

CHAPTER 2: PROJECT NEED AND PURPOSES

As reviewed in this Chapter, federal agency efforts to protect the coastal California gnatcatcher have been integrated with the state's Southern California Coastal Sage Scrub NCCP program. The FESA Special 4(d) Rule (Special Rule) for the coastal California gnatcatcher provides for the conservation of the species through the preparation of subregional conservation plans, called a NCCP/HCP, that would meet the goals of the state's NCCP Act and CESA, and the FESA. As further reviewed in *Chapter 1*, the goals of the Southern NCCP/MSAA/HCP have been expanded, consistent with the recommendations of the Southern Orange County NCCP Science Advisors Report (*Appendix B*) to include all of the major habitat types included within the planning area, as well as state/federally listed and sensitive species dependent on such habitats.

This Chapter discusses the need for the proposed Southern NCCP/MSAA/HCP and the need for coordinating and integrating the NCCP/MSAA/HCP with the SAMP. This Chapter also sets forth the specific project purposes and related objectives that must be addressed by the approved Southern NCCP Conservation Strategy. The NCCP/MSAA/HCP purposes and objectives set forth in this Chapter are consistent with the requirements of the NCCP Act, CESA, Fish and Game Code Section 1600 *et seq.* and the FESA, including the FESA Special Rule for the coastal California gnatcatcher. The project purposes and objectives are important because they serve as the program goals that enabled the County of Orange, state/federal agencies and other NCCP participants to formulate and evaluate specific Habitat Reserve Alternatives and a long-term management program that were identified during the process of selecting the proposed Southern NCCP Conservation Strategy set forth in this draft NCCP/MSAA/HCP.

SECTION 2.1 PROJECT NEED

2.1.1 NCCP/HCP

The need for the proposed Southern NCCP/HCP has been established and defined over several years by a combination of legislative and regulatory actions, and by the findings compiled by the NCCP Scientific Review Panel (SRP). The need for broadening the scope of habitat systems to be addressed by the Southern NCCP/HCP beyond habitats associated with the coastal sage scrub vegetation community was recognized by the participants in the Southern NCCP/HCP process and confirmed by the Science Advisors Report. The needs identified by the NCCP participants and by participants in associated planning programs are summarized in the following subsections.

a. California Department of Fish and Game

1. NCCP Act

In 1991, the California Legislature enacted the NCCP Act. The Legislature found and declared, as part of the Legislative Findings for the Act (“Legislative Findings”), that “there is a need for broad-based planning to provide for effective protection and conservation of the state’s wildlife heritage while continuing to allow appropriate development and growth.” Included in Section 1 of the Legislative Findings for the NCCP Act of 1991 were the following declarations:

- a) The continuing population growth in California will result in increasing demands for dwindling natural resources and result in the continuing decline of the state’s wildlife.
- b) There is a need for broad-based planning to provide for effective protection and conservation of the state’s wildlife heritage while continuing to allow appropriate development and growth.
- c) Natural community conservation planning is an effective tool in protecting California’s natural diversity while reducing conflicts between protection of the state’s wildlife heritage and reasonable use of natural resources for economic development.
- d) Natural community conservation planning is a mechanism that can provide an early planning framework for proposed development projects within the planning area in order to avoid, minimize and compensate for project impacts to wildlife.
- e) The purpose of natural community conservation planning is to sustain and restore those species and their habitat identified by the Department of Fish and Game which are necessary to maintain the continued viability of those biological communities impacted by growth and development.

(Legislative Findings, Section One, AB 2172, 1991)

The need for the State of California to support the preparation of subregional NCCP plans pursuant to the Southern California NCCP Program, in furtherance of the above Legislative Findings of the NCCP Act, was articulated through the preparation of the NCCP Process Guidelines and Conservation Guidelines reviewed in *Chapter 1*. As reviewed in *Chapter 1*, the NCCP Process Guidelines and Conservation Guidelines were formulated and adopted by CDFG for the purpose of integrating state natural communities conservation planning with federal initiatives pursuant to Section 10 of FESA. Consistent with the NCCP Process Guidelines and Conservation Guidelines, the proposed NCCP/HCP provides the desired integration between

broad landscape-scale natural communities conservation planning and the requirements of the NCCP Act, and FESA with regard to the long-term protection of listed and unlisted species.

2. California Fish and Game Code Section 1600 et seq.

In enacting a new statute providing for streambed alteration agreements, the California Legislature stated as follows:

The Legislature finds and declares that the protection and conservation of the fish and wildlife resources of this state are of utmost public interest. Fish and wildlife are the property of the people and provide a major contribution to the economy of the state, as well as providing a significant part of the people's food supply; therefore their conservation is a proper responsibility of the state.

Streambed alteration agreements pursuant to Fish and Game Code Section 1600 *et seq.* involve a proposed activity that would: “substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked or ground pavement where it may pass into any river, stream, or lake” (Fish and Game Code Section 1602(a)). Under Fish and Game Code Section 1605(g), CDFG may enter into long-term agreements if certain conditions are met including provisions for providing a status report addressing the topics identified in that section and provisions for department review and consultation regarding the status report. According to CDFG regulations:

“A ‘Master Agreement’ means an agreement with a term of greater than five years that (1) covers multiple projects. . . . The master agreement will specify a process the department and entity will follow before each project begins and may identify various measures the entity will be required to incorporate as part of each project in order to protect fish and wildlife resources. . . . A master agreement will typically, but not always, encompass one or more watersheds and/or relate to a habitat conservation plan or natural community conservation plan.”
(cite)

Given its authority under Fish and Game Code Section 1600 *et seq.*, and its commitment to a natural communities scale of planning for major habitat systems under the NCCP Act, CDFG has a goal of addressing both statutory mandates under a coordinated planning and approval program, hence broadening of the NCCP/HCP to become a NCCP/MSAA/HCP.

b. U.S. Fish and Wildlife Service

USFWS reviewed the need for large-scale subregional conservation planning in Southern California in conjunction with the consideration of the FESA Special Rule for the coastal California gnatcatcher. According to the Final Environmental Assessment for the Special Rule, the inability to complete and implement NCCP coastal sage scrub subregional plans would have potentially severe environmental consequences for coastal sage scrub and other habitats and associated species. USFWS underscored the need for the proposed project by citing the following consequences related to a failure to implement a landscape-level Conservation Strategy:

Coastal Sage Scrub

. . . The No Action Alternative [i.e., no adoption of the 4(d) rule integrating the state NCCP program into Section 10 HCP conservation planning] would result in further loss and fragmentation of habitat as projects continue to develop habitat in Southern California. There would be less incentive for projects to participate in the NCCP Program, since they would still be required to obtain a Section 10(a) permit (or conduct a Section 7 consultation, as appropriate) for any action that might affect gnatcatchers.

As development continues to occur in the Southern California area, coastal sage scrub would continue to be fragmented and lost. Coastal sage scrub impacts would continue to be addressed on a project by project basis. Research on coastal sage scrub management and restoration would probably not be initiated, since no one project could justify such an expense. Biodiversity within the CSS ecosystem would incur substantial losses (CDFG et al., 1992). With no coordinated regional NCCP planning process to preserve CSS, the survival of the gnatcatcher could be further jeopardized and may require consideration by the service for listing as an endangered species.

Other Natural Habitats

Other habitat types would continue to diminish due to piecemeal losses from individual projects. The requirements of CEQA would continue to apply. The NCCP program would proceed but without being done in conjunction with other important environmental requirements (i.e., ESA take prohibitions). . . . Comprehensive regional planning would receive less effort, diluting efforts that may conserve some other habitat types known to be associated with CSS.

Other Species of Plants and Wildlife

[Under the No Action Alternative for the 4(d) rule],*s[S]imilar to other habitat types, other species of plants and wildlife would continue to be subject to piecemeal losses. With less incentive for regional conservation efforts, other species of plants and wildlife will continue to decline. Conservation of these species would be subject to CEQA requirements and any attending mitigation.*

(Final Environmental Assessment of the Proposed Special Rule, November 1993, USFWS, pp. 43-44)

On December 10, 1993, USFWS adopted the Special 4(d) Rule for the gnatcatcher, effectively integrating habitat conservation planning at the state and federal level. The Special 4(d) Rule states that incidental take of the coastal California gnatcatcher “will not be considered a violation of section 9 of the Endangered Species Act of 1973 . . . if it results from activities conducted pursuant to the State of California’s Natural Community Conservation Planning Act of 1991 . . . and in accordance with a NCCP plan for the protection of coastal sage scrub habitat, prepared consistent with the State’s NCCP Conservation and Process Guidelines,” the provisions of the NCCP Act and the FESA Section 10 HCP regulations.

The USFWS has recently compared conservation benefits that can be provided for pursuant to HCPs versus protection and management that can be achieved through Section 7 consultations and has concluded:

. . . HCPs typically provide for greater conservation benefits to a covered species than section 7 consultations because HCPs assure the long-term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5-Point Policy for HCPs (64 FR 35242) and the HCP No Surprises regulation (63 FR 8859). Such assurances are typically not provided by section 7 consultations which, in contrast to HCPs, often do not commit the project proponent to long term special management or protections.

Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery of covered species.

(65 Federal Register 63688 and 63889, 10/24/00)

With regard to the significance of subregional conservation plans in Southern California, the USFWS has determined that:

The Service considers the subregional NCCP planning process as the best opportunity to provide for the comprehensive conservation on a regional scale that is essential to protect coastal sage scrub and its associated mosaic of habitats, in an area subject to some of the most intense development pressure in the country.

(ROD for the Orange County Central and Coastal Subregional NCCP/HCP)

Seven federally-listed species are found in the Southern NCCP/HCP Subregion. The population characteristics of these seven species in the Southern Subregion may be summarized as: (1) major populations of three species—the coastal California gnatcatcher, the arroyo toad and the thread-leaved brodiaea; (2) small but expanding coastal California populations of two species—the least Bell’s vireo and the southwestern willow flycatcher; and (3) small and very habitat specific populations of the San Diego fairy shrimp and the Riverside fairy shrimp. Additionally, an eighth species, the southern steelhead, has the potential for returning to portions of San Juan Creek and, along with the federally listed tidewater goby, is found downstream of the planning area in San Mateo Creek. (One other state-listed species, the Swainson’s hawk is a rare winter migrant to the planning area). In light of the above conclusions regarding the benefits of landscape-level planning, the ability of the NCCP/MSAA/HCP to provide for long-term protection of the habitats of these listed species, as well as the habitats of other unlisted species, through the creation of habitat reserves and the provisions for comprehensive long-term adaptive management of such reserves in partnership with the state NCCP program defines the need for the USFWS to undertake the proposed project.

c. County of Orange

The County of Orange was one of the early participants in the southern California NCCP process. As reviewed in *Chapter 1*, the County formally enrolled its unincorporated area in the NCCP program on a jurisdictional basis early in 1992 and it took the lead in preparing the First Memorandum of Agreement (Planning Agreement) covering a NCCP subregional planning area. The subregional Planning Agreement was signed on May 7, 1993 by the County, the USFWS, CDFG, the State of California Resources Agency and participating landowners and is set forth in *Appendix A*. The County further demonstrated its commitment to subregional planning through its role as the local lead agency for the County of Orange Central and Coastal Subregional NCCP/MSAA/HCP and its major commitments of County regional park lands to the Central and Coastal reserve system. The County has continued to support subregional conservation planning in southern Orange County and has provided support to HCP and other habitat planning in the northern Orange County Matrix area. The County’s participation in these large-scale planning efforts is also based on the need for integrating collaborative public and private partnership conservation planning with short and long-term planning for the provision of vital elements of

economic development, including housing, employment and infrastructure, consistent with the Legislative Findings for the NCCP Act of 1991.

d. Participating Landowners

For the participating landowners, the NCCP program is a voluntary planning program. The participating landowners have assessed the results of smaller scale, incremental development and conservation planning and have concluded that piecemeal, project-by-project planning will not provide the certainty and predictability required to undertake long-term development activities. Accordingly, the NCCP/MSAA/HCP participating landowners have concluded that there is a need for involvement in the NCCP/MSAA/HCP planning effort because the NCCP/MSAA/HCP presents the best opportunity to achieve a balance between the conservation of natural resources and reasonable economic development as articulated by the Legislative Findings to the NCCP Act of 1991.

2.1.2 Coordinated Planning for the NCCP/MSAA/HCP and the SAMP

As reviewed in *Chapter 1*, NCCP/MSAA/HCP planning and environmental review has been coordinated with the joint preparation by the USACE of a SAMP for the portions of the San Juan Creek and western San Mateo Creek watersheds located within the NCCP planning area. The USACE has identified the need for the SAMP as follows:

Natural habitats throughout the San Juan and San Mateo watersheds are continuing to be converted to developed uses due to population and economic growth. These habitats include sensitive aquatic resources such as natural streams and various classes of wetlands. Consequently, there is a need to develop a comprehensive and coordinated approach to aquatic resource protection to ensure that the functional integrity of aquatic resources is maintained. In addition, there is a continuing need to enhance degraded aquatic resources and to restore or replace such resources to offset impacts of ongoing development and other activities. The success of preservation, restoration and long-term management efforts can be better attained by the use of a comprehensive watershed-wide approach.

Consistent with the above long-term resource concerns, there is a need to develop a more informed, consistent and coordinated permitting evaluation and decision process that will ensure better agency decisions and improve the use of agency resources and administrative efficiency. An improved permitting process will also provide more certainty and predictability for both the permitting agencies and permittees.

Therefore, a comprehensive watershed-wide resource planning and implementation program is needed to provide a means of addressing long-term natural resource conservation and cumulative impact assessment in a more effective manner than project-by-project review.

The public agencies (CDFG, USFWS, USACE and County of Orange) and participating landowners involved in the Southern NCCP/HCP planning process believe that the opportunity to coordinate the NCCP/MSAA/HCP conservation planning program with the proposed SAMP will further the ability of all participants to comprehensively address the need for both large-scale conservation planning and certainty with respect to long-term economic development reviewed in this Chapter. The geomorphic, hydrologic and biological resources addressed under the SAMP are also essential elements of the natural communities of the NCCP/MSAA/HCP planning area. These resources include aquatic/riparian vegetation communities, listed species dependent on aquatic/riparian and upland vegetation communities that support important elements of the drainage systems for aquatic vegetation communities.

The Southern Orange County NCCP Science Advisors recognized the critical role played by hydrologic and geomorphic processes in shaping and sustaining both upland and aquatic systems. In recognition of the significance of these processes for the ultimate NCCP/HCP Conservation Strategy, the Science Advisors formulated a new tenet of reserve design – Tenet 7 – that focuses on hydrologic and geomorphologic processes. The importance of the Science Advisors Tenet 7 to the Southern NCCP/MSAA/HCP Conservation Strategy underscores the need for coordinating planning and management decisions of the NCCP/MSAA/HCP with the SAMP.

In November 2005, the USACE issued three Special Public Notices as part of the SAMP announcing USACE's proposal to establish alternate permitting processes including a Regional General Permit, Letter of Permission Procedures (LOP) for RMV lands and Letter of Permission Procedures for non-RMV lands, as well as the revocation of selected Nationwide Permits. A draft EIS was issued at the same time to address the environmental considerations involved in the review and approval of the proposed permitting procedures. The EIS review of the proposed permitting procedures reflects a high level of coordination of the SAMP with the NCCP/MSAA/HCP, including proposed provisions for integrating protection and long-term management of aquatic resources subject to USACE jurisdiction with protection and management of vegetation communities pursuant to the final NCCP/MSAA/HCP Conservation Strategy.

2.1.3 Coordinated Processes for the NCCP/MSAA/HCP and the Proposed General Plan Amendment/Zone Change for Rancho Mission Viejo Lands

Rancho Mission Viejo (RMV) has completed processing of a request for a General Plan Amendment and Zone Change (GPA/ZC) on its properties within the planning area. The GPA/ZC provides for new development and preservation of natural habitat and other open space within the remaining 22,815 acres of RMV's lands located in southern Orange County. The RMV lands included in the GPA/ZC constitute a central focus of the NCCP/MSAA/HCP planning program because these lands comprise approximately 90 percent of the remaining privately owned lands in the Southern NCCP/MSAA/HCP planning area that are not already developed or approved for development.

As reviewed in *Chapter 1*, the Rancho Mission Viejo GPA/ZC application was processed in full consideration of the NCCP/HCP and SAMP/MSAA coordinated governmental review and approval process (at that time, the MSAA was joined with the SAMP rather than with the NCCP/HCP for CEQA/NEPA review purposes), including the application of the Draft Southern Planning Guidelines and Watershed Planning Principles, at both the sub-basin and landscape levels, to the review of the GPA/ZC Proposed Project and other Habitat Reserve Alternatives developed through the NCCP/MSAA/HCP planning process and by the County. As the lead agency for the GPA/ZC, a lead agency for the NCCP/HCP and as a participating landowner under the NCCP/HCP, the County of Orange stated its intent to coordinate the GPA/ZC closely with the NCCP/HCP and SAMP/MSAA, including the coordination of land use planning with the identification of the proposed NCCP/HCP Habitat Reserve and the SAMP/MSAA aquatic protection and management program through specific provisions set forth in the County of Orange Preferred Alternative GPA/ZC adopted on November 8, 2004.

In both the County of Orange Central and Coastal Subregion NCCP/HCP and the San Diego Multiple Species Conservation Program (MSCP), landowner dedications, related directly to land use entitlements and resource agency approvals, are a central element of the overall program for assembling the permanent Habitat Reserve lands identified in those plans. With regard to considerations involving potential public acquisition of lands owned by RMV or any other private landholdings, the public planning and regulatory agencies have as a matter of policy stated that the agencies will not resort to condemnation of private lands and that any acquisition must be entered into voluntarily by private property owners (according to Section 5.2.4 of the County of Orange Central/Coastal NCCP/HCP IA: "Consistent with current state and federal land acquisition practices, lands identified for potential inclusion within the Reserve System shall be acquired only if the landowner is a willing participant in the transaction."). RMV has indicated that any consideration of potential public acquisition must be based on satisfactory resolution of the coordinated conservation planning and entitlement processes. As a

consequence of the foregoing, the land use entitlement process is a central programmatic element that affects the feasibility of assembling the overall subregional Habitat Reserve design reviewed in the Alternatives.

2.1.4 Coordination with Water Quality Planning and Management

Water quality management, including planning for the hydrologic and geomorphologic processes identified in Tenet 7 of the Southern NCCP Science Advisors Report, is central to assuring the long-term viability of important vegetation communities and species dependent upon those communities. The State of California Water Resources Control Board Nonpoint Source Plan (NPS Plan, January 2000) emphasizes the need to address water quality planning at a large geographic scale. One of the policy directives set forth in the State NPS Plan is to:

Manage NPS pollution, where feasible, at the watershed level – including pristine areas and watersheds that contain water bodies on the Clean Water Act (CWA) 303(d) list – where local stewardship and site-specific MPs [Management Practices] can be implemented through comprehensive watershed protection or restoration plans.

(NPS Plan, p. 1)

The San Diego Regional Water Quality Control Board (SDRWQCB) has established a program for implementing federal stormwater/water quality management requirements. In fulfillment of the requirements established by the SDRWQCB, the County of Orange MS4 Stormwater Permit/Drainage Area Management Plan (DAMP)/Local Water Quality Management Plan (LWQMP) contains provisions for identifying “pollutants of concern” and “hydrologic conditions of concern” that are applicable to species protection and management and to hydrologic and geomorphologic processes that need to be addressed pursuant to the NCCP/MSAA/HCP and SAMP. In addition, the SAMP must address CWA Section 401 and 404(b)(1) water quality requirements. Accordingly, there is a need to assure the coordination of water quality management with the long-term NCCP/MSAA/HCP Habitat Reserve Management Program (HRMP). This coordinated planning has addressed the following: **(1)** the requirements and policies of the County, the SDRWQCB and the State NPS Plan and the provisions of the Draft Watershed Planning Principles in conjunction with the NCCP/MSAA/HCP; and **(2)** the requirements of CWA Section 401 and the USACE/EPA 404(b)(1) water quality guidelines in conjunction with the SAMP.

SECTION 2.2 PROJECT PURPOSES

The County of Orange Southern NCCP/MSAA/HCP, Joint EIR/EIS and IA are designed to address several key project purposes and related objectives. The purposes and objectives of the

NCCP/HCP planning participants are set forth in the following sections. *Section 2.2.1* below sets forth the collective purposes of the planning participants relating to overall conservation planning goals. *Sections 2.2.2* and *2.2.3* set forth goals of the local agency and landowner participants relating to local planning and economic/societal objectives within the context of the NCCP/HCP planning effort.

2.2.1 Purposes of the Planning Participants

Natural Community Planning and Take Authorization. The central purpose of the Planning Participants is to undertake natural community-based planning for the major habitat systems found in the County of Orange Southern NCCP/HCP Subregion in a manner that would: **(1)** further the statutory purposes of the NCCP Act Fish and Game Code Section 1600 *et seq.* and FESA; **(2)** meet the requirements of the Special Rule for the coastal California gnatcatcher and Draft Southern Planning Guidelines and Draft Watershed Planning Principles, including the NCCP Conservation Guidelines; and **(3)** in so doing, provide the basis for authorizing regulatory coverage for the impacts of Covered Activities on designated Covered Species (including both listed and unlisted species) and other provisions pursuant to the NCCP/MSAA/HCP Conservation Strategy and Implementation Agreement.

Overview

The final rule listing the coastal California gnatcatcher as a federally-listed threatened species was followed by a Special Rule on December 10, 1993 (50 FR 65088) to allow Take of the California gnatcatcher pursuant to the Special Rule. The Special Rule defined the conditions under which Take of the coastal California gnatcatcher, resulting from specified land use activities regulated by state and local government, would not violate Section 9 of FESA. In the Special Rule, USFWS recognized the significant efforts undertaken by the State of California through the NCCP Act and encouraged the holistic management of listed species, like the coastal California gnatcatcher, and other sensitive species. USFWS declared its intent to permit Incidental Take of the coastal California gnatcatcher associated with land use activities covered by an approved subregional NCCP/HCP prepared under the NCCP Southern California Coastal Sage Scrub Program, provided USFWS determines that the subregional NCCP/HCP meets the issuance criteria of an Incidental Take permit pursuant to Section 10(a)(1)(B) of FESA and 50 CFR 17.32(b)(2). Other federally-listed species to be addressed in natural community planning for the Southern NCCP include both upland species (thread-leaved brodiaea) and aquatics/riparian species (arroyo toad, least Bell's vireo, southwestern willow flycatcher, Riverside fairy shrimp, and San Diego fairy shrimp). State listed species include upland species (brodiaea), riparian species (vireo and flycatcher) and one raptor (the Swainson's hawk, a rare winter migrant to the Subregion).

The NCCP/MSAA/HCP is intended to address the purposes of the NCCP Act of 1991 set forth in the Act's Legislative Findings (reviewed above in *Section 2.1.1 (a)*) and the Purpose Section of FESA which states its intent "to provide a means whereby the ecosystems upon which endangered and threatened species depend may be conserved . . ." (16 USCA 1531(b)). According to the NCCP Conservation Guidelines incorporated in the Special Rule, the primary vehicle for achieving these goals is the designation of habitat reserve systems that will be adaptively managed on a long-term basis:

. . . subregional NCCPs will designate a system of interconnected reserves designed to: 1) promote biodiversity, 2) provide for high likelihoods for persistence of target species in the subregion, and 3) provide for no net loss of habitat value from the present, taking into account management and enhancement. No net loss of habitat value means no net reduction in the ability of the subregion to maintain viable populations of target species over the long-term.

(NCCP Conservation Guidelines, November 1993, p. 9)

In contrast with previous single species conservation planning efforts under the CESA and FESA, the regionwide NCCP Program for Southern California and the Southern NCCP/MSAA/HCP subregional planning element of that program are intended to provide a natural community-based focus for conservation planning undertaken within the geographically defined NCCP/MSAA/HCP subregion of southern Orange County. The NCCP Conservation Guidelines concluded that NCCP planning can and should proceed independently on a subregional basis. As defined by the NCCP Scientific Review Panel (NCCP Conservation Guidelines, at p. 4, referencing the "Subregional Planning Document" August 1992), the designated subregions have sufficient geographic scope and habitat/species diversity to enable the analysis of cumulative impacts on the proposed Conserved Vegetation Communities found within the planning area and associated Covered Species, reserve design and connectivity needs consistent with the NCCP Conservation Guidelines. Accordingly, in addressing the statutory purposes of the NCCP Act and FESA, one goal of the Southern NCCP/HCP planning program is to carry out a comprehensive conservation planning effort on a subregional level.

The original focus of the Southern California NCCP program was on the coastal sage scrub ecosystem and the mosaic of vegetation communities found within that ecosystem. Given the variety of vegetation communities occupied by listed species in the Southern NCCP planning area and the recommendations of the Southern NCCP Science Advisors to address all major vegetation communities found within the Southern NCCP/HCP planning area, one of the major goals of the NCCP/HCP is to prepare a "Conservation Strategy" based on a multiple-habitat, natural communities approach for the subregion.

The initial NCCP subregional planning effort in Orange County, the County of Orange Central and Coastal NCCP/HCP, focused on upland vegetation communities and did not attempt to address wetlands/riparian vegetation communities either with respect to species or as “covered” habitats. Subsequently, the Southern Science Advisors Report recommended the inclusion of wetlands/riparian communities in the Southern Subregion planning program and identified a new planning tenet, reserve design Tenet 7, that addresses hydrologic/geomorphic processes that shape and affect wetlands/riparian communities. Further, as reviewed in *Chapter 1*, planning participants noted the limitations on the effectiveness of the NCCP program that result from plans which do not include wetlands/riparian vegetation communities as habitats covered by a NCCP Plan.

With the wetlands/riparian community as one of the five major vegetation communities proposed to be addressed by the NCCP/MSAA/HCP Conservation Strategy, CDFG has determined that its mandates under the NCCP Act and under Fish and Game Code Section 1600 *et seq.* should be addressed through one comprehensive, integrated planning and implementation program. Given the significance of the wetlands/riparian natural communities in the Southern Subregion planning context, the goals and programmatic requirements of Fish and Game Code Section 1600 *et seq.* can best be fulfilled by a larger scale sub-basin and watershed approach within the framework of the NCCP Act than by proceeding on a project-by-project review basis. Accordingly, one major purpose of CDFG is to prepare a long-term plan and management program that integrates planning for the natural communities encompassed by streambed alteration agreements with planning for other major vegetation communities that combine to form sub-basin and watershed habitat systems. Natural communities proposed for management and protection are designated as Conserved Vegetation Communities.

Since the Southern NCCP/MSAA/HCP is intended to address a broad range of habitats, the list of “target species” (coastal California gnatcatcher, coastal cactus wren, orange-throated whiptail) originally designated by the SRP to help guide the reserve design process has been broadened to include, for reserve design planning purposes, all state- and federally-listed species that inhabit the study area, as well as an additional group of unlisted species; these species have been termed planning species. The needs of species proposed for regulatory coverage (*i.e.*, Covered Species) are specifically addressed and reviewed in the NCCP/MSAA/HCP Conservation Strategy. Further, it is anticipated that the comprehensive nature of NCCP/MSAA/HCP planning and management will effectively address a wide range of sensitive species (both the state-listed Swainson’s hawk and other unlisted species) in addition to the planning species and Covered Species reviewed in the NCCP/MSAA/HCP and environmental considerations associated with such species will be examined in the EIR/EIS.

a. Formulate a NCCP/HCP “Conservation Strategy” to carry out the SRP and Science Advisors conservation planning principles and tenets of reserve design.

Four programmatic elements comprise the final Conservation Strategy that will be selected at the conclusion of the environmental and agencies review processes. These four programmatic elements have been formulated as long-term planning and implementation vehicles for carrying out the SRP and Science Advisors Report tenets of reserve design, as well as the other sub-basin and landscape level guidelines and principles set forth in *Chapters 4* and *5*:

- **Creation of a Habitat Reserve:** This programmatic element focuses on the creation of a subregional Habitat Reserve capable of protecting and maintaining populations of planning species over the long term, including land areas necessary for the dispersal of planning species and the ability to maintain genetic flow within and between areas. This element of the Conservation Strategy involves the assemblage, over time, of a large-scale Habitat Reserve that is capable of being managed effectively to provide long-term protection of proposed Covered Species, Conserved Vegetation Communities and CDFG Jurisdictional Areas. Consistent with the approach reviewed in *Chapter 10* and associated Implementation Agreement (IA), it is contemplated that the Habitat Reserve will likely be assembled over time in an orderly manner. The final subregional Habitat Reserve design will include current public lands and previously set aside conservation easements and RMV lands identified for phased dedication as part of the buildout of the RMV Covered Activities addressed in this NCCP/MSAA/HCP. The subregional Habitat Reserve also is designed to relate functionally to adjacent federal lands such as the Cleveland National Forest and the San Mateo Wilderness.
- **Habitat Reserve Management Program (HRMP):** This programmatic element focuses on the creation of the technical and institutional capability for undertaking coordinated monitoring and management actions necessary or helpful to sustain populations over the long term, while adapting management actions to new information and changing habitat conditions.
- **Regulatory Coverage for Designated Species and CDFG Jurisdictional Areas:** Covered Species and CDFG Jurisdictional Areas intended to be protected and managed by the Habitat Reserve and HRMP are designated by the NCCP/MSAA/HCP Conservation Strategy. The extent of authorized regulatory coverage for the impacts of Covered Activities on Covered Species and CDFG Jurisdictional Areas, and the impacts of Covered Activities on Conserved Vegetation Communities is set forth in *Chapters 13* and *14* and the IA.

- ***Implementation Agreement and Funding:*** The IA identifies the rights and obligations of all signatory parties to the approved NCCP/MSAA/HCP and provides for funding mechanisms adequate to assure the implementation of the NCCP/MSAA/HCP Conservation Strategy consistent with the terms of the approved IA and with the NCCP Act, FESA (including compliance monitoring) and Fish and Game Code Section 1600 *et seq.* The IA provides for any mutual assurances required for the long-term implementation of the NCCP/MSAA/HCP Conservation Strategy.

b. Specific Goals in Furtherance of the Formulation and Ultimate Implementation of the NCCP/MSAA/HCP Conservation Strategy

1. In formulating the Habitat Reserve element of the Final Subregional Conservation Strategy, provide for a subregional Habitat Reserve design that, to the maximum extent practicable, builds upon and integrates the extensive regional open space planning which already has been undertaken in the Subregional Study Area.

Existing conditions reflect large-scale conservation efforts undertaken within the Southern NCCP planning area in furtherance of the goal of protecting important habitat and open space areas. The eastern portion of the planning area includes a very large block of contiguous habitat comprising the Cleveland National Forest, Caspers Wilderness Park and the NAS Starr Ranch Sanctuary (*Figure 6-M*). The central portion of the planning area includes large blocks of contiguous habitat comprising O'Neill Regional Park, the Upper Chiquita Conservation Area, Gen. Thomas F. Riley Wilderness Park, the Ladera Ranch Open Space and Arroyo Trabuco open space/conservation easements (*Figure 6-M*). The southern portion of the planning area includes the Donna O'Neill Land Conservancy at Rancho Mission Viejo, numerous conservation easement areas resulting from the 4(d) interim Take permit process in San Clemente and other areas and a large open space designated as such under the City of San Juan Capistrano General Plan. As a result, the subregion currently includes approximately 29,700 acres of protected wildlands habitat outside the Cleveland National Forest (*Figure 6-M*). These prior habitat/open space protection efforts are reviewed in *Chapter 6* and have been undertaken in order to address a variety of goals and regulatory requirements including:

- Public acquisition of parklands ;
- Creation of the National Audubon Society Starr Ranch Sanctuary;
- Mitigation for the impacts of development by protecting habitat/open space areas in blocks of contiguous habitat, as contrasted with project-by-project, smaller scale

mitigation efforts (e.g., O'Neill Regional Park, Ladera Open Space, Upper Chiquita Conservation Area and Donna O'Neill Land Conservancy);

- Mitigation for regional infrastructure facilities, housing and other development activities; and
- Mitigation pursuant to the 4(d) rule for the gnatcatcher and FESA Section 7 consultations.

Prior open space planning and commitments are addressed under the SRP/Science Advisors Tenets of Reserve Design Consistency Review in order to determine the extent to which they contribute to species and habitat protection goals, including the extent to which such previously protected areas can be effectively connected with or integrated into the proposed Habitat Reserve and managed as part of the long-term HRMP .

2. Formulating the Regulatory Coverage Element of the Proposed Conservation Strategy

This subsection addresses regulatory coverage needs related to proposed Covered Activities consistent with the following applicable state and federal regulations: **(a)** regulatory coverage under FESA Sections 7 and 10 and the NCCP Act requirements for impacts on listed Covered Species; **(b)** regulatory coverage and provisions under FESA and the NCCP Act for impacts on unlisted Covered Species; **(c)** regulatory coverage for impacts to CDFG Jurisdictional Areas; and **(d)** provision of mutual long-term assurances regarding Covered Species. To support the regulatory coverage proposed, the Conservation Strategy also analyzes the impacts of Covered Activities on Conserved Vegetation Communities and provides for both protection and management of such vegetation communities.

(a) Regulatory Coverage Under FESA and the NCCP Act for Listed Covered Species

One purpose of the planning participants is to designate listed Covered Species that are protected and managed in a manner consistent with applicable statutory requirements and, in so doing, provide the basis for impacts of proposed Covered Activities on Covered Species and Conserved Vegetation Communities authorized pursuant to the IA and Incidental Take permit(s). With respect to any federally-listed species proposed for regulatory coverage as a Covered Species, one purpose of the Southern NCCP/MSAA/HCP is to satisfy the FESA Section 10 requirements (including the provisions relating to the coastal California gnatcatcher specified in the Special Rule) by showing that:

- Any permitted Take is incidental to otherwise authorized activities;
- The NCCP/MSAA/HCP provides for minimizing and mitigating the impacts of any authorized Take, to the maximum extent practicable;
- The NCCP/MSAA/HCP, through an IA, assures that adequate funding will be provided and that procedures for dealing with unforeseen circumstances will be established; and
- Any identified Take will not appreciably reduce the likelihood of the survival and recovery of the species in the wild.

Implementation Agreement provisions regarding FESA Section 3 and Section 7 requirements will also be addressed.

With respect to regulatory coverage for any state-listed Covered Species proposed for Take, one purpose of the Southern NCCP/MSAA/HCP is to meet the requirements of Section 2825(c) and 2835 of the NCCP Act of 1991, including the requirement to provide for the conservation and management of Identified Species (termed “Covered Species” under the draft NCCP/MSAA/HCP), as applicable.

All listed species found in the Southern study area are addressed by the NCCP/MSAA/HCP Conservation Strategy. For some species, no impacts on occupied habitat encompassed by Conserved Vegetation Communities are proposed but indirect effects that could constitute “harassment” under FESA regulations are identified and addressed. For other species, direct impacts on occupied habitat are proposed to be authorized in a manner that would constitute Take of listed Covered Species under the NCCP Act and/or FESA. Thus, one goal of the NCCP/MSAA/HCP is to formulate programmatic elements of the Conservation Strategy that will be adequate to meet statutory standards for approving the type and extent of impacts of Covered Activities on listed Covered Species proposed to be authorized through the IA and Incidental Take permit(s).

In return for long-term Conservation Strategy implementation assurances (*e.g.*, the phased dedication of lands for the Habitat Reserve) provided for through the NCCP/MSAA/HCP IA, state and federal regulatory long-term assurances and other provisions would be specified in the NCCP/MSAA/HCP IA in accordance with the purposes of the NCCP Act and, in the case of USFWS, in accordance with the Legislative History to the 1982 FESA Amendments and applicable regulations.

(b) Regulatory Coverage Under FESA and the NCCP Act for Unlisted Covered Species

The final approved Southern NCCP/MSAA/HCP is intended to provide the basis for authorizing future regulatory coverage for impacts of Covered Activities on presently unlisted Covered Species should such Covered Species be listed in the future by either USFWS or CDFG, or both. At the federal level the authorization for future Incidental Take of currently unlisted Covered Species responds to the Congressional statement of intent regarding the treatment of unlisted species in HCPs under the FESA (as declared in the 1982 FESA re-authorization findings) and to the USFWS' Habitat Conservation Planning Handbook (1996) to address candidate species in HCPs. Consistent with the emphasis on natural communities in the Legislative Findings for the NCCP Act, at the state level the NCCP Act refers to Identified Species (referred to in this NCCP/MSAA/HCP as Covered Species) and thus does not limit coverage under the Act to state-listed species.

Consistent with the goal of addressing the protection and management of all of the major vegetation communities found in the Southern NCCP planning area, the inclusion of unlisted Covered Species and related Conserved Vegetation Communities is intended to assure that protection and long-term management of the NCCP Habitat Reserve addresses a broader suite of species and vegetation communities than would be possible if such protection/management was limited to federal or state-listed species. The geographic delineation of alternative Habitat Reserve designs and the final approved subregional Habitat Reserve design is to be based, in significant part, on the needs of the designated planning species (see *Chapter 4*). Vegetation communities providing habitat for other species – including planning species that are not designated as Covered Species and other species considered sensitive species under CEQA – will likely be included within the natural communities included within the Habitat Reserve or otherwise protected through the NCCP/MSAA/HCP Conservation Strategy. In this way, the assemblage of the Habitat Reserve and implementation of the long-term HRMP are intended to: **(1)** reduce or minimize significantly the likelihood of the need (at the subregional level) for listing such presently unlisted Covered Species; and **(2)** treat such species “as if listed” so that the habitat needs of such species can be addressed in the event a future listing of one or more presently unlisted Covered Species were to occur.

To the extent that the habitats of specific unlisted species are substantially protected by the Habitat Reserve and are supported by the long-term HRMP, the designation of such species as Covered Species will reduce the need for the future listing of such species. In the event that any presently unlisted Covered Species is nonetheless listed in the future, the NCCP/MSAA/HCP Habitat Reserve and HRMP treat such species “as if listed” at the time of program approval and thus provide the basis for authorization of future regulatory coverage. Accordingly, with regard

to unlisted species, one goal under the regulatory coverage component of the NCCP/MSAA/HCP Conservation Strategy is to include a suite of species that are protected and managed sufficiently to warrant designation as Covered Species and are treated “as if listed” for purposes of including such species in the long-term management of the NCCP/MSAA/HCP Habitat Reserve. To the extent that the NCCP/MSAA/HCP Habitat Reserve and HRMP protect and manage the habitat of unlisted species sufficiently to justify regulatory coverage authorization under the NCCP/MSAA/HCP IA, assurances will be provided for authorizing long-term regulatory coverage of such species in the same manner as for listed species consistent with the Statutory Purposes and Legislative History of FESA and the NCCP Act and applicable regulations.

(c) Regulatory Coverage for Impacts to CDFG Jurisdictional Areas

The proposed NCCP/MSAA/HCP identifies proposed Covered Activities to be undertaken by the Participating Landowners that would involve streambed alteration and impacts on fish or wildlife resources within CDFG Jurisdictional Areas subject to regulation under Fish and Game Code Section 1600 *et seq.* The final approved Southern NCCP/MSAA/HCP is intended to provide the basis for authorizing future regulatory coverage under Section 1600 *et seq.* of the California Fish and Game Code for Covered Activities for such streams and aquatic resources.

(d) Provision of Long-term Assurances Regarding Covered Species

To the extent that the final NCCP/MSAA/HCP Conservation Strategy assures the protection and management of current and future listed Covered Species sufficiently to justify regulatory coverage, one important aspect of the goal of the NCCP/MSAA/HCP to provide regulatory coverage for such listed Covered Species is to provide for mutual assurances for the assemblage of the Habitat Reserve and Take of Covered Species.

3. Formulating the Habitat Reserve, Habitat Reserve Management and Regulatory Coverage Elements of the Conservation Strategy

This subsection identifies vegetation communities that provide habitat essential to the conservation of listed Covered Species for which critical habitat under FESA is required to be designated for species found in the Southern NCCP/MSAA/HCP, including any special management considerations or protection for designated occupied Conserved Vegetation Communities (habitat) and measures to further the conservation of other listed Covered Species that have final critical habitat designations but do not have designated critical habitat in the subregion.

Concurrent with the preparation of the NCCP/MSAA/HCP, USFWS has been under court order to undertake a new set of designations of “critical habitat” for a number of species, including the

coastal California gnatcatcher, the arroyo toad, the thread-leaved brodiaea, the Riverside fairy shrimp and the southwestern willow flycatcher. Final critical designations have been adopted for the Riverside fairy, thread-leaved brodiaea, arroyo toad, and southwestern willow flycatcher, of which only the Riverside fairy shrimp has final critical habitat in the Subregion. Proposed designations for California gnatcatcher and San Diego fairy shrimp are still under consideration.

USFWS has previously determined that critical habitat designations may severely impact the HCP process:

Many HCPs, particularly large regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery of covered species. Many of these regional plans benefit many species, both listed and unlisted. Imposing an additional regulatory review after HCP completion may jeopardize conservation efforts and partnerships in many areas and could be viewed as a disincentive to those developing HCPs. Excluding HCPs provides us with an opportunity to streamline regulatory compliance and confirms regulatory assurances for HCP participants.

(Fed. Reg. Vol. 65, 10/24/00, 63689)

USFWS has also acknowledged the importance of excluding HCPs for the purpose of encouraging public/private partnerships that can achieve conservation actions that USFWS would not be able to carry out on its own:

A related benefit of excluding HCPs is that it would encourage the continued development of partnerships with HCP participants, including states, local governments, conservation organizations, and private landowners, that together can implement conservation actions we would be unable to accomplish alone. By excluding areas covered by HCPs from critical habitat designation, we preserve these partnerships and, we believe, set the stage for more effective conservation actions in the future.

(Ib.)

Based on the above findings, it is clear that the critical habitat designation process, as well as Section 7 consultation determinations for proposed and final critical habitat designations, and the HCP planning process must be integrated in order to: (1) foster the completion of large regional HCPs; and (2) provide associated regulatory assurances for HCP participants essential to the implementation of such HCPs. Accordingly, consistent with the provisions of the FESA Section 3 (5)(A) and 50 CFR 424.12, 424.16 and 424.19, one purpose of the NCCP/MSAA/HCP subregional plan is to identify and analyze areas which would meet the definition of “critical habitat” and any “special management considerations or protection” for any federally-listed

Covered Species for which a critical habitat designation is not final within the study area, to provide determinations that would govern “adverse modifications” for critical habitat located within the NCCP/MSAA/HCP plan area or to identify areas that should be considered for purposes of an amendment to any critical habitat designation for a listed Covered Species within the subregion that is finalized before the formal approval of the NCCP/MSAA/HCP.

This project purpose recognizes that only USFWS and the National Marine Fisheries Service (NMFS), as applicable, have the authority to designate “critical habitat” under FESA and to determine areas that should be excluded from such designations in accordance with FESA requirements and procedures. Further, only USFWS and NMFS have the authority to determine whether federally permitted activities would result in “adverse modification” of land and water areas located within areas proposed or designated as critical habitat. The intent of the planning participants is to assure coordination/integration of Habitat Reserve design planning for federally-listed species with both the designation of “critical habitat” for such species under FESA and any future “adverse modification” determinations under Section 7 of FESA (including the internal Section 7 consultation for the Biological Opinion for Take permits issued pursuant to the Southern NCCP/MSAA/HCP). Accordingly, the intent is to maximize both the efficiency of the planning process and the provision of assurances of certainty for future land uses and development activities, including proposed regulatory authorizations for the impacts of Covered Activities on Covered Species and consideration of such impacts on Conserved Vegetation Communities related to critical habitat identified through the NCCP/MSAA/HCP planning process. Therefore, the NCCP/MSAA/HCP is intended to provide the analysis of habitat and species conservation and management factors under the operational definitions of critical habitat in FESA 3(5)(A) that serve as the substantive basis for the critical habitat provisions for Participating Landowners set forth in the IA.

Because the NCCP/MSAA/HCP planning effort focuses on natural community reserve design, connectivity and long term management considerations in relation to listed species (as well as other species) found in the subregion and adjacent areas, it is appropriate to identify both occupied and unoccupied habitat essential to the conservation of listed species and any special management considerations or protection for such species. In particular, the NCCP Conservation Guidelines set forth criteria for maintaining “net habitat value” by identifying Habitat Reserve areas capable of sustaining Covered Species, both with respect to protecting major populations of occupied habitat and with respect to providing for “connectivity” through both occupied and unoccupied habitat, on a long-term basis (see *Chapters 4 and 5*). Likewise, the emphasis in the NCCP Conservation Guidelines on long-term management would encompass any special management considerations for assuring long-term conservation of listed species. This NCCP/MSAA/HCP addresses protection and management considerations for listed species in terms of both survival and recovery of each listed species that inhabits the subregion. Factors for

identifying critical habitat, as set forth in FESA Section 3(5)(A) and 50 CFR 424.12 (b)-(12) and for making “adverse modification” determinations for proposed and final critical habitat pursuant to FESA Section 7 are specifically addressed in the NCCP/MSAA/HCP.

In order to assure coordination between the critical habitat designation process and conservation planning for the Southern NCCP/MSAA/HCP, one purpose of the Southern NCCP/MSAA/HCP is to:

- (a) identify habitat within the planning area occupied by listed species at the time that they were listed on which are found those physical or biological features (i) essential to the conservation of the species and (ii) which may require special management considerations or protection; and
- (b) identify specific unoccupied areas found essential for the conservation of the species.

For listed species found within the subregion for which critical habitat designations are final or proposed within the subregion, one goal of the NCCP/MSAA/HCP is to identify feasible actions that will provide for or “contribute significantly” to the recovery of such species within the subregion. The identification of habitat essential to the conservation of the species and special management considerations or protection will also be provided for other listed species which do not have designations and are not currently in the designation process. Under the Southern NCCP/MSAA/HCP Conservation Strategy, both occupied and unoccupied vegetation communities that provide habitat essential to the conservation of proposed Covered Species are addressed as Conserved Vegetation Communities and will be subject to special management considerations pursuant to the HRMP reviewed in *Chapter 7* and as set forth in *Chapter 13*.

4. In formulating the Habitat Reserve, Habitat Reserve Management Program and Regulatory Coverage elements of the Conservation Strategy, provide for coordination with the SAMP for the planning area in order to maximize consistency between the NCCP/MSAA/HCP and SAMP.

The USACE has stated the Purpose and Objectives of the SAMP as follows:

The purpose of the effort is to develop and implement a watershed-wide aquatic resource management plan and implementation program (SAMP), which will include preservation, enhancement, and restoration of aquatic resources, while allowing reasonable and responsible economic activities and development within the study area.

The objectives are:

- *Evaluate the extent and condition of existing aquatic resources. Analyze direct, indirect and cumulative impacts from a reasonable array of reserve design, development and management alternatives on aquatic resources within the study area.*
- *Provide predictability and coordination between Section 404 of the CWA permitting process and Section 1600 of the Fish and Game Code by identifying areas and/or activities suitable for coverage under a streamlined, programmatic permitting process for residential, commercial, industrial, recreational, infrastructure, and maintenance needs within the study area. The programmatic permitting procedures will be based on an analysis of opportunities for avoidance, minimization and compensation for impacts to the aquatic resources at both watershed scale and project level and will include a mitigation and monitoring program.*
- *Preserve and enhance existing aquatic resources, and establish a regional restoration management plan for aquatic resources in the study area, including development of a comprehensive aquatic resource reserve program. The aquatic resource reserve system would accommodate mitigation requirements for contemplated development within the watershed, and other conservation efforts. To the extent feasible, the ultimate goal is to provide for a comprehensive reserve and adaptive management program for both aquatic and upland natural resources.*
- *Comply with the requirements of the CWA Section 404(b)(1) Guidelines, California Fish and Game Code Section 1600-1603, Sections 7(a)(1) and 7(a)(2) of the Federal Endangered Species Act, Section 2081 (a)(1) and (2) of the California Endangered Species Act, and other applicable federal and state and local laws; coordinate with the NCCP/HCP planning and environmental review program to the maximum extent practicable. To the extent feasible, satisfy requirements of Section 401 of the Clean Water Act.*
- *Provide a programmatic platform for tiering of future NEPA/CEQA compliance on specific actions within the study area.*

One purpose of the NCCP/MSAA/HCP is to maximize the programmatic coordination and integration of the natural communities conservation planning program with the above purpose/objectives of the SAMP. Substantively, coordination goals focus on integrating NCCP/MSAA/HCP planning for aquatic/riparian vegetation communities, species dependent on those vegetation communities, and hydrologic/geomorphic landscape level planning pursuant to Science Advisors Tenet 7 with the above purpose/objectives of the SAMP and associated

planning activities. Coordination between the NCCP/MSAA/HCP and the SAMP is specifically reviewed in the SAMP EIS (November 2005).

5. In formulating the NCCP/MSAA/HCP Habitat Reserve and Habitat Reserve Management Program elements of the final Conservation Strategy, provide for coordination with the County General Plan Amendment/Zone Change process for RMV lands and other planning programs potentially impacting the planning area.

All of the alternative Habitat Reserve designs developed through the coordinated planning process were included in and fully reviewed as part of the CEQA process for the RMV General Plan Amendment and Zone Change (GPA/ZC); the County prepared two additional alternatives, to further reflect County NCCP/MSAA/HCP and housing goals. The GPA/ZC approved on November 8, 2004 by the County of Orange for RMV lands is reviewed in this NCCP/MSAA/HCP. As the lead agency for the GPA/ZC, a lead agency for the NCCP/HCP and as a participating landowner under the NCCP/HCP, the County of Orange stated its commitment to coordinate the GPA/ZC closely with the NCCP/MSAA/HCP and SAMP, including the coordination of future land use planning and entitlements review with the identification of the final NCCP/MSAA/HCP Habitat Reserve design and the SAMP aquatic protection and management program through specific provisions set forth in the County of Orange Preferred Alternative GPA/ZC adopted on November 8, 2004.

Thus, the formulation and review of Alternatives addressing the NCCP/MSAA/HCP Habitat Reserve and HRMP elements of the Conservation Strategies have been (as discussed in *Chapter 6*) and will continue to be coordinated with County land use processes in order to be able to properly assess the implications of development and infrastructure requirements for proposed development areas and other proposals for regional infrastructure that are independent of local land use requirements but that reflect County transportation and other infrastructure goals. Likewise, the ultimate assemblage of the Habitat Reserve will likely be significantly dependent on open space dedications keyed to land use entitlements. Accordingly, one of the goals of the NCCP/MSAA/HCP planning program is to assure coordination with County and regional planning programs potentially impacting the NCCP planning area.

6. In formulating the Habitat Reserve Management Program element of the final Conservation Strategy and undertaking coordinated land use planning, assure the preparation of a comprehensive water quality management program which, to the maximum extent feasible, integrates a program addressing Covered Species and Conserved Vegetation Community water quality considerations and the requirements of the SWRCB and the SDRWQCB, the

County of Orange DAMP, Clean Water Act Section 401 and the USACE/EPA 404(b)(1) water quality guidelines.

In light of the significance of water quality management for long-term protection and adaptive management of species' vegetation communities providing habitat for Covered Species, one goal of NCCP/MSAA/HCP planning is to formulate a comprehensive water quality management program that integrates applicable requirements and standards of the regulatory agencies. Water quality planning embraces a wide array of planning considerations including: **(1)** the formulation of treatment systems and measures to address specific pollutants potentially impacting species (termed "pollutants of concern"); and **(2)** open space planning/development siting considerations and hydrology/sediment management programs for purposes of protecting hydrologic and geomorphic processes essential to maintaining both uplands and aquatic/riparian vegetation communities as set forth in Tenet 7 of the Southern NCCP Science Advisors Report (termed "hydrologic conditions of concern"). The State Nonpoint Source Plan (NPS Plan) emphasizes watershed planning and contains an implementation measure, Management Measure 3.1A – Watershed Protection, that emphasizes a watershed approach to water quality management and includes a reference to CWA Section 402 (the section governing NPDES stormwater programs) as a primary statutory element of the Management Measure. The State NPS also includes Management Measures 6B and 6C which emphasize the use of natural treatment systems to address non-point source pollution.

Regional and subregional water quality programs, including the County of Orange MS4/DAMP/LWQMP and regulations of the San Diego RWQCB, set forth requirements for identifying and addressing "pollutants of concern" and "hydrologic conditions of concern." One purpose of the Southern NCCP/MSAA/HCP is to integrate, to the maximum extent feasible, water quality planning (intended to address applicable State NPS and SDRWQCB policies, measures and implementation programs with the reserve design and long-term management program for the NCCP/MSAA/HCP and SAMP with regard to undeveloped lands within County jurisdiction. In this way, Habitat Reserve design considerations will include the protection of important areas for sediment generation, planning to protect against detrimental turbidity in stormwater runoff and recommendations for the location of Best Management Practices (BMPs) to address "pollutants of concern" and "hydrologic conditions of concern" potentially affecting the Habitat Reserve and associated Covered Species. Emphasis should be placed on addressing: **(1)** pollutants that may affect individual species/habitats; and **(2)** important hydrologic/ geomorphologic processes and conditions identified in the Southern Watershed Planning Principles (see the SAMP Tenets and Baseline Conditions Watershed Planning Principles and sub-basin Planning Considerations and Planning Recommendations reviewed in *Chapter 5*).

Given the central role that habitat management plays in helping assure long-term protection of NCCP/MSAA/HCP Covered Species and associated habitats and the need for adapting water quality strategies to changing hydrologic and geomorphic conditions, the NCCP/MSAA/HCP Habitat Reserve and HRMP should be coordinated with programs addressing applicable water quality requirements and aquatics management under the Clean Water Act and associated state water quality programs and the SAMP (including the MS4 stormwater program, Section 401 of the CWA and USACE/EPA 404(b)(1) water quality guidelines). Both the draft WQMP and the proposed USACE SAMP permitting procedures address these regulatory water quality requirements, as well as the SAMP Tenets and Baseline Conditions Watershed Planning Principles.

c. Addressing Applicable Provisions of FESA, NCCP Act and Fish and Game Code 1600 et. seq. Consistent with CEQA/NEPA Tiering and Programmatic Environmental Review Provisions

The CEQA/NEPA review of proposed regulatory coverage, will address applicable provisions of FESA and the NCCP Act and the requirements of Fish and Game Code Section 1600 *et seq.*, with respect to impacts resulting from development areas and associated infrastructure and other uses defined as Covered Activities through the coordinated planning process in a manner that will be used and relied upon in conjunction with subsequent environmental reviews consistent with applicable law.

State and federal environmental laws contain both policy statements and specific provisions encouraging broad-scale, early review of potential direct, indirect and cumulative development impacts on a programmatic basis. In furtherance of the strong mandate of the NCCP Act to encourage broad-based natural communities conservation planning, and consistent with the tiering and programmatic review provisions of CEQA and NEPA, one purpose of the NCCP/MSAA/HCP planning participants is to address, to the maximum extent practicable, potential direct, indirect and cumulative impacts to Covered Species and to Conserved Vegetation Communities causally related to land uses and activities identified as proposed Covered Activities through the coordinated land use and other planning processes. To the extent that impacts to species and vegetation communities related to future land uses and development or other types of activities addressed in the NCCP/MSAA/HCP and the associated Joint EIR/EIS have met the requirements of FESA, Fish and Game Code Section 1600 *et seq.* and the NCCP Act, future environmental review and authorization for such future activities will be based on the analyses and mitigation measures set forth in the NCCP/MSAA/HCP and Joint EIR/EIS as provided in applicable law.

2.2.2 Collective Purposes of the Participating Local Governments/ Landowners

The local governments and landowners that have signed the NCCP Planning Agreement and have continued to participate in the NCCP/MSAA/HCP process are:

- The County of Orange
- Rancho Mission Viejo
- The Santa Margarita Water District

The NCCP Program is a voluntary program. Likewise, the preparation of a Habitat Conservation Plan under Section 10(a)(1)(B) of the FESA is a voluntary undertaking. Hence, the overall NCCP/HCP regional and subregional conservation effort reflects a broad public/private partnership involving federal and state regulatory agencies, local governments and agencies, special districts, utilities and private landowners. Once the NCCP/MSAA/HCP Joint EIR/EIS is certified, any significant differences between the provisions of the NCCP, SAMP and GPA/ZC are reconciled and the NCCP/MSAA/HCP and IA are approved and signed, including the issuance of necessary permits, the participating landowners who have received permits pursuant to the IA, will be obligated to fulfill their requirements as specified in the applicable documents.

As participating entities in the NCCP/MSAA/HCP planning program, the participating landowners have identified a collective set of economic and social goals set forth below and individual goals of local government/landowner participants set forth in *Section 2.2.3*.

- Provide for land uses meeting the social and economic needs of the people of the subregion and overall County area by designating areas where the loss of Conserved Vegetation Communities providing habitat and Take of Covered Species resulting from the need to respond to societal needs would be compatible with the NCCP/MSAA/HCP Conservation Strategy and would be permitted consistent with the NCCP Act and Section 10 of FESA and Fish and Game Code Section 1600 et seq.***

As reviewed previously, one of the Legislative Findings of the NCCP Act is to create a natural communities program to address the “need for broad-based planning to provide for effective protection and conservation of the state’s wildlife heritage while continuing to allow appropriate development and growth.” Additionally, the California Legislature determined that: “Natural community conservation planning is a mechanism that can provide an early planning framework for proposed development projects within the planning area in order to avoid, minimize and compensate for project impacts to wildlife.” Similarly, in the EA for the Special Rule for the gnatcatcher, USFWS indicated under the No Action Alternative analysis that: (1) residential

projects would have to go through the Section 10(a)(1)(B) or Section 7 processes; (2) the “capacity of existing housing and infrastructure would be saturated;” and (3) as a consequence, the No Action Alternative “would have significant adverse economic impacts to the region’s economy” (EA, at p. 44). USFWS further concluded that: (1) “the prohibitions of Section 9 would restrict development of projects which impact the gnatcatcher;” (2) “this restriction would result in fewer jobs within the NCCP planning area and could result in jobs leaving the area for places where endangered species restrictions would not curtail the ability to expand;” and (3) “this would result in adverse economic impacts” (EA, at p. 45).

With the above Legislative declarations and 4(d) Special Rule assessments in mind, a central purpose of the NCCP/MSAA/HCP is to evaluate proposed and alternative land uses and activities in order to identify specific areas where loss of Conserved Vegetation Communities and Take of Covered Species could be permitted consistent with the final recommended NCCP/MSAA/HCP Conservation Strategy and with the requirements of FESA, the NCCP Act and Fish & Game Code Section 1600 *et seq.* The identification of permitted land uses/activities and their potential impacts on Covered Species and Conserved Vegetation Communities will be essential to formulating effective mitigation and management measures and to assuring implementation of a balanced Conservation Strategy. By allowing identified public and private development to proceed without undue interruption and by providing long-term certainty (through FESA NCCP Act and long-term Master Streambed Alteration Agreement assurances) needed for major infrastructure and other support funding, the NCCP would enable necessary economic uses to continue.

b. Identify land areas and uses, compatible with Covered Species and Conserved Vegetation Community conservation needs, that could provide the economic basis for dedications and management funding essential to the formation and long-term management of the NCCP/MSAA/HCP Habitat Reserve and provide the basis for voluntary agreements with private landowners required for any public acquisition of Habitat Reserve lands.

Allowing important societal land uses also provides significant economic benefits essential for funding important aspects of long-term species and habitat protection (*e.g.*, Habitat Reserve dedication and acquisition programs) and management (*e.g.*, funding for the long-term Adaptive Management Program element of the HRMP). The significance of previously committed open space for achieving habitat protection goals is addressed in *Section 2.2.1* which highlights the importance of mitigation-based land dedications for long-term habitat and species protection. Pursuant to applicable legal nexus requirements, many areas of the proposed Habitat Reserve will be transferred to the Habitat Reserve in conjunction with phased dedication programs keyed to subsequent development approvals. Absent such phased dedication programs, land values in

southern Orange County are such that public acquisition of all lands comprising the Habitat Reserve would very likely be cost prohibitive. Consequently, an additional purpose of the NCCP/MSAA/HCP is to assure coordination with the land use entitlement process in order to facilitate the potential provision of future dedications that may be essential to the assemblage of the proposed Habitat Reserve, as well as to provide an economic basis for any voluntary acquisition programs agreed upon by NCCP program participants.

2.2.3 Individual Purposes of Participating Local Governments and Landowners

Without substantial commitments from local agencies, special districts, utilities and private landowners, large-scale NCCP conservation planning will not be effective at a subregional scale of planning. Consistent with the Legislative Purposes of FESA, the NCCP Act and Fish & Game Code Section 1600, the individual participating landowners have particular goals with respect to achieving effective protection and conservation of the state's wildlife heritage while continuing to allow appropriate development and growth. Specific individual purposes of the participating landowners are the following.

a. The County of Orange

The County of Orange is involved in the NCCP program both as a governmental entity with regulatory authority and as an owner of major parklands and other public facilities such as flood control facilities and landfills. With regard to regulatory authority, the County is a participating agency in the coordinated planning program under the NCCP/MSAA/HCP and the SAMP. The County is the agency with jurisdiction over the processing of the GPA/ZC (including any subsequent discretionary approvals pursuant to the GPA/ZC and County land use authority), which process is being coordinated with the aforementioned planning programs, and is the lead local agency under the NCCP. The County plays a major role in transportation and air quality planning and also plays a significant role under the MS4 Stormwater Permit requirements of the SDRWQCB.

With regard to its role as a landowner, County parks are major elements of the proposed NCCP/MSAA/HCP Habitat Reserve. In addition, the County owns flood control facilities that will be affected by watershed management actions and is the owner of the Prima Deshecha landfill in the Southern NCCP Subregion with an operational life expected to last well into the timeframe of the NCCP/MSAA/HCP IA. The following goals reflect the County's purposes in both its regulatory and landowner capacities:

1. Meet the requirements of the State NCCP Program, Fish and Game Code Section 1600 *et seq.* and FESA by providing for long-term protection of coastal sage scrub and other

- vegetation communities, CDFG Jurisdictional Areas and designated planning species on a subregional basis, with a focus on major and important populations of planning species and maintaining and enhancing connectivity between blocks of natural areas;
2. Protect long-term coastal sage scrub and other vegetation communities' carrying capacity for planning species on a subregional basis by, to the maximum extent practicable, avoiding, minimizing and mitigating impacts, and by assuring that taking will not appreciably reduce the likelihood of Covered Species survival and recovery;
 3. Facilitate needed housing and other economic development supportive of County long-term societal and economic goals including OCP and other long-term planning guidance and projections; avoid conflicts and delays through early involvement of agencies, landowners and public interests in order to identify minimization and mitigation measures for impacts in advance of proposals for specific projects;
 4. Address opportunities for monitoring and managing coastal sage scrub and other vegetation communities supporting Covered Species and opportunities for protecting other vegetation communities embedded within or found in proximity to the coastal sage scrub mosaic;
 5. Focus the Conservation Strategy on creation of a permanent Habitat Reserve, long-term HRMP and enforceable IA;
 6. Identify habitat areas essential for planning species protection and survival, reflecting Scientific Review Panel Conservation Guidelines (source populations, connectivity, *etc.*) (1993), Science Advisors Principles and NCCP Working Group guidance documents;
 7. Identify areas with significant potential for enhancement and restoration within the Prima Deshecha General Development Plan (GDP) area;
 8. Formulate NCCP/MSAA/HCP mitigation measures that provide adequate minimization and mitigation for all vegetation community impacts related to County supported Covered Activities, including the Prima Deshecha GDP and improvements to La Pata Road addressed by the NCCP/MSAA/HCP Conservation Strategy;
 9. Identify compatible and incompatible activities within the Habitat Reserve in relation to species protection and survival, and related vegetation community management, restoration and enhancement measures pursuant to the HRMP;

10. Analyze the technical, social and economic implications of potential mitigation measures and conservation alternatives;
11. Facilitate needed housing and other economic development supportive of County long-term societal and economic goals, avoid conflicts and delays through early involvement of agencies, landowners and public interests in order to identify minimization and mitigation measures for impacts in advance of proposals for specific projects;
12. Identify equitable and effective public and private funding and implementation mechanisms adequate to implement the recommended NCCP/MSAA/HCP Conservation Strategy actions;
13. Provide for a watershed scale approach to hydrology/flood control, geomorphology and water quality consistent with applicable requirements, the SAMP and Tenet 7 of the Science Advisors Report.

b. Rancho Mission Viejo

RMV's primary NCCP/MSAA/HCP goal is to participate in and help implement a coordinated, comprehensive land use, conservation planning, and state/federal/local regulatory and entitlement process instead of an incremental project-by-project review and approval process, in order to provide land areas compatible with NCCP/MSAA/HCP conservation goals within the RMV portions of the San Juan Creek and San Mateo Creek watersheds. In so doing, RMV will be able to provide an economically viable mix of residential, commercial and other urban and natural open-space lands capable of addressing the societal needs and goals of Southern Orange County as reflected in the plans and policies of the Orange County General Plan and the Orange County Projections (OCP). Specific objectives included within this overall goal, include addressing, fulfilling and providing for:

1. The growth management goals of the Southern California Association of Governments;
2. The air quality objectives of the South Coast Air Quality Management Plan;
3. Habitat, species, aquatic resource and watershed protection goals of the Southern NCCP/MSAA/HCP and the San Juan Creek and San Mateo Creek SAMP;
4. The water quality protection goals of the State of California Nonpoint Source Pollution Control Program and applicable requirements of the County of Orange and the San Diego RWQCB;

5. The financial return necessary for the landowner to offset the level of risk inherent in long-term master-plan development; and
6. Investment opportunities and commitment of land and financial resources necessary to provide for the large-scale protection and management of many valuable natural resources, including required dedications for the NCCP/MSAA/HCP Habitat Reserve and funding for the AMP component of the HRMP.

c. The Santa Margarita Water District

The Santa Margarita Water District is responsible for providing water and wastewater service for a portion of the San Juan Creek and San Mateo Creek watersheds. The District periodically adopts plans of works and capital improvement programs identifying facilities to be constructed and operated in response to the existing and proposed land uses. The District's goal is to plan, design, construct and operate those facilities in conjunction with the applicable goals of the NCCP/MSAA/HCP and SAMP for the watersheds.