

DEPARTMENT OF FISH AND GAME

South Coast Region
4949 Viewridge Avenue
San Diego, California 92123
(858) 467-4201
FAX (858) 467-4235



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POWER

January 16, 2002

State of California
Department of Transportation, District 11
Attn: Lawrence Carr
2829 Juan Street
P.O. Box 85406
San Diego, CA 92186-5406

EA 234501

Dear Mr. Carr:

Enclosed is Streambed Alteration Agreement R5-2001-0201 that authorizes work on the Tributaries to Chicarita Creek in San Diego County. This action is authorized under Section 1600 of the Fish and Game Code and has been approved by the California Department of Fish and Game. Pursuant to the requirements of the California Environmental Quality Act (CEQA), the Department filed a Notice of Exemption (NOE) on the project on 1/15/02. Under CEQA regulations, the project has a 35-day statute of limitations on court challenges of the Department's approval under CEQA.

The Department believes that the project fully meets the requirements of the Fish and Game Code and CEQA. However, if court challenges on the NOE are received during the 35-day period, then an additional review or even modification of the project may be required. If no comments are received during the 35-day period, then any subsequent comments need not be responded to. This information is provided to you so that if you choose to undertake the project prior to the close of the 35-day period, you do so with the knowledge that additional actions may be required based on the results of any court challenges that are filed during that period.

Please contact Pam Beare at (858) 467-4229 you have any questions regarding the Streambed Alteration Agreement.

Sincerely,

C.F. Raysbrook
Regional Manager

Enclosure

cc: Pam Beare

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CALIFORNIA DEPARTMENT OF FISH AND GAME
4949 Viewridge Avenue
San Diego, California 92123

Notification No. R5-2001-0201
Page 1 of 5

AGREEMENT REGARDING PROPOSED STREAM OR LAKE ALTERATION

THIS AGREEMENT, entered into between the State of California, Department of Fish and Game, hereinafter called the Department, and Lawrence Carr of the State of California, Department of Transportation, District 11, 2829 Juan Street, P.O. Box 85406, CA 92186-5406, hereinafter called the Operator, is as follows:

WHEREAS, pursuant to Section 1601 of California Fish and Game Code, the Operator, on the 16th day of July, 2001, notified the Department that they intend to divert or obstruct the natural flow of, or change the bed, channel, or bank of, or use material from the streambed(s) of, the following water(s): unnamed tributaries to Chicarita Creek, San Diego County, California, (Section _ Township 14S, Range 2W, Poway Quad.).

WHEREAS, the Department has determined that such operations may substantially adversely affect those existing fish and wildlife resources within unnamed tributaries to Chicarita Creek, specifically identified as follows: birds: bush tit (*Psaltriparus minimus*), California towhee (*Pipilo crissalis*), scrub jay (*Aphelocoma californica*), house finch (*Carpodacus mexicanus*), black phoebe (*Sayornis nigricans*), song sparrow (*Melospiza melodia*), Anna's hummingbird (*Calypte anna*), lesser goldfinch (*Carduelis psaltria*), northern mockingbird (*Mimus polyglottos*), and mourning dove (*Zenaida macroura*); riparian vegetation which provides habitat for those species: black willow (*Salix goodingii*), ash (*Fraxinus* sp.) mulefat (*Baccharis salicifolia*), sedge (*Cyperus* sp.) cattail (*Typha* sp.); and all other aquatic and wildlife resources, including that riparian vegetation which provides habitat for such species in the area.

THEREFORE, the Department hereby proposes measures to protect fish and wildlife resources during the Operator's work. The Operator hereby agrees to accept the following measures/conditions as part of the proposed work.

If the Operator's work changes from that stated in the notification specified above, this Agreement is no longer valid and a new notification shall be submitted to the Department of Fish and Game. Failure to comply with the provisions of this Agreement and with other pertinent code sections, including but not limited to Fish and Game Code Sections 5650, 5652, 5937, and 5948, may result in prosecution.

Nothing in this Agreement authorizes the Operator to trespass on any land or property, nor does it relieve the Operator of responsibility for compliance with applicable federal, state, or local laws or ordinances. A consummated Agreement does not constitute Department of Fish and Game endorsement of the proposed operation, or assure the Department's concurrence with permits required from other agencies.

This Agreement becomes effective the date of Department's signature and terminates December 31, 2006 for project construction only. This Agreement shall remain in effect for that time necessary to satisfy the terms/conditions of this Agreement.

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1. The following provisions constitute the limit of activities agreed to and resolved by this Agreement. The signing of this Agreement does not imply that the Operator is precluded from doing other activities at the site. However, activities not specifically agreed to and resolved by this Agreement shall be subject to separate notification pursuant to Fish and Game Code Sections 1600 et seq.

2. The Operator proposes to alter the streambed to construct operational improvements to the Interstate 15 (I-15)/State Route 56 (SR-56) Interchange. Project features that will result in impacts to the streambed include: 1) The direct connector ramp from southbound I-15 to westbound SR-56 will be realigned and widened to two lanes. A retaining wall along the connector will accommodate the widening and minimize impacts to environmentally sensitive areas; 2) The existing eastbound SR-56 to southbound I-15 ramp will be realigned and widened for extra storage capacity. A right turn pocket will be added on eastbound SR-56 to southbound I-15. The existing bike path along eastbound SR-56 will be realigned. A retaining wall will be used to accommodate the right turn pocket and bike path realignment. Impacts to streambeds include those areas shown on the attached Figure A: Wetland Areas at I-15/SR-56 Interchange, San Diego, California from the Conceptual Wetland Mitigation and Revegetation Plan dated June 12, 2001, and include .11 acre of mulefat scrub, .04 acre of emergent wetland consisting of cattail (*Typha* sp.) and sedge (*Cyperus* sp.), and .01 acre of primarily unvegetated channel.

3. The agreed work includes activities associated with No. 2 above. The project area is located in San Diego County. Specific work areas and mitigation measures are described on/in the plans and documents submitted by the Operator, including the "Wetland Delineation and Assessment..." Memorandum dated March 12, 2001 and Exhibit 2A, Alternative 1 Layout, Sheets 1 through 7, and shall be implemented as proposed unless directed differently by this agreement.

4. The Operator shall not impact more than .16 acre of streambed/wetlands as described above. The loss of this habitat shall be mitigated with creation of .32 acre of similar habitat types in the project vicinity.

5. The Operator shall submit a revegetation/mitigation plan for Department review at least 60 days prior to initiating project construction and shall receive Department approval prior to impacting streambed/wetlands. The Operator acknowledges that the authorization to alter the stream(s) pursuant to this Agreement is not granted until the Department has reviewed and approved the revegetation/mitigation plan; if the Department discovers that alterations to the stream(s) have occurred without the Department's approval of said plan, the Department's Wildlife Enforce Personnel (i.e. Wardens), or the Department's Regional Manager, or his/her designee has the expressed right to stop work within the stream (except for necessary work approved by the Department to secure the stream's bed and banks for possible storm events) until the Department has approved said plan.

The plan shall: identify one or more specific areas for the creation of .32 acre of wetland habitat; include specific plans for the creation of wetlands and enhancement of the area; include the criteria that will be used to evaluate the success of the mitigation and a monitoring plan to document progress toward achieving/meeting those criteria; and a detailed plan that specifies how the area will be maintained as a biological mitigation site in the long-term. Revegetation shall use only native species known to occur, either presently or historically, in the project vicinity, and shall be derived from local individuals. All revegetation shall be installed in the first appropriate planting season following the completion of construction adjacent to the mitigation site(s).

6. All planting shall have a minimum of 80% survival the first year and 100% survival thereafter and/or shall attain 75% cover after 3 years and 90% cover after 5 years (cover shall be attained at a density that is typical for the species, appropriate for site conditions, and that can be sustained in the long-term. If the survival and cover requirements have not been met, the Operator is responsible for replacement planting to achieve these requirements. Replacement plants shall be monitored with the same survival and growth requirements for 5 years after planting. The entire site shall be monitored along with replacement plants, even if it has been 5 years since the initial planting.

7. An annual report documenting the revegetation effort shall be submitted to the Department by Oct. 1 of each year for a minimum of 5 years; any replacement planting shall extend the requirement for the entire site so that there are at least 5 years of monitoring after the last replacement planting is done. This report shall include the documentation necessary to evaluate progress in achieving the success criteria; it shall also include the number of plants replaced, by species and date planted; a list of all maintenance activities performed on the site along with the date they were performed; a description of how the site compares to the previous year; a description of the methods used to assess these parameters; and photographs taken from the same locations each year.

8. The Operator shall not remove vegetation within the stream from March 1 to August 15 to avoid impacts to nesting birds. However, the Operator may remove vegetation during this time if a qualified biologist conducts a survey for nesting birds within one week prior to the vegetation removal, and ensures no nesting birds shall be impacted by the project. If nesting birds are present, no work shall occur until the young have fledged and will no longer be impacted by the project.

9. Vehicles shall not be driven or equipment operated in water covered portions of a stream or lake, or where wetland vegetation, riparian vegetation, or aquatic organisms may be

15. No equipment maintenance shall be done within or near any stream channel where petroleum products or other pollutants from the equipment may enter these areas under any flow.

16. Structures and associated materials not designed to withstand high seasonal flows shall be removed to areas above the high water mark before such flows occur.

17. Spoil sites shall not be located within a stream/lake, where spoil shall be washed back into a stream/lake, or where it will cover aquatic or riparian vegetation.

18. Raw cement/concrete or washings thereof, asphalt, paint or other coating material, oil or other petroleum products, or any other substances which could be hazardous to aquatic life, shall not be allowed to enter into or placed where it may be washed by rainfall or runoff into, waters of the State. These materials, placed within or where they may enter a stream/lake, by Operator or any party working under contract, or with the permission of the Operator, shall be removed immediately.

19. The Operator shall comply with all litter and pollution laws. All contractors, subcontractors and employees shall also obey these laws and it shall be the responsibility of the operator to ensure compliance.

20. The Operator shall **provide a copy of this Agreement to all contractors, subcontractors, and the Operator's project supervisors. Copies of the Agreement shall be readily available at work sites at all times during periods of active work** and must be presented to any Department personnel, or personnel from another agency upon demand. **All project personnel shall abide by all terms and conditions of this agreement.**

21. The Department reserves the right to enter the project site at any time to ensure compliance with terms/conditions of this Agreement.

22. The Operator shall notify the Department, in writing, **at least five (5) days prior to initiation of construction (project) activities and at least five (5) days prior to completion of construction (project) activities.** Notification shall be sent to the Department at 4949 Viewridge Avenue, CA 92123, Attn: Pam Beare/SAA No.5-2001-0201

23. It is understood the Department has entered into this Streambed Alteration Agreement for purposes of establishing protective features for fish and wildlife. The decision to proceed with the project is the sole responsibility of the Operator, and is not required by this agreement. **It is further agreed all liability and/or incurred cost related to or arising out of the Operator's project and the fish and wildlife protective conditions of this agreement, remain the sole responsibility of the Operator.** The Operator agrees to hold harmless the State of California and the Department of Fish and Game against any related claim made by any party or parties for personal injury or any other damages.

24. The Operator shall request an extension of this agreement prior to its termination. Extensions may be granted for up to 12 months from the date of termination of the agreement and are subject to Departmental approval. The extension request and fees shall be submitted to the Department's South Coast Regional Office at the above address. If the Operator fails to request the extension prior to the agreement's termination then the Operator shall submit a new notification with fees and required information to the Department. Any activities conducted under an expired agreement is a violation of Fish and Game Code Section 1600 et. seq.

| WETLANDS AREA | | IMPACTED AREA | |
|---|--------|-----------------------------------|--------|
| (m2) | (acre) | (m2) | (acre) |
| 538 | 0.13 | | 0.06 |
| 292 | 0.072 | | 0.003 |
| 22 | 0.0054 | | |
| 3.7 | 0.0091 | | |
| 94.4 | 0.023 | | |
| 151.3 | 0.037 | | 0.037 |
| 50.7 | 0.012 | | |
| 24.4 | 0.006 | | 0.003 |
| 36.6 | 0.009 | | 0.009 |
| 266.5 | 0.065 | | |
| 2012.6 | 0.50 | | 0.05 |
| TOTAL WETLANDS AREA = 3492.2 m2 = 0.87 acre | | (TOTAL IMPACTED AREA = 0.16 acre) | |

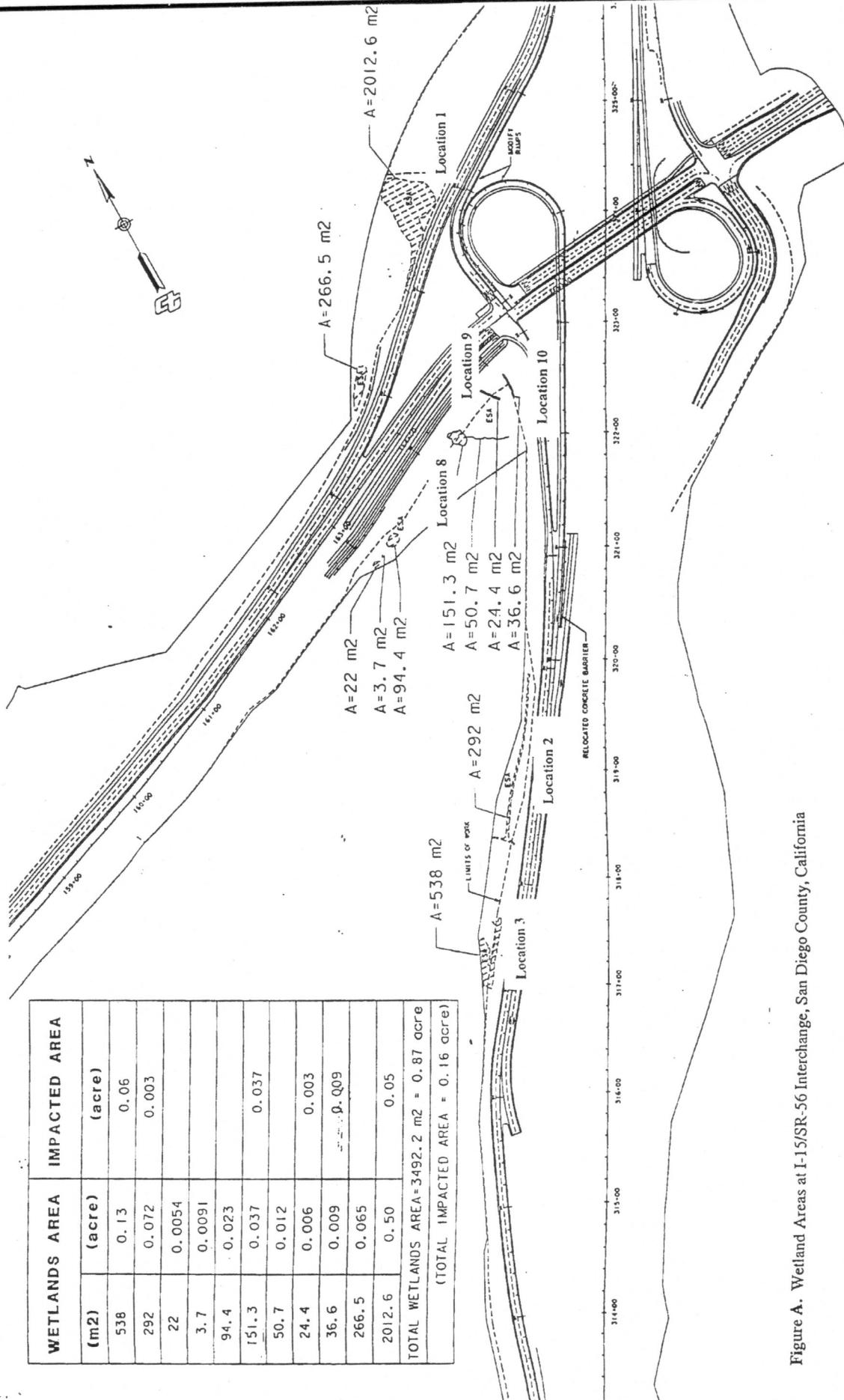


Figure A. Wetland Areas at I-15/SR-56 Interchange, San Diego County, California



United States Department of the Interior
 Fish and Wildlife Service
 Ecological Services
 Carlsbad Fish and Wildlife Office
 2730 Loker Avenue West
 Carlsbad, California 92005



In Reply Refer to: 1-6-01-F-1328.2

MAY 08 2001

Mr. Michael G. Ritchie, California Administrator
 Federal Highway Administration
 Department of Transportation
 980 Ninth Street, Suite 400
 Sacramento, CA 95814-2724

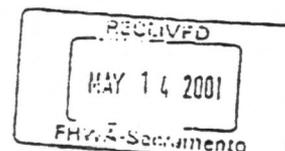
Re: Biological Opinion on the Proposed Operational Improvement Projects on Interstate 15 in San Diego County, California;

Dear Mr. Ritchie:

This document transmits the Fish and Wildlife Service's (Service) biological opinion based on our review of the proposed Operational Improvement Projects on Interstate 15 (I-15) located in San Diego County, California, and its effects on the threatened coastal California gnatcatcher (*Poliopitilla californica californica*, gnatcatcher) in accordance with section 7 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.). Critical habitat for the gnatcatcher was designated in 2000, however none occurs within the project boundaries and therefore it will not be addressed further. Your January 27, 2001, request for formal consultation was received on January 31, 2001.

This biological opinion is based on information provided in the November 3, 2000, and January 27, Biological Assessment, meetings, and other information available in our files. A complete administrative record of this consultation is on file at the Service's Carlsbad Fish and Wildlife Office.

Focused surveys for the endangered least Bell's vireo (*Vireo bellii pusillus*) and southwestern willow flycatcher (*Empidonax traillii eximius*) detected neither species. A patch of *Plantago erecta*, a larval host plant for the endangered Quino checkerspot butterfly (*Euphydryas editha quino*, Quino), was observed just outside of grading limits on the southbound side of I-15, just south of State Route 56 (SR-56). No Quino were observed during protocol surveys. Suitable habitat for the endangered arroyo toad (*Bufo californicus*) is not currently present within the project area. Designated or proposed critical habitat for the above species does not occur within the project boundaries and therefore none will be adversely modified as a result of the proposed operational improvements project. For these reasons, the proposed operational improvements project is not likely to adversely affect the above species or adversely modify their respective proposed or designated critical habitats. Therefore, these species will not be addressed further in this Biological Opinion except in the Description of the Proposed Action.



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CONSULTATION HISTORY

In 1999, several meetings took place between our office and Caltrans to discuss preliminary findings and discuss project review. In 2000, Caltrans and our office discussed project impacts and compensation in meetings and telephone conference calls. We received a draft Biological Assessment dated November 3, 2000, on November 7, 2000, followed by additional information on November 29, 2000. The details of the project were discussed in a January 17, 2001, meeting with Caltrans biologist Bob James at Carlsbad Field Office. On January 18, 2001, Bob James sent additional information regarding the Biological Assessment via e-mail. On January 31, 2001, we received a request for formal consultation. Field notes from Bob James were received on February 15, 2001.

BIOLOGICAL OPINION

DESCRIPTION OF THE PROPOSED ACTION

The Service, Federal Highways, and Caltrans view the proposed action for which this Biological Opinion is written as a part of a larger action along the I-15 Corridor Project. Interstate highway improvement projects are often disjunct individual projects that, when pieced together, constitute a much larger single linear project. Repair and improvement work along an interstate corridor is generally conducted in finite, disjunct construction periods (and areas) to allow for minimum disturbance to the interstate's primary purpose of providing safe transportation. Each distinct project has environmental impacts associated with it that contribute to regional cumulative impacts associated with the improvement and upkeep of the interstate system. Impacts associated with the I-15 Corridor Project will be addressed in the Cumulative Impacts section of this Biological Opinion. Due to the duration of the larger I-15 Corridor Project, and the need to stagger the work along the corridor, this Biological Opinion will analyze the impacts within a three year time frame associated with the proposed Operational Improvement Projects for three areas along I-15 between Mercy Road and Carmel Mountain Road. Impacts associated with these three areas will be compensated for by purchase of 86 acres of habitat near Lake Hodges. By rendering a Biological Opinion on the three Operational Improvements addressed in this document, temporal loss of habitat is minimized, and habitat that is near the impact areas can be secured for conservation to compensate for project impacts to coastal California gnatcatcher.

This Description of the Proposed Action will describe the larger I-15 Corridor Project briefly and then describe in detail the three projects within the Component Three Operational Improvements for which this Biological Opinion addresses.

The I-15 Corridor Project is composed of three (3) components:

1. Component One plans for bridge widening and either a Managed Lanes alternative or High Occupancy Vehicle Lanes alternative.

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Bridge widening is proposed at Los Peñasquitos Creek, Green Valley Creek, and Lake Hodges. Timber pilings, cofferdams, and piling driving are planned and construction time is anticipated at nine months for Los Peñasquitos, one year for Green Valley and 18 months for Lake Hodges.

The Managed Lanes Alternative of Component One proposes four managed lanes in the freeway median of I-15 throughout the length of the I-15 Corridor. This alternative requires outside widening of the existing freeway lanes on at least one side and sometimes both. Some additional right-of-way will be required for temporary construction and drainage easements and noise barriers. A moveable barrier system is proposed so that the four lanes can be oriented in three different configurations depending upon traffic needs. Three moveable barrier machines would be needed. A maintenance facility is proposed in the I-15 median or adjacent, about 0.5 miles south of State Route-163 junction. Other important project features are bridge removal and reconstruction at Carroll Canyon Road, I-15/SR-56, Carmel Mountain Road, Duenda Road, Highland Valley Road, Via Rancho Parkway, and Del Lago Blvd. Direct access ramps will be constructed into the Managed Lanes at Hillery Avenue, Del Lago Blvd, and Hale Avenue. Up to 21 noise barriers are proposed throughout the I-15 Corridor. The final number will be determined later in the planning process. Potential impacts to CSS and gnatcatchers have been incorporated in the impact analysis (Table 2).

The High Occupancy Vehicle (HOV) Alternative of Component One proposes four lanes located in the freeway median separated from the main lanes by a painted buffer. This alternative also includes the same direct access ramps, bridge modifications, and noise barriers as the Managed Lanes Alternative.

2. Component Two plans for five Bus Rapid Transit Centers.

Transit Centers are proposed with the I-15 Corridor at Mira Mesa (Hillery Drive), Sabre Springs (off Evening Creek Road), Rancho Bernardo (off West Bernardo Road), Del Lago, and Escondido (from Hale Avenue)¹. Direct Access Ramps are proposed with each of these Transit Centers. To date, the only biological resource identified that occur on these transit center sites are vernal pools present in the vicinity of Miramar College. These pools may support San Diego fairy shrimp (*Branchinecta sandiegonensis*). The Service will be consulted if impacts may affect listed species.

3. Component three plans for Operational Improvements.

Auxiliary/Added Lanes at seven locations (Table 1). Auxiliary lanes extend between entrances/exits, while "added lanes" continue through an interchange.

¹ The Metropolitan Transit Development Board is the lead agency for all of the proposed transit centers, with the exception of Del Lago.

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Table 1. Seven Proposed Auxiliary/Added Lane Projects in I-15 Corridor, Direction, and Kilopost Limits. Projects are listed from south (list top) to north (bottom). The three projects marked in bold type are considered the Proposed Action for this Biological Opinion.

| Direction(s) | KP Limits | Street Location Limits |
|---------------|--------------------|---|
| NB, SB | 20.7 - 26.1 | Miramar Way - Mira Mesa Blvd |
| NB, SB | 28.2 - 29.0 | Mercy Rd - Poway Rd |
| SB | 29.6 - 30.9 | Rancho Peñasquitos Blvd - State Route 56 |
| NB, SB | 30.6 - 32.0 | I-15 / State Route 56 Interchange |
| NB, SB | 31.4 - 35.2 | Carmel Mt. - Camino Del Norte |
| NB, SB | 38.1 - 43.5 | Camino Del Norte - Via Rancho Pkwy |
| NB, SB | 45.7 - 49.6 | Citracado Pkwy - Valley Pkwy |

Interstate 15/ State Route 56 Interchange and Auxiliary Lanes Improvement:

The main features are a loop on-ramp (eastbound SR-56 to northbound [NB] I-15), retaining walls under the Ted Williams Parkway overcrossing, and a soundwall along NB I-15 and connector from southbound [SB] I-15 to westbound SR-56. In the north part, it is proposed to add one auxiliary lane NB from the NB Carmel Mountain Road off-ramp to the end of the existing truck climbing lane. In the SB direction, the proposal is to add one lane from the SB off-ramp to the existing fifth lane located just south of the I-15/SR-56 Interchange. Noise barriers will be included on both the north- and southbound sides adjacent to the highway shoulder north of SR-56/Ted Williams Parkway to Carmel Mountain Road, and adjacent to residences on the southbound side of I-15 near SR-56. Construction is scheduled to begin in December 2001 and take about one year.

Southbound Auxiliary Lane from State Route 56 to Rancho Peñasquitos Blvd:

An auxiliary lane would be extended about 500 meters (1,700 feet) from the southern end of the I-15/SR-56 Project southward to Rancho Peñasquitos Blvd. Construction is scheduled to begin in December 2001, and be completed within the schedule of the above project.

Auxiliary/Added Lanes from Mercy Road to Poway Road:

In the northbound direction, an additional lane would extend from Scripps Poway Parkway to the Rancho Peñasquitos Creek Bridge. The lane would continue from just northbound of the bridge to Ted Williams Parkway. The bridge across Rancho Peñasquitos Creek would be widened. An auxiliary lane would also extend from Rancho Peñasquitos Blvd to Mercy Road in the southbound direction. Noise barriers are proposed on the southbound side adjacent to the highway shoulder between Rancho Peñasquitos Creek and just south of Mercy Road, as well as adjacent to residences just south of Rancho Peñasquitos Blvd. Construction is proposed to begin in June 2002, with completion by December 2003.

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Conservation Measures

The following conservation measures are proposed to minimize impacts to sensitive habitats and species:

4. Environmentally Sensitive Areas (ESA's) and Limited Use Areas (LUA's) will be designated on project plans. ESA designation will best ensure that no impacts occur outside of the project limits. LUA designation (e.g., equipment storage/staging) will also reduce impacts.
5. Erosion control measures will be incorporated, including use of San Diego sagewort at the Los Peñasquitos Creek Bridge. A Caltrans District Biologist will review the Plans, Specifications, and Estimate (PS&E) Package and attend the pre-job meeting with contractors and Caltrans Resident Engineer to explain mitigation requirements. A biologist will provide technical assistance as needed throughout the construction period. San Diego sagewort will be included in the erosion control seed mix, as recommended in the conceptual mitigation plan (Odgen 2000).
6. Impacted San Diego barrel cactus (*Ferocactus viridescens*) will be salvaged and transplanted in appropriate habitat as recommended in the conceptual mitigation plan (Odgen 2000).
7. To compensate for the three operational improvements described in the proposed action, approximately 92.71 acres of habitat was acquired west of I-15 on the north shore of Lake Hodges. The three parcels (Tax Assessor Parcel Nos. 272-111-16, -20, and 272-252-61) were purchased by Caltrans in February 2001, consisting of about 86 acres of coastal sage scrub (CSS) supporting gnatcatchers. There are also 6.2 acres of southern mixed chaparral habitat on the parcels. Cactus wrens (*Campylorhynchus brunneicapillus*), a California State Species of Special Concern, are also present on the parcels. It is likely these lands would be transferred to a land management agency in the future. Parcels Nos. 272-111-16, -20 are within the Multiple Habitat Planning Area of the City's Multiple Species Conservation Program Subarea Plan.
8. The middle parcel Nos. 272-11-20 has four recorded conservation easements totaling 5.46 acres. The Environmental Trust has agreed to manage this area in perpetuity as open space for biological conservation. These easements are clustered at the southern end of the parcel, and are not considered to significantly detract from use of the parcel as mitigation.

The following conservation measures are proposed to minimize incidental take of gnatcatchers:

9. On the three parcels being set aside to compensate for project impacts, there are about 81 acres of CSS, supporting nine pairs and three individual gnatcatchers. To offset adverse impacts to gnatcatchers, a total of 32.2 acres of CSS (a 2:1 ratio) and six gnatcatcher



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territories (1:1 ratio) would be encumbered on the parcels for these three proposed projects. The remainder would be available as mitigation for other projects.

10. Vegetation removal, including clearing and grubbing, will be done between August 31 and February 1, outside of the gnatcatcher nesting season.

The proposed I-15 Operational Improvement Projects will have a major impact on a core California gnatcatcher population and a highly important north/south corridor that facilitates gnatcatcher dispersal. The following conservation measures are proposed to minimize the cumulative impacts of Federal Highways and Caltrans actions to gnatcatchers and sensitive biologic communities:

11. To offset cumulative impacts from the proposed I-15 Operational Improvement Projects, and other future Caltrans and Federal Highways projects in San Diego County, to coastal sage scrub vegetation and the California gnatcatcher, Caltrans and/or Federal Highways may establish a mitigation bank with regional conservation value for the California gnatcatcher. The mitigation bank shall be used to offset total project impacts such that an overall net benefit is achieved for conservation of gnatcatchers and coastal sage scrub vegetation.
12. The mitigation bank shall comply with all Federal Highways and State of California Mitigation Banking policy.
13. The mitigation bank or other acquired land must be located in core gnatcatcher habitat (as defined by the Natural Community Conservation Planning Program and Multiple Species Conservation Program (MSCP) or the Multiple Habitat Conservation Program (MHCP)), and shall provide a significant contribution to regional conservation planning efforts.
14. The mitigation bank or other acquired land site shall have high biological value in the San Diego region for target species and habitats. At a minimum, the site(s) should mitigate at no less than in-kind for the amount and quality of coastal sage scrub habitat to support an equal or greater number of gnatcatcher pairs than is proposed to be impacted.
15. The site shall consist of predominantly high or very high value habitat for mitigation.

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18. The mitigation bank lands shall be acquired, preserved, and managed consistent with a Mitigation Bank Implementing Agreement signed by Caltrans, Federal Highways (if applicable), the Service, and the California Department of Fish and Game, prior to initiation of project impacts for the I-15 Managed/HOV Lanes Projects.
19. A land management agency should be prepared to accept the land and have the fiscal and human resources to monitor and manage it properly in perpetuity.
20. The mitigation bank lands should be a good candidate to manage human access and prevent non-native species establishment.
21. There should not be incompatible management constraints (e.g., easements).

STATUS OF THE SPECIES/CRITICAL HABITAT

Listing Status

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high as 912 m (3,000 ft) and that more than 99 percent of the known gnatcatcher locations occurred below 770 m (2,500 ft) (U.S. Fish and Wildlife Service 2000).

Habitat Affinities

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

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the biological needs of dispersal and foraging, and (3) undeveloped areas, including agricultural areas, that provide or could provide connectivity or linkage between or within larger core areas, including open space and disturbed areas that may receive only periodic use.

Life History

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

The California gnatcatcher seems to become highly territorial by late February or early March each year, as males become more vocal during this time period (Mock *et al.* 1990). In southwestern San Diego County the mean breeding season territory size ranged from 5 to 11 ha (12 to 27 ac) per pair and non-breeding season territory size ranged from 5 to 17 ha (12 to 42 ac) per pair (Preston *et al.* 1998). During the nonbreeding season, gnatcatchers have been observed to wander in adjacent territories and unoccupied habitat increasing their home range size to approximately 78 percent larger than their breeding territory (Preston *et al.* 1998).

The breeding season of the gnatcatcher extends from mid-February through the end of August, with the peak of nesting activity occurring from mid-March through mid-May. The gnatcatcher's nest is a small, cup-shaped basket usually found 0.3 to 1 m (1 to 3 ft) above the ground in a small shrub or cactus. Clutch sizes range between three and five eggs, with the average being four. Juvenile birds associate with their parents for several weeks (sometimes months) after fledging (Atwood 1990). Nest building begins in mid-March with the earliest recorded egg date of March 20 (Mock *et al.* 1990). Post-breeding dispersal of fledglings occurs between late May and late November. Nest predation is the most common cause of nest failure (Grishaver *et al.* 1998). Gnatcatchers are persistent nest builders and often attempt multiple broods, which is suggestive of a high reproductive potential. This is, however, typically offset by high rates of nest predation and brood parasitism (Atwood 1990). Nest site attendance by male gnatcatchers was determined to be equal to that of females for the first nest attempt and then decline to almost a third of female nest attendance for later nesting attempts (Sockman 1998).

Gnatcatchers typically live for two to three years, although ages of up to five years have been recorded for some banded birds (Dudek and Associates 2000). Observations indicate that gnatcatchers are highly vulnerable to extreme cold, wet weather (Mock *et al.* 1990). Predation occurs in greater proportion in the upper and lower third of the nest shrub. Predation is lower in nests with full clutch sizes (Sockman 1997). Potential nest predators are numerous, and include snakes, raccoons, and corvids (Grishaver *et al.* 1998). The California gnatcatcher also is known to be affected by nest parasitism of the brown-headed cowbird (*Molothrus ater*). Nest parasitism apparently has resulted in earlier nesting dates of the gnatcatcher which may help compensate for the negative effect of parasitism (Patten and Campbell 1998). However, the gains in nest success

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from decreased nest parasitism appear to be negated by increased nest abandonment due to predation before cowbirds have migrated into an area (Braden *et al.* 1997).

The natal dispersal, for a nonmigratory bird, such as the gnatcatcher, is an important aspect of the biology of the species (Galvin 1998). The mean dispersal distance of gnatcatchers banded in San Diego County is reported at less than 3 kilometers (km) (1.9 miles (mi)) (Bailey and Mock 1998). Although the mean dispersal distances that have been documented above are relatively low, dispersal of juveniles is difficult to observe and to document without extensive banding studies. Therefore, it is likely that the few current studies underestimate the gnatcatcher's typical dispersal capacity (Bailey and Mock 1998). Juvenile gnatcatchers are apparently able to traverse highly man-modified landscapes for a least short distances (Bailey and Mock 1998). Natural and restored coastal sage scrub habitat along highway corridors is used for foraging and nesting by gnatcatchers and may serve important dispersal functions (Famolaro and Newman 1998). Typically, however, the dispersal of juveniles requires a corridor of native vegetation which provides foraging and cover opportunities to link larger patches of appropriate sage scrub vegetation (Soule 1991). These dispersal corridors may facilitate the exchange of genetic material and provide a path for recolonization of areas from which the species has been extirpated (Soule 1991, Galvin 1998).

Population Trend

The gnatcatcher was considered locally common in the mid-1940's, but by the 1960's this subspecies had declined substantially in the United States owing to widespread destruction of its habitat (Atwood 1990). By 1980, Atwood (1980) estimated that no more than 1,000 to 1,500 pairs remained in the United States. In 1993, at the time the gnatcatcher was listed as threatened, the Service estimated that approximately 2,562 pairs of gnatcatchers occurred in the United States. In 1997, the total number of gnatcatchers in the United States was estimated at 2,899 pairs with two-thirds occurring in San Diego County (U.S. Fish and Wildlife Service 1996), after subtracting out all gnatcatcher pairs authorized for take under Habitat Loss Permits, approved Natural Community Conservation Plans, Habitat Conservation Plans, and section 7 consultations. These population estimates were intended to represent a coarse approximation of the number of gnatcatchers in southern California. Confidence intervals have not been calculated for these estimates and therefore, we can not be sure of their precision.

Threats

The loss, fragmentation, and adverse modification of habitat are the principal reasons for the gnatcatcher's federally threatened status (*Federal Register* 58: 16742). The amount of coastal sage scrub available to gnatcatchers has continued to decrease during the period after the listing of the species. It is estimated that up to 90 percent of coastal sage scrub vegetation has been lost as a result of development and land conversion (Westman 1981a, 1981b, Barbour and Major 1977), and coastal sage scrub is considered to be one of the most depleted habitat-types in the United States (Kirkpatrick and Hutchinson 1977, O'Leary 1990). The fragmentation of habitat may artificially increase populations in adjacent preserved habitat; however, these population

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EFFECTS OF THE ACTION

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

A total of 16.1 acres of coastal sage scrub (CSS) habitat (15 habitat patches) and six territories of coastal California gnatcatchers (*Poliopstila californica californica* = gnatcatcher) (two pairs and four individuals) would be affected by construction of the three operational improvements bolded in Table 2. There would be direct loss of habitat likely used by gnatcatchers for breeding, foraging, and sheltering in these areas. The following paragraphs describe the impacts by project feature.

A pair northeast of the I-15/SR-56 Interchange and an individual to the southwest were observed in the direct impact areas for the I-15/SR-56 Interchange and Auxiliary Lane Project (i.e., two territories). A total of 10 CSS habitat patches (consisting of 10.3 acres) would be impacted by construction of the three operational improvements bolded in Table 2. Three of the patches total 5.3 acres (80% of the impact) and are of good habitat quality. The remaining seven areas, totaling 2.0 acres, are within ramp ovals or adjacent to the pavement.

The Auxiliary/Added Lanes from Mercy Road to Poway Road would impact four CSS habitat patches (3.5 acres), supporting three gnatcatcher territories (two on the southbound side, the third on the northbound side). The first patch (0.9 acres) is on the northbound side, just north of Poway Road. The habitat quality is fair, with sparse shrub cover, compared to other habitat patches in the area. The remaining areas, all of good quality (fairly dense CSS), are on the southbound side (0.8 acres just north of Los Peñasquitos Creek) and two areas on the slope just south of the Creek (0.8 and 1.0 acres respectively).

The Southbound Auxiliary Lane from State Route 56 to Rancho Peñasquitos Blvd, would impact a single area of CSS habitat (2.2 acres) observed to be used by a pair of gnatcatchers. There would also be direct loss of habitat likely used by gnatcatchers for breeding, foraging, and sheltering in these areas. The shrub cover is dense California sagebrush (*Artemisia californica*) and flat-top buckwheat (*Eriogonum fasciculatum*) and of good quality with few non-native species present.

Planned transportation facilities in the I-15 Corridor with probable Federal involvement that will impact CSS and/or gnatcatchers are listed below in Table 2. Since the biological impacts for all the I-15 Corridor projects will be substantially greater than just the three "operational" projects, the mitigation would need to be correspondingly greater to reflect these associated biological values, and should have increased regional benefit to mitigate for cumulative impacts.

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Table 2. I-15 Corridor Project Information and Impacts, by Proposed Project.

Note: The three proposed projects are bolded.

| Proposed Projects | GSS (acres) | GSS areas impacted | CAG territories (pairs, Singles) | Planned Construction Dates |
|----------------------------------|-------------|--------------------|----------------------------------|----------------------------|
| ML/HOV Phase 1 | 12.0 | 6 | 2 (2s) | 10/2003 - 12/2005 |
| ML/HOV CDN-VR | 23.5 | 18 | 9 (8p, 1s) | 10/2003 - 12/2005 |
| ML/HOV Phase 2 | 0.2 | 1 | - | 2006+ |
| ML/HOV Phase 3 | 3.4 | 4 | 3 (3p) | 2006+ |
| ML/HOV BTM Bridge | 4.1 | 1 | 1 (1s) | 10/2003 - 12/2005 |
| ML/HOV Subtotal | 43.2 | 30 | 15 (11p, 4s) | - |
| <hr/> | | | | |
| I-15 / SR-56 Interchange | 10.3 | 10 | 2 (1p, 1s) | 8/2002 - 2/2004 |
| Carmel Mt Road | 0.8 | 1 | - | 12/2001 - 12/2002 |
| SR-56 to Rancho Peñasquitos Blvd | 2.2 | 1 | 1 (1p) | 8/2002 - 2/2004 |
| Poway to Mercy Road | 3.5 | 4 | 3 (3s) | 7/2003 - 12/2004 |
| Miramar Way to Mira Mesa Blvd | 5.0 | 3 | - | 2/2004 - 2/2004 |
| Operational Project Subtotal | 21.8 | 19 | 6 (2p, 4s) | - |
| <hr/> | | | | |
| TOTAL | 65.0 | 49 | 21 (13p, 8s) | |

¹Managed Lane/High Occupancy Vehicle Lanes from just south of I-15/SR-56 Interchange to Centre City Parkway (central phase)
²An operational project between Camino Del Norte to Via Rancho Parkway planned to be built concurrent with ML/HOV Phase 1
³From Centre City Parkway to SR-78 (northern phase)
⁴From just south of SR-163 to just south of SR-56 (southern phase)
⁵Barrier Transfer Machine
⁶Coastal California Gnatcatcher

CUMULATIVE EFFECTS

Cumulative effects include the effects of future State, tribal, local or private actions that are reasonably certain to occur in the action area considered in this biological opinion. Future Federal actions that are unrelated to the proposed action are not considered in this section because they require separate consultation pursuant to section 7 of the Act. The majority of activities anticipated to affect gnatcatchers within the foreseeable future are local urban development projects with no Federal involvement. The conservation of gnatcatchers in the United States is dependent on both the 4 (d) special rule, established at the time of listing, and multi-species Habitat Conservation Plans such as the MSCP, and the Multiple Habitat Conservation Program (MHCP). The 4 (d) rule recognized the State's Natural Community Conservation Planning (NCCP) Program, and several local governments' ongoing multi-species conservation planning efforts that intend to apply Act standards to activities affecting the gnatcatcher. Under the special rule, incidental take of the gnatcatcher by land-use activities

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addressed in an approved NCCP Plan would not be considered a violation of section 9 of the Act, provided that the Service determined that the NCCP Plan meets the issuance criteria for an "incidental take" permit, pursuant to section 10(a)(2)(B) of the Act and 50 CFR 17.32(b)(2). Ultimately, conservation of the gnatcatcher is dependent upon implementation of the special rule and HCPs working in concert with conservation on federal lands. Therefore cumulative effects are expected to be minimal with the proper implementation of established conservation strategies.

CONCLUSION

After reviewing the current status of the gnatcatcher, the environmental baseline for the action area, the effects of the proposed operational improvements, and the cumulative effects, it is the Service's biological opinion that the action, as proposed, is not likely to jeopardize the continued existence of the gnatcatcher, and is not likely to destroy or adversely modify designated critical habitat. The Service reached this conclusion for the following reasons:

- 1) The majority of the CSS habitat impacted is of medium to low quality. Impacted habitats are small oval, or linear, disjunct patches which have high perimeter to area ratios. The majority of impacts will take only portions of gnatcatchers' territories, and this habitat removal will occur outside the breeding season.
- 2) Impacts to gnatcatchers will be offset by the conservation of occupied habitat inside the Multiple Habitat Planning Area boundary. The CSS which would be preserved is of medium to high quality, occurs in a contiguous habitat patch, connects to other preserved lands, exhibits a low perimeter to area ratio, and will be managed for long-term conservation of the site.
- 3) To offset cumulative impacts from the proposed I-15 Operational Improvements Projects, Caltrans would establish a mitigation bank or conservation area of regional importance to gnatcatcher populations.
- 4) Impacts to gnatcatchers will be minimized through the implementation of Best Management Practices, such as delineation of Environmentally Sensitive Areas and Limited Use Areas.

INCIDENTAL TAKE STATEMENT

Section 9 of the Act and Federal regulation pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species, respectively, without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm is further defined by the Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering. Harass is

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defined by the Service as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. Incidental take is defined as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Under the terms of section 7(b)(4) and 7(o)(2), taking that is incidental to and not intended as part of the agency action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this Incidental Take Statement.

The measures described below are non-discretionary, and must be undertaken by Federal Highways and Caltrans so that they become binding conditions of any grant or permit issued to the applicant as appropriate for the exemption in section 7(o)(2) to apply. Federal Highways

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REASONABLE AND PRUDENT MEASURES

The Service believes the following reasonable and prudent measure are necessary and appropriate to minimize take of gnatcatchers:

1. The Federal Highways Administration and Caltrans shall adhere to the project description and conservation measures set forth in this Biological Opinion.
2. The Federal Highways Administration and Caltrans shall implement best management practices during construction in order to minimize impacts to gnatcatcher habitat and thereby minimize the amount of take anticipated.
3. The Federal Highways Administration and Caltrans shall use local, endemic plant and seed stock for revegetation efforts resulting from the proposed project. Revegetation efforts shall be intended to recreate the impacted native community. This shall apply to all areas which are temporarily cleared, graded or otherwise adversely impacted by the proposed project. Areas between main lanes of the freeway and ramps, and inside ramp ovals, may be seeded or replanted with non-invasive ornamental plants.
4. To offset impacts from the proposed I-15 Operational Improvement Projects, and other future Caltrans and Federal Highway projects in San Diego County, to coastal sage scrub vegetation and the California gnatcatcher, Caltrans and/or FHWA shall establish a mitigation bank with regional conservation value for the California gnatcatcher.

TERMS AND CONDITIONS

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

The Federal Highways and Caltrans shall implement reasonable and prudent measure one through the following terms and conditions:

- 1.1 The Federal Highways Administration and Caltrans shall implement conservation measures set forth in the project description portion of this Biological Opinion.

The Federal Highways and Caltrans shall implement reasonable and prudent measure two through the following terms and conditions:

- 2.1 The project work area, consistent with that described in the project description, will be delineated with plastic orange fencing in the field before construction, and a map depicting the project work area will be provided to the construction crews. Construction crews will be educated as to the importance of containing impacts within the project

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delineation boundary. Environmentally Sensitive Areas, and Limited Use Areas shall be clearly marked by fencing on site and clearly shown and labeled on the map depicting the project work area. Before construction begins, the Service shall be provided with a copy of the project work area map and education materials presented to the construction crews.

- 2.2 The Service shall be allowed to access and inspect the project site for compliance with the proposed project description and with the terms and conditions of this biological opinion. Any habitat destroyed that is not in the identified project footprint should be disclosed immediately to the Service for possible reinitiation of consultation. Compensation for such habitat loss will be requested at a minimum ratio of 5:1.
- 2.3 Before construction begins, a storm water prevention plan (SWPP) shall be developed and implemented to minimize erosion. The Service shall be notified when this plan is developed, and shall be provided with a copy upon request.

The Federal Highways and Caltrans shall implement reasonable and prudent measure three through the following terms and conditions:

- 3.1 All cut and fill slopes, or other areas which have been cleared of vegetation, shall be seeded or planted with appropriate native, local stock from the immediate area. No exotic, non-native plants shall be used in any portion of this project. The seed list, or planting pallet, as well as revegetation and monitoring plans, shall be submitted to the Service for approval prior to any revegetation efforts. Areas between main lanes of the freeway and ramps, and inside ramp ovals, may be seeded or replanted with non-invasive ornamental plants.

The Federal Highways and Caltrans shall implement reasonable and prudent measure four through the following terms and conditions:

- 4.1 Federal Highways and Caltrans shall work in collaboration with the Service and California Fish and Game to identify possible mitigation bank locations. Within three months of this opinion, these parties shall meet to discuss possible mitigation bank site locations.
- 4.2 Within six months of this opinion, a mitigation site, or sites, shall be identified and agreed upon by Federal Highways, Caltrans, the Service and California Fish and Game. A description of the property, and its conformance with regional conservation planning efforts (such as the MSCP, MHCP), shall be provided to the Service and California Fish and Game. This deadline may be extended with written consent of the Service.
- 4.3 Within nine months of this opinion, a land management agency shall be identified to accept the land and have the fiscal and human resources to monitor and manage it properly in perpetuity. This land management agency shall be subject to the approval of

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the Service and California Fish and Game. This deadline may be extended with written consent of the Service.

- 4.4 Within one year of this opinion, a draft Mitigation Bank Implementing Agreement shall be in review by Caltrans, Federal Highways (if applicable), the Service, and the California Department of Fish and Game. This deadline may be extended with written consent of the Service.
- 4.5 Prior to initiation of project impacts for the I-15 Managed/HOV Lanes Project, the final Mitigation Bank Implementing Agreement shall be signed by Caltrans, Federal Highways (if applicable), the Service, and the California Department of Fish and Game.

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

The Service believes that no more than one gnatcatcher will be harmed and seven harassed as a result of the proposed action. The reasonable and prudent measures, with their implementing terms and conditions, are designed to minimize the impact of incidental take that might otherwise result from the proposed action. If, during the course of the action, this level of incidental take is exceeded, such incidental take represents new information requiring reinitiation of consultation and review of the reasonable and prudent measures provided. The Federal agency must immediately provide an explanation of the causes of the taking and review with the Service the need for possible modification of the reasonable and prudent measures.

CONSERVATION RECOMMENDATIONS

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

1. In an effort to assist with regional conservation, Federal Highways and Caltrans should develop guidelines for planting road cut and fill areas with local endemic species. The Service invites Federal Highways and Caltrans to informal discussions of potential cooperative efforts to ensure the continuation of coastal sage scrub and locally endemic plants along highway corridors.

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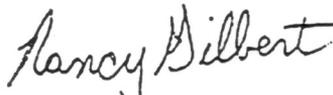
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In order for the Service to be kept informed of actions minimizing or avoiding adverse effects or benefitting listed species or their habitats, the Service requests notification of the implementation of any conservation recommendations.

REINITIATION NOTICE

This concludes formal consultation on the I-15 Operational Improvements at and near the I-15/SR 56 Interchange as outlined in the January 27, 2001, initiation package. As provided in 50 CFR §402.16, reinitiation of formal consultation is required where discretionary Federal agency involvement or control over the action has been retained (or is authorized by law) and if (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; (3) the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or (4) a new species is listed or critical habitat designated that may be affected by the action. In instances where the amount or extent of incidental take is exceeded, any operations causing such take must cease pending reinitiation. If you have any questions or concerns about this biological opinion, please contact Bill Ostheimer of my staff at (760) 431-9440.

Sincerely,



Nancy Gilbert
Assistant Field Supervisor

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