (LAFCO) requesting comments on the proposed San Marcos Highlands Reorganization to annex the County portion of San Marcos Highlands to the City.
December 23, 2002	We received a Notice of Determination, dated July 10, 2002, from the City certifying the final EIR.
January 3, 2003	The Service received a copy of a letter from the County, dated December 31, 2002, to LAFCO commenting on the San Marcos Highlands Reorganization. The County stated that approval of the annexation would seriously impede the County's efforts for regional habitat planning and preservation because the land under consideration was a relatively large block of habitat that supported a sensitive species that was targeted for conservation under the County's NC MSCP. In addition, the proposed dwelling unit density far exceeded the density proposed by the County's General Plan 2020.
January 6, 2003	The Wildlife Agencies submitted a letter to LAFCO, dated January 6, 2003, detailing outstanding issues with the San Marcos Highlands project, including: 1) inadequacy of the preserve and wildlife corridor design, 2) wildlife undercrossings; and 3) the lack of appropriate measures to offset impacts consistent with CEQA requirements.
January 8, 2003	The Service received, via fax, a copy of a letter, dated December 31, 2002, from the Environmental Protection Agency (EPA) to LAFCO. The letter expressed EPA's concern that the proposed project would fragment the last large contiguous block of coastal sage scrub in northern San Marcos as well as result in direct impacts to aquatic resources.

January 14, 2003	The Twin Oaks Valley Community Sponsor Group sent the Service a copy of a letter to LAFCO, dated July 10, 2002, commenting on the proposed San Marcos Highlands Reorganization.
January 2004	The Service attended a meeting on January 21, 2004, with the Corps, RWQCB, KB Home, PCR, and Hunsacker & Associates. The EPA participated by telephone. Discussion included Las Posas Road, the proposed trail, and the need to minimize impacts along the creek. The EPA expressed concern about impacts to the headwaters of Agua Hedionda Creek and inadequate buffers. The Service recommended a 100-foot buffer between the riparian/wetland areas and the development footprint and stated that the MSCP required a 1,000-foot wide wildlife corridor be provided between areas of high value habitat. We recommended that KB Home contact the landowner to the north of the project site regarding the possibility of placing an easement over a portion of his property adjacent to the San Marcos Highlands project site. On January 28, 2004, we received, via electronic mail, a summary of issues addressed at the January 21, 2004, meeting.
August 2004	The Wildlife Agencies submitted a letter, dated August 24, 2004, to the City for consideration at the August 24, 2004, City Council Hearing. The letter addressed unresolved issues regarding the wildlife corridor, culvert size, and the approval of a new Tentative Parcel Map (TPM 616) incorporating an additional 61.8 acres to the east of the original TSM 408 and deleting 21.9 acres to the northwest.
September 10, 2004	The Service received updated survey reports, dated September 9, 2004, from PCR for the southwestern willow flycatcher (*Empidonax traillii extimus*), the vireo, and the southwestern pond turtle (*Clemmys marmorata pallida*).
September 13, 2004	We received a letter from KB Home, dated September 10, 2004, responding to our letter to the City Council, dated August 24, 2004.
October 6, 2004	At a meeting on October 6, 2004, with the Corps, the Department, RWQCB, KB Home, the property owner, PCR, and Hunsacker & Associates, we received a revised project map with an east-west wildlife corridor proposed along the northern boundary. The discussion also included the proposed acquisition of Parcel D as dedicated open space and the need for a minimum 500-foot wide corridor on site or through acquisition of easements off site.

October 7, 2004	The Service received a letter from the Corps, dated October 4, 2004, requesting the initiation of formal section 7 consultation on the gnatcatcher.
October 14, 2004	We received an aerial photo with redesign overlay and proposed corridor redesign option from Hunsacker & Associates.
November 3, 2004	In a letter to the Corps, the Service requested additional information needed to complete the initiation package for formal section 7 consultation. We requested an updated project description and additional information requested at the October 6, 2004, meeting. We also recommended that the vireo be included in the consultation.
November 19, 2004	We received a letter from PCR, dated November 18, 2004, with additional information on the revised wildlife corridor and proposed culverts. We also received a letter from PCR via electronic mail, dated November 19, 2004, with the revised project description. We received the hard copy of the revised project description from PCR on November 23, 2004.
November 23, 2004	Via electronic mail, we received a letter from PCR, dated November 23, 2004, with information on the status of the vireo observed on the project site. We received the hard copy of the vireo status letter from PCR on November 24, 2004.
December 9, 2004	The Service received revised information on the culverts and corridors in a letter from PCR, dated December 8, 2004.
December 16, 2004	In a letter to the Corps, dated December 16, 2004, the Service initiated formal section 7 consultation on the gnatcatcher and vireo as of November 24, 2004. In the letter, we indicated that there were still unresolved concerns regarding the adequacy of the proposed wildlife corridor and the extension of fuel modification zone into the proposed corridor.
March 2, 2005	The Service attended a meeting with the Corps, KB Home, the property owner, PCR, and other consultants to discuss measures to widen the proposed wildlife corridor along the northern project boundary. KB Home presented a proposal to acquire an easement on the property to the north to widen the corridor to a minimum 400 feet excluding the fuel modification zone. Several lots had been removed along the southwestern boundary as a result of the City indicating they would not be able to make a finding of substantial conformance with the existing CEQA document.

March 8, 2005 Via electronic mail from PCR, the Service received conservation measures proposed to reduce impacts to the gnatcatcher and vireo.

March 15, 2005 The Service received the revised project description and impact acreages from PCR via electronic mail. The revised project includes a minimum 400-foot wide wildlife corridor across the northern property boundary and the removal of additional lots along the western boundary.

Throughout the planning process for this project, the Service has received extensive comments and recommendations from local residents, the Friends of Agua Hedionda, and the Endangered Habitats League. These communications are included in the Administrative Record on file at the Carlsbad Fish and Wildlife Office.

BIOLOGICAL OPINION

DESCRIPTION OF THE PROPOSED ACTION

KB Home is seeking authorization from the U.S. Army Corps of Engineers (Corps) to impact 0.02 acre of Corps jurisdictional wetland and 0.69 acre of non-riparian Waters of the United States in connection with the development of approximately 80.0 acres into single-family lots, associated fuel-modification zones, graded slopes, minor roads, the extension of Las Posas Road, and an active-use park. In addition, approximately 123.1 acres will be left as open space, of which approximately 109.3 acres qualify as "natural open space," largely in the form of Diegan coastal sage scrub (CSS) habitat, and secondarily in the form of riparian habitat along Agua Hedionda Creek (the "Creek"). Natural open space will constitute approximately 53 percent of the site.

The San Marcos Highlands property is located in San Diego County, California (Figure 1, *Regional Map*). The approximately 203-acre property is partly in the City (southern portion; 113 acres) and partly in unincorporated County (northern portion). The property is north of State Route 78 (SR78), west of Twin Oaks Valley Road (S14), and south of Buena Creek Road (Figure 2, *Vicinity Map*). The property can be found on the United States Geological Survey (USGS) 7.5' San Marcos quadrangle in Sections 34 and 35, T. 11 S., R. 3 W., as shown in Figure 2. The UTM coordinates corresponding to the approximate center of the property are Zone 11N 483180m E and 3670140m N. The southern portion of the San Marcos Highlands property lies within the MHCP, and the northern portion is within the NC MSCP, which is currently in preparation. It is anticipated that the County portion of the project site will ultimately be included in the MHCP, if this portion of the property is annexed into the City.

The proposed development is medium-density, residential housing (Figure 3, *Proposed Development Plan and Wildlife Corridor*). Approximately 191 single-family homes are proposed. Lot sizes range from 4,000 sq. ft. to 42,200 sq. ft., with an average of 7,980 sq. ft.

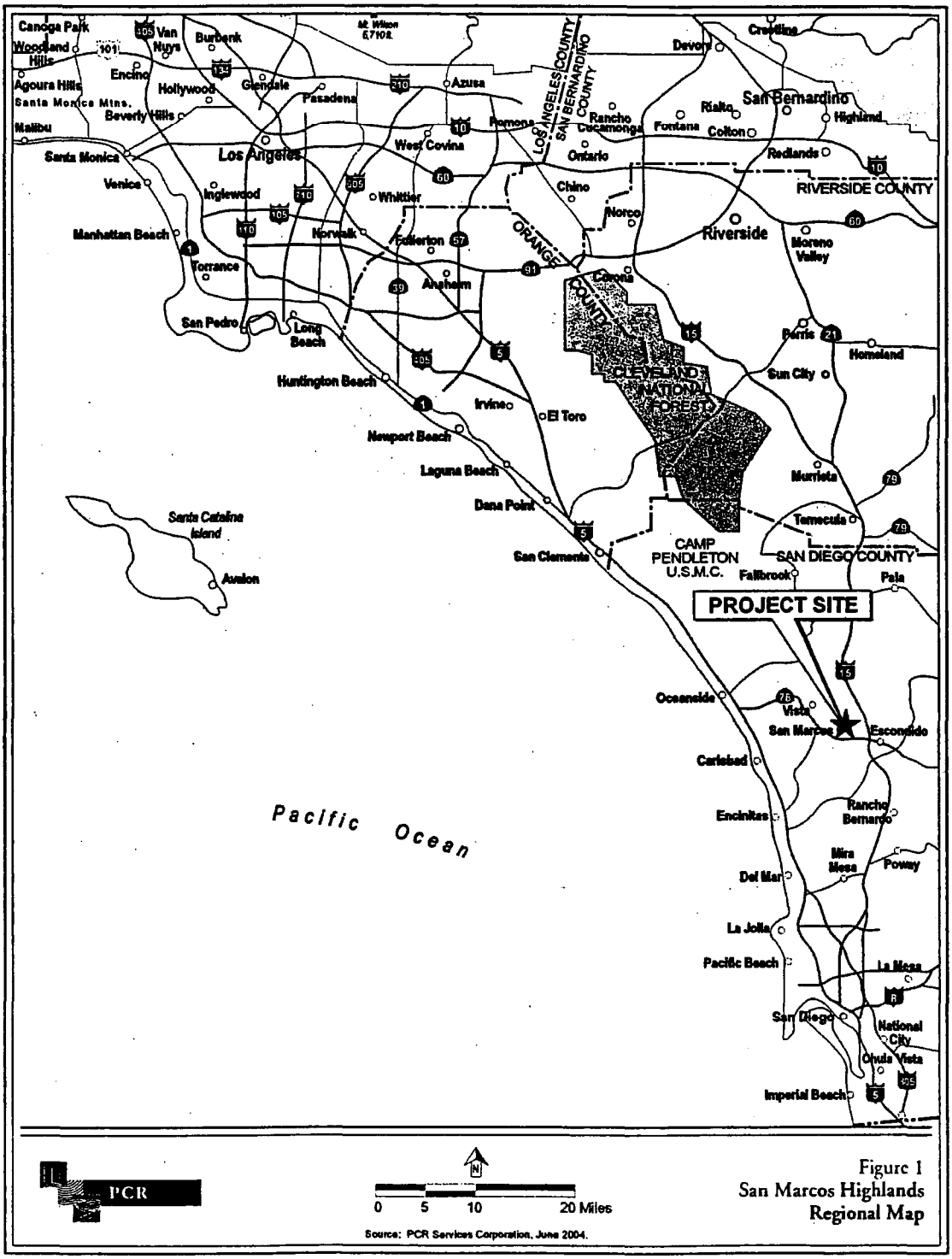


Figure 1
San Marcos Highlands
Regional Map

Figure 2
San Marcos Highlands
Vicinity Map

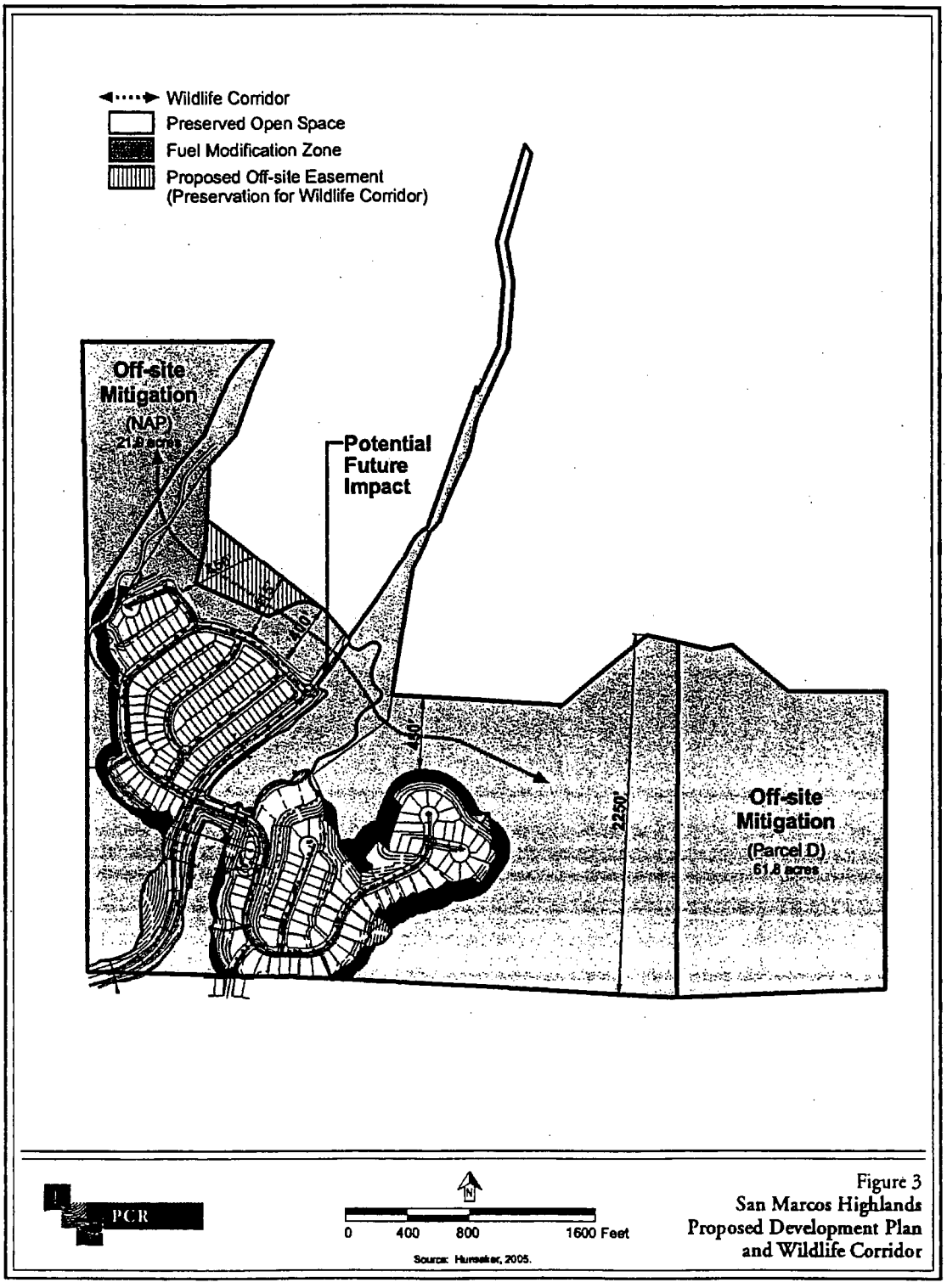


Figure 3
San Marcos Highlands
Proposed Development Plan
and Wildlife Corridor

Specifically, the three proposed minimum lot/pad sizes are 4,000 sq. ft., 5,000 sq. ft., and 5,500 sq. ft. However, lot sizes are generally larger due to fuel modification and other requirements. Residential housing and their immediate access roads will occupy approximately 68.5 acres of the 203-acre proposed project area. An additional 11.5 acres of fuel modification zones bring the total permanent project-related impacts to 80.0 acres. In support of these developments, Las Posas Road (equaling approximately 4.7 acres) will be extended and an approximately 1-acre active-use park will be established. The extension of Las Posas Road, beyond its proposed terminus at the northern property boundary, is not a part of the San Marcos Highlands development. The park will conform to City standards, will include a water feature/fountain (discussed below) and picnic areas, and may contain half basketball courts.

Grading plans require that a number of ephemeral stream segments located within the project site be filled using native material, and permanently culverted below ground, to facilitate construction of the project as proposed. Impacts to the Creek will occur during the removal and rebuilding of an existing earthen dam/road crossing over the Creek, and from the construction of the proposed alignment of Las Posas Road. The earthen dam in the Creek will be replaced with an 8-foot arched culvert and the streambed will be restored with riparian vegetation. The incorporation of the arched culvert is to facilitate movement of small and medium-sized mammals in the area, thus maintaining some north-south connectivity. Currently, the existing pond receives all the low flow that comes down the Creek. The earthen dam impounds the water and severely cuts off hydrologic input to downstream reaches of the stream. The proposed plan would restore flows, unimpeded down the length of the Creek on-site. The City is requiring a "water feature" within the project boundaries. Therefore, the proposed project includes a water feature within the proposed upland park. This water feature will flow into the water quality treatment basin prior to discharging into the Creek. Figure 4, *Impacts to Jurisdictional Waters & Wetlands and Sensitive Species*, shows the locations of Corps jurisdictional "waters of the U.S." within the project boundary.

The proposed east-west wildlife corridor along the northern property boundary would provide connectivity for wildlife between large expanses of open space to the northwest and southeast. The width of the corridor ranges from approximately 400 feet to 500 feet in width. The width at several points along the proposed corridor is indicated in Figure 3. In addition, the preservation and restoration of riparian and wetland habitat within the Creek (described below) would contribute to bird and small to medium-sized mammal movement up- and down-stream, as well as to the on-site open space to the east. The project design includes a requirement to minimize night lighting in the preserve, fencing of backyards, and a 6-foot-high block wall on site along the wildlife corridor that will discourage domestic animals from utilizing the open space areas. In addition, the Home Owner's Association (HOA) will be required to distribute educational information to the future residents regarding wildlife sensitivity.

With the exception of the lots and street that abut the wildlife corridor, the fuel modification zone extends approximately 130 feet beyond the development footprint. This estimation is in addition

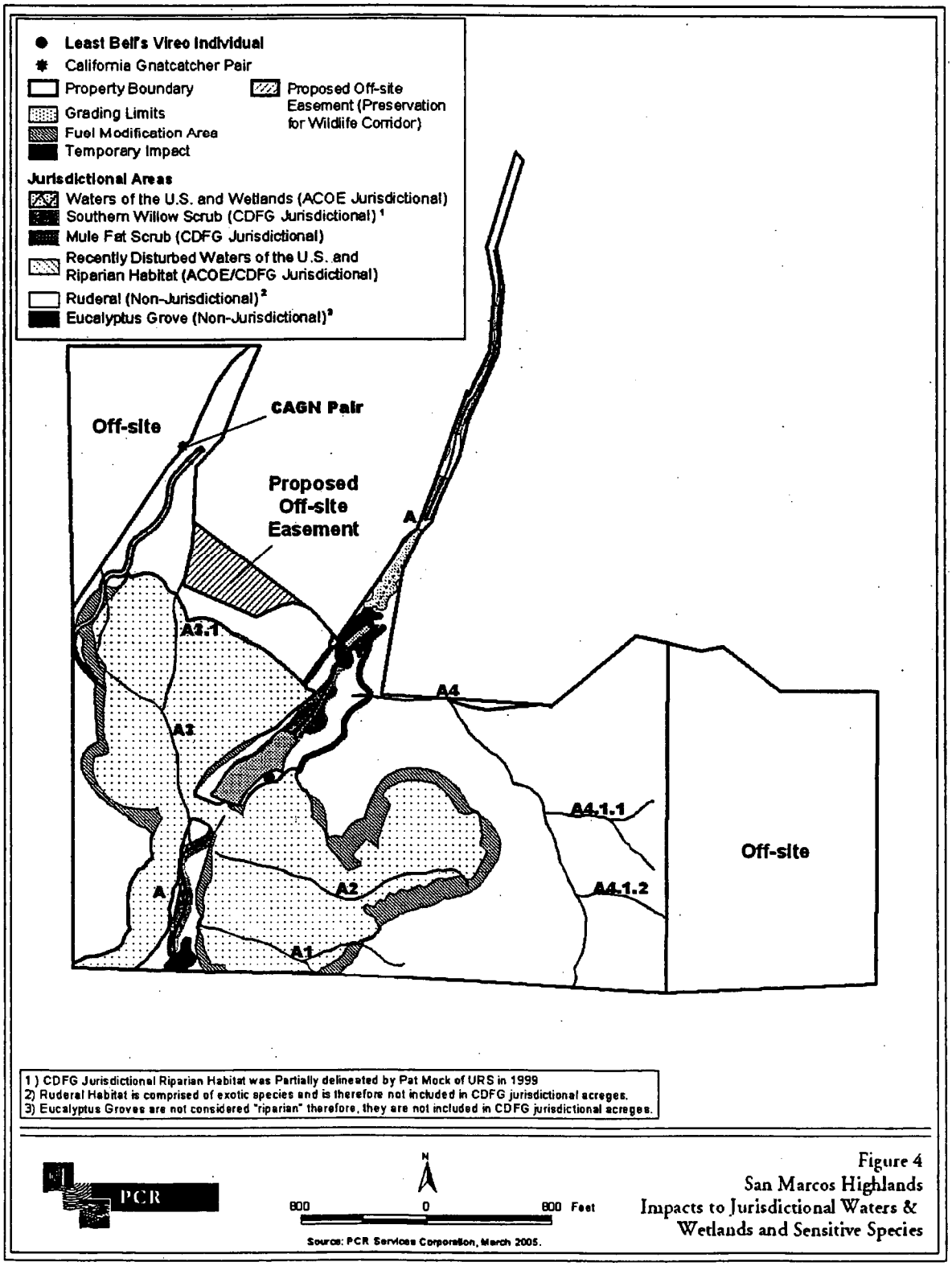


Figure 4
San Marcos Highlands
Impacts to Jurisdictional Waters & Wetlands and Sensitive Species

to an average 20-foot irrigated area associated with backyards of the future residents or within newly graded slopes associated with the housing pads. The development along the southern boundary of the wildlife corridor will have a total fuel modification zone of 100 feet that will abut a block wall. In summary, the fuel modification zone requirement will be 150 feet from the edge of buildings or structures in areas without a block wall and 100 feet in areas with a block wall.

In accordance with the City's General Plan requirements, a trail system is proposed as part of the San Marco Highlands project (Figure 5, *Development Footprint with Trails*). All newly created and improved trails are included in the impact calculations as permanent impacts. Temporary impacts, including a 10-foot buffer around all trails and the limits of grading, will be revegetated with the appropriate native species.

Trail 36 is proposed to run along the eastern edge of Las Posas road, south of Street A where it crosses over Agua Hedionda Creek. The proposed Trail 36, both north and south of Street A, will be an urban trail that is a total of 16 feet wide within the right-of-way of Las Posas Road. From east to west, the first 10 feet will be composed of decomposed granite (DG) surface, followed by a double rail fence, and then an additional 5 feet of sidewalk.

From the northern terminus of Trail 36, a 10-foot local trail, with a DG surface, will cross the creek and run along the eastern edge of the creek outside of the designated buffer area and ending at Street A. This trail has been located to avoid the small northernmost pond on site thereby minimizing impacts to Corps/RWQCB jurisdictional wetlands and "waters of the U.S./State."

On the south side of Street A, where it crosses the Creek, a new trail is proposed (Trail 27). Trail 27 will connect with Trail 36 and continue along the western edge of the development within the graded slope. Trail 27 will be a 21-foot multiple use trail with 10 feet of paved surface closest to the development, a double rail fence, and 10 feet of DG surface.

Trail 37 currently exists as a paved and gravel road that serves as access to, and is within the easement of, the San Diego County Water Authority aqueduct. Trail 37 will be improved to function as a 21-foot multiple use trail. Where it is paved, KB Home will add a DG trail separated by a double rail fence. Where it is gravel, KB Home will add a paved trail separated by a double rail fence. This trail is within the 100-foot easement granted to the San Diego County Water Authority.

Trails 36 and 37 will be connected by a 10-foot local DG trail (no City number) along the northern edge of Street "A" adjacent to the proposed east-west wildlife corridor. This trail will be bordered to the north by a 6-foot wall that will serve as a firebreak and minimize human intrusion into the adjacent wildlife corridor. This trail will be within the limits of grading.

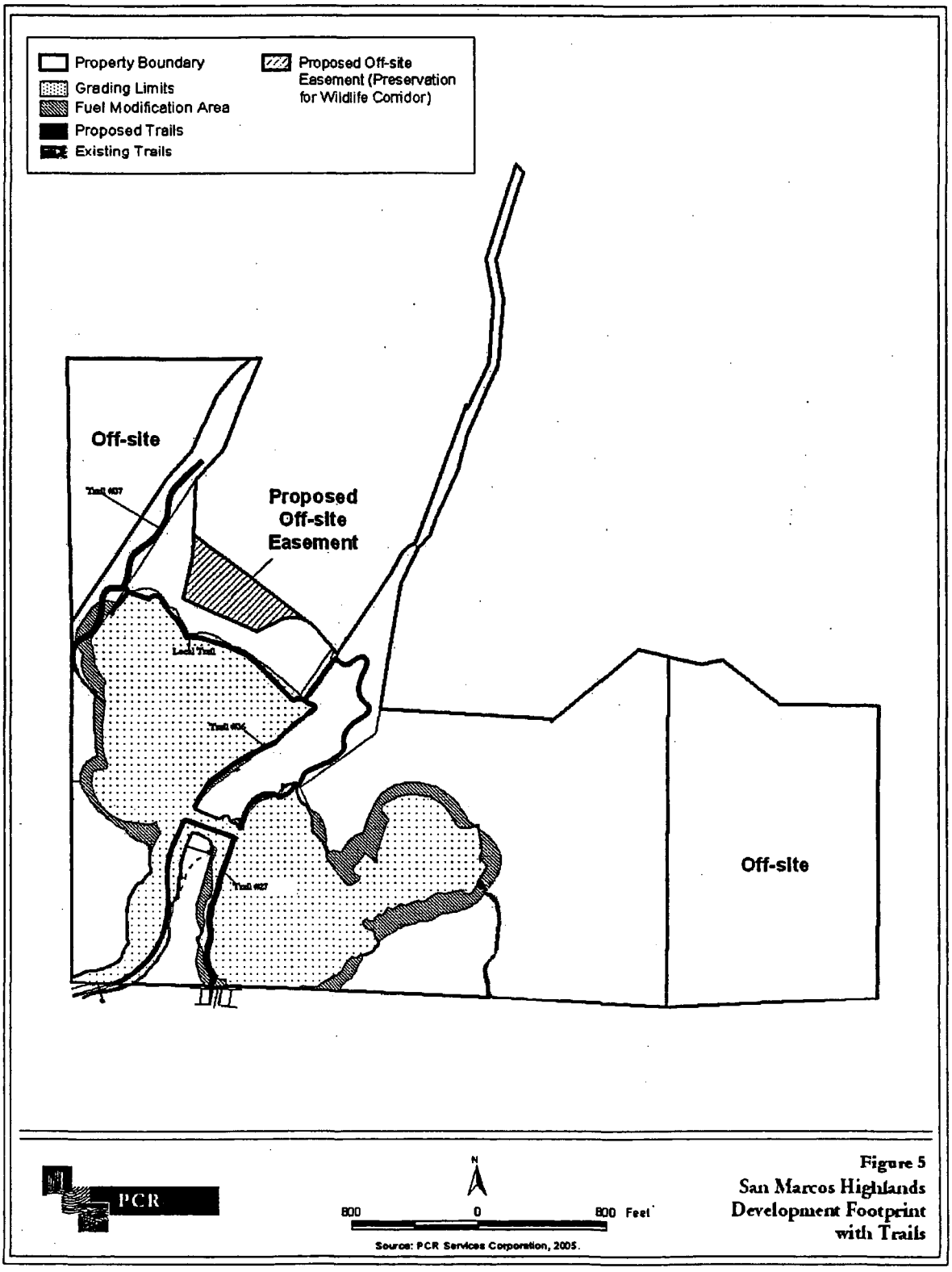


Figure 5
San Marcos Highlands
Development Footprint
with Trails

In addition to the trails described above, a couple additional dirt trails currently exist within the property. These will not be improved; however, the City has requested that they be maintained in order to provide access to the dirt road that extends from the easternmost cul-de-sacs and connects to another dirt trail south of the project boundary.

The project engineer proposes to locate the staging areas off-site within the graded portion of Las Posas Road; however, if staging is to occur on site, it will be located within a graded pad within the development footprint. Measures will be taken to ensure that no additional disturbance will occur to native vegetation. In addition, the designated staging areas will be located in such a manner as to prevent any runoff from entering waters of the United States, including wetlands.

The approved tentative map anticipates balanced grading of approximately 760,000 cubic yards of cut and fill. The project is expected to be graded in one phase, using the cut material from the eastern portion of the project site to fill the western portion of the development footprint.

The brushing and clearing phase of the project is expected to take approximately two weeks. Grading is expected to take up to six months, but could vary depending on the difficulty of the rock areas to rip. Once grading is complete, street improvements should be completed in four to five months. The timing of residential construction is dependent upon the builder. Types of equipment will include scrapers, dump trucks, water trucks, front load bulldozers, backhoes, and belly dumpers.

Conservation Measures

1. In order to avoid and minimize impacts to nesting birds, including gnatcatcher, no clearing or grubbing activity will occur during the avian breeding season (February 15 through August 31) within the project area, unless pre-construction surveys indicate that active nests are not present on the site or in surrounding areas.

2. If project construction activities are necessary during the bird breeding season (February 15th to August 31st), work may occur if a qualified biologist conducts a survey for nesting birds within three days prior to the work in the area, and ensures no nesting birds will be impacted by the project. If an active nest is identified, a buffer will be established between the construction activities and the nest so that nesting activities are not interrupted. The buffer will be a minimum width of 300 feet (500 feet for raptors), will be delineated by temporary fencing, and will remain in effect as long as construction is occurring or until the nest is no longer active. No habitat removal or any other work will occur within the fenced nest zone, until the young have fledged, are no longer being fed by the parents, have left the nest, and will no longer be impacted by the project. The mapped survey results will be submitted to the Wildlife Agencies for review and approval prior to vegetation removal to ensure full avoidance measures are in place.

3. A Service-approved biologist will conduct pre-construction surveys for least Bell's vireo if construction is to occur during breeding season (March 15 through September 30). If vireos are detected, then the applicant will delay construction activities occurring within 500 feet of active territories until after fledglings have left the active territories.

4. To reduce potential noise impacts to nesting gnatcatcher or vireo, a qualified acoustician will monitor the project site and vicinity for listed birds during initial grading, and on a monthly basis thereafter, to determine if any nests are within a distance potentially affected by noise from grading, clearing, or construction activities. If nesting birds are located adjacent to the project site with the potential to be affected by construction activity noise above 60 dBA L_{eq}, a noise barrier will be erected. This noise barrier will consist of a 10-foot-high continuous plywood fence supported by posts or an earthen berm located at the site boundary that abuts potential off-site habitat. If 60 dBA L_{eq} is exceeded, the acoustician will work with the construction contractor to make operational and barrier changes to reduce noise levels during the breeding season. Noise monitoring will occur during operational changes and installation of barriers, as needed, to ensure their effectiveness.

5. The applicant will designate a Service-approved qualified biologist who will be responsible for overseeing compliance with protective measures for the listed species. The biologist will have the authority to halt all associated project activities, which may be in violation of this biological opinion. In such an event, the biologist is required to contact the Corps and the Service within 24 hours.

6. The applicant will require the HOA to implement covenants, conditions, and restrictions to regulate property usage, including maintenance of on-site restored habitats, indoor cat policy, and protection of adjacent natural areas of the on-site preserve and the Creek. The applicant will incorporate landscape management practices into the covenants, conditions, and restrictions that minimize the use of chemical fertilizers, pesticides, and herbicides.

7. Potential impacts from human and pet intrusion into the on-site open space will be minimized through a program of education (using that developed by the American Society for the Prevention of Cruelty to Animals), cat control, and the inclusion of permanent cat-proof fences, with no gates between the development and the open space, along the backyards of residential lots adjacent to the planned open space.

8. Use of invasive exotic plant species in landscaped areas adjacent to or near sensitive vegetation communities will be restricted. The applicant will encourage the use of native species in the landscaping plan and will avoid the use of species listed in Lists A & B of the California Invasive Plant Council's list of Exotic Pest Plants of Greatest Ecological Concern in California as of October 1999. This list includes such species as pepper trees, pampas grass, fountain grass, ice plant, myoporum, black locust, capeweed, tree of

heaven, periwinkle, sweet alyssum, English ivy, French broom, Scotch broom, and Spanish broom.

9. Typical erosion control measures, Best Management Practices (BMPs), near streams will be employed in accordance with the conditions in the 401 Water Quality Certification requirements of the Regional Water Quality Control Board.

10. An employee education program will be developed. Each employee (including temporary, contractors, and subcontractors) will receive a training/awareness program within two weeks of working on the proposed project. They will be advised of the potential impact to the listed species and the potential penalties for taking such species. At a minimum, the program will include the following topics: occurrence of the listed and sensitive species in the area, their general ecology, sensitivity of the species to human activities, legal protection afforded these species, penalties for violations of Federal and State laws, reporting requirements, and project features designed to reduce the impacts to these species and promote continued successful occupation of the project area environs.

11. Construction work areas will be delineated and marked clearly, by flagging or temporary orange construction fencing, in the field prior to habitat removal, and the marked boundaries maintained and clearly visible to personnel on foot and by heavy equipment operators. Fencing will be placed on the impact side to reduce the potential for additional vegetation loss within open space. All temporary fencing will be removed only after the conclusion of all grading, clearing, and construction. Employees will strictly limit their activities and vehicles to the proposed project areas, staging areas, and routes of travel. The project proponent and/or the biological monitor will contact the Service to verify that the limits of construction have been properly staked and are readily identifiable. Intrusion by unauthorized vehicles into the riverbed and outside of construction limits will be prohibited, with control exercised by an on-site foreman. Access routes to the construction area outside of work hours will be blocked with physical barriers, such as concrete blocks or large equipment.

12. The work area will be kept clean to avoid attracting predators. All food and trash will be disposed of in closed containers and removed from the project site. No pets will be allowed on the construction site.

13. All equipment maintenance, staging, and dispensing of fuel, oil, or any other such activities, will occur in designated upland areas outside of the proposed preserve. The designated upland areas will be located in such a manner as to prevent any runoff from entering waters of the United States, including wetlands.

14. All night lighting within the proposed development area, including streets and backyards, will be directed away from habitat areas, including Agua Hedionda Creek, the northern wildlife corridor, and the preserved open space area to the east of the development. The

HOA will regulate this condition and will not allow any future additional lighting to be installed by private homeowners.

15. A greater than 2:1 conservation ratio for permanent impacts to 73.80 acres of CSS will be accomplished through on-site preservation of approximately 105.7 acres, approximately 4.9 acres of on-site CSS restoration, an easement for off-site preservation of approximately 4.7 acres, and the purchase of approximately 21.9 acres immediately off-site and adjacent to the northwest and another 61.8 acres off-site and contiguous with the eastern project boundary (Table 1; Figure 6).

Table 1. Proposed Compensation for Permanent Impacts to Coastal Sage Scrub

Plant Community	Permanent Impacts[b]	On-Site Conservation	Off-Site Acquisition
Coastal sage scrub[a]	73.80		
Preservation without restoration		105.70	83.70[c]
Restoration and subsequent preservation		4.90	4.70[d]
TOTALS	73.80	110.60	88.40

[a] Including less than 0.01 acre of coyote brush scrub.
[b] Including lot and road development (entire grading limit) and fuel modification impacts that extend beyond the grading limits.
[c] Including two parcels: approximately 21.9 acres northwest of the project site (NAP) and 61.8 acres east of the property boundary (Parcel D).
[d] Off-site easement along northern property boundary.
Source: PCR Services Corporation, March 2005.

16. Graded slopes outside the fuel modification zone adjacent to natural open space areas will be revegetated with coastal sage scrub species (specifically, this includes the slope along the western side of the Las Posas Road extension adjacent to Agua Hedionda Creek.) The location of this revegetation, totaling 4.90 acres, is shown in Figure 6. In addition, the off-site easement area will require removal of exotic species, seeding with native species, and/or spreading of CSS duff for preservation that will allow the project to maintain a minimum 400-foot wide wildlife corridor.

17. Unavoidable, permanent impacts to Corps and Department jurisdictional areas will be offset at a ratio of no less than 2:1 and will be initiated concurrent with the first grading activities. Not counting southern willow scrub preservation within the creek, total on-site compensation will be approximately 2.9 acres of Corps jurisdictional "waters of the U.S." and 7.1 acres of Department jurisdictional riparian habitat (Figure 6; Table 2). Proposed compensation activities, all of which will be on-site, consist of:

a. Riparian enhancement – trash and sediment removal, exotic species removal, and minor replanting;
b. Eucalyptus removal;
c. Riparian restoration – more extensive revegetation; and
d. Southern willow scrub preservation.

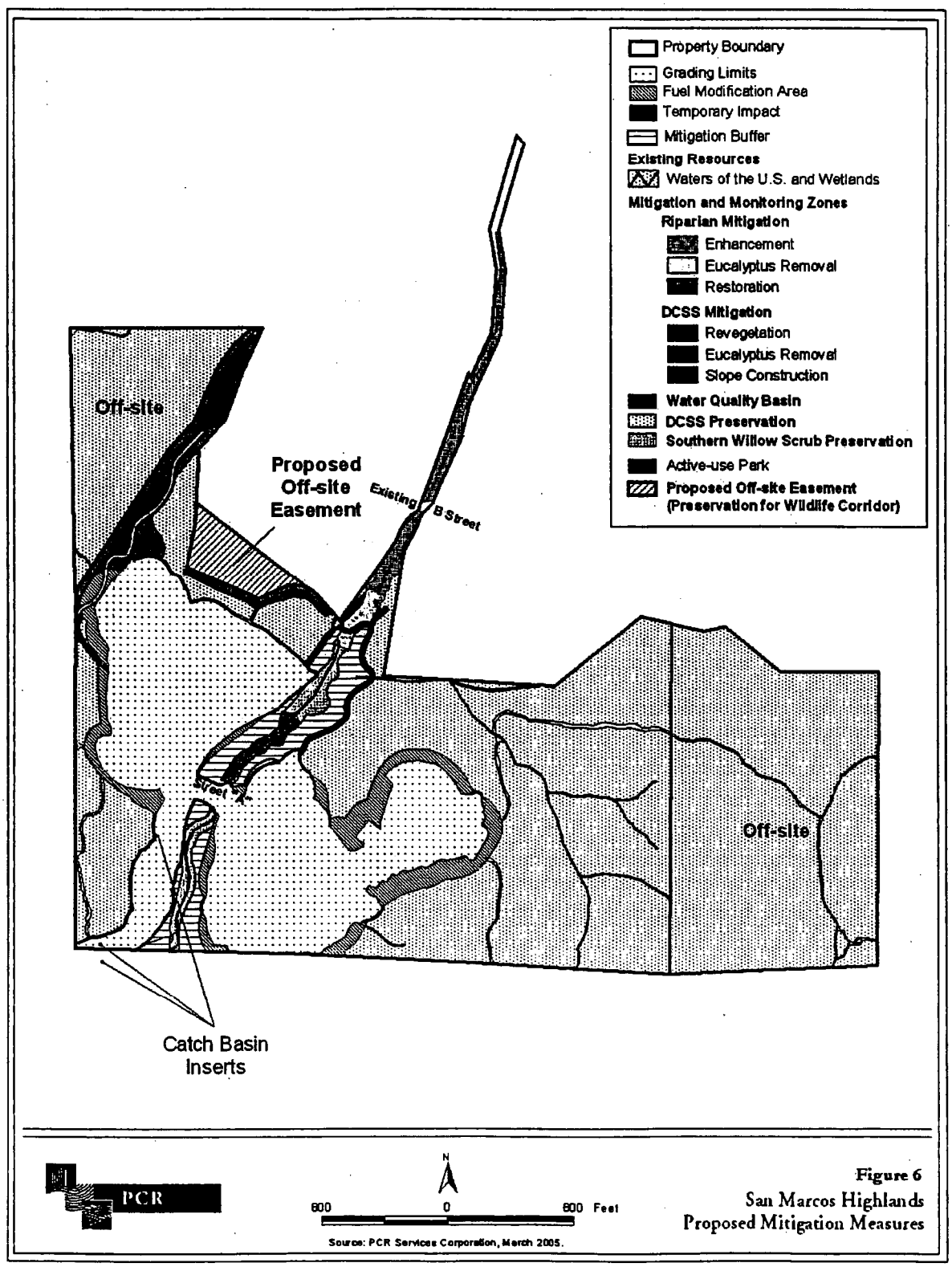


Figure 6
San Marcos Highlands
Proposed Mitigation Measures

Table 2. Summary of Compensation within Agua Hedionda Creek

Compensation Type	Linear Feet of Streambed	Corps Compensation on-site (acres)	Department Compensation on-site (acres)
Riparian Restoration	619	2.5	2.5
Riparian Enhancement	2,391	0.2	3.5
Eucalyptus Removal	548	0.2	1.1
Total Riparian Restoration [a]	**3,558**	**2.9**	**7.1**
Southern Willow Scrub Preservation	1,394	0.2	3.1
Total Riparian Compensation	**4,952**	**3.1**	**10.2**

[a] The various jurisdictional acreages often overlap, i.e., Corps acreage is typically included in Department, and therefore are not additive.

Source: PCR Services Corporation, March 2005.

18. To ensure preservation and management of the proposed on- and off-site restoration and preserve areas in perpetuity consistent with MHCP guidelines, the following will occur prior to initial vegetation clearing:

    a. Conservation easements will be recorded over the 110.60 acres of on-site preserve and restoration, as well as the 83.70 acres of off-site acquisition.
    b. A conservation easement will be recorded on approximately 4.7 acres off site adjacent to the northern property boundary following the purchase by KB Home from the current owner.
    c. An experienced natural lands manager, approved by the Service and the City, will be designated.
    d. A non-wasting endowment will be funded at an amount to be determined through the preparation of a Property Analysis Record (PAR), or similar analysis.

19. A conceptual monitoring/management plan(s) that is consistent with MHCP guidelines and that addresses both the habitat and the species will be developed and implemented by the natural lands manager or biological consultant in coordination with the Service. The plan will include management objectives to determine the distribution and abundance of plants and animals found within the on-site and off-site acquisition parcels and build a baseline database from this information. Management will include monitoring specific taxonomic groups to determine whether the project site is functioning naturally or if the biological diversity of the project site is being degraded or diminished. All threats will be monitored and managed appropriately. This plan will be implemented prior to, or concurrent with, the initiation of construction.

20. A five-year restoration and monitoring plan for the wetland and upland restoration areas will be developed and submitted to the Corps and the Service for approval prior to any ground disturbance in the wetland or coastal sage scrub habitat. The plan will include

salvaging on-site plant materials prior to initial clearing and the storage of those materials to be used in the revegetation efforts. The restoration/monitoring plan will include specific replacement planting techniques, timing, success criteria, and an As-Built report.

STATUS OF THE SPECIES/CRITICAL HABITAT

Coastal California Gnatcatcher (*Polioptila californica californica*)

Listing Status

The Service listed the coastal California gnatcatcher as threatened on March 30, 1993 (58 FR 16742). In conjunction with the listing decision, the Service issued a special rule, pursuant to section 4(d) of the Act, defining the conditions under which take of the gnatcatcher would not be a violation of section 9 (58 FR 65088-65096). This special rule recognized the State's Natural Community Conservation Planning (NCCP) Program, and several local governments' ongoing multi-species conservation planning efforts (e.g., the Multiple Species Conservation Plan [MSCP]) that intend to apply Act standards to activities affecting the gnatcatcher. An interim process was established whereby jurisdictions actively involved in NCCP planning would be allowed to develop up to five percent of the remaining coastal sage habitat for projects that were consistent with the NCCP conservation guidelines (California Department of Fish and Game and California Resources Agency 1993).

Designated/Proposed Critical Habitat

A final determination of critical habitat for the gnatcatcher was published in the *Federal Register* on October 24, 2000 (U.S. Fish and Wildlife Service 2000). This determination was litigated in the U.S. District Court, Central District of California. On June 11, 2002, the U.S. District Court for the Central District of California granted the Service's request for a remand of the coastal California gnatcatcher critical habitat designation so that we could reconsider the economic impact associated with designating any particular area as critical habitat. The Court ordered us to publish a new proposed rule by April 11, 2003. In a subsequent order, the Court held that the critical habitat designated for the gnatcatcher should remain in place until such time as a new, final regulation becomes effective. Critical habitat for this species was re-proposed on April 24, 2003 (U.S. Fish and Wildlife Service 2003).

Currently designated critical habitat for the gnatcatcher includes 513,650 acres of Federal, state, local, and private land in Los Angeles, Orange, Riverside, San Bernardino, and San Diego Counties, and has been divided into 13 Critical Habitat Units (U.S. Fish and Wildlife Service 2000). Approximately 120,040 acres (or 25 percent) of the total 513,650 acres of gnatcatcher critical habitat, and 5 of the 13 Critical Habitat Units occur within San Diego County (U.S. Fish and Wildlife Service 2000). The re-proposed critical habitat rule for the gnatcatcher includes 495,795 acres of Federal, state, local, and private land, of which approximately 124,805 acres (25 percent) are located within San Diego County (U.S. Fish and Wildlife Service 2003).

The primary constituent elements of gnatcatcher critical habitat, as described in both the final and re-proposed critical habitat rules, are those habitat components that are essential for the primary biological needs of foraging, nesting, rearing of young, intra-specific communication, roosting, dispersal, genetic exchange, or sheltering (Atwood 1990). Primary constituent elements are provided in (1) undeveloped areas, including agricultural lands, that support or have the potential to support, through natural successional processes, various types of sage scrub, or (2) undeveloped areas that support chaparral, grassland, or riparian habitats where they occur proximal to sage scrub and where they may be utilized by gnatcatchers for the biological needs of dispersal and foraging, and (3) undeveloped areas, including agricultural areas, that provide or could provide connectivity or corridor between or within larger gnatcatcher core areas, including open space and disturbed areas that may receive only periodic use.

Species Description

The coastal California gnatcatcher is a small (length: 11 centimeters; weight: 6 grams), long-tailed member of the old-world warbler and gnatcatcher family *Sylviidae* (American Ornithologists' Union 1998). The bird's plumage is dark blue-gray above and grayish-white below. The tail is mostly black above and below. The male has a distinctive black cap which is absent during the winter. Both sexes have a distinctive white eye-ring.

The coastal California gnatcatcher is one of three subspecies of the California gnatcatcher (*Polioptila californica*) (Atwood 1991). Prior to 1989, the California gnatcatcher was classified as a subspecies of the Black-tailed gnatcatcher (*Polioptila melanura*). Atwood (1980, 1988) concluded that the species was distinct from *P. melanura*, based on differences in ecology and behavior.

Distribution

The coastal California gnatcatcher occurs on coastal slopes in southern California, from southern Ventura southward through Palos Verdes Peninsula in Los Angeles County through Orange, Riverside, San Bernardino and San Diego Counties into Baja California to El Rosario, Mexico, at about 30 degrees north latitude (Atwood 1991). In 1990, Atwood reported that ninety-nine percent of all gnatcatcher locality records occurred at or below an elevation of 984 feet (ft). In 1992, Atwood and Bolsinger reported that, of 324 sites of recent occurrence, 272 (84 percent) were located below 820 ft in elevation, 315 (97 percent) were below 1,640 ft, and 324 (100 percent) were below 2,460 ft. Since that time, additional data collected at higher elevations shows that this species may occur as high as 3,000 ft and that more than 99 percent of the known gnatcatcher locations occurred below 2,500 ft (U.S. Fish and Wildlife Service 2000).

Habitat Affinity

Gnatcatchers typically occur in or near coastal sage scrub habitat. Coastal sage scrub is patchily distributed throughout the range of the gnatcatcher, and the gnatcatcher is not uniformly distributed within the structurally and floristically variable coastal sage scrub vegetation community. Rather, the subspecies tends to occur most frequently within California sagebrush (*Artemisia californica*) -dominated stands on mesas, gently sloping areas, and along the lower slopes of the coast ranges (Atwood 1990). An analysis of the percent gap in shrub canopy supports the hypothesis that gnatcatchers prefer relatively open stands of coastal sage scrub (Weaver 1998). The gnatcatcher occurs in high frequency and density in scrub with an open or broken canopy while it is absent from scrub dominated by tall shrubs and occurs in low frequency and density in low scrub with a closed canopy (Weaver 1998). Territory size increases as vegetation density decreases and with distance from the coast, probably due to food resource availability.

Gnatcatchers also use chaparral, grassland, and riparian habitats where they occur adjacent to sage scrub (Campbell *et al.* 1998). The use of these habitats appears to be most frequent during late summer, autumn, and winter, with smaller numbers of birds using such areas during the breeding season. These non-sage scrub habitats are used for dispersal, but data on dispersal use are largely anecdotal (Campbell *et al.* 1998). Probable dispersing gnatcatchers have been documented in vegetation dominated by such species as *Brassica* spp. (wild mustard), annual grasses, *Salsola tragus* (Russian thistle), *Baccharis salicifolia* (mule fat), *Salix* spp. (willow), and *Tamarix* spp. (salt cedar) (Campbell *et al.* 1998). Linkages of habitat along linear features such as highways and power-line corridors may be of significant value in linking populations of the gnatcatcher (Famolaro and Newman 1998). Although existing quantitative data may reveal relatively little about gnatcatcher use of these other habitats, these areas may be critical during certain times of year for dispersal or as foraging areas during drought conditions (Campbell *et al.* 1998). Breeding territories have also been documented in non-sage scrub habitat (Campbell *et al.* 1998). Campbell *et al.* (1998) discuss scenarios explaining why habitats other than coastal sage scrub are used by gnatcatchers, including food source availability, dispersal areas for juveniles, temperature extremes, fire avoidance, and lowered predation rate for fledglings.

Life History

The California gnatcatcher is primarily insectivorous, nonmigratory, and exhibits strong site tenacity (Atwood 1990). Diet deduced from fecal samples resulted in leaf- and plant-hoppers and spiders predominating in the samples. True bugs, wasps, bees, and ants were only minor components of the diet (Burger *et al.* 1999). Gnatcatcher adults selected prey to feed their young that was larger than expected given the distribution of arthropods available in their environment. Both adults and young consumed more sessile than active prey items (Burger *et al.* 1999).

The California gnatcatcher becomes highly territorial by late February or early March each year, as males become more vocal during this time (Preston *et al.* 1998a). In southwestern San Diego

County, the mean breeding season territory size ranged from 12 to 27 acres per pair and non-breeding season territory size ranged from 12 to 42 acres per pair (Preston *et al.* 1998b). During the non-breeding season, gnatcatchers have been observed to wander in adjacent territories and unoccupied habitat increasing their home range size to approximately 78 percent larger than their breeding territory (Preston *et al.* 1998b). The smallest documented home ranges occur near the coast and increase in more inland areas (Preston *et al.* 1998b).

The breeding season of the gnatcatcher extends from mid-February through the end of August, with the peak of nesting activity occurring from mid-March through mid-May (Grishaver *et al.* 1998). The gnatcatcher's nest is a small, cup-shaped basket usually found 1 to 3 ft above the ground in a small shrub or cactus. Clutch sizes range between three and five eggs, with the average being four. Juvenile birds associate with their parents for several weeks (sometimes months) after fledging (Atwood 1990). Nest building begins in mid-March with the earliest recorded egg date of March 20 (Grishaver *et al.* 1998). Post-breeding dispersal of fledglings occurs between late May and late November. Nest predation is the most common cause of nest failure (Braden *et al.* 1997, Sockman 1997, Grishaver *et al.* 1998). Gnatcatchers are persistent nest builders and often attempt multiple broods, which is suggestive of a high reproductive potential. However, typically this is offset by high rates of nest predation and brood parasitism (Atwood 1990, Braden *et al.* 1997). Nest site attendance by male gnatcatchers was determined to be equal to that of females for the first nest attempt and then declines to almost a third of female nest attendance for later nesting attempts due to the male tending to fledglings (Grishaver *et al.* 1998, Sockman 1998).

Gnatcatchers typically live for two to three years, although ages of up to five years have been recorded for some banded birds (Dudek and Associates 2000). Observations indicate that gnatcatchers are highly vulnerable to extreme cold, wet weather (Mock 1998). Nest predation tends to occur in greater proportion in the upper and lower third of the nest shrub. Predation is lower in nests with full clutch sizes (Sockman 1997). The species of nest shrub also influences predation risk (Grishaver *et al.* 1998). Potential nest predators are numerous, and include snakes, raccoons, and corvids (Grishaver *et al.* 1998). The California gnatcatcher also is known to be affected by nest parasitism of the brown-headed cowbird (*Molothrus ater*) (Braden *et al.* 1997). Nest parasitism has apparently resulted in earlier nesting dates of the gnatcatcher, which may partially compensate for the negative effect of parasitism (Patten and Campbell 1998). However, the gains in nest success from decreased nest parasitism appear to be negated by increased nest abandonment due to predation before cowbirds have migrated into an area (Braden *et al.* 1997).

The natal dispersal, for a non-migratory bird, such as the gnatcatcher, is an important aspect of the biology of the species (Mock 1993, Galvin 1998). The mean dispersal distance of gnatcatchers banded in San Diego County is reported at less than 1.9 miles (mi), however, birds were also documented moving up to 6 mi from their natal territory (Bailey and Mock 1998). The longest documented dispersal distance by a juvenile is 10.1 mi (Braden 1992). Dispersal across highly man-modified landscapes, including major highways and residential development, is known to occur (Bailey and Mock 1998, Galvin 1998, Lovio 1996, Campbell and Haas 2003,

Atwood *et al.* 1998). Extensive movement by breeding adults is relatively rare (Bailey and Mock 1998). Types of habitat used during dispersal are highly variable (Campbell *et al.* 1998). Although the mean dispersal distances that have been documented above are relatively low, dispersal of juveniles is difficult to observe and to document without extensive banding studies. Therefore, it is likely that the few current studies underestimate the gnatcatcher's typical dispersal capacity (Bailey and Mock 1998). Juvenile gnatcatchers are apparently able to traverse highly man-modified landscapes for at least short distances (Bailey and Mock 1998). Natural and restored coastal sage scrub habitat along highway corridors is used for foraging and nesting by gnatcatchers and may serve important dispersal functions (Famolaro and Newman 1998). Typically, however, the dispersal of juveniles requires a corridor of native vegetation, which provides foraging, and cover opportunities to link larger patches of appropriate sage scrub vegetation (Soulé 1991). These dispersal corridors facilitate the exchange of genetic material and provide a path for recolonization of areas from which the species has been extirpated (Soulé 1991, Galvin 1998).

Population and Habitat Status

The gnatcatcher was considered locally common in the mid-1940's, but by the 1960's, this subspecies had declined substantially in the United States owing to widespread destruction of its habitat (Atwood 1990). By 1980, Atwood (1980) estimated that no more than 1,000 to 1,500 pairs remained in the United States. In 1993, at the time the gnatcatcher was listed as threatened, the Service estimated that approximately 2,562 pairs of gnatcatchers occurred in the United States. Of these, 30 pairs occurred in Los Angeles County, 757 pairs occurred in Orange County, 261 pairs occurred in Riverside County, and 1,514 pairs occurred in San Diego County (U.S. Fish and Wildlife Service 1993a). In October 1996, the total number of gnatcatchers in the United States was estimated at 2,899 pairs with two-thirds occurring in San Diego County (U.S. Fish and Wildlife Service 1996), after subtracting out all gnatcatcher pairs authorized for take under Habitat Loss Permits, approved Natural Community Conservation Plans, Habitat Conservation Plans, and section 7 consultations. These population estimates were intended to represent a coarse approximation of the number of gnatcatchers in southern California. Confidence intervals have not been calculated for these estimates and, therefore, we cannot be sure of their precision.

Population estimates for gnatcatcher populations in the southern portion of the species' range (i.e., Mexico) are unknown. However, past surveys within northern Baja California, Mexico, have not identified gnatcatchers within approximately 15.5 miles south of the border, despite the presence of suitable habitat (U.S. Fish and Wildlife Service 2003). The closest individual gnatcatchers have been documented at inland localities 15.5 miles to 52.8 miles south of the border (Mellink and Rea 1994). Furthermore, Mellink and Rea (1994) found consistent morphological discontinuity between the Southern California and Mexico populations of gnatcatchers, suggesting that although the species range extends into Mexico there is limited gene flow between these populations and the populations remaining in the United States (U.S. Fish and Wildlife Service 2003). In addition, the populations of gnatcatchers in Mexico are

treated very differently than those located within the United States. In Mexico, the gnatcatcher is not regulated or managed by the Mexican Government (Diario Official 2000). Therefore, take of individuals or loss and degradation of habitat are not controlled in this portion of the species' range.

The loss, fragmentation, and adverse modification of habitat are the principal reasons for the gnatcatcher's federally threatened status (U.S. Fish and Wildlife Service 1993a). The amount of coastal sage scrub available to gnatcatchers has continued to decrease during the period after the listing of the species. It is estimated that up to 90 percent of coastal sage scrub vegetation has been lost as a result of development and land conversion (Westman 1981a, b; Barbour and Major 1977), and coastal sage scrub is considered one of the most depleted habitat-types in the United States (Kirkpatrick and Hutchinson 1977, O'Leary 1990). The elimination of nearby habitat may artificially increase populations in adjacent preserved habitat; however, these population surpluses may be lost in subsequent years due to crowding and lack of resources (Scott 1993). In addition, agricultural use, such as grazing and field crops, urbanization, air pollution, and the introduction of non-native plants have all had an adverse impact on extant sage scrub habitat. A consequence of urbanization that is contributing to the loss, degradation, and fragmentation of coastal sage scrub is an increase in wildfires due to anthropogenic ignitions. High fire frequencies and the lag period associated with recovery of the vegetation may significantly reduce the viability of affected subpopulations (Dudek and Associates 2000). Furthermore, nest-parasitism by the brown-headed cowbird and nest predation threatens the recovery of the gnatcatcher (Atwood 1980, Unitt 1984).

Early studies suggested that the California gnatcatcher is highly sensitive to the effects of habitat fragmentation and development activity (Atwood 1990; ERCE 1990; Ogden unpublished data). The loss of coastal sage scrub vegetation has been associated with an increasing degree of habitat fragmentation, which reduces habitat quality and promotes increased levels of nest predation and brood parasitism, and ultimately, increased rates of local extinction (Wilcove 1985, Rolstad 1991, Saunders *et al.* 1991, Soulé *et al.* 1988). Although the published literature on this subject is based on studies in forested landscapes, the ecological implications of these studies are applicable to other landscape types such as coastal sage scrub.

An important corollary of habitat fragmentation is reduction of opportunity for successful natal dispersal. Dispersal of gnatcatchers is critical to demographic and genetic soundness of the population, and to population persistence of gnatcatchers in the fragmented habitat characteristic of coastal southern California. Landscape connectivity enhances population viability for many species, and, until recently, most species lived in well-connected landscapes (Beier and Noss 1998). Well-designed studies offer strong evidence that corridors provide sufficient connectivity to improve the viability of populations in habitats connected by corridors (Beier and Noss 1998). For relatively sedentary bird species such as gnatcatchers, connectivity of habitat patches is probably the most important landscape feature for maintaining species diversity of native biota (Soulé *et al.* 1988). Corridors counteract the effects of fragmentation, and should eliminate or minimize the attrition of species over time by facilitating dispersal and recolonization (Willis

1974, Diamond 1975, Brown and Kodric-Brown 1977, Frankel and Soulé 1981, Soulé and Simberloff 1986, Noss and Harris 1986, Forman and Godron 1986, Diamond *et al.* 1987, Noss 1987). Linkages that support resident populations of animals are more likely to function effectively as long-distance dispersal conduits for those species (Bennett 1990).

In addition to development and land conversion, the recent occurrence of large-scale wildfires throughout southern California likely temporally reduced the amount of gnatcatcher habitat available throughout the species' range. For example, in October 2003, severe wildfires throughout southern California resulted in the temporal loss of approximately 24,786 acres (21 percent) of gnatcatcher designated critical habitat in San Diego County, and approximately 39,418 acres (10 percent) of gnatcatcher designated critical habitat in the northern extent of the species' range, which includes Orange, Riverside, Los Angeles, San Bernardino and Ventura Counties; this loss represents an overall temporal perturbation of 64, 204 acres (12 percent) of designated critical habitat across the species' range. These fires likely impacted several known source populations of gnatcatchers in San Diego County.

Atwood *et al.* (1998) and Bontrager *et al.* (1995) found that extensive wildfires result in adverse impacts to gnatcatcher populations within unburned areas, as well as within the burn area, due to increased mortality resulting from excessive competitive interactions between resident birds within unburned areas and birds displaced by the fires. Studies conducted after the 1993 Laguna Fire in Orange County (Wirtz *et al.* 1995, Bontrager *et al.* 1995, Beyers and Wirtz 1995, Atwood *et al.* 1998) suggest that post-fire gnatcatcher population recovery is likely dependant on the amount of suitable vegetation remaining within the burned area, as well as the presence of gnatcatcher source populations in close proximity to areas affected by the fire. Furthermore, Beyers and Wirtz (1995) found that following a fire, regrowing coastal sage scrub would not be recolonized by gnatcatchers until total shrub cover approaches 50 percent, which is expected to take a minimum of 4 to 5 years. Due to the scope and intensity of the recent Southern California fires, the areas affected are expected to take several years to recover fully; therefore, any remaining gnatcatcher source populations, and remaining gnatcatcher habitat, are important to the survival and recovery of the species.

To date, a recovery plan has not been developed for the gnatcatcher. However, pursuant to the Coastal Sage Scrub Natural Communities Conservation Program (CSSNCCP), developed in 1993, San Diego County was divided into four subareas for conservation/preserve planning for the long-term conservation and protection of the coastal sage scrub vegetation community of Southern California, and the species, including the gnatcatcher, that it supports (California Department of Fish and Game and California Resource Agency 1993). The four subareas within San Diego County include the MSCP (finalized), the MHCP (finalized), the North County MSCP Plan (currently in preparation; NC MSCP), and the East County MSCP (initiated; EC MSCP). However, of these four subareas, only three (MSCP, MHCP, and NC MSCP) support viable populations of the gnatcatcher. A recovery plan for the gnatcatcher would describe the current threats to the species, the current population trend, the scope of the recovery effort, the recovery criteria, necessary recovery actions, and define recovery units. Without a recovery plan, the three

subareas that support viable populations of the gnatcatcher, within San Diego County (MSCP, MHCP, and NC MSCP), as well as Marine Corps Base Camp Pendleton and Marine Corps Air Station Miramar (which are not a part of the CSS NCCP), serve as "recovery units" for the species within San Diego County. Multiple species plans developed, pursuant to the CSS NCCP, within Riverside, Orange, Los Angeles, and San Bernardino counties would similarly serve as "recovery units" for the gnatcatcher in the northern/eastern portion of its range.

Threats

The primary threats to the long-term survival and recovery of the gnatcatcher are habitat loss, fragmentation, and adverse modification of habitat due to increased urbanization throughout the range of the species. In association with urbanization, the introduction of non-native plants, non-native predators (i.e., domestic animals and brown-headed cowbirds), and changes in natural fire regimes (i.e., fire suppression or increased fire frequency due to anthropogenic ignitions) have all had an adverse impact on extant sage scrub habitat. Therefore, the survival and recovery of the gnatcatcher is dependent on: (1) the protection of large, intact blocks of suitable breeding and resident habitat; (2) known source populations of gnatcatchers; and (3) suitable linkage habitat capable of providing for genetic exchange between known source populations and dispersal between source populations and smaller populations throughout the species' range. In addition, recovery units (multiple species preserves) have been defined as geographic, or otherwise identifiable, subunits of the species that individually are necessary to conserve the genetic diversity, population stability, demographic robustness, important life history stages, or some other feature necessary for the long-term survival of the species in the wild (U.S. Fish and Wildlife Service and National Marine Fisheries Service 2002). Therefore, stabilizing and expanding the populations of gnatcatchers within the previously described gnatcatcher "recovery units", through the development of an effective preserve design, will provide for the species' conservation needs, and preserve the coastal sage scrub vegetation community on which this species depends. Because 60 percent of the remaining gnatcatchers within the United States occur within San Diego County, the protection of gnatcatcher habitat, and the maintenance of gnatcatcher population viability within San Diego County is particularly important for the survival and recovery of the species as a whole.

ENVIRONMENTAL BASELINE

Regulations implementing the Act (50 CFR §402.02) define the environmental baseline as the past and present impacts of all Federal, state, or private actions and other human activities in the action area. Also included in the environmental baseline are the anticipated impacts of all proposed Federal projects in the action area that have undergone section 7 consultation, and the impacts of state and private actions which are contemporaneous with the consultation in progress.

Relationship to Regional Preserves

The San Marcos Highlands property is located in the last large block of high to very high value habitat for the gnatcatcher within northern San Marcos (see Figure 1 and Figure 2). Furthermore, the project area provides connectivity between undeveloped gnatcatcher habitat areas in the County and the City that are important to the survival and recovery of the gnatcatcher. The southern portion of the proposed project within the City (approximately 113 acres) is located within the BCLA of the MHCP planning area which includes the cities of Carlsbad, Encinitas, Escondido, Oceanside, San Marcos, and Vista (Figure 2-4, Final MHCP Plan, Volume I). The northern portion of the project site (approximately 90 acres) is within the proposed PAMA of the NC MSCP planning area that includes unincorporated lands within northern San Diego County (County). The County portion of the project site is proposed for annexation to the City of San Marcos and, if this portion of the property is incorporated into the City, will be included in the MHCP.

The BCLA includes large contiguous areas of habitat, areas supporting major and critical species populations or habitat areas, important functional linkages and movement corridors, and corresponds closely with those areas shown as high and very high on the MHCP habitat evaluation map. The Composite Habitat Value map for the MHCP study area ranks the entire block of habitat on site as having very high habitat value (Figure 2-3, Final MHCP Plan, Volume I), as does the NC MSCP Habitat Evaluation Map. This large block of habitat currently provides a wildlife corridor between existing 100 percent preserve areas within the City's draft MHCP Subarea Plan and the PAMA proposed by the NC MSCP.

The project is shown as hard-lined in the City's draft Subarea Plan and the proposed open space is contiguous with areas of 50 percent, 75 percent, and 100 percent preserve (Figure 7, *San Marcos Northern Focused Planning Area*). Although the City's Subarea Plan has not been approved by the Wildlife Agencies and the preserve design is subject to revision, the NC MSCP assumes 75 percent preservation of lands within the PAMA, including the project area. However, as proposed the San Marcos Highlands project will preserve less gnatcatcher habitat than that contemplated by the NC MSCP; therefore, because the project proposes to preserve approximately 120.8 acres of the 203 acres of vegetation on site (i.e., approximately 60 percent preservation), it is inconsistent with the NC MSCP.

Site Characteristics and Surrounding Land Uses

Figure 2, *Vicinity Map*, depicts the project site in a local context. As shown, a portion of the project site is located within the College Area Community Plan area of the City of San Marcos and within the North County Metro Subregional Plan area of the County of San Diego. Immediately surrounding the project site are rural residential and agricultural uses to the north, undeveloped land to the east, single family residential (Paloma Specific Plan Area) to the south, and undeveloped land and rural residential land uses to the southwest and west. Las Posas Road currently terminates at the southern limits of the project boundary. Figure 8, *Surrounding Land*

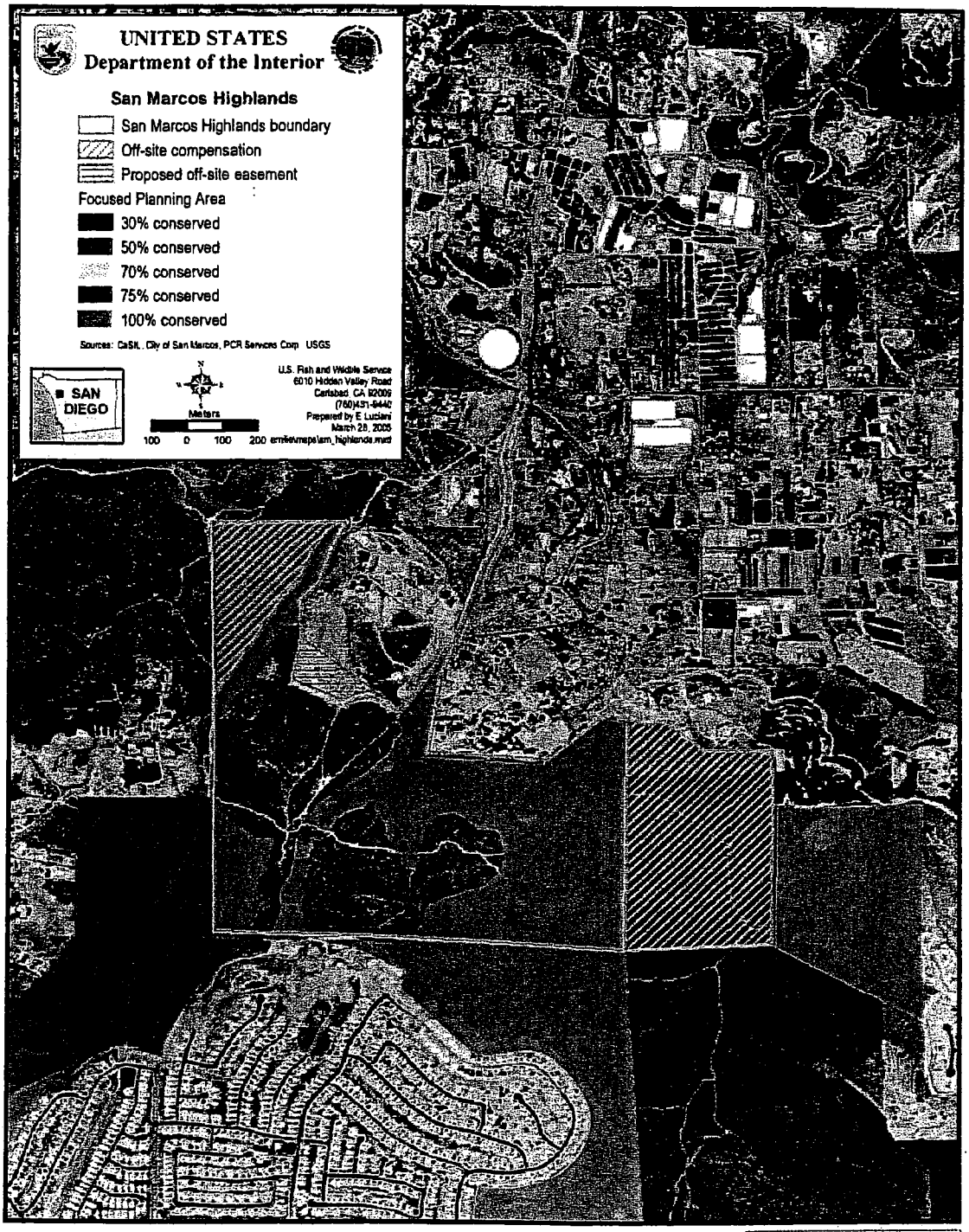


Figure 7
San Marcos Northern Focused Planning Area

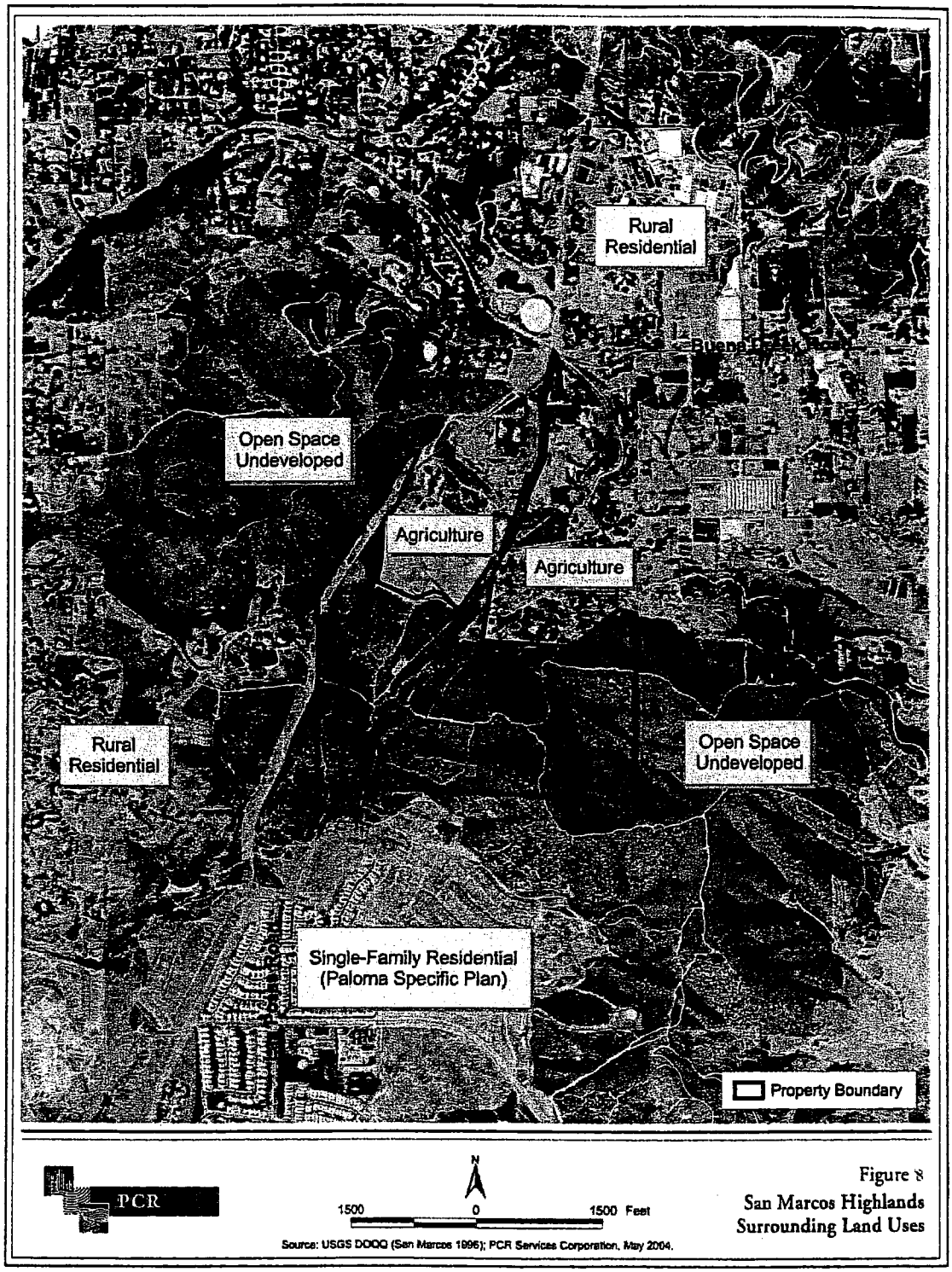


Figure 8
San Marcos Highlands
Surrounding Land Uses

Uses, is an aerial view of the project site and surrounding land uses. Several dirt roads lead to the project site from the north, east, south, and west.

The site is characterized by hilly terrain traversed by a northeast-southwest trending drainage corridor, Agua Hedionda Creek. At the far northwestern portion of the project site, underground pipelines of the San Diego Aqueduct traverse the site. A pond is located along the drainage corridor near the center of the property. Elevations range from approximately 600 feet above mean sea level (msl) in the southern portion of the Creek to approximately 1,300 feet above msl in the northeast and southeast corners of the site. Coastal sage-scrub and freshwater marsh/riparian habitat dominate the site. Disturbance of the site is minimal, mainly attributed to graded dirt roads and fire roads.

The property supports seven vegetation communities: Diegan coastal sage scrub (174.1 acres), southern willow scrub (4.6 acres), mule fat scrub (0.13 acre), coyote brush scrub (0.31 acre), disturbed (19.5 acres), ruderal (0.05 acre), and eucalyptus grove (2.1 acres) (Figure 9, *Plant Communities*). The project site is dominated by upland plant species, including California sagebrush (*Artemisia californica*), Californica buckwheat (*Eriogonum californica*), laurel sumac (*Malosma laurina*), and black sage (*Salvia mellifera*). Associated species include California bush sunflower (*Encelia californica*), orange bush monkeyflower (*Mimulus aurantiacus*), fuchsia-flowered gooseberry (*Ribes speciosum*), and coyote brush (*Baccharis pilularis*). The easternmost portion of the property appears to be undergoing a transition from coastal sage scrub to chaparral as dominance and cover of sugar bush (*Rhus ovata*) and other chaparral-related species increase in abundance at the higher elevations. Disturbances to coastal sage scrub consist of a few dirt paths and access/fire roads, including the establishment of the San Diego Water Authority utility easement road/San Diego Aqueduct pipeline that parallels the western/northwestern property boundary.

Agua Hedionda Creek originates on the southwestern slopes of the San Marcos Mountains, on the San Marcos Highlands property, and discharges into the Pacific Ocean via Agua Hedionda Lagoon (Carlsbad Watershed Network 2002). The Agua Hedionda Creek Watershed is the third largest within the Carlsbad Hydrologic Unit. The watershed is dominated by Agua Hedionda Creek, extends approximately 10.62 miles inland from the coast, and is about 18,837 acres in area (Carlsbad Watershed Network 2002; Figure 10).

Site History

At some time between 1928 and 1958, an earthen dam was constructed within Agua Hedionda Creek to provide a road crossing. Because of this disturbance, the creek is currently impounded behind the dam, forming a man-made pond and depriving the downstream reach of the creek of ordinary low flows. The existing pond currently receives agricultural runoff, and is highly contaminated with fertilizers, pesticides, and horse manure. In addition, the pond dries up periodically during years of normal and sub-normal rainfall, leaving behind a dirt basin. Approximately 600 feet of the upstream portion of the creek within the project site has been

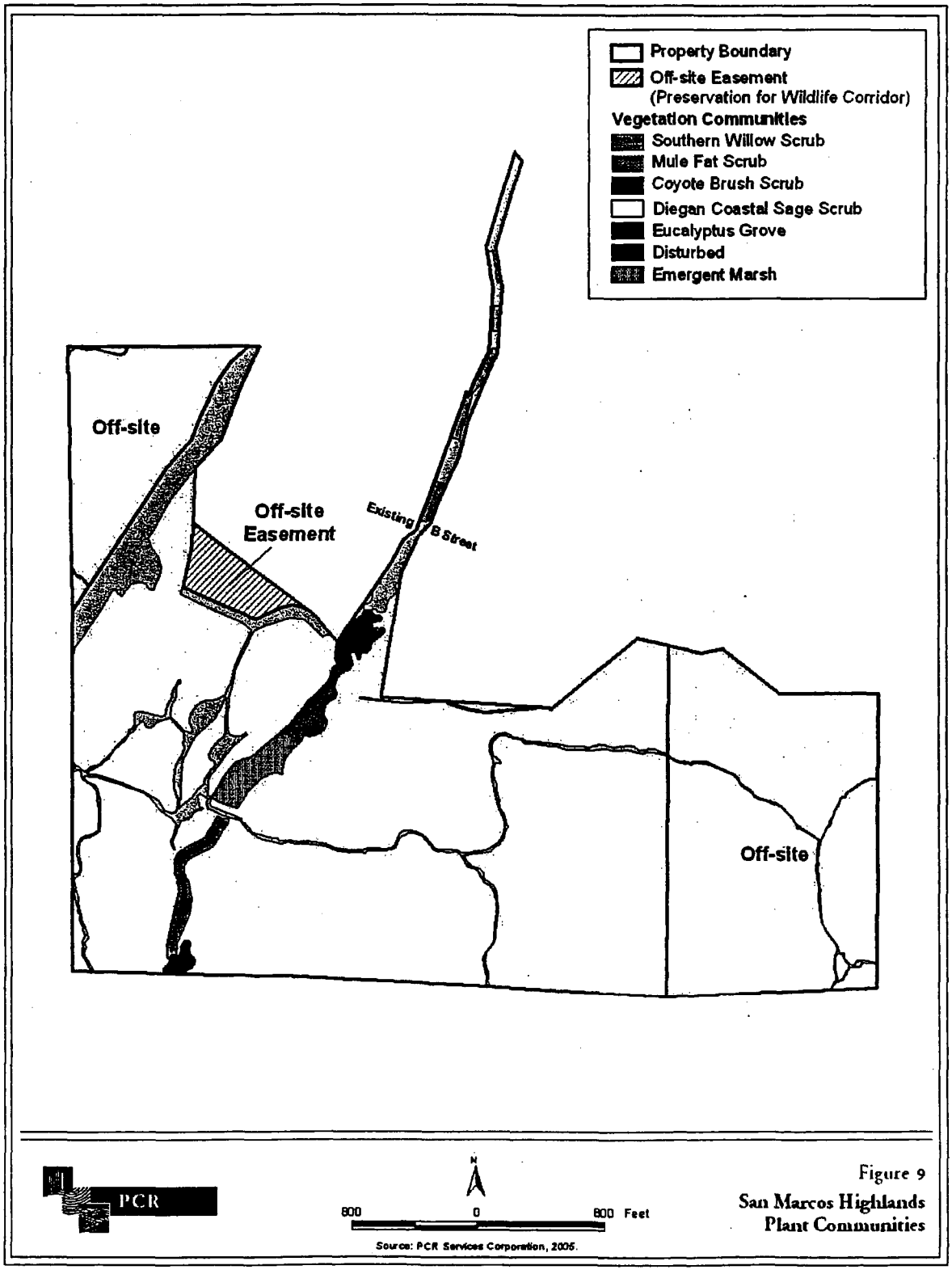


Figure 9
San Marcos Highlands
Plant Communities

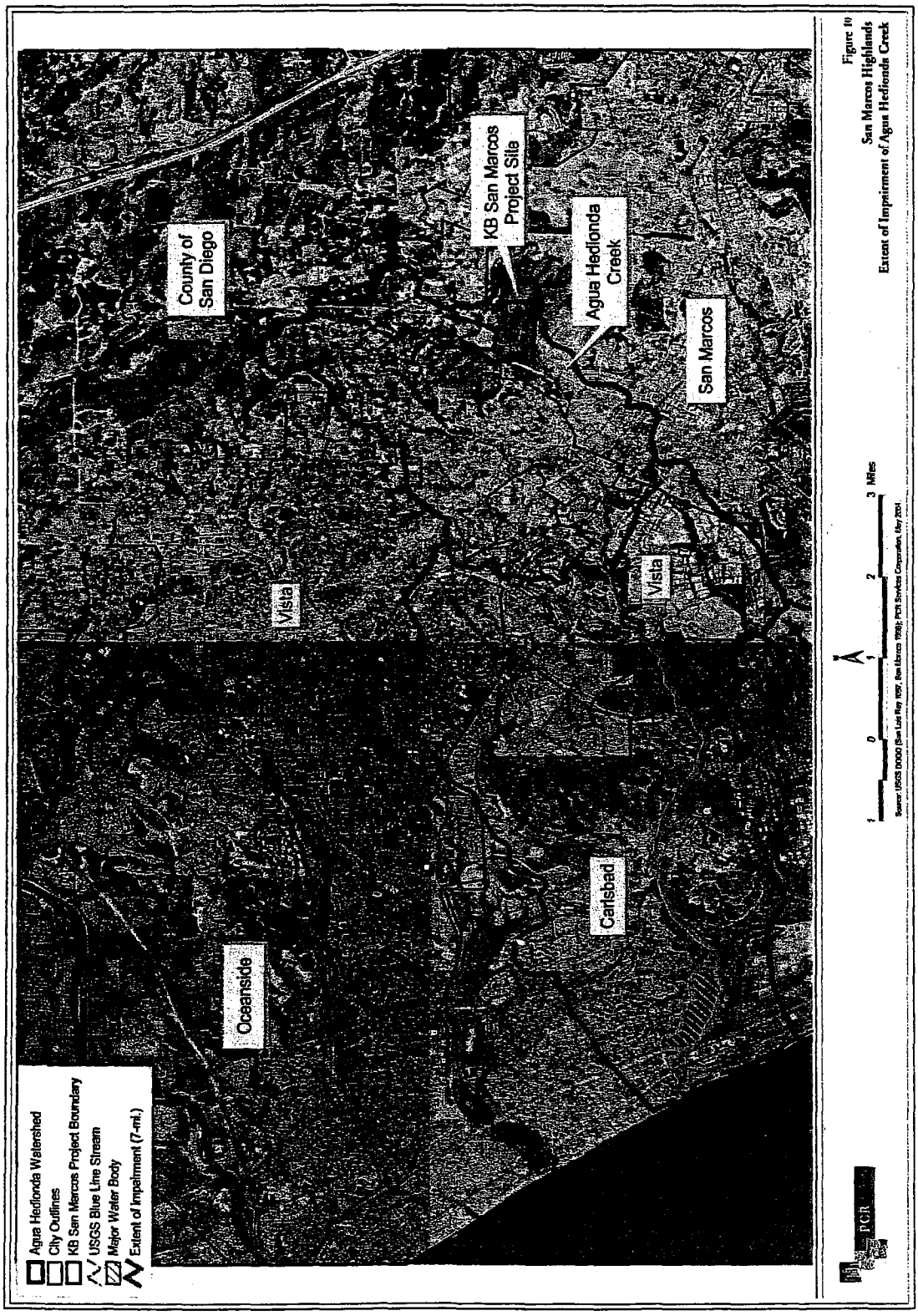


Figure 10
San Marcos Highlands
Extent of Impairment of Agua Hedionda Creek

filled with dirt since at least 1928. Farther downstream, horse manure historically has been dumped into an approximately 700-linear-foot portion of the creek. Downstream of the manure-filled portion of the creek is another man-made pond that is somewhat smaller than the one behind the earthen dam/road crossing. Additional disturbance to the creek include the historic dumping of many types of rubbish and a squatter's encampment along the banks. In several locations throughout the creek on site, there are patches of invasive, non-native plants, including castor bean (*Ricinus communis*), fennel (*Foeniculum vulgare*), and pampas grass (*Cortaderia selloana*), as well as two groves of eucalyptus (*Eucalyptus* spp.).

Gnatcatcher Survey Results

Focused surveys, consistent with Service protocols, were conducted by ERC Environmental and Energy Services Company (ERCE) in 1989, by URS in 1999, and by PCR in 2002. Gnatcatcher vocalizations were played from a hand-held tape player during the surveys to elicit responses from gnatcatchers that were present in the project study area. During the 1999 survey, one pair of gnatcatchers was detected (URS 2001) on site, as well as two locations immediately off site. A pair of gnatcatchers was also detected by PCR in 2002 (PCR 2002c) utilizing the northwestern border of the project site, which was the same general location as that documented in 1999 by URS.

Residential and Road Development in Proximity to San Marcos Highlands

The Paloma/Las Posas Road extension is located north of SR78 and west of Interstate 15 within the City of San Marcos. The road extension is located within the approximately 530-acre Neighborhood One Specific Plan Area (Specific Plan) south of the San Marcos Highlands project site. The Specific Plan called for approximately 1,565 residential units, fire station, elementary school, park, and open space. Construction was started and the majority of the Specific Plan was built by the Baldwin Company prior to purchase by KB Home. The Las Posas Road extension began at the terminus of Las Posas Road and proceeded in a northerly direction along Agua Hedionda Creek, crossing the creek on site before proceeding to the southern boundary of San Marcos Highlands. The Service, through consultation with the Corps, permitted the project under section 7 of the Act. A biological opinion on the effect of the project on thread-leaved brodiaea (*Brodiaea filifolia*) was issued June 8, 2001. Permanent impacts to 2.56 acres of coastal sage scrub and 0.60 acre of Corps jurisdictional wetlands were offset through the purchase of credits at an approved conservation bank. In addition, approximately 15 thread-leaved brodiaea plants were transplanted to the Baldwin Brodiaea Preserve in San Marcos.

The Loma Alta project is the subdivision of 38.9 acres into 94 single-family residential lots and 4 open space lots. The project is located at the northern terminus of Santa Fe Road, west of Las Posas Road, east of Bosstick Boulevard, and south of Borden Road, in the City of San Marcos, San Diego County, California. The proposed project is adjacent to the Santa Fe Hills development to the north and the proposed Santalina Hills development to the west. On October 22, 2002, the Wildlife Agencies concurred that the issuance of a Habitat Loss Permit (HLP) was

appropriate pursuant to section 4(d) of the Act. The HLP allowed the clearance of 3.36 acres of coastal sage scrub. Compensation for impacts to the coastal sage scrub was at a 2:1 ratio through on-site preservation (2.04 acres) and off-site acquisition (4.68 acres) of coastal sage scrub credits at the Service-approved Heights of Pala Mesa Conservation Bank. No gnatcatchers were observed on site. The northern on-site open space is contiguous with the Santa Fe Hills 100 percent preserve that is shown in the City's draft Subarea Plan.

The Rancho Santalina project is located approximately 0.2 mile east of the intersection of South Santa Fe Avenue and Bosstick Boulevard in the City of San Marcos, San Diego County, California. The 61.1-acre parcel east of the railway is proposed to include 244 single-family residences, a 300 linear feet extension of Cherimoya Drive, and 0.8 acre of off-site grading within the North County Transit District (NCTD) ownership. The project also includes the extension of Las Flores Drive approximately 1,000 linear feet (approximately 1.1 acre), the construction of 88 apartments on 4.7 acres, and a 1.6-acre remainder parcel that is zoned industrial west of the NCTD Railway. Take of one pair of gnatcatchers was permitted by the Service through consultation with the Corps under section 7 of the Act. A biological opinion was issued on August 25, 2003, based on the conservation of an approximately 6.83-acre on-site thread-leaved brodiaea preserve, comprised of approximately 6.53 acres preserved to offset impacts to thread-leaved brodiaea from the project and 0.302 acre of habitat that will be used by the City of San Marcos to offset impacts from the Las Posas Road/SR78 interchange project. In addition, approximately 0.59 acre of coastal sage scrub will be preserved at the northern end of the property and included in the conservation easement. The open space areas will be managed and maintained by a natural lands management organization approved by the Service.

The City, in cooperation with the Federal Highway Administration and California Department of Transportation will construct, operate, and maintain a new directional diamond configuration interchange at SR78 and Las Posas Road to relieve traffic congestion. The Las Posas Road/SR78 interchange in the City was permitted through consultation with the Federal Highway Administration under section 7 of the Act. A biological opinion was issued on April 29, 2003. Impacts to the approximately 323 individuals occupying 0.2 acre of thread-leaved brodiaea will be offset at a 1:1 ratio through the translocation of these individuals to a 0.3 acre area within the western portion of the approximately 6.0-acre Rancho Santalina Reserve located immediately north of the Santa Fe rail corridor in the City of San Marcos. No gnatcatchers were affected by this project.

The proposed Oceanside-Escondido Rail project will convert an existing 22-mile freight rail corridor into a Diesel Multiple Unit (DMU) passenger rail system. The existing right-of-way (ROW) runs parallel to State Highway 78 and connects the cities of Oceanside, Vista, San Marcos, Escondido, and unincorporated areas of San Diego County. The project will also include the construction of 1.7 miles of new track that realigns the existing mainline track to provide service to California State University San Marcos (CSUSM). Take of two pair and three individual gnatcatchers and seven pair of vireo was permitted by the Service through consultation with the Federal Transit Administration under section 7 of the Act. On March 11, 1997, the

Service issued a biological opinion on the effects of the proposed Oceanside-Escondido Rail Project. Formal section 7 consultation was reinitiated on January 22, 2002, a biological opinion was issued on June 3, 2002, and an amendment was issued on February 15, 2005. Permanent impacts to coastal sage scrub will be offset through the off-site acquisition of habitat at a 2:1 ratio within a Service-approved conservation bank or other lands identified by the MHCP plan.

The Forecast Homes project is the development of 103 single-family residential lots plus one existing residential lot on a 53.62-acre site. The site is located east of Palomar College, north of Mission Road, and south of Borden Road in the City. On June 26, 2003, the Wildlife Agencies concurred that a HLP was appropriate pursuant to section 4(d) of the Act. Impacts to 22.85 acres of coastal sage scrub and two gnatcatchers will be offset at a 2:1 ratio for a total obligation of 45.7 acres of comparable coastal sage scrub. This will be accomplished through the on-site preservation of 26.81 acres of coastal sage scrub and the off-site acquisition of the 18.14-acre Raza property north of Borden Road and the purchase of 8.0 acres of coastal sage scrub credits at the Rancho Pacifica Diamond Trail Preserve, located along Rancho Santa Fe Road. The gnatcatchers observed on site are expected to continue to utilize the on-site preserve. The natural open space on site and the off-site acquisition will be deeded to and maintained by an organization or individual experienced in natural lands management that is approved by the City and the Wildlife Agencies.

2003 Cedar, Paradise, and Otay Fires

In October 2003, approximately 24,786 acres (21 percent) of designated gnatcatcher critical habitat (of a total 120,040 acres of designated gnatcatcher critical habitat in San Diego County) burned because of the Cedar, Otay, and Paradise Fires in San Diego County. In addition, these fires severely impacted several known source populations of gnatcatchers in San Diego County. For example, it is expected that approximately 43 breeding pairs of gnatcatchers were impacted on the Marine Corps Air Station, Miramar (MCAS Miramar), which is located to the southeast of the City. Due to the scope and intensity of the fires, the areas affected are expected to take several years to recover fully; therefore, any remaining gnatcatchers, such as the Rancho Santa Fe/Harmony Grove source population, as well as the populations located along Interstate 15 (I-15), may be important to the post-fire recovery of the gnatcatcher. The San Marcos Highlands corridor contributes to the connectivity to gnatcatcher habitat to the east in the San Marcos Mountains and along the I-15 corridor. It also contributes to maintaining a north-south connection between San Dieguito River near Lake Hodges to the south, in the County's MSCP preserve system, through gnatcatcher habitat within the City of Carlsbad to the northwest, and then with the "stepping stone" corridor of gnatcatcher habitat patches extending through Oceanside, to core populations of gnatcatchers on Camp Pendleton. Thus, retaining the connectivity of the gnatcatcher habitat within northern San Marcos with County lands located adjacent to the cities of San Marcos, Vista, and Oceanside, is also important.

EFFECTS OF THE ACTION

Effects of the action refer to the direct and indirect effects of an action on the species or critical habitat, together with the effects of other activities that are interrelated and interdependent with that action that will be added to the environmental baseline. Interrelated actions are those that are part of a larger action and depend on the larger action for their justification. Interdependent actions are those that have no independent utility apart from the action under consideration. Indirect effects are those that are caused by the proposed action and are later in time, but are still reasonably certain to occur.

Direct Impacts

The proposed San Marcos Highlands project would directly and permanently impact a total of 79.95 acres, including upland vegetation consisting of 73.80 acres of coastal sage scrub (including less than 0.01 acre of coyote brush scrub) and 5.73 acres of disturbed (grazed, rural residential, roadways). Based on protocol surveys conducted by PCR in 2002, the proposed project would directly impact habitat used by one gnatcatcher detected within the project survey area. An additional 1.84 acres of coastal sage scrub would be temporarily impacted.

The gnatcatcher found within the proposed on-site preserve is in an area that is not proposed for direct impact. However, the extent of the use area/territory is not reflected on the map included in the Permit Application prepared by PCR (2004c). Because the map represents points at which the gnatcatcher was identified, rather than the true use area, the extent of the bird's use areas are not known, and a majority of the territory may even be in areas to be developed. An unknown portion of the territory for one gnatcatcher may be impacted directly, which could result in death of adult birds. If the habitat is disturbed during the breeding season, interruption of courtship, nest building, destruction of eggs, and disturbance or death of unfledged young could also occur. The applicant proposed to not clear or grub native vegetation between February 15 and August 31. Thus, there should be no impacts to nesting birds, eggs, and chicks.

However, impacts to adult gnatcatchers are still expected from removal of habitat during the non-breeding season due to the elimination of necessary foraging and sheltering areas for the gnatcatcher observed within and adjacent to the property. The permanent removal of 73.80 acres of coastal sage scrub would reduce the ability for that individual to find alternate, suitable habitat to forage. Variable gnatcatcher breeding and post-breeding season territories and home range areas reflect the changing size needed to meet the particular breeding, feeding, and sheltering requirements of the species at any given part of the year. For example, Bontrager (1991) noted an 82 percent increase in home-range size during the non-breeding season, Preston *et al.* (1998b), found a 78 percent increase in post breeding home range size, and Braden *et al.* (1994) found an 86 percent increase in home range size during the non-breeding season. Therefore, a reduction of territory habitat could harm individual gnatcatchers by reducing the available resources for individual gnatcatcher survival and subsequent reproduction. Gnatcatchers need large non-breeding season home ranges for adequate foraging opportunities during cold weather conditions

(Mock 1993, 1998). Impacts would be temporary for 1.84 acres of coastal sage scrub that would be revegetated after construction with the appropriate native species.

In addition to the impacts described above, development of the San Marcos Highlands project would fragment one of the last large blocks of gnatcatcher habitat in northern San Marcos into two smaller blocks, creating a constricted corridor along the northern boundary of the property. The degree to which this constriction would reduce the function and value of the wildlife corridor for gnatcatcher movement is not known. Linkages that support resident populations of animals are more likely to function effectively as long-distance dispersal conduits for those species as well as provide an additional source of dispersing animals (Bennett 1990). The property currently provides a critical wildlife corridor and a core block of live-in habitat connecting designated preserve areas in the City's Northern Focused Planning Area (FPA) to high value habitat within the PAMA of the NC MSCP and the cities of Vista and Oceanside. Conservation of such blocks of live-in habitat is necessary because studies suggest that the gnatcatcher is highly sensitive to the effects of habitat fragmentation and development activity (Atwood 1990; ERCE 1990; Ogden unpublished data). Fragmentation reduces habitat quality and promotes increased levels of nest predation and brood parasitism, and ultimately, increased rates of local extinction (Wilcove 1985, Rolstad 1991, Saunders *et al.* 1991, Soulé *et al.* 1988).

Connectivity between habitat reserve areas is essential for long-term maintenance of the viability of the wide range of species in this biological community, including the gnatcatcher. Movement corridors between isolated patches of gnatcatcher habitat (i.e., the remaining patches of gnatcatcher habitat in coastal cities of San Diego County) serve to: 1) allow exchange of genetic material between separate populations; 2) allow recolonization of habitat patches from which gnatcatchers have been extirpated; and 3) allow relatively safe travel for gnatcatchers moving from one area to another (whether in natal dispersal or other movements). Narrowing of corridors intended for movement of gnatcatchers is thought to reduce the function and value of those corridors.

Narrow corridors are more difficult for a dispersing animal to find. Corridors that are occupied by conspecifics may be difficult for dispersing gnatcatchers to traverse, due to aggression from occupying gnatcatchers. A narrower corridor is easier for a territorial bird to defend against intrusion, and thus more difficult for a dispersing bird to traverse. Narrow corridors have a higher edge/area ratio, making the habitat within the corridor more subject to deleterious edge effects (i.e., human disturbance, noise, house cats, exotic plants, dumping, etc.). Dispersal is critical to the demographic and genetic soundness of the population, and to population persistence of gnatcatchers in the fragmented habitat characteristic of coastal southern California. Juvenile gnatcatchers may be able to cross highly man-modified landscapes for short distances (Bailey and Mock 1998). Typically, however, the dispersal of juveniles requires a corridor of native vegetation, which provides foraging, and cover opportunities to link larger patches of appropriate sage scrub vegetation (Soulé 1991). These dispersal corridors may facilitate the exchange of genetic material and provide a path for recolonization of areas from which the species has been extirpated (Soulé 1991, Galvin 1998). In addition to connecting local

populations, corridors may facilitate movement of individuals within its home range, and thus contribute to the survival of individuals and populations in fragmented environments (Rosenberg *et al.* 1997). Linking high value habitat areas by establishing or maintaining functional ecological corridors will contribute to a healthy, naturally functioning landscape (Soulé and Terborgh 1999).

In order for a corridor to be functional, it must be large enough to provide habitat for the animals that move through; however, corridors that are too narrow may actually be detrimental to the species that use them because of high edge effect and corresponding predation (Quinby and Lee 2002). Assuming that an occupying gnatcatcher uses a rectangular home range twice as long as wide (Harrison 1992), a suitable long-distance corridor for gnatcatchers would need to be 328 feet to 984 feet (110-300 m) wide, depending on local habitat quality. However, edge effects would necessitate wider corridors. For example, if cowbird parasitism extends 656 feet (200 m) into a corridor, as it does in Wisconsin forests (Brittingham and Temple 1983), then a linkage with successfully breeding pairs of gnatcatchers would need to be 1,673-2,296 feet (510-700 m) wide. Movements of suburban house cats routinely extend over 820 feet (250 m) into adjacent wildlife habitat (Barratt 1997), and presence of house cats is expected to decrease probability of gnatcatcher population persistence. Studies by Wilcove *et al.* (1986) have shown that the edge-related increase in predation may extend from 984 feet to 1,968 feet (300-600 m) into the interior of a preserve. Therefore, corridors should be as wide as possible, but may vary in width; however, a corridor should be no less than 500 feet wide and a minimum width of 1,000 feet is recommended (Bond 2003; County of San Diego 2000; Torrey Pines State Reserve 1997). A corridor should include a minimum 250-foot buffer of native vegetation on either side to provide animals cover and to make human intrusion more difficult (Torrey Pines State Reserve 1997). In areas less than 400 feet wide, corridor length should be less than 500 feet (Torrey Pines State Reserve 1997; County of San Diego 2000).

Throughout the consultation history, the Service recommended that the San Marcos Highlands project contribute to a minimum 1,000-foot wide corridor through the preservation of 500 feet on site along either the northern or western property line. The project was redesigned to provide a minimum 400-foot wide corridor, including an easement on 4.7 acres of the adjacent property, for a length of approximately 1,200 feet along the northern boundary (see Figure 6). Some north-south connectivity may be maintained along the western property line adjacent to the San Diego Water Authority aqueduct easement, as well as through the riparian corridor along Agua Hedionda Creek. However, a portion of the aqueduct easement is a dirt road/trail with no vegetative cover. In addition, approximately 1,200 feet of the open space along the western boundary will be about 100 to 200 feet wide between the property line and the project footprint, with much of this area subject to fuel modification.

The project applicant proposes to partially offset permanent direct impacts to 73.80 acres and temporary direct impacts to 1.84 acres of coastal sage scrub through on-site preservation of approximately 105.7 acres of coastal sage scrub and the on-site restoration of approximately 4.9 acres of coastal sage scrub. In addition, conservation easements will be placed on approximately

88.4 acres off site comprised of 4.7 acres adjacent to the northern property boundary; 21.9 acres immediately off-site and adjacent to the northwest; and 61.8 acres contiguous with the eastern project boundary. The 21.9-acre parcel is comprised of approximately 21.7 acres of high quality coastal sage scrub and 0.2 acre of disturbed areas (see Figure 8). The 61.8-acre parcel (Parcel D) supports approximately 61.1 acres of high quality coastal sage scrub and 0.7 acre of disturbed areas (see Figure 8). The coastal sage scrub within the 21.9-acre parcel has a higher occurrence of coastal prickly pear (*Opuntia littoralis*) due to the southeast-facing slopes. Conversely, the composition of the coastal sage scrub within Parcel D shows an increase in abundance of laurel sumac (*Malosma laurina*). Despite these slight differences in coastal sage scrub composition, both parcels support coastal sage scrub habitat comparable to what occurs on-site. In addition, a conservation easement will be recorded on approximately 4.7 acres adjacent to the northern property boundary, following the purchase by KB Home from the current owner. In order to contribute to the minimum 400-foot wide wildlife corridor, exotic species will be removed from the corridor and it will be seeded with native species and/or coastal sage scrub duff salvaged from the impact area will be spread. While these restoration and preservation areas, particularly the 61.8-acre Parcel D off site to the east, will provide a permanently protected and managed link between the PAMA in the NC MSCP and the City's FPA, the development footprint will constrict the existing wildlife corridor.

Besides the upland impacts described above, Corps jurisdictional "waters of the U.S." within the project boundary will also be impacted (Figure 4). Wetlands are limited to the Corps jurisdictional streambed of the creek, on-site. All remaining Corps jurisdiction constitutes non-wetland "waters of the U.S." in the form of multiple ephemeral drainages, and an intermittent tributary to the creek, which runs along the northeastern project boundary. Impacts to the creek will result from the removal of an existing earthen dam/road crossing over the creek, along with the fill from construction of Las Posas Road. These permanent impacts across the site will total approximately 5,620 linear feet of streambed, totaling approximately 0.71 acre of Corps jurisdictional wetland "waters of the U.S." (of which, approximately 0.02 acre is wetland), and approximately 1.26 acres acre of Department jurisdictional streambed and associated riparian habitat. To facilitate construction of the project as proposed, the ephemeral stream segments located within the project site will be filled using native material and permanently culverted below ground. Temporary construction-related impacts resulting from a 10-foot buffer around the limits of grading would include approximately 0.04 acre of Corps jurisdictional "waters of the U.S." and 0.10 acre of Department jurisdictional streambed and associated riparian habitat.

Permanent impacts to Corps and Department jurisdictional areas will be offset at a ratio of no less than 2:1 and will be initiated concurrent with the first grading activities. On-site activities proposed to offset permanent impacts to Corps (Department) jurisdictional wetlands include: 1) approximately 0.2 acre (3.5 acres) riparian enhancement, such as trash and sediment removal, exotic species removal, and minor replanting); 2) 0.2 acre (1.1 acre) eucalyptus removal; 3) approximately 2.5 acres (2.5 acres) riparian restoration; and 4) approximately 0.2 acre (3.1 acres) southern willow scrub preservation. Total on-site compensation will include

approximately 2.9 acres of Corps jurisdictional "waters of the U.S." and 7.1 acres of Department jurisdictional riparian habitat.

These enhancement, restoration, and preservation activities will assist in returning the creek to a natural state and will provide southern willow scrub habitat for the vireo and southwestern willow flycatcher, in addition to providing a corridor with vegetative cover to facilitate gnatcatcher and other wildlife movement. In addition, a water quality basin and catch basin inserts will be incorporated into the project design to capture nuisance and first-flush storm flows. Figure 6, *Proposed Mitigation Measures*, identifies the locations of each of the proposed compensation activities.

All preservation, restoration, and enhancement areas, including the on-site reaches of the creek and on and off-site areas of coastal sage scrub, will be preserved in perpetuity through the recording of conservation easements. Areas that result in temporary impacts will be restored to pre-construction conditions. A detailed Habitat Mitigation and Monitoring Plan/Water Quality Management Plan will be prepared by the applicant and approved by the Corps, Service, Department, and RWQCB prior to initiation of construction activities.

If more than 79.95 acres were to be impacted due to construction operator error, there would be a resulting increase in the effects described above. However, a Service-approved biologist would flag the project area prior to the commencement of clearing or grading activities to ensure no additional loss of habitat for the gnatcatcher occurs. In addition, a Service-approve biological monitor will be responsible for overseeing compliance with the Conservation Measures and will have the authority to halt all associated project activities that may be in violation of this biological opinion.

Indirect Impacts

If grading is conducted during the breeding season, noise and disturbance associated with construction may adversely affect gnatcatchers by disrupting breeding and foraging, causing the birds to frequently flush from the nest endangering eggs and chicks. Construction noise is a concern if it is at such a level that it masks vital communication signals (Awbrey 1993), normal singing behavior, or alters the ability to detect conspecific encroachments, defend territory, attract a mate, detect or warn of the approach of a predator or other interspecific intruder, and/or forage adequately. This level is generally accepted to be greater than 60 dBA hourly L_{eq}. To reduce the potential for these impacts, noise levels would be monitored by a Service-approved biologist and if noise levels exceed 60 dBA hourly L_{eq}, noise attenuation would be provided to reduce the noise level to below 60 dBA hourly L_{eq}.

Indirect impacts from development adjacent to the biological open space could occur through introduction of non-native plant species on the site and surrounding open space areas and the potential increase in Argentine ants (*Iridomyrmex humilis*) due to increases in water supply. Invasive species are now recognized as a threat to biodiversity within native vegetation second

only to direct habitat loss and fragmentation (Pimm and Gilpin 1989, Scott and Wilcove 1998). Non-native, weedy species may out-compete and exclude native species potentially altering the structure of the vegetation, degrade or eliminate habitat needed by the gnatcatcher for breeding and foraging, and provide food and cover for undesirable non-native animals (Bossard *et al.* 2000). High densities of non-native ants may reduce the suitability of nest sites, alter behavior patterns, and increase susceptibility to predation (Sockman 1997, Holway *et al.* 2002). The increase in non-native ants may also contribute to the decline of the gnatcatcher's insect prey base (Holway *et al.* 2002). To reduce the potential for exotic plant invasion into natural habitat, use of exotic species in landscaping or near native vegetation would be restricted, and the temporary impacts would be revegetated with appropriate native species.

Lighting introduced onto the project site during construction may adversely affect adjacent habitat areas and lead to increased predation of native species. All work associated with the development of the project would be conducted during the daytime hours and night lighting would not occur except in an emergency. All residential and street lighting would be shielded and directed away from upland and wetland preserve areas.

Human activity in the project area may result in accumulation of trash and food, attracting predators that may prey on gnatcatchers. Efforts would be made to keep the construction site free of trash or food that may attract predators.

The narrowing of existing corridors of native habitat, in conjunction with increased human density and auto traffic, may be a significant impediment to movement of coyotes and bobcats. Coyote and bobcat prey includes smaller animals (i.e., domestic cats) that depredate gnatcatchers and their nests. Absence of coyotes and bobcats may thus result in local extirpation of gnatcatchers (Crooks and Soulé 1999). The presence of a full complement of resident species is important to the health and viability of a naturally functioning ecosystem. Potential impacts from human and pet intrusion into the on-site open space will be minimized through a program of education (using that developed by the American Society for the Prevention of Cruelty to Animals), cat control, and the inclusion of permanent cat-proof fences, with no gates between the development and the open space, along the backyards of residential lots adjacent to the planned open space. In addition, KB Home will require the HOA to implement covenants, conditions, and restrictions to regulate property usage, including maintenance of on-site restored habitats, indoor cat policy, and protection of adjacent natural areas of the on-site preserve and the Creek. KB Home will also incorporate landscape management practices into the covenants, conditions, and restrictions that minimize the use of chemical fertilizers, pesticides, and herbicides.

To help maintain the full complement of mesopredators necessary to the health of gnatcatcher habitat, as well as to improve the viability of the riparian corridor, the proposed project will replace the earthen dam in the creek with an 8-foot arched culvert and restore the streambed with riparian vegetation. The incorporation of the arched culvert will facilitate movement of small and medium-sized mammals in the area, thus providing a northeast-southwest trending wildlife corridor along Agua Hedionda Creek. However, this culvert is probably not large enough to

accommodate movement by deer. Agua Hedionda Creek currently serves as a regionally important habitat linkage/wildlife corridor for a variety of species, including the gnatcatcher, and other species considered to be important in maintenance of ecological functions, including coyotes (*Canis latrans*) and bobcats (*Lynx rufus*). Where roads cross a wildlife corridor, bridges with 10-foot high fencing to channel wildlife to the underpass are the preferred option (County of San Diego 2000). Underpasses should be situated along primary travel routes away from areas containing noise and light pollution and serve only wildlife needs since human presence and/or recreational activities can deter wildlife activity (Griffiths & Van Schaik 1993). Native vegetation should surround all underpass entrances and replace any proposed rock fill slope protection. Underpass dimensions are important in determining whether a species will use an underpass as well as how frequently a species will use an underpass (Haas 2000). Haas (2000) found that coyotes never used underpasses less than 1 m in height. A more important variable is the openness of the underpass, which takes into consideration the height, width, and length of the underpass (H*W/L). An openness value greater than 0.6 has been recommended for deer (Reed 1981). In fact, Haas (2000) reported that bobcat, coyote, and mule deer frequency of underpass use increased as underpass height, width, and/or openness increased. Although the smaller drainage culverts may receive use by smaller vertebrates (rodents, herpetofauna, and mesopredators), predator activity through underpasses less than 1 m in height is highly unlikely.

Other indirect impacts to upland and wetland habitats will be minimized through the implementation of water quality protection measures and by using best management practices both during and after construction.

CUMULATIVE EFFECTS

Cumulative effects include the effects of future state, tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act and, therefore, are not considered cumulative in the proposed project.

We anticipate that a wide range of activities will be determined to affect the gnatcatcher within the action area. Such activities include, but are not limited to, urban development, illegal off-road vehicle use, hiking and equestrian use, illegal trash dumping, road improvements, and utility projects. The area of impact is located partially within the MHCP planning area and partially within the NC MSCP planning area. The City of San Marcos and the County of San Diego are participants in the NCCP program. The City has prepared a draft Subarea Plan under this program, proposing to include gnatcatchers as a covered species and the County is currently preparing the NC MSCP. Under these plans, the City and County would apply for Incidental Take Permits from the Service, pursuant to section 10(a)(1)(B) of the Act. The Service must analyze the impacts of permit issuance on federally listed species resulting from the MHCP, MSCP, and future Subarea Plans for the City and County through consultation under section 7 of the Act. Any projects potentially affecting the gnatcatcher would thus have a Federal nexus and

be subject to section 7 of the Act, and cumulative effects of such projects would not be considered under this consultation. Should this process not result in the Service's issuance of a 10(a)(1)(B) permit, future land development projects in the City that affect listed species would need to receive incidental take through the section 7 process, or through an individual incidental take permit pursuant to section 10(a)(1)(B) of the Act (which, as it is permitted by a Federal agency, is subject to consultation under section 7 of the Act and is not considered a cumulative effect).

The City of Carlsbad, a MHCP participating jurisdiction, was issued an Incidental Take Permit for species covered by their approved Habitat Management Plan, and cumulative effects of projects covered by the City's permit would not be considered under this consultation. Unincorporated County and other jurisdictions that have habitat allowance remaining under the 4(d) rule (i.e., Escondido and Encinitas) will continue to permit habitat loss in accordance with NCCP guidelines and the 4(d) special rule. Habitat loss in these jurisdictions has the potential to further depress gnatcatcher populations and degrade (but not preclude) connectivity between biological core areas and must meet the criteria established by the NCCP Conservation Guidelines (California Department of Fish and Game and California Resources Agency 1993) in the City of San Marcos and the MSCP preserve to the south and east.

Future projects that impact wetlands would require permits from the Corps pursuant to Section 404 of the Clean Water Act; therefore, these would constitute Federal actions that would not be considered as contributing to cumulative effects.

Unauthorized grading and filling of habitat would continue to affect the long-term viability of listed species in a regional context. In recent years, there have been several incidents of illegal grading of habitat within the cities of Carlsbad and San Marcos and adjacent lands within adjacent cities and unincorporated areas of the County of San Diego. Illegal grading, as well as trespassing by vehicles, equestrians, hikers, and pets is expected to continue to occur, affecting the multiple species planning efforts in the area.

CONCLUSION

After reviewing the current status of the gnatcatcher, the environmental baseline for the action area, the effects of the proposed San Marcos Highlands project, and cumulative effects, it is the Service's biological opinion that the development, as proposed, is not likely to jeopardize the continued existence of the gnatcatcher. The resulting habitat loss (73.80 acres of permanent and 1.84 acres of temporary impacts to coastal sage scrub) will not appreciably reduce the likelihood of the survival or recovery of the gnatcatcher.

The Service reached these conclusions for the following reasons:

1. Impacts to the gnatcatcher through the direct permanent loss of approximately 73.80 acres of, as well as 1.84 acres of temporary impacts to, coastal sage scrub habitat will be offset

adequately through implementation of the conservation measures, as described in the project description.

2. Direct impacts to the gnatcatcher will be minimized through the implementation of breeding season restrictions as described in the project description.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering. Harass is defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

The measures described below are non-discretionary, and must be undertaken by the Corps so that they become binding conditions of any grant or permit issued to KB Home as appropriate, for the exemption in section 7(o)(2) to apply. The Corps has a continuing duty to regulate the activity that is covered by this incidental take statement. If the Corps (1) fails to assume and implement the terms and conditions or (2) fails to require to adhere to the terms and conditions of this incidental take statement through enforceable terms that are added to the permit or grant document, the protective coverage of section 7(o)(2) may lapse. In order to monitor the impact of incidental take, the Corps or KB Home must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement [50 CFR §402.14(I)(3)].

AMOUNT OR EXTENT OF TAKE

The Service anticipates one gnatcatcher could be taken as a result of this proposed action. The take may be in the form of harm to adult birds as a result of the permanent removal of 73.80 acres of coastal sage scrub, as well as temporary impacts to 1.84 acres of coastal sage scrub.

The Fish and Wildlife Service will not refer the incidental take of any migratory bird or bald eagle for prosecution under the Migratory Bird Treaty Act of 1918, as amended (16 U.S.C. §§ 668-668d), if such take is in compliance with the terms and conditions (including amount and/or number) specified herein.

EFFECT OF THE TAKE

In the accompanying biological opinion, the Service determined that this level of anticipated take is not likely to result in jeopardy to the species or destruction or adverse modification of critical habitat.

REASONABLE AND PRUDENT MEASURES

The Service believes the following reasonable and prudent measure(s) are necessary and appropriate to minimize take of coastal California gnatcatchers:

1. Take of this species, through harm, shall be avoided and minimized to the extent possible by project design and implementation of best management practices.

2. Unavoidable project impacts shall be offset by the implementation of the conservation measures as described in the project description of this biological opinion, including creation and restoration activities.

3. The preservation areas shall be conserved and managed in perpetuity.

TERMS AND CONDITIONS

In order to be exempt from the prohibitions of section 9 of the Act, the Corps and the applicant must comply with the following terms and conditions, which implement the reasonable and prudent measures described above, and outline required reporting/monitoring requirements. These terms and conditions are non-discretionary.

1. The Corps and the project proponent shall implement reasonable and prudent measure 1 through the following terms and conditions:

    1.1. The Service hereby incorporates by reference the conservation measures 1-14 identified in the project description of this biological opinion into this Incidental Take Statement as terms and conditions.

    1.2. The covenants, conditions, and restrictions shall be enforced through the recordation of deed restrictions on the property, developed in coordination with and approved by the Service, to implement an indoor cat policy and landscape management to minimize the use of chemical fertilizers, pesticides, and herbicides, as well as the use of invasive exotic species adjacent or near sensitive vegetation communities.

1.3. The Service retains the right to access and inspect the project site for compliance with the proposed project description and with the terms and conditions of this biological opinion during the creation/revegetation and construction phases.

2. The project proponent shall implement reasonable and prudent measure 2 through the following terms and conditions:

2.1. The Service hereby incorporates by reference conservation measures 15-17 identified in the project description of this biological opinion into this Incidental Take Statement as terms and conditions.

2.2. A final restoration plan for the revegetation areas shall be approved by the Service and the Corps prior to ground disturbance. The plan shall include, but not be limited to:

2.2.1. A plant palette, timing of planting, description of site preparation, planting ratios, type of planting (e.g., seed, container stock), and duration of monitoring.

2.2.2. Success criteria for species richness for riparian, upland, and transitional revegetation areas shall be based on the species richness found in local, undisturbed areas of similar vegetation composition.

2.2.3. Success criteria for final ground cover for the riparian corridor revegetation areas shall be 75 percent cover by native woody species after 3 years and 90 percent cover by native woody species after 5 years (not including herbaceous plants).

2.2.4. Success criteria for upland restoration shall be 70 percent to 90 percent native, gnatcatcher-quality CSS cover after five years, if all weeds are excluded. The 90 percent cover should be comprised of approximately 60 percent cover by native woody shrubs.

2.2.5. Within the wildlife corridor revegetation areas, a maximum 10 percent total absolute cover of non-native/invasive plants and weed species shall be tolerated during the long-term management period. Invasive exotics on the California Invasive Plant Council's (Cal-IPC) List A shall be controlled completely and have a zero percent tolerance. Cal-IPC List B and grass species shall not exceed 5 percent total cover.

2.2.6. If restoration efforts fail to meet the performance criteria in any one year, the designated Project Biologist shall recommend remedial actions to be

implemented the following year that will enhance the vegetation to a level in conformance with the original standards.

3. The project proponent shall implement reasonable and prudent measure 3 through the following terms and conditions:

   3.1. The Service hereby incorporates by reference conservation measures 18-20 identified in the project description of this biological opinion into this Incidental Take Statement as terms and conditions.

   3.2. Prior to any ground disturbance, a final Habitat Management Plan (HMP) that will ensure the preserves are managed and monitored in perpetuity, consistent with MHCP guidelines and that addresses both the habitat and the species, shall be approved by the Corps and the Service. The HMP shall include management and monitoring in perpetuity of both the all restoration areas once the five-year performance standard has been achieved.

   3.3. Conservation easements shall be recorded on all proposed conservation, restoration, and off-site acquisition areas prior to any ground disturbance.

   3.4. The project proponent shall establish an appropriate financial mechanism (e.g., escrow account, performance bond) that would assure that the conservation measures are implemented fully. This mechanism must be in place prior to any surface disturbance. A permanent endowment fund shall be established for this project. The principal shall not be used and shall be non-wasting. The interest from this fund shall be adequate to maintain, manage and monitor the on-site and off-site preserve resources in perpetuity consistent with the draft MHCP guidelines. In the event that the organization responsible for management of the habitat is financially unable to maintain the property for whatever reason, the endowment funds and management responsibility shall be transferred to another like organization as approved by the Service and the Corps for interim or permanent management. The Service shall confer with the applicant to ensure that the establishment of the funding mechanism is proceeding in a manner acceptable to the Service. An endowment must be established and proof submitted to the Service prior to commencement of ground disturbing activities.

   3.5. The project proponent, in coordination with the Corps and the Service, shall designate an experienced natural lands manager to implement the HMP.

REPORTING REQUIREMENTS

In order to demonstrate compliance with this Biological Opinion, for the duration of construction, KB Home, or its designated contact, shall submit to an annual report to the Service

that describes and summarizes the implementation of the proposed project and its associated conservation measures.

Disposition of Sick, Injured, or Dead Specimens: The Service's Carlsbad Office is to be notified within three working days should any endangered or threatened species be found dead or injured during this project. Notification must include the date, time, and location of the carcass, and any other pertinent information. Dead animals may be marked in an appropriate manner, photographed, and left on-site. Injured animals should be transported to a qualified veterinarian. Should any treated animals survive, the Service should be contacted regarding the final disposition of the animals. The Service contact person is Janet Stuckrath. She may be contacted at the letterhead address or at (760) 431-9440.

The Service retains the right to access and inspect the project site for compliance with the proposed project description and with the terms and conditions of this biological opinion. Any habitat destroyed that is not in the identified project footprint should be disclosed immediately to the Service for possible reinitiation of consultation. Compensation for such habitat loss will be requested at a minimum ratio of 5:1.

CONSERVATION RECOMMENDATIONS

Section 7(a)(1) of the Act directs Federal agencies to utilize their authorities to further the purposes of the Act by carrying out conservation programs for the benefit of endangered and threatened species. Conservation recommendations are discretionary agency activities to minimize or avoid adverse effects of a proposed action on listed species or critical habitat, to help implement recovery plans, or to develop information.

1. We recommend that prior to issuance of the Corps permit, and as part of the annexation process, an agreement should be reached between the County, City, Service, Department, and the project proponent to ensure that development of the annexed land proceeds in accordance with the conservation goals of the NC MSCP and MHCP, and sets forth the resulting responsibilities pursuant to the NC MSCP and MHCP for ongoing maintenance and enforcement of the terms of this agreement and the two regional plans as they relate to the annexed land.

2. We recommend that monitoring and, when necessary, control of brown-headed cowbirds (*Molothrus ater*) should be included in the long-term management/monitoring plan for the preservation areas.

3. Because of the regional planning efforts that are underway and the fact that San Marcos has used its 5 percent take of coastal sage scrub habitat allotted under the 4(d) Rule of the Act, we recommend that the annexation not proceed until an approved NC MSCP Plan has been adopted for this area.

In order for the Service to be kept informed of actions minimizing or avoiding adverse effects or benefiting listed species or their habitats, the Service requests notification of the implementation of any conservation recommendations.

REINITIATION NOTICE

This concludes formal consultation on the San Marcos Highlands outlined in the March 2005 project description. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation.

A complete administrative record for this consultation is on file at the Carlsbad Fish and Wildlife Office. If you have any questions or concerns about this biological opinion, please contact Janet Stuckrath of my staff at (760) 431-9440 extension 270.

Sincerely,

Therese O'Rourke
Assistant Field Supervisor

Enclosures (2)

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USFWS Amended BO (FWS Log No. 1-6-05-F-1668-R1)

U.S. Fish and Wildlife Services (USFWS) Amended Biological Opinion (BO)
FWS Log No. 1-6-05-F-1668-R1, December 2005

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road
Carlsbad, California 92011

In Reply Refer To:
FWS-SDG-1668.10

Dec 7 2005

Colonel Alex Dornstauder
District Engineer
U.S. Army Corps of Engineers, Los Angeles District
Regulatory Branch B San Diego Field Office
16885 West Bernardo Drive, Suite 300A
San Diego, California 92127

Attn: Robert Smith

Subject: Amendment to the Biological Opinion on the San Marcos Highlands Project, City of San Marcos, San Diego County, California (Corps File No. 200100479-SKB, FWS Log No. 1-6-05-F-1668-R1)

Dear Colonel Dornstauder:

This document is an amendment to our biological opinion (1-6-05-F-1668) for the San Marcos Highlands project. The project site is located partially within the City of San Marcos (City) and partially within the County of San Diego (County), California. In our biological opinion for the San Marcos Highlands project, we concluded that the project was not likely to adversely affect either the least Bell=s vireo (*Vireo bellii pusillus*; vireo) or southwestern willow flycatcher (*Empidonax traillii extimus*; flycatcher), nor jeopardize the continued existence of the federally listed threatened coastal California gnatcatcher (*Polioptila californica californica*). The biological opinion was issued on April 8, 2005, in accordance with section 7(a)(2) of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*).

This amendment is necessary to modify the description of the proposed project. The project applicant has requested that the following changes be made to the project description:

- The total area of the San Marcos Highlands project site (Site) was originally described as "approximately 203 acres." The Site area has been revised with additional property line and topographic surveys and is now identified as being 204.5 acres in size. The acreage of the adjacent off-site mitigation parcel to the northwest was also refined from 21.9 acres to 22.8 acres.

- The biological opinion stated that "approximately 123.1 acres" of the Site will be preserved as open space, "of which approximately 109.3 acres can be considered natural open space." Due to minor project revisions and refined survey data, on-site open space will total 124.5 acres, of which 111.3 acres will be considered natural open space.

- The refined proposed project involves replacing the earthen dam in the Creek with a single arched culvert that is 10 feet high, 12 feet wide, and 159 feet long to allow for the flow of water and wildlife movement.

- Temporary, construction-related impacts, which include a buffer around the limits of grading, have been increased from 10 feet to 20 feet in order to accommodate maneuvering the large, earth-moving equipment where needed.

- U.S. Army Corps of Engineers (Corps), California Department of Fish and Game (Department), and Regional Water Quality Control Board (RWQCB) jurisdictional impacts have been revised. Minor revisions have been incorporated into the project design to address concerns raised during the review process (e.g., modified limit of grading, realignment of the fuel modification zone, 10-foot culvert design, etc.), and data collected during an additional site survey. The revised impact values reflect more accurate site conditions as well as the most current project design. The revised impacts do not alter the existing permit application status of the project. These impact revisions include the following:

  - Total Corps and RWQCB impacts increased from 0.75 acre (0.71 acre permanent and 0.04 acre temporary) to 0.80 acre (0.74 acre permanent and 0.06 acre temporary).

  - Total Department impacts are 1.38 acres. However, permanent impacts have decreased from 1.26 acres to 1.22 acres and temporary impacts have increased from 0.10 acre to 0.16 acre.

- Approximately 0.05 acre of wetland creation will be established within the upland eucalyptus removal zone immediately adjacent to the stream corridor of Agua Hedionda Creek (Creek). The area of wetland creation has been designed and incorporated within the project to address agency concerns and to ensure a "no-net-loss" of wetlands on the Site. The placement of the wetland has been chosen such that it satisfies the Corps, RWQCB, and Department "wetland creation" definitions (as discussed during the September 30, 2005, meeting).

- The dredged pond material will not be re-used within the project site. As such, sediment dredged from the pond will be properly disposed of and clean topsoil collected from upland areas within the development footprint will be used in construction and mitigation activities requiring fill or topsoil amendments.

- All mitigation areas will be preserved in perpetuity and managed under a conservation easement. Separately, 2.3 acres of enhanced riparian habitat in the upper reaches of Agua

Hedionda Creek lie within an area occupied by several infrastructure easements. While it is likely that the easements may never be executed, their presence precludes the 2.3 acres from being preserved "in perpetuity" and thus must be excluded from the conservation easement. Nevertheless, KB Home Coastal, Inc. will provide funds to maintain the ecological integrity of riparian zone where the Vista Irrigation District pipeline easement crosses the Creek.

The points listed above are the major points of the updated project description. A complete version of the updated project description may be found in the Memorandum from PCR to the Agencies, dated October 20, 2005. We believe that these changes to the project description will not change the analysis or conclusions of our April 8, 2005, biological opinion; therefore, no change is necessary to the Incidental Take Statement.

All measures proposed by the applicant, except as discussed above, and all terms and conditions in the April 8, 2005, biological opinion must be implemented as written. If you have any questions regarding this amendment, please contact Janet Stuckrath at (760) 431-9440.

Sincerely,

//s//Kathleen Brubaker, for
Therese O=Rourke
Assistant Field Supervisor

cc: Chris Means, Regional Water Quality Control Board