



County of San Diego

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February 24, 2017

G. Mendel Stewart
Field Supervisor
United States Fish and Wildlife Service
2177 Salk Avenue, Suite 250
Carlsbad, CA 92008

Reference number: FWS 12B0127-17CPA0062

Re: Multiple Species Conservation Program Compliance with the Bald and Golden Eagle Protection Act through County Incidental Take Permit

Dear Mr. Stewart:

On December 5, 2016, the County of San Diego (County) received a letter from the United States Fish and Wildlife Service (USFWS) stating that the incidental take of golden eagle in the Multiple Species Conservation Program Plan (MSCP) and South County Subarea Plan (Subarea Plan) is limited to four (4) of the eleven (11) nesting territories as identified in the County's Endangered Species Act (ESA) Section 10 (a)(1)(B) Incidental Take Permit (PRT- 840414). On December 20, 2016, the County requested the USFWS to provide the legal rationale for this assertion. The County has evaluated the subsequent letter by the USFWS, dated January 12, 2017, and further email communications, dated January 20, 2017, and has determined that a clear legal basis has not been provided by the USFWS. The County asserts that the Incidental Take Permit authorizes take of golden eagle in all eleven (11) nesting territories identified in the Subarea Plan. The following discussion provides the legal basis and support for the County's position on this matter.

Background

The County's MSCP is a comprehensive habitat conservation planning program that addresses multiple species habitat needs and preserves native vegetation communities for a 900-square-mile area in Southwestern San Diego County. The MSCP creates a network of wildlife corridors and habitats, protects biodiversity, provides certainty to the development community and streamlines the permitting process. The MSCP, the County's Subarea Plan and the Implementing Agreement between the County, the USFWS and the California Department of Fish and Game (CDFG) were approved in 1998. The MSCP, Subarea Plan and Implementing Agreement established the conditions under which the County receives certain long-term

authorizations allowing the take of specific “covered” species incidental to land development and other lawful land uses authorized by the County. The MSCP has been the model of a successful program and the basis for habitat protection in the County for almost 20 years.

The MSCP and the Subarea Plan serve as the multiple species Habitat Conservation Plan (HCP) under Section 10(a)(1)(B) of the Federal Endangered Species Act (FESA; 1973) which is administered by USFWS. The MSCP and the Subarea Plan also serve as the Natural Community Conservation Plan (NCCP) pursuant to the California NCCP Act (NCCPA; 1991), which is administered by the California Department of Fish and Wildlife (CDFW). Both authorize the take of special-status species, including those listed as endangered, threatened, or fully protected (Cal Fish & G. Code §2835).

Summary of USFWS Correspondence

In the USFWS letters, dated December 5, 2016 and January 12, 2017 (ATTACHMENT A), and further email communications, dated January 20, 2017, several assertions were made and are summarized below:

- I. **Golden Eagle Take Coverage:** USFWS asserts that the County’s Incidental Take Permit authorizes incidental take for golden eagle in only four (4) of the eleven (11) nesting territories identified in the permit.

The County disagrees. The Incidental Take Permit and relevant documents (MSCP Table 3-5 and the Biological Opinion prepared for the MSCP) authorize take in all eleven (11) territories.

- II. **Adding Quino Checkerspot Butterfly as a Covered Species:** USFWS states that any major amendment to the Subarea Plan, such as the major amendment to add the Quino Checkerspot Butterfly as a covered species to the Subarea Plan, would need to address consistency with the 2016 Bald and Golden Eagle Act (BGEPA) regulations.

The County disagrees. The procedures and requirements to amend the Subarea Plan to add a species to the covered species list are outlined in the Implementing Agreement and do not authorize the USFWS to impose regulatory requirements for other species to such amendments.

- III. **County Conservation and Management Actions:** USFWS addresses the County’s conservation and management actions and states that the County should ensure that these actions committed to in the MSCP are being fully implemented.

Comment noted. The County is in compliance with its conservation and management activities as required by the MSCP, Subarea Plan and associated agreements.

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The following detailed responses summarize the County's legal basis for each of the assertions made by the USFWS.

I. Golden Eagle Take Coverage

USFWS letters and subsequent email correspondence indicate that the County - and presumably any other jurisdiction using take authority under the MSCP - has no coverage in the seven (7) territories identified as "should remain viable", and therefore, is subject to the 2016 BGEPA regulations (81 FR 91494; December 16, 2016). USFWS position that incidental take for golden eagle in these seven (7) territories is not authorized under the MSCP is not supported by evidence and, in fact, ignores evidence to the contrary, as highlighted below.

The County's Incidental Take Permit

The County was granted an Incidental Take Permit pursuant to the Federal ESA Section 10(a)(1)(B) on March 17, 1998 (ATTACHMENT B). The Incidental Take Permit authorized the incidental take of 82 species of plants and animals, subject to compliance with and implementation of the MSCP and Subarea Plan adopted on October 22, 1997 and the Implementing Agreement by and between the County, the USFWS and the CDFG dated March 17, 1998.

The Incidental Take Permit was granted for those covered species determined by the USFWS to be adequately conserved by the MSCP and the Subarea Plan. Permit coverage for take of these 82 species was dependent solely on the County Subarea Plan and is not dependent on the approval or implementation of any other jurisdiction's Subarea Plans. Permit coverage is also not dependent on other permits issued within the plan area including the unincorporated and incorporated County.

ESA defines the term "take" to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct". The term "harm" is further defined as "an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering".

The Incidental Take Permit states that amount and nature of the take (e.g. harass or harm due to habitat loss) is described in the MSCP for each species and clarified in permit conditions "H." and "I." for certain species, including golden eagle. Permit condition "H." applies to golden eagle and states the following:

"No lethal take is authorized. Take of active nests is not permitted at any time. Human disturbance of active nests must be avoided, including establishing a 4000-foot disturbance avoidance area around active nests within the preserve. **Harm as a result of habitat loss is authorized in the amount and locations specified in Table 3-5 of the MSCP Plan.**" (emphasis added).

MSCP – Table 3-5

The Species Evaluation for golden eagle (Table 3-5 of the MSCP) identifies eleven (11) active golden eagle nesting territories within or partially within the MSCP plan area (based on information from the Golden Eagle Survey Project, San Diego) and provides the rationale for granting take authorization for the species (territory map provided as ATTACHMENT C).

In Table 3-5, the rationale for identifying golden eagles as a covered species cited the fact that 53% of potential foraging/nesting habitat would be conserved by the MSCP and would consist of approximately 139,000 acres in large blocks of habitat in the eastern portion of the plan area where active nesting territories exist. Thus, due to the conservation of 53% of potential foraging and nesting habitat, the preserve design and area specific management efforts, the golden eagle was included as a Covered Species Subject to incidental take, as defined by the MSCP, with the expectation that of the eleven (11) nesting territories identified in the Table, four (4) may not remain viable and seven (7) were expected to remain viable. Table 3-5 contains the conclusion that “local populations of the eagle are not critical to, and the plan will not adversely affect, the species’ long-term survival”.

For each of the eleven (11) territories, Table 3-5 includes an analysis of the MSCP’s effects on the individual nesting territory and specifies the percentage of habitat loss anticipated by development under the plan (ATTACHMENT D). Territories with less than 20% anticipated habitat loss were identified as “should remain viable”, while territories with greater than 20% anticipated habitat loss were identified as “may not remain viable”.

Since the Incidental Take Permit defines take as harm due to habitat loss, the establishment of anticipated habitat loss percentages for each individual territory in Table 3-5 indicate that take (in the form of habitat loss) was granted for all eleven (11) territories. It is logical to conclude that as long as the Table 3-5 limitations on the loss of habitat are not exceeded, the County was granted incidental take for the golden eagle up to those limits. If no take was authorized for the seven (7) territories anticipated to remain viable, then habitat loss percentages would have been unnecessary.

Further evidence that the County was granted take authorization for each of the eleven (11) territories up to the limits on loss of habitat delineated in Table 3-5 is the fact that historically, and during the entire implementation period of the Permit and Subarea Plan to date, development projects within each of the territories that disturbed golden eagle habitat were approved and developed without opposition by the USFWS.

There are several examples of development proceeding under the MSCP without the issue of incidental take coverage being raised. Most notably, the development of 4S Ranch in the County and the extensive amount of development that has occurred in the City of Chula Vista in areas that were formerly within the County’s unincorporated area. 4S Ranch is located within the Del Dios Territory and the developments in the City of Chula Vista are located within the San Miguel Mountain Territory. Both territories were identified as “should remain viable” on Table 3-5. If those developments had not had incidental take authorization for golden eagle, the USFWS should have noted that at the time those projects were being considered for approval.

Biological Opinion

The Biological and Conference Opinions (BO) on Issuance of an Incidental Take Permit to the County under the MSCP for the Subarea Plan was prepared by the USFWS in 1998 (BO 1998). The BO contains the following statements, which serve as further evidence that take in the form of habitat loss was granted for all eleven (11) territories:

- “The proposed incidental take of up to 85 species (the County has coverage for 82 species, however with additional participating jurisdictions, coverage was extended to 85 species) would occur as a result of habitat loss and disturbance associated with residential and limited municipal development consistent with the MSCP Plan... as described in the County of San Diego Subarea Plan.” (BO, Page 1)
- “Take” is defined as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt to engage in any such conduct. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.” (BO, Page 62)
- “The proposed County Subarea Plan and its associated documents clearly identify anticipated impacts to affected species likely to result from the proposed taking and the measures that are necessary and appropriate to minimize those impacts.” (BO, Page 62)
- Other Covered Species: “The Service anticipates that levels of incidental take of other covered species described in Table 1 of this Biological Opinion and Table 1-3 of the County Subarea Plan may occur as a result of permit issuance. Such take is expected to be in the form of killing, harm, or harassment. However, as analyzed above, the Service has determined that this level of anticipated take is not likely to result in jeopardy to the species.” (BO, Page 67)
- Golden eagle is listed in Table 1. (BO, Page 53)

Conclusion as it Pertains to Take Coverage

For the reasons outlined above, the County has concluded that the County’s Incidental Take Permit, the MSCP, the Subarea Plan, the Implementing Agreement and the BO grant take for every territory identified in Table 3-5. The County points to the following facts in support of its conclusion that all eleven (11) territories received incidental take coverage:

- Under the ESA definition, take includes harm in the form of habitat modification or degradation;
- Harm as a result of habitat loss is authorized in the amount and locations specified in Table 3-5;

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- The coverage granted under the Incidental Take Permit does not differentiate between viable and non-viable territories, rather the permit states that harm as a result of habitat loss is authorized in the amount and locations specified in Table 3-5;
- The Species Evaluation for the Golden Eagle (Table 3-5) identifies the species as covered;
- Table 3-5 makes reference to four (4) territories that may not remain viable if the amount of habitat loss identified in the Table occurs, but fails to distinguish the incidental take coverage for these nesting territories from the other seven (7) territories evaluated in the Table;
- Details of coverage for all eleven (11) territories, with conditions (limitations) on the amount of habitat loss for each territory to maintain incidental take coverage is set forth in the Table;
- Urban development and incidental take coverage for such activities was analyzed and evaluated for all active nesting territories; and
- The BO issued in support of the approval of the Subarea Plan anticipated and evaluated incidental take of golden eagle in the form of habitat loss and did not distinguish between territories expected to remain viable and those that were not expected to remain viable.

MSCP Conservation Analysis

Upon receipt of the USFWS January 12, 2017 letter, the County inquired further into the basis for the conclusions reached in that letter concerning the golden eagle. Specifically, the letter appears to rely on the Conservation Analysis in support of golden eagle coverage for the MSCP, stating that the Conservation Analysis considered the loss of only four (4) of the eleven (11) known golden eagle territories. The County asked the USFWS to cite the analysis they were relying on in making the referenced statement. The USFWS responded that they were referencing *the MSCP 1995 and 1996 Species Evaluation, USFWS and California Department of Fish and Game, September 1996*.

The County reviewed and assessed this document. Set forth below is the analysis and the evaluation contained in that document:

- Conservation Analysis, MSCP Standards and Guidelines Section states:
 1. Include within the open space preserve viable nesting pairs ...with sufficient foraging habitat to maintain a viable population;
 2. Stabilize and maintain the preserved population; and
 3. Enhance the preserved population.

- The Conservation Analysis, Evaluation Section states:
 1. Each current and historical nesting site that may still be viable must be considered when evaluating proposed development;
 2. The area required for preservation of a viable territory or nest site must be analyzed on a pair by pair basis; and
 3. Much uncertainty remains concerning the location of potential development and current nesting localities.

The Conservation Analysis does not include a specific breakdown of what was considered a “viable” vs. “non-viable” territory and did not specify that it only evaluated the loss of four (4) of the eleven (11) nesting territories as stated in the USFWS letter. In fact, the Conservation Analysis does not provide support for the statements made in the December 5, 2016 or January 12, 2017 letter.

In summary, the County maintains its view that taking of covered species, including the disturbance of habitat in eleven (11) golden eagle territories, is allowed in accordance with the approved MSCP, Subarea Plan and Implementing Agreement. As noted in the introduction to this response concerning the County’s Incidental Take Permit, the County’s permit coverage is dependent solely on the County Subarea Plan and is severable from and not dependent on the approval or implementation of any other jurisdiction’s Subarea Plan. Therefore, as long as habitat disturbance in the unincorporated County remains within the limits of habitat loss established in Table 3-5 for all golden eagle territories, the County is in compliance with the Incidental Take Permit.

II. Adding Quino Checkerspot Butterfly as a Covered Species

The USFWS letter states that any major amendment to the Subarea Plan, such as a major amendment to add the Quino Checkerspot Butterfly as a covered species to the Subarea Plan, would need to address consistency with the 2016 BGEPA regulations. The County disagrees with this assertion for the following reasons:

- The County has been working for a number of years on achieving coverage under the Subarea Plan for the Quino Checkerspot Butterfly. The Implementing Agreement between the County, USFWS and CDFW addresses the process that must be followed to add species to the Subarea Plan.
- Section 9.7 C. of the Implementing Agreement provides that if a non-covered species becomes listed and it occupies the plan area, the USFWS and CDFW (Wildlife Agencies) are required to use their best efforts to identify the conservation measures, if any, within six months, which are necessary to adequately protect the species and determine whether the conservation measures are beyond those prescribed by the Subarea Plan. If adequate conservation measures are already in the Subarea Plan and the County applies for take authorization for the species, the Subarea Plan can be amended to add the species to the list of covered species for the remaining term of the

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Agreement. If the conservation measures are not adequate, the Wildlife Agencies will work with the County to identify and jointly implement additional conservation measures identified as being necessary to add the species to the list of covered species. In developing additional conservation measures, the parties will look to the following in order of preference:

1. Habitat management practices; and
2. Habitat acquisition.

If these methods are not adequate to allow coverage of the species, other methods will be developed.

Thus, the Implementing Agreement that governs the administration and implementation of the County's Incidental Take Permit is clear that the application to add a covered species to the Subarea Plan need only address the additional coverage for that new species and does not authorize the USFWS or the State to add conditions to the approved Subarea Plan regarding other covered species.

The Code of Federal Regulations addresses the issuance and amendment of Incidental Take Permits at 50 CFR 13.23 and 17.22. Neither of these regulations gives the USFWS the authority to re-open the permit to comply with new regulations concerning covered species.

The Implementing Agreement contains assurances to the County in Section 9.4 stating that no additional land, additional restrictions or additional financial compensation for the covered species will be required from the County or Third Party Beneficiaries provided the County is in compliance with its obligations under this Agreement.

In summary, the County strongly disagrees with the statement made in the letter that an amendment of the Subarea Plan to add the Quino Checkerspot Butterfly to the Covered Species list would trigger the need to evaluate the County's take coverage for the golden eagle for compliance with BGEPA. The USFWS and CDFW may request some changes to the Subarea Plan to add Quino Checkerspot Butterfly to the covered species list, but those changes are limited to the methods needed to conserve that species and cannot add restrictions to Subarea Plan coverage for any other species.

III. County Conservation and Management Actions

USFWS letters of December 5, 2016 and January 12, 2017 make reference to ongoing County recreational activities, conservation and management actions under the Subarea Plan, giving the impression that USFWS believes those activities may be harassing or disturbing golden eagles in some locations. USFWS states that the County should ensure that the conservation and management actions committed to in the MSCP are being fully implemented. USFWS has not specified any activities that are concerning and therefore, it is difficult to respond with specificity to this issue.

However, the County agrees with the USFWS position that recreational activities were considered a compatible use under the MSCP and were not anticipated to result in take of

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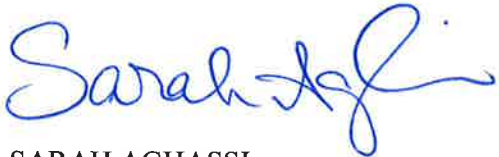
covered species. As required under the Subarea Plan, buffers have been established around all known active nests within the preserves. The MSCP establishes that no lethal take is authorized and take of active nests is not permitted at any time.

The County is in full compliance with these provisions of the Subarea Plan. If there are other conservation or management activities that concern USFWS, the County is ready and willing to brief the USFWS team on the management activities it undertakes in the Subarea Plan on a continuous basis. However, prior to such a briefing, the USFWS needs to provide the specific recreational activities, conservation and management actions referred to in the correspondence.

Conclusion

The County is willing to meet with the regional USFWS and CDFW staff to explain the facts presented in this letter pertaining to the incidental take of golden eagle in the MSCP and Subarea Plan. The County is also contacting the national and regional offices of the federal and state agencies to explain the legal basis for the County's Incidental Take Permit for the golden eagle and to seek further guidance from those offices moving forward.

Sincerely,



SARAH AGHASSI
Deputy Chief Administrative Officer

Cc: County Board of Supervisors
Kevin "Jack" Haugrud – Acting Secretary of the Interior, Department of the Interior
Jim Kurth, Acting Director, USFWS
Paul Souza, Regional Director, USFWS
Alexandra Pitts, Deputy Regional Director, USFWS
Michael Fris, Assistant Regional Director, USFWS
Charlton H. Bonham, Director, CDFW
Kevin Hunting, Chief Deputy Director, CDFW
Ed Pert, South Coast Regional Manager, CDFW
Mark Wardlaw, Director, Planning & Development Services
Brian Albright, Director, Parks and Recreation Department

ATTACHMENT(S)

Attachment A - December 5, 2016 and January 12, 2017 USFWS Letters to County of San Diego
Attachment B - County of San Diego's ESA Section 10(a)(1)(B) Incidental Take Permit
Attachment C - Map of Golden Eagle Territories Identified in Subarea Plan
Attachment D - Table 3-5: Species Evaluated for Coverage Under the MSCP - Golden Eagle

ATTACHMENT A

December 5, 2016 and January 12, 2017 USFWS Letters to County of San Diego



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Carlsbad Fish and Wildlife Office
2177 Salk Avenue, Suite 250
Carlsbad, California 92008



In Reply Refer To:
FWS-12B0127-17CPA0029

December 5, 2016

Sent by Email

Sarah Aghassi
Deputy Chief Administrative Officer and Group General Manager
County of San Diego Land Use and Environment Group
1600 Pacific Highway
San Diego, California 92101

Subject: Multiple Species Conservation Program Compliance with the Bald and Golden Eagle Act

Dear Ms. Aghassi:

This letter provides guidance regarding Endangered Species Act (ESA) coverage for the golden eagle under the County's Multiple Species Conservation Program (MSCP) Subarea Plan and associated compliance with our agency's 2009 Bald and Golden Eagle Act (BGEPA) Permit Regulations (74 FR 46835 – 46879) and 2016 proposed revisions to these regulations (81 FR 27934 – 27976). Several projects within the plan area boundary of the County's Subarea Plan are pending approval and overlap with existing golden eagle territories. During several of our monthly meetings with your management staff, we discussed golden eagle coverage under the Subarea Plan and how such coverage addresses compliance with the 2009 BGEPA permit regulations for pending and future County projects.

As follow-up to these meetings, we sought guidance from our Regional Office, including our Division of Migratory Birds, Regional Habitat Conservation Planning Coordinator, and Regional Solicitors, on the relationship between incidental take authorizations for golden eagles under the ESA and the BGEPA permit regulations. The guidance provided herein is a result of these meetings and discussions specific to the County's ESA section 10(a)(1)(B) incidental take permit (ESA Permit) for your MSCP Subarea Plan.

The ESA Permit (see Special Terms and Conditions F and H.2) for the County's Subarea Plan provides incidental take authorization for the eagle territories identified in Table 3-5 of the final MSCP Plan (City of San Diego 1998) that are wholly or partially within your Subarea Plan boundary and are not anticipated to remain viable due to a greater than 20 percent loss of habitat. Specifically these four territories are the Sycuan Peak territory and the Lake Jennings territory, which are wholly within your Subarea Plan boundary, and the San Vicente Reservoir and Santee territories, which are partially within your Subarea Plan boundary.

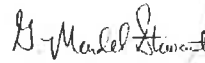
Accordingly, incidental take of golden eagles in these four nesting territories is also authorized under the BGEPA for Subarea Plans with approved ESA Permits (i.e., the City of San Diego and the County of San Diego). Where incidental take was not anticipated and thus not identified in the County's ESA Permit, none is authorized under the ESA or the BGEPA permit regulations.

For pending and future development projects and ongoing recreational activities that intersect with existing golden eagle territories, we recommend the County work with our agency and the California Department of Fish and Wildlife (Department) to ensure that the conservation and management actions under your Subarea Plan are being carried out in a manner that avoids take of golden eagles beyond that anticipated by the ESA Permit for your Subarea Plan. We are committed to assisting you in these efforts.

If additional take is unavoidable, we will work with your staff to identify options to amend the County's ESA Permit to obtain compliance with the BGEPA permit regulations or for projects to obtain individual BGEPA permits. To foster this discussion, we are compiling current eagle nesting data for the County of San Diego. Once we share this information with you and the Department, a meeting to discuss next steps will be appropriate.

We look forward to this discussion and providing a path forward that maintains the original intent of the MSCP to conserve golden eagles and other covered species at a landscape level while providing for appropriate economic development and passive recreational use of the preserve system. If you have any questions regarding this letter, please contact me at 760/431-9440, extension 211.

Sincerely,



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G. Mendel Stewart

cc:

Ed Pert, California Department of Fish and Wildlife

Mark Wardlaw, Planning and Development Services, County of San Diego



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
Carlsbad Fish and Wildlife Office
2177 Salk Avenue, Suite 250
Carlsbad, California 92008



In Reply Refer To:
12B0127-17CPA0062

January 12, 2017
Sent by Email

Sarah E. Aghassi
Deputy Chief Administrative Officer
County of San Diego Land Use and Environment Group
1600 Pacific Highway, Room 212
San Diego, California 92101

Subject: Multiple Species Conservation Program Compliance with the Bald and Golden Eagle Protection Act

Dear Ms. Aghassi:

Thank you for your December 20, 2016, letter requesting additional clarification of the guidance we recently provided concerning Multiple Species Conservation Program (MSCP) Compliance with the Bald and Golden Eagle Protection Act (BGEPA). The determination outlined in our December 5, 2016, letter that incidental take for golden eagles is only authorized under the MSCP within four identified territories is based on the language in the MSCP and the County's Endangered Species Act (ESA) section 10(a)(1)(B) incidental take permit (Section 10 ITP).

Special Term and Condition F of the Section 10 ITP states, "[t]he amount and nature of the take (e.g. harass, or harm due to habitat loss) is described in the MSCP Plan for each species, and clarified in permit conditions H and I for certain species." Special Term and Condition H.2 specifically addresses take of golden eagles. It provides: "[n]o lethal take is authorized. Take of active nests is not permitted at any time. Human disturbance of active nests must be avoided, including establishing a 4000-foot disturbance avoidance area around active nests within the preserve. Harm as a result of habitat loss is authorized in the amount and at the locations specified in Table 3-5 of the MSCP Plan."

Thus, the Section 10 ITP authorizes take of golden eagles in the form of harm due to habitat loss and specifically limits such take to the "amount and at the locations" described in Table 3-5. Pages 3-75 and 3-76 of Table 3-5 identify by location 11 specific active golden eagle nesting territories in the MSCP Plan area. For each specific nesting territory, the text states that either the territory "should remain viable" or "may not remain viable" based on the amount of habitat loss expected within that territory under the Plan.

The only logical reading of Table 3-5 in conjunction with Special Term and Condition H is that take of golden eagles is anticipated and authorized at those nesting territories that are not

expected to remain viable to support nesting golden eagles, while take is not anticipated or authorized at those territories that are anticipated to remain viable to support nesting golden eagles. Out of the 11 nesting territories identified, 7 are expected to remain viable to support a nesting pair of golden eagles, while 4 are not. The amount of take authorized under the Section 10 ITP is limited to golden eagles that occupy the four nesting territories identified in Table 3.5 that are not anticipated to remain viable under the MSCP, i.e., the locations where take in the form of harm is likely to occur.

The Service's BGEPA Permit regulations at 50 C.F.R. § 22.11(a) provide that an approved Section 10(a)(1)(B) permit that authorizes take of golden eagles is also considered a valid permit authorizing take of golden eagles under BGEPA, so long as the permittee is in full compliance with the terms and conditions of the Section 10 ITP. Accordingly, incidental take of golden eagles in the four nesting territories that are identified in Table 3-5 of the MSCP as not likely to remain viable is also authorized under the BGEPA. Any take of golden eagles beyond the four identified territories is not authorized under the Section 10 ITP or under BGEPA.

The only incidental take authorized under the County's Section 10 ITP was harm as a result of a greater than 20 percent loss of habitat within four known golden eagle territories. While habitat loss was anticipated and thus evaluated as a result of covered activities (i.e., development projects) within seven other golden eagle territories, the amount of habitat loss (i.e., always less than 20 percent) was not anticipated to be significant enough to cause take in the form of harm.¹ All of the seven golden eagles territories evaluated in this manner were anticipated to remain viable and were included in the conservation analysis in support of golden eagle coverage under the MSCP; that is, the conservation analysis considered the loss of only 4 of the 11 known golden eagle territories while 7 other territories would be conserved.

In our previous letter, we mentioned the potential need to amend the County's Section 10 ITP. To clarify, if additional take of golden eagles beyond that authorized under the County's Section 10 ITP is unavoidable, and the County seeks to maintain its coverage for golden eagles under its MSCP Subarea Plan, the County can voluntarily apply for an amendment to the existing Section 10 ITP to request authorization for additional golden eagle take. Likewise, individual project proponents could voluntarily apply for BGEPA permits. Consistency with the 2016 BGEPA regulations (81 FR 91494; December 16, 2016) would be evaluated by our agency when making permit decisions on these actions. Any major amendments to the County's Subarea Plan, such as the major amendment being discussed to add the quino checkerspot butterfly as a covered species, will also need to address consistency with the 2016 BGEPA regulations.

Our December 5, 2016, letter also acknowledged that ongoing recreational activities intersect with golden eagle territories. Recreational activities were considered a "compatible use" under the MSCP that were not anticipated to result in take of covered animal species. Management of

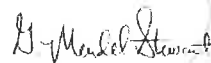
¹ Harm is defined by the US Fish and Wildlife Service (Service) as "an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering" (50 CFR §17.3).

recreational activities to avoid take in the form of “harass”² under the ESA and “disturb”³ under BGEPA is important to maintaining golden eagle coverage under the MSCP. Thus, we reiterate the need for the County to ensure that the specific conservation and management actions committed to in the MSCP are being fully implemented.

We would like to emphasize our belief that the overall goals of the MSCP are aligned with our agency’s commitment to conserve golden eagles. Our intent in providing the guidance in our December 5, 2016, letter was to facilitate collaboration in assessing the status of golden eagles under the MSCP and to assist the County in addressing any MSCP compliance questions and needs with regard to the BGEPA regulations. In monthly meetings with your staff, we agreed to provide such written guidance because project proponent and consultant emails sent to our agency and copied to the County requested clarification on this subject.

We believe reviewing the current golden eagle nesting and territory information in the MSCP Plan area will facilitate discussion on how best to address golden eagle conservation in the County consistent with the intent of the MSCP and the County’s Section 10 ITP. We look forward to meeting with your staff soon to coordinate and assess this information, to review our collective conservation efforts for golden eagles under the MSCP, and to address any of the County’s remaining compliance questions or concerns.

Sincerely,



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G. Mendel Stewart
Field Supervisor

cc:

Ed Pert, California Department of Fish and Wildlife

Mark Wardlaw, Planning and Development Services, County of San Diego

² Harass is defined by the Service as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering” (50 CFR §17.3).

³ Disturb is defined by the Service as “to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available: (1) injury to an eagle; (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior; or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior” (50 CFR § 22.3).

ATTACHMENT B

County of San Diego's ESA Section 10(a)(1)(B) Incidental Take Permit

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE

FEDERAL FISH AND WILDLIFE PERMIT

1. PERMITTEE

COUNTY OF SAN DIEGO
1500 PACIFIC HIGHWAY
SAN DIEGO, CA 92101-24722. AUTHORITY-STATUTES
16 USC 668-668d
16 USC 703-712
16 USC 1533(d)
16 USC 1539(a)
REGULATIONS (Attached)
50 CFR 17.22
50 CFR 17.27
50 CFR 17.323-201
(10/86)3. NUMBER
PRT-8404144. RENEWABLE
☒ YES
☐ NO5. MAY COPY
☒ YES
☐ NO6. EFFECTIVE
3/17/19987. EXPIRES
3/16/2048

8. NAME AND TITLE OF PRINCIPAL OFFICER (If #1 is a business)

Lawrence B. Prior, III,
Chief Administrative Officer

9. TYPE OF PERMIT

Endangered/Threatened Species

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED

All land within the County of San Diego Multiple Species Conservation Program Subarea Plan delineated on Figure 1.1 of the County Subarea Plan, excluding the MSCP "Cornerstone Lands" owned by the City of San Diego (see MSCP Plan for description of the Cornerstone Lands).

11. CONDITIONS AND AUTHORIZATIONS:

A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY OR RENEWAL OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.

B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.

C. VALID FOR USE BY PERMITTEE NAMED ABOVE.

D. Further conditions of authorization are contained in the attached Special Terms and Conditions.

☐ ADDITIONAL CONDITIONS AND AUTHORIZATIONS ON REVERSE ALSO APPLY

12. REPORTING REQUIREMENTS

ISSUED BY

Michael J. Spear

TITLE

Regional Director

DATE

3/17/98

ORIGINAL

U.S. FISH AND WILDLIFE SERVICE, PORTLAND, OREGON
SPECIAL TERMS AND CONDITIONS FOR PERMIT PRT-840414

- D. All sections of Title 50 *Code of Federal Regulations*, parts 13, 17.22, and 17.32 are conditions of this permit (copies attached).
- E. The authorization granted by this permit is subject to compliance with, and implementation of, the Multiple Species Conservation Program (MSCP) Plan, County of San Diego Subarea Plan, and Implementing Agreement executed by the County of San Diego, California Department of Fish and Game, and U.S. Fish and Wildlife Service, all of which are hereby incorporated into the permit.
- F. Permit Coverage Dependent Solely on the County of San Diego Subarea Plan:

The permittee and agents designated by the permittee are authorized to take 82 species on the attached "List of Covered Species Subject to Incidental Take," to the extent that take of these species would otherwise be prohibited under Section 9 of the Endangered Species Act of 1973, as amended (Act), and its implementing regulations, or pursuant to a rule promulgated under section 4(d) of the Act. (See condition G for other covered species.) For each Covered Species Subject to Incidental Take which is not listed as threatened or endangered under the Act, the Section 10(a) permit will become effective with respect to such species concurrent with the listing of the species as threatened or endangered under the Act, to the extent that their take is prohibited by the Act. Take must be incidental to otherwise lawful activities associated with urban growth as described in the MSCP Plan and County of San Diego Subarea Plan, and as conditioned herein. The amount and nature of the take (e.g. harass, or harm due to habitat loss) is described in the MSCP Plan for each species, and clarified in permit conditions H and I for certain species.

- G. Permit Coverage Dependent on Another Subarea Plan and Permit:

Coverage for the endangered California least tern (*Sterna antillarum brownii*), and if they become listed, Orcutt's bird's-beak (*Cordylanthus orcuttianus*) and Del Mar sand aster (*Corethrogyne filaginifolia* var. *linifolia*) is dependent upon the City of San Diego Subarea Plan which is currently in effect. As long as the City of San Diego permit (PRT-830421) is in effect, these three species are considered Covered Species Subject to Incidental Take under permit PRT-840414 to the County of San Diego.

- H. The following conditions apply to birds:

1. Bald Eagle. No harm, harassment, or lethal take is authorized. Take of active nests is not permitted at any time.
2. Golden Eagle. No lethal take is authorized. Take of active nests is not permitted at any time. Human disturbance of active nests must be avoided, including establishing a

PERMIT CONDITIONS FOR PRT-840414, cont'd.

2

4000-foot disturbance avoidance area around active nests within the preserve. Harm as a result of habitat loss is authorized in the amount and locations specified in Table 3-5 of the MSCP Plan.

3. Migratory Birds other than Bald Eagle.

A. This Section 10(a) permit also constitutes a Special Purpose Permit under 50 CFR 21.27 for the take of those Covered Species Subject to Incidental Take which are listed as threatened or endangered under the Endangered Species Act of 1973, as amended, and which also are protected by the Migratory Bird Treaty Act, except for the bald eagle. Such Special Purpose Permit shall be valid for a period of 3 years from the effective date, provided the section 10(a) permit remains in effect for such period. Such Special Purpose Permit shall be renewed, provided that the County of San Diego continues to fulfill its obligations under this agreement. Each such renewal shall be valid for the maximum period of time allowed by 50 CFR 21.27 or its successor at the time of renewal.

B. Incidental take associated with habitat loss for covered bird species on the list of Covered Species Subject to Incidental Take is subject to the restrictions provided in Table 3-5 of the MSCP Plan. These include, but are not limited to, the following restrictions related to disturbance of active nest sites and/or occupied habitat during the breeding season:

i. No take of active nests is anticipated or authorized for birds on the list of "Covered Species Subject to Incidental Take" that are not known to nest within the MSCP planning area: California brown pelican, reddish egret, ferruginous hawk, mountain plover, Canada goose, Swainson's hawk, long-billed curlew, large-billed savannah sparrow, and bald eagle.

ii. For other birds on the list of "Covered Species Subject to Incidental Take," restrictions apply regarding take associated with impacts to active nests and/or occupied habitat during the breeding season. These restrictions are provided below.

Species

Take Restrictions

Coastal California gnatcatcher

No clearing of occupied habitat within the County of San Diego's Multiple Habitat Planning Area (MHPA) between March 1 and August 15.

Least Bell's vireo

No harm or lethal take authorized within the U.S. Army Corps of Engineers' jurisdictional wetlands. No clearing of occupied habitat between March 16 and September 14.

PERMIT CONDITIONS FOR PRT-840414, cont'd.

3

Southwestern willow flycatcher	No harm or lethal take authorized within the U.S. Army Corps of Engineers' jurisdictional wetlands. No clearing of occupied habitat between May 2 and August 31.
Light-footed clapper rail	No harm, harassment, or lethal take authorized.
Cooper's hawk	Implement a 300-foot impact avoidance area around active nests within the preserve.
Tri-colored blackbird	Impacts to active nests and breeding colonies must be avoided.
Peregrine falcon	No harassment or lethal take authorized; take of active nests is not permitted at any time.
Brown pelican	No harm, harassment, or lethal take authorized.
Coastal cactus wren	No clearing of occupied habitat between February 15 and August 15.
Northern harrier	Implement a 900-foot (or maximum possible) impact avoidance area around active nests within the preserve.
Burrowing owl	No incidental take authorized within the County of San Diego MHPA.
Elegant tern	No harm, harassment, or lethal take authorized. Human disturbance of active nests must be avoided. Incidental take during the breeding season associated with maintenance/removal of levees/dikes is not authorized except as specifically approved on a case-by-case basis by the Service and California Department of Fish and Game.
California least tern	No harm, harassment, or lethal take authorized. Human disturbance of active nests must be avoided. Incidental take during the breeding season associated with maintenance/removal of levees/dikes and maintenance/ enhancement of beaches is not authorized except as specifically approved on a case-by-case basis by the Service and

PERMIT CONDITIONS FOR PRT-840414, cont'd.

4

California Department of Fish and Game.

Western snowy plover

No harm, harassment, or lethal take authorized.
Human disturbance of active nests must be avoided.
Incidental take during the breeding season associated with maintenance/removal of levees/dikes is not authorized except as specifically approved on a case-by-case basis by the Service and California Department of Fish and Game.

I. Special restrictions apply to wetland species:

Incidental take authorization for covered species within U.S. Army Corps of Engineers' jurisdictional wetlands for projects that affect jurisdictional wetlands shall be authorized through future Endangered Species Act Section 7 consultations between the Service and U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act and in accordance with the MSCP Plan, County of San Diego Subarea Plan and Implementing Agreement. Incidental take of wetland associated or dependent species outside of jurisdictional wetlands is authorized in accordance with the MSCP Plan, and the County of San Diego Subarea Plan and Implementing Agreement.

Species Associated with or Dependent upon Wetlands

Southwestern willow flycatcher	Elegant tern
American peregrine falcon	Palmer's ericameria
California brown pelican	Southwestern arroyo toad
Light-footed clapper rail	Red-legged frog
California least tern	Southwestern pond turtle
Least Bell's vireo	San Diego fairy shrimp
Western snowy plover	Riverside fairy shrimp
Cooper's hawk	Salt marsh skipper
Tri-colored blackbird	Salt marsh bird's beak
Northern harrier	California Orcutt grass
Reddish egret	San Diego mesa mint
Long-billed curlew	Otay Mesa mint
Belding's savannah sparrow	Thread-leaved brodiaea
White-faced ibis	Spreading navarretia
	Willow monardella

PERMIT CONDITIONS FOR PRT-840414, cont'd.

5

J. With regard to monitoring and enforcement:

1. The permittee must ensure that Service personnel are given appropriate access (as defined under 50 CFR 13.21(e)(2)) to monitor the Covered Species Subject to Incidental Take within the County of San Diego Subarea planning area in perpetuity.
2. The permittee must ensure that the Service's Carlsbad Fish and Wildlife Office (2730 Loker Avenue West, Carlsbad, California 92008, telephone 760-431-9440) is contacted immediately regarding any violations or potential violations of the Federal Endangered Species Act or Migratory Bird Treaty Act.
3. Within 1 working day of finding dead, injured, or sick endangered or threatened wildlife species, the permittee or its designated agents must orally notify the Service's Carlsbad Field Office. Written notification to the Carlsbad Fish and Wildlife Office and the Division of Law Enforcement (185 West F Street, Suite 440, San Diego, California 92101-6025) must be made within 5 calendar days and must include the date, time, and location of the specimen and any other pertinent information.

K. An annual report shall be prepared as described in the MSCP Plan and submitted to the Service by February 15 of each year that the permit is in effect, beginning in 1999. One copy of the annual report shall be submitted to the Field Supervisor of the Carlsbad Field Office, and one copy shall be submitted to the Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, 911 Northeast 11th Avenue, Portland, Oregon 97232.

L. A copy of this permit must be in the possession of the permittee and designated agents while conducting taking activities. Please refer to the permit number in all correspondence and reports concerning permit activities. Any questions you may have about this permit should be directed to the Field Supervisor, Carlsbad Fish and Wildlife Office.

PERMIT CONDITIONS FOR PRT-840414, cont'd.

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**List of Covered Species
Subject to Incidental Take**

Endangered Species:Birds

- | | |
|-----------------------------------|--|
| 1. Southwestern willow flycatcher | (<i>Empidonax traillii extimus</i>) |
| 2. American peregrine falcon | (<i>Falco peregrinus anatum</i>) |
| 3. California brown pelican | (<i>Pelecanus occidentalis californicus</i>) |
| 4. Light-footed clapper rail | (<i>Rallus longirostris levipes</i>) |
| 5. Least Bell's vireo | (<i>Vireo bellii pusillus</i>) |

Reptiles and Amphibians

- | | |
|----------------|---|
| 6. Arroyo toad | (<i>Bufo microscaphus californicus</i>) |
|----------------|---|

Invertebrates

- | | |
|---------------------------|--|
| 7. San Diego fairy shrimp | (<i>Branchinecta sandiegonensis</i>) |
| 8. Riverside fairy shrimp | (<i>Streptocephalus woottoni</i>) |

Plants

- | | |
|-----------------------------|--|
| 9. Del Mar manzanita | (<i>Arctostaphylos glandulosa</i> var. <i>crassifolia</i>) |
| 10. Salt marsh bird's beak | (<i>Cordylanthus maritimus</i> ssp. <i>maritimus</i>) |
| 11. San Diego button celery | (<i>Eryngium aristulatum</i> var. <i>parishii</i>) |
| 12. California Orcutt grass | (<i>Orcuttia californica</i>) |
| 13. San Diego mesa mint | (<i>Pogogyne abramsii</i>) |
| 14. Otay Mesa mint | (<i>Pogogyne nudiuscula</i>) |

Threatened Species:Birds

- | | |
|------------------------------------|---|
| 15. Western snowy plover | (<i>Charadrius alexandrinus nivosus</i>) |
| 16. Coastal California gnatcatcher | (<i>Polioptila californica californica</i>) |
| 17. Bald eagle | (<i>Haliaeetus leucocephalus</i>) |

PERMIT CONDITIONS FOR PRT-840414, cont'd.

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Reptiles and Amphibians

18. Red-legged frog (*Rana aurora draytonii*)

Plants

19. Encinitas baccharis (*Baccharis vanessae*)

Species Proposed for Listing:Plants

- | | |
|------------------------------|--|
| 20. San Diego thorn-mint | (<i>Acanthomintha ilicifolia</i>) |
| 21. Coastal dunes milk vetch | (<i>Astragalus tener</i> var. <i>titi</i>) |
| 22. Nevin's barberry | (<i>Berberis nevinii</i>) |
| 23. Thread-leaved brodiaea | (<i>Brodiaea filifolia</i>) |
| 24. Otay tarplant | (<i>Hemizonia conjugens</i>) |
| 25. Willowy monardella | (<i>Monardella linoides</i> ssp. <i>viminea</i>) |
| 26. Spreading navarretia | (<i>Navarretia fossalis</i>) |
| 27. Dehesa bear-grass | (<i>Nolina interata</i>) |

Other Unlisted Species:Birds

- | | |
|---------------------------------------|---|
| 28. Cooper's hawk | (<i>Accipiter cooperii</i>) |
| 29. Tri-colored blackbird | (<i>Agelaius savannarum</i>) |
| 30. California rufous-crowned sparrow | (<i>Aimophila ruficeps canescens</i>) |
| 31. Golden eagle | (<i>Aquila chrysaetos</i>) |
| 32. Canada goose | (<i>Branta canadensis</i>) |
| 33. Ferruginous hawk | (<i>Buteo regalis</i>) |
| 34. Swainson's hawk | (<i>Buteo swainsoni</i>) |
| 35. Coastal cactus wren | (<i>Campylorhynchus brunneicapillus couesi</i>) |
| 36. Northern harrier | (<i>Circus cyaneus</i>) |
| 37. Mountain plover | (<i>Charadrius montanus</i>) |
| 38. Reddish egret | (<i>Egretta rufescens</i>) |
| 39. Long-billed curlew | (<i>Numenius americanus</i>) |
| 40. Belding's savannah sparrow | (<i>Passerculus sandwichensis beldingi</i>) |
| 41. Large-billed savannah sparrow | (<i>Passerculus sandwichensis rostratus</i>) |
| 42. White-faced ibis | (<i>Plegadis chihi</i>) |
| 43. Western bluebird | (<i>Sialia mexicana</i>) |
| 44. Burrowing owl | (<i>Speotyto cunicularia hypugaea</i>) |

PERMIT CONDITIONS FOR PRT-840414, cont'd.

8

45. Elegant tern (*Sterna elegans*)

Reptiles and Amphibians

46. Orange-throated whiptail lizard (*Cnemidophorus hyperthrus beldingi*)
47. Southwestern pond turtle (*Clemmys marmorata pallida*)
48. San Diego horned lizard (*Phrynosoma coronatum*)

Mammals

49. Mountain lion (*Felis concolor*)
50. Southern mule deer (*Odocoileus hemionus fuliginata*)
51. American badger (*Taxidea taxus*)

Invertebrates

52. Thorne's hairstreak butterfly (*Mitoura thornei*)
53. Salt marsh skipper (*Panoquina errans*)

Plants

54. Shaw's agave (*Agave shawii*)
55. San Diego ambrosia (*Ambrosia pumila*)
56. Aphanisma (*Aphanisma blitoides*)
57. Otay manzanita (*Arctostaphylos otayensis*)
58. Orcutt's brodiaea (*Brodiaea orcuttii*)
59. Dense reed grass (*Calamagrostis densa*)
60. Dunn's mariposa lily (*Calochortus dunnii*)
61. Slender-pod jewelflower (*Caulanthus stenocarpus*)
62. Lakeside ceanothus (*Ceanothus cyaneus*)
63. Wart-stemmed ceanothus (*Ceanothus verrucosus*)
64. Tecate cypress (*Cupressus forbesii*)
65. Short-leaved dudleya (*Dudleya blochmaniae* ssp. *brevifolia*)
66. Variegated dudleya (*Dudleya variegata*)
67. Sticky dudleya (*Dudleya viscida*)
68. Palmer's ericameria (*Ericameria palmeri* ssp. *palmeri*)
69. Coast wallflower (*Erysimum ammophilum*)
70. San Diego barrel cactus (*Ferocactus viridescens*)
71. Heart-leaved pitcher plant (*Lepechinia cardiophylla*)
72. Gander's pitcher sage (*Lepechinia ganderi*)
73. Nuttall's lotus (*Lotus nuttallianus*)
74. Felt-leaved monardella (*Monardella hypoleuca* ssp. *lanata*)
75. San Diego goldenstar (*Muilla clevelandii*)

PERMIT CONDITIONS FOR PRT-840414, cont'd.

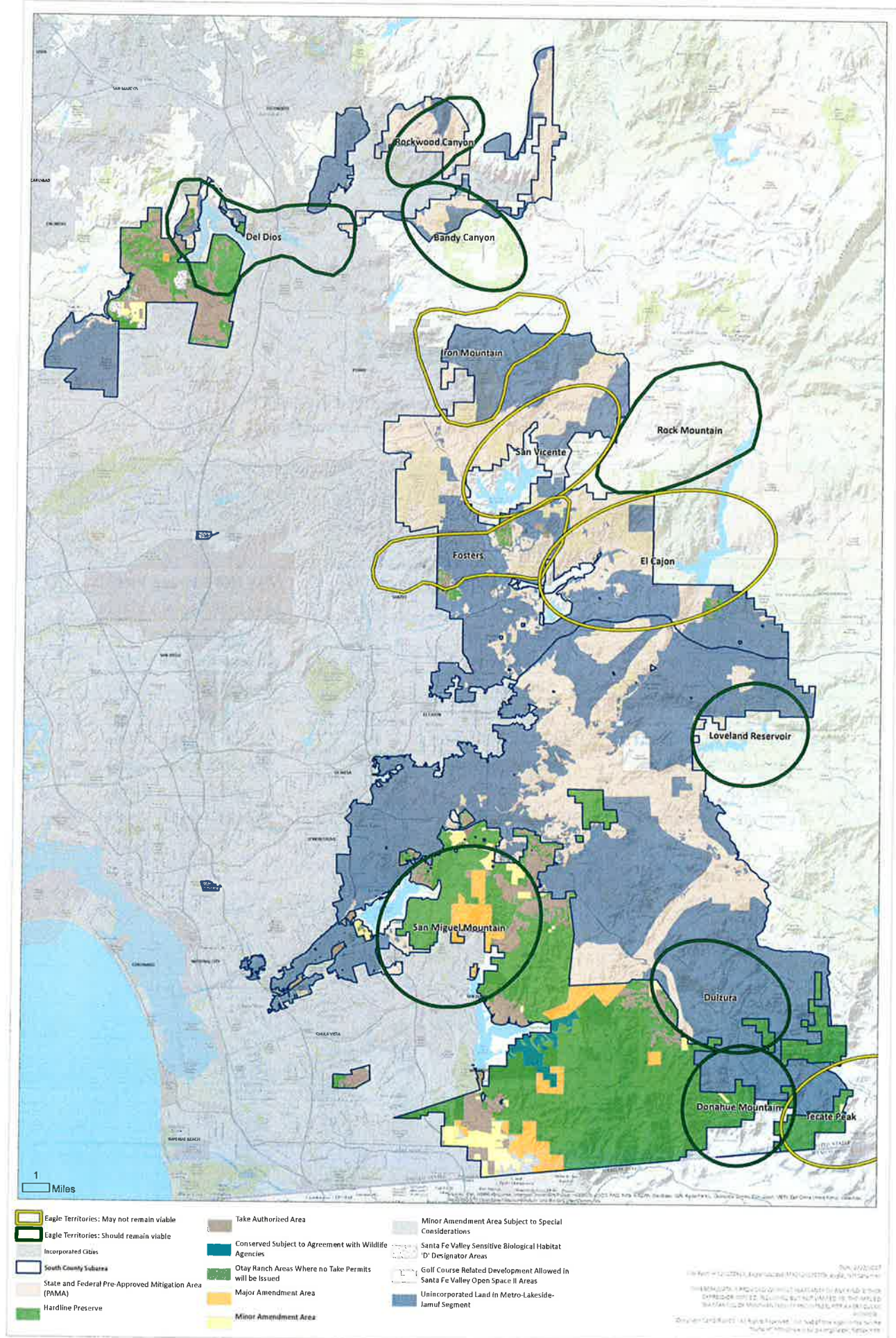
9

- | | |
|------------------------------|--|
| 76. Snake cholla | (<i>Opuntia parryi</i> var. <i>serpentina</i>) |
| 77. Torrey pine | (<i>Pinus torreyana</i>) |
| 78. Small-leaved rose | (<i>Rosa minutifolia</i>) |
| 79. San Miguel savory | (<i>Satureja chandleri</i>) |
| 80. Gander's butterweed | (<i>Senecio ganderi</i>) |
| 81. Narrow-leaved nightshade | (<i>Solanum tenuilobatum</i>) |
| 82. Parry's tetracoccus | (<i>Tetracoccus dioicus</i>) |

ATTACHMENT C

Map of Golden Eagle Territories identified in SCMSCP
based on information from the Golden Eagle Survey Project, 1996

Current Territory Name	Table 3-5 Name	Table 3-5 Limits	Table 3-5 Viability
El Cajon	Lake Jennings	<50%	May Not Remain Viable
Fosters/Iron Mountain	Santee	<40%	May Not Remain Viable
San Vicente	San Vicente	<30%	May Not Remain Viable
Bandy Canyon	San Pasqual	<20%	Should Remain Viable
Rockwood Canyon	San Pasqual	<20%	Should Remain Viable
Del Dios	Lake Hodges	<20%	Should Remain Viable
Donahue Mountain/Dulzura	East Otay Mountain	<5%	Should Remain Viable
Loveland Reservoir	Loveland Reservoir	<20%	Should Remain Viable
Rock Mountain	El Capitan	<15%	Should Remain Viable
San Miguel Mountain	Rancho San Diego	<10%	Should Remain Viable



ATTACHMENT D

**Table 3-5: Species Evaluated for Coverage under the MSCP
Golden Eagle**

Table 3-5 (Continued)

SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS (Federal/State) ¹	CONSERVED ² (BASED ON THE MSCP PLAN)	POTENTIALLY IMPACTED/ DEVELOPED (BASED ON THE MSCP PLAN)	GENERAL BASIS FOR ANALYSIS OF COVERAGE	MONITORING METHOD(S) (MONITORING PLAN AND/OR MANAGEMENT PLANS/ DIRECTIVES)	MEETS STATE & FEDERAL TAKE AUTHORIZATION STANDARDS
<i>Aquila chrysaetos</i> Golden eagle BEP/SSC	53% of potential foraging/nesting habitat (coastal sage scrub, chaparral, grassland and oak woodland) (139,000± acres) - large blocks of habitat conserved in the eastern portion of the plan area where active nesting territories exist. Of the 11 active nesting territories (based on information from the Golden Eagle Survey Project, San Diego) which are fully or partially within the MSCP plan area, 7 nesting territories should remain viable.	Viability of 4 of the 11 active nesting territories (partially or fully within the plan area)	Preserve design/landscape level with site-specific consideration(s)/ management	Monitoring Plan - Habitat Based and Management Plans/Directives (site-specific nest territories)	YES

Table 3-5 (Continued)

SPECIES EVALUATED FOR COVERAGE UNDER THE MSCP

SCIENTIFIC NAME COMMON NAME STATUS (Federal/State) ¹	CONSERVED ² (BASED ON THE MSCP PLAN)	POTENTIALLY IMPACTED/ DEVELOPED (BASED ON THE MSCP PLAN)	GENERAL BASIS FOR ANALYSIS OF COVERAGE	MONITORING METHOD(S) (MONITORING PLAN AND/OR MANAGEMENT PLANS/ DIRECTIVES)	MEETS STATE & FEDERAL TAKE AUTHORIZATION STANDARDS
---	---	--	--	--	---

DETAILS OF RATIONALE FOR IDENTIFYING SPECIES AS COVERED

This species will be covered by the MSCP because 53% of potential foraging and nesting habitat will be conserved. Local populations are not critical to, and the plan will not adversely affect, the species' long-term survival.

Notes: Fourteen active nesting territories occur primarily outside of the MSCP area (east and northeast of the plan area). Plans developed for these areas should include measures to conserve adequate habitat to maintain their viability. The following is an analysis of the plan's effects on each nesting territory within the MSCP study area:

1. Rancho San Diego- development under the plan will result in <10% loss of habitat in the nesting territory; nesting territory should remain viable.
2. East Oray Mountain- development under the plan will result in <5% loss of habitat in the nesting territory; nesting territory should remain viable.
3. Sequan Peak- between 30% and 40% of the habitat in the nesting territory could be developed; the nesting territory may not remain viable, but the steepness of the areas that could be developed may preclude enough development to keep the territory viable.
4. Loveland Reservoir- development under the plan will result in <20% loss of habitat in the nesting territory; nesting territory should remain viable.
5. Lake Jennings- between 40% and 60% of the habitat in the nesting territory could be developed under the plan; the nesting territory may not remain viable.
6. El Capitan- development under the plan will result in <15% loss of habitat within the nesting territory; the territory should remain viable.
7. San Vicente Reservoir- development under the plan will result in <30% of the high quality golden eagle habitat being developed, although low quality habitat (steep slopes); the nesting territory may not be viable.
- 8 and 9. San Pasqual (two nesting territories)- development under the plan will result in <20% loss of habitat in the nesting territory; both nesting territories should remain viable.
10. Santee- development under the plan could result in 30%-40% loss of habitat in the nesting territory; nesting territory may not remain viable, although a significant amount of foraging habitat (Miramar and Mission Trails) occurs just outside of the territory and within normal foraging distances.
11. Lake Hodges- development under the plan will result in <20% loss of habitat in the nesting territory; nesting territory should remain viable.

Conditions: Area-specific management directives for areas with nest sites must include measures to avoid human disturbance while the nest is active, including establishing a 4,000-foot disturbance avoidance area within preserve lands.⁴ Area-specific management directives must also include monitoring of nest sites to determine use/success.