



COUNTY OF SAN DIEGO

LAND USE AGENDA ITEM

BOARD OF SUPERVISORS

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Fifth District

DATE: **October 28, 2020**

06

TO: Board of Supervisors

SUBJECT

RECEIVE THE NORTH COUNTY MULTIPLE SPECIES CONSERVATION PLAN STATUS REVIEW AND OPTIONS ASSESSMENT AND PROVIDE DIRECTION ON OPTIONS (DISTRICTS: ALL)

OVERVIEW

San Diego county has one of the most diverse habitats in the United States, with over 200 rare, threatened, or endangered species inhabiting the region. In the early 1990's, urbanization of San Diego's natural lands threatened the biodiversity and long-term biological viability of this unique region. In response, the County of San Diego (County) partnered with 11 other jurisdictions to develop the Multiple Species Conservation Program (MSCP), a joint Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) that ensures compliance with the federal Endangered Species Act (ESA), California Endangered Species Act (CESA), and the Natural Community Conservation Planning Act (NCCP). The MSCP is a long-term, regional habitat conservation program focused on balancing the protection of plant and animal species and the demand for housing, non-residential development, recreation, and agriculture.

On October 22, 1997 (1), the Board of Supervisors (Board) adopted the 50-year Multiple Species Conservation Program County Subarea Plan (South County Plan), which includes the unincorporated areas in the southwestern portion of the region. The County has successfully implemented the South County Plan for over 20 years: assembling 79,188 acres (80%) of the proposed 98,379-acre preserve; providing mitigation exemptions for 1,224 acres of agricultural clearing; and streamlining the permitting of over 3,900 private development projects. From 1998 through calendar year 2019, the County invested a total of \$209 million in land acquisitions for the MSCP, of which \$114 million is from County funding and \$95 million is from partnering organizations and grants.

Over the years, development has continued to expand into the unincorporated county's natural lands. The County has been developing the North County Multiple Species Conservation Plan (North County Plan), an independent HCP/NCCP, to bring the same environmental and economic benefits to the unincorporated north county area as have been realized through the South County Plan. Preparation of the North County Plan will also fulfill goals and policies of the County General Plan and mitigation requirements identified in the County General Plan Update Environmental Impact Report (EIR). Implementation of the North County Plan will

SUBJECT: RECEIVE THE NORTH COUNTY MULTIPLE SPECIES CONSERVATION PLAN STATUS REVIEW AND OPTIONS ASSESSMENT AND PROVIDE DIRECTION ON OPTIONS (DISTRICTS: ALL)

result in other benefits related to preservation of open space, protection of water resources, creation of recreational opportunities, promotion of agricultural operations, and reductions in greenhouse gas emissions. In return, development permit streamlining can occur through permits to allow the incidental take of threatened and endangered species that are covered by the North County Plan.

In 2019, the County selected ICF Consulting, a national leader in regional conservation planning that has successfully prepared HCP/NCCPs for counties such as Yolo and Santa Clara, to: review the 2017 Preliminary Draft North County Plan in relation to current HCP/NCCP practices and regulatory requirements; confirm that the desired economic and biological benefits of the North County Plan can still be realized; consider additional options available to the County to address ESA and CESA compliance; and, develop planning options for discussion and input from the North County Plan Steering Committee and members of the public. ICF Consulting summarized their findings in the North County Multiple Species Conservation Plan Status Review and Options Assessment (Assessment).

This is a request for the Board to receive and provide direction on the options identified in the Assessment. Estimated one-time program development costs range from \$300,000 to \$3.5 million in Fiscal Year 2020-21, depending on the option directed by the Board, and are proposed to be funded by unassigned General Fund fund balance.

RECOMMENDATION

CHIEF ADMINISTRATIVE OFFICER

1. Find in accordance with Section 15061(b)(3) of the California Environmental Quality Act Guidelines that this action is exempt because it has no potential to result in either a direct physical change to the environment or a reasonably foreseeable indirect physical change to the environment.
2. Receive the North County Multiple Species Conservation Plan Status Review and Options Assessment (Assessment) (Attachment C, on file with the Clerk of the Board).
3. Provide direction on the options identified in the Assessment.

FISCAL IMPACT

There is no fiscal impact associated with the Board of Supervisor's (Board's) receipt of the North County Multiple Species Conservation Plan Status Review and Options Assessment (Assessment).

Three primary cost analyses were included in the Assessment:

- Cost for the County of San Diego (County) to develop a plan under each of the five options (funding requested as part of today's action),
- Estimated future cost for the County to implement a plan developed under each of the five options (funding to be refined and approved as part of plan adoption), and
- Estimated total cost for private project applicants to mitigate project impacts under each of the plan options (not a part of the County Fiscal Impact).

SUBJECT: RECEIVE THE NORTH COUNTY MULTIPLE SPECIES CONSERVATION PLAN STATUS REVIEW AND OPTIONS ASSESSMENT AND PROVIDE DIRECTION ON OPTIONS (DISTRICTS: ALL)

Funds for the development of a plan under Options 1-5 are not included in the Fiscal Year 2020-21 Operational Plan. Should the Board direct staff to pursue one of the options identified in the Assessment, one-time program development costs are estimated to range from \$300,000 to \$3.5 million in Fiscal Year 2020-21 depending on the option directed, and would be funded by unassigned General Fund fund balance. The table below presents the total estimated one-time program development costs of each option. There will be no additional staff years.

Table 1: Fiscal Year 2020-21 Estimated One-Time Costs of Identified Options (in millions – not to exceed)

	Option 1: Project-by-Project ESA/CESA Compliance	Option 2: Conservation Strategy	Option 3: HCP/2081 (County Only)	Option 4: HCP/2081 (Public-Private)	Option 5: Revised North County Plan (HCP/NCCP)
Consultant Costs	\$0.0	\$1.3	\$1.9	\$2.1	\$2.2
County Costs	\$0.3	\$0.8	\$1.4	\$1.3	\$1.3
Total Estimated One-time Program Development Costs	\$0.3	\$2.1	\$3.3	\$3.4	\$3.5

Future program implementation costs, funding sources, and staffing needs will be further assessed and refined as part of plan development under the option directed by the Board and will be presented to the Board for adoption at a future date. These implementation costs are estimated to total up to \$360.4 million, accounting for inflation, over the 50-year permit term. As a comparison, the adopted Multiple Species Conservation Program (MSCP) County Subarea Plan (South County Plan) is projected to have an implementation cost of \$294 million over the 50-year permit term. It is expected that the average implementation cost for Options 1 through 5 for North County would be up to \$7.2 million per year after plan adoption. The implementation costs are anticipated to be funded through General Purpose Revenue appropriations from the Board as part of the Capital Program. Under Option 4 and Option 5, it is assumed that County implementation costs would be offset by mitigation fees that are not currently in place but could be enacted by the Board. Implementation funds will be included in future Operational Plans, with annual appropriations beginning as early as Fiscal Year 2023-24 (Option 1) or as late as Fiscal Year 2025-26 (Option 5).

Currently, the Board allocates to the Department of Parks and Recreation (DPR) approximately \$14.6 million per year to implement the MSCP via three separate funding sources. \$7.5 million is allocated as one-time funding each year for acquisition of open space throughout the three MSCP Plan Areas. In Fiscal Year 2020-21, the \$7.5 million for acquisition was not allocated by the Board due to financial constraints associated with the coronavirus pandemic. DPR receives \$2.5 million as part of ongoing General Purpose Revenue for land management and monitoring costs. DPR allocates an additional approximately \$4.6 million as part of its annual operational budget to implement MSCP-related stewardship activities. Based on current cost projections, it is anticipated that the \$14.6 million annual allocation will not be sufficient to implement Options 1 through 5, and additional funding would be required. Of the existing \$14.6 million spent on MSCP implementation items, it is estimated that roughly \$2 million per year is currently spent towards the North County Plan Area acquisition, management, and monitoring. Therefore, to

SUBJECT: RECEIVE THE NORTH COUNTY MULTIPLE SPECIES CONSERVATION PLAN STATUS REVIEW AND OPTIONS ASSESSMENT AND PROVIDE DIRECTION ON OPTIONS (DISTRICTS: ALL)

meet the average estimated implementation cost of up to \$7.2 million per year for Options 1 through 5, it is anticipated that an additional annual allocation of up to \$5.2 million per year could be required. DPR will continue to pursue alternative sources of funding to supplement annual appropriations.

BUSINESS IMPACT STATEMENT

N/A

ADVISORY BOARD STATEMENT

In 2017, a nine-person Steering Committee was formed by the Directors of Planning & Development Services and the Department of Parks and Recreation under the Natural Communities Conservation Planning Act. Steering Committee Members represent various environmental, recreational, and economic interest groups and are tasked with reviewing and providing feedback on components of the North County Multiple Species Conservation Plan. An informational meeting was held with the Steering Committee on March 6, 2020 to provide an overview of the North County Multiple Species Conservation Plan Status Review and Options Assessment (Assessment). A follow-up discussion was held on May 1, 2020 (virtual) to discuss the Steering Committee’s feedback on the Assessment and the options identified. The Steering Committee did not take formal action; however, comment letters received from individual Steering Committee members are included in Attachment E. Of the five letters received from Steering Committee members, four supported the preparation of the North County Plan under Option 5, while one did not specify their support for a specific option.

A recorded informational presentation was provided to the Community Planning and Sponsor Group (CPSG) Chairs on April 29, 2020. A follow-up discussion was held with the CPSG Chairs on June 13, 2020 and individual meetings with the CPSGs were offered. An informational presentation was requested and provided to the Twin Oaks Valley Community Sponsor Group (CSG) virtually on September 16, 2020. The Twin Oaks Valley CSG took formal action to prepare a letter in support of Option 5. An informational presentation was requested and provided to the Bonsall CSG virtually on October 6, 2020. The Bonsall CSG did not take formal action.

BACKGROUND

Multiple Species Conservation Program

In 1997, the County of San Diego (County) partnered with 11 other jurisdictions to develop the Multiple Species Conservation Program (MSCP): a joint Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) that ensures compliance with the Endangered Species Act (ESA), California Endangered Species Act (CESA), and the Natural Community Conservation Planning (NCCP) Act. The MSCP is a long-term, regional habitat conservation program focused on balancing the protection of plant and animal species and the demand for housing, non-residential development, recreation, and agriculture.

San Diego county has one of the most diverse habitats in the United States, with over 200 rare, threatened, or endangered species inhabiting the region. The MSCP works across jurisdictional boundaries in a unique, regional conservation effort to conserve these biologically valuable

SUBJECT: RECEIVE THE NORTH COUNTY MULTIPLE SPECIES CONSERVATION PLAN STATUS REVIEW AND OPTIONS ASSESSMENT AND PROVIDE DIRECTION ON OPTIONS (DISTRICTS: ALL)

native habitats and wildlife for future generations to enjoy. The County and its partners protect habitat and species through land acquisition, management, and monitoring of dedicated open space. Land acquisitions are focused within areas designated as having the potential for high-quality habitat or contributing to regional habitat linkages that allow for movement of species between large conserved areas, ensuring genetic diversity. Preservation of open space land also reduces greenhouse gas emissions by conserving land which could otherwise be developed.

In return for these conservation efforts, the County receives long-term incidental take permits from the United States Fish and Wildlife Service and the California Department of Fish and Wildlife (collectively, the Wildlife Agencies) that authorize permanent impacts to habitat for the species covered by the plan. Known as “No Surprises” under the ESA and NCCP Act, these permits include regulatory assurances from the Wildlife Agencies that the terms of the conservation plan will not change in response to unforeseen circumstances in the environment or the status of the species covered by the plan, such as unexpected species disease or non-native species invasion. The County is then able to extend its permit coverage to public and private projects within its jurisdiction, accommodating future growth by streamlining development regulations and implementing standardized mitigation requirements. Depending on project size, this permit streamlining can save project applicants thousands of dollars and 12 to 24 months of permit processing time by eliminating the need for applicants to undergo project-by-project negotiations and permitting with the Wildlife Agencies.

The unincorporated county is comprised of three MSCP Plan Areas (Attachment A): the adopted MSCP County Subarea Plan (South County Plan), the draft North County MSCP Plan (North County Plan), and a future East County MSCP Plan (East County Plan). Each MSCP Plan has been or will be designed to meet the needs of the habitats and species located within its respective Plan Area’s unique geography. The Board of Supervisors (Board) adopted the 50-year South County Plan on October 22, 1997 (1) and the Wildlife Agencies provided final permit approval on March 17, 1998.

In the first 22 years of the South County Plan’s 50-year permit term, the County and its public agency and land conservancy partners have assembled 79,188 acres (80%) of the proposed 98,379-acre Preserve. Of the 19,191 acres remaining to assemble the Preserve, the County is obligated to acquire at least 1,792 acres. The remaining 17,399 acres were originally anticipated to be acquired through mitigation resulting from private development projects. However, if the private development mitigation does not meet this goal, the County will be responsible for acquiring the additional acreage necessary to meet the 98,379-acre Preserve obligation. The County owns and/or manages approximately 42,000 acres within all three MSCP Plan Areas, acquiring approximately 23,000 acres within the three MSCP Plan Areas since 1998: 8,200 acres within the South County Plan Area; 7,400 acres within the draft North County Plan Area; and 7,400 acres within the future East County Plan Area. As of 2019, 42 of the 85 species covered under the South County Plan have been documented across 25 of the 30 County Preserves. These include bald eagle, burrowing owl, coastal California gnatcatcher, golden eagle, peregrine falcon, southern mule deer, and mountain lion. From 1998 through calendar year 2019, the County invested a total of \$209 million in land acquisitions in the three MSCP Plan Areas, of which \$114 million is from County funding and \$95 million from partnering organizations and grants.

SUBJECT: RECEIVE THE NORTH COUNTY MULTIPLE SPECIES CONSERVATION PLAN STATUS REVIEW AND OPTIONS ASSESSMENT AND PROVIDE DIRECTION ON OPTIONS (DISTRICTS: ALL)

In addition to land preservation, the County has provided mitigation exemptions for 1,224 acres of agricultural clearing and streamlined the permitting of over 3,900 private development projects in the South County Plan Area.

Historically, MSCP funding has shifted from primarily funding acquisitions to funding acquisition, management, and monitoring. Since 1998 there have been increases in the funding allocation for the MSCP to provide additional funding above the Department of Parks and Recreation's (DPR's) operational budget to meet acquisition, management, and monitoring costs. In 1998, the MSCP began with an annual allocation of \$5 million for land acquisitions and an additional \$2 million for management and monitoring as part of DPR's operational budget. In 2000, the annual allocation for land acquisition was increased to \$7.5 million and increased again in 2008 to \$10 million. In 2017, an additional change was made to shift \$2.5 million of the \$10 million annual allocation to cover management and monitoring costs.

Currently, the Board allocates to DPR approximately \$14.6 million per year to implement the MSCP via three separate funding sources. \$7.5 million is allocated as one-time funding each year for acquisition of open space throughout the three MSCP Plan Areas. In Fiscal Year 2020-21, the \$7.5 million for acquisition was not allocated by the Board due to financial constraints associated with the coronavirus pandemic. DPR receives \$2.5 million as part of ongoing General Purpose Revenue for land management and monitoring costs. DPR allocates an additional approximately \$4.6 million as part of its annual operational budget to implement MSCP-related stewardship activities. Over time, it is estimated that there will be additional adjustments to how MSCP funding is spent. As acquisition obligations for the South County Plan Area are met, more funding will be spent on management and monitoring in the South County Plan Area and some of the acquisition funding previously spent in the South County Plan Area could be spent in the North and East County Plan Areas.

Preparation and/or implementation of the adopted South County Plan, the draft North County Plan, and future East County Plan as HCP/NCCPs fulfills three goals (and their associated policies) of the County General Plan (COS-1: Inter-Connected Preserve System; COS-2: Sustainability of the Natural Environment; COS-3: Protection and Enhancement of Wetlands) and two County General Plan Update Environmental Impact Report (EIR) Mitigation Measures (BIO-1.2 and CC-1.10) (Attachment B). Implementation of the MSCP Plans will also support other General Plan goals and policies related to carbon sequestration, protection of water resources, creation of recreational opportunities, promotion of agricultural operations, and reductions in greenhouse gas emissions. The conservation and preservation of natural habitat associated with the MSCP Plans will help to maintain the rural community character of the unincorporated county, consistent with the General Plan land use goals and policies. Implementation of these plans also aligns with the San Diego Association of Governments (SANDAG) Sustainable Communities Strategy, which accounts for areas protected under habitat conservation plans in identifying how the region will meet greenhouse gas reduction targets set by the State.

SUBJECT: RECEIVE THE NORTH COUNTY MULTIPLE SPECIES CONSERVATION PLAN STATUS REVIEW AND OPTIONS ASSESSMENT AND PROVIDE DIRECTION ON OPTIONS (DISTRICTS: ALL)

North County Plan

On July 17, 1996 (6), the Board directed staff to prepare the North County Plan, an HCP/NCCP for the northwestern portion of the unincorporated county. After successful completion of the South County Plan, staff focused their attention on developing a plan that would bring the same environmental and economic benefits realized through the South County Plan to the unincorporated north county.

In 2008, the County and Wildlife Agencies entered into a Planning Agreement for the preparation of the North and East County Plans. Required under the NCCP Act, the Planning Agreement serves several purposes, including defining the County and Wildlife Agencies' goals and commitments to plan preparation and establishing a procedure to process interim development projects. This interim process included granting the County interim authority to grant incidental take of coastal sage scrub, the primary habitat of the federally endangered coastal California gnatcatcher, to project applicants through the issuance of Habitat Loss Permits (HLPs). For the HLP Program to be valid, the County must be entered into a Planning Agreement with the Wildlife Agencies and be actively engaged in the preparation of an MSCP (as an HCP/NCCP).

The Planning Agreement was restated and amended in both 2014 and 2019, but the content of the document was never updated to reflect progress. The County and the Wildlife Agencies began the preparation of a new Planning Agreement in 2019 and the existing Planning Agreement expired on January 31, 2020. As of October 2020, a draft Planning Agreement is under review by the California Department of Fish and Wildlife for finalization. It is anticipated the Planning Agreement will be posted online for the mandatory 21-day public review period under the NCCP Act and signed by all parties before the end 2020.

Several draft versions of the North County Plan have been prepared over the years; however, the County has faced many challenges drafting the North County Plan that were not experienced during the development of the South County Plan (*Assessment, Table 1-1*). An important difference between the South and North County Plans is that the South County Plan was adopted under the original 1991 NCCP Act, which was replaced by an expanded NCCP Act in 2002. The expanded NCCP Act has more regulatory requirements, a higher conservation standard, and more procedural steps than the 1991 NCCP Act. Further, best practices for an HCP/NCCP and ESA Section 10 regulations have evolved. The North County Plan must meet the standards outlined in the 2016 Habitat Conservation Planning and Incidental Take Permit Processing Handbook and adopt current best practices, including funding assurances that address current program implementation costs as well as inflation, changing land values, and costs for any other potential changed circumstances during the duration of the permit. The evolution of these regulatory requirements has resulted in the County spending more time negotiating details with the Wildlife Agencies and preparing a lengthier and more complex document that contains significantly more detail than what was included in the South County Plan.

The most recent draft North County Plan was submitted to the Wildlife Agencies in May 2017. County staff met with the Wildlife Agencies several times to review the draft plan and to discuss their feedback on the draft chapters. That spring, the North County Plan Steering Committee also

SUBJECT: RECEIVE THE NORTH COUNTY MULTIPLE SPECIES CONSERVATION PLAN STATUS REVIEW AND OPTIONS ASSESSMENT AND PROVIDE DIRECTION ON OPTIONS (DISTRICTS: ALL)

met nine times to discuss major plan components and to provide feedback on identified challenges and concerns. The County also held over 50 stakeholder engagement meetings to present the basics of the North County Plan, answer questions, and receive feedback on major plan components. The comments received varied greatly amongst stakeholders; however, there were three recurring concerns: (1) preserve size should be based on the habitat needs of the covered species, not on a fixed preserve to development ratio; (2) the County's proposed financial obligation for plan implementation was too high; and, (3) land acquisition should be more fairly shared between the County, Wildlife Agencies, and the development community.

Based on the feedback received, the County analyzed methods to reengineer components of the draft North County Plan and began conceptualizing options to address ESA and CESA compliance outside the scope of an HCP/NCCP. In 2019, the County contracted with ICF Consulting to prepare the North County Multiple Species Conservation Plan Status Review and Options Assessment (Assessment) (Attachment C). The Assessment furthers the evaluation of options available to the County, identifying potential benefits, drawbacks, costs, and timeframes that could be realized by adopting a plan created under one of these options. The Assessment also includes a thorough status review of the work completed to date on the North County Plan and provides recommendations and strategies to progress the North County Plan as an HCP/NCCP (Option 5) — should the Board direct staff to do so.

A public outreach and comment period for the Assessment, held from March 4 to May 14, 2020, collected feedback on the future of the North County Plan. The County held virtual meetings and phone calls with public agencies, business organizations, environmental organizations, community groups, and other interested members of the public. This included two Steering Committee meetings on March 6, 2020 and May 1, 2020 (virtual) and a Q&A session held virtually for interested parties on April 30, 2020. Additional follow-up discussions were held throughout the summer of 2020 with individual Steering Committee members, stakeholder groups, and Community Planning and Sponsor Groups.

Options & Staff Recommendation

The Assessment identifies five options available to the County to address Endangered Species Act (ESA) and California Endangered Species Act (CESA) compliance: (1) Project-by-Project ESA/CESA Compliance; (2) Conservation Strategy – No Private or Public Covered Activities; (3) HCP/2081 (no NCCP) – County-only Covered Activities; (4) HCP/2081 (no NCCP) – Public & Private Covered Activities; and, (5) Revised North County Plan (HCP/NCCP).

Options were evaluated under several criteria, including:

- Environmental and conservation benefits;
- Issuance of incidental take permits from the Wildlife Agencies that allow impacts to covered species;
- Compliance with the County and Wildlife Agencies' Draft Planning Agreement for the North and East County Plans and the County's HLP Process;
- Compliance with the County General Plan goals and policies, and County General Plan Update EIR Mitigation Measures which require the North County Plan to be prepared as an HCP/NCCP;

SUBJECT: RECEIVE THE NORTH COUNTY MULTIPLE SPECIES CONSERVATION PLAN STATUS REVIEW AND OPTIONS ASSESSMENT AND PROVIDE DIRECTION ON OPTIONS (DISTRICTS: ALL)

- Cost and time for the County to prepare a plan under each option;
- Estimated annual cost to the County to implement a plan developed under each option;
- Estimated implementation costs to private project applicants, ranging from single-family home builders to farmers seeking agricultural clearing permits to large-scale developers;
- Ability for the County to provide mitigation exemptions for single-family home builders and agricultural clearing, and
- Stakeholder feedback received on the Assessment.

Attachment D compares the benefits and costs associated with the various options. Based on this evaluation, staff recommend Option 5 – Revised North County Plan (HCP/NCCP) for its unmatched environmental and economic benefits to all stakeholder sectors and alignment with the County General Plan goals (COS-1, COS-2, COS-3) and General Plan Update EIR Mitigation Measures (BIO-1.2, CC-1.10).

Option 1: Project-by-Project ESA/CESA Compliance

Under this option, the County would no longer pursue a regional plan to address ESA and CESA compliance. Without a regional HCP or NCCP, project applicants (including the County) would pursue their own incidental take permits from the Wildlife Agencies on a project-by-project basis because there would be no standardized process or an adopted plan for applicants to follow in order to streamline the receipt of incidental take permits. These inefficiencies could add an additional 12 to 24 months to the permit process as applicants would be required to coordinate with both the County and Wildlife Agencies separately instead of receiving incidental take from the County through the discretionary or ministerial permitting processes.

The County would continue to implement other programs and policies that result in benefits similar to those that would be achieved through a HCP/NCCP, such as conserving open space through the Resource Protection Ordinance, protecting agricultural operations through the Purchase of Agricultural Conservation Easement Program, and providing recreational opportunities through the Park Land Dedication Ordinance. However, these programs would not realize the same magnitude of conservation benefits that would be realized through a regional plan such as the protection of wildlife corridors and the conservation of large blocks of habitat for sensitive species. Individual species management and monitoring activities would also not be standardized across the North County Plan Area nor would they occur at the same scale as would be required under a regional conservation plan.

Option 1 also does not comply with the County and Wildlife Agencies' Draft Planning Agreement for the North County Plan. Should the Board direct the County to pursue Option 1 (or any option other than Option 5), the County and Wildlife Agencies' efforts to prepare the new Planning Agreement would be terminated and the HLP Program voided. Approximately 25 projects approved by the County but not yet constructed or yet to be approved that have coastal sage scrub habitat occupied by coastal California gnatcatcher would have to obtain incidental take permits from the Wildlife Agencies on their own instead of through the County's HLP Program.

SUBJECT: RECEIVE THE NORTH COUNTY MULTIPLE SPECIES CONSERVATION PLAN STATUS REVIEW AND OPTIONS ASSESSMENT AND PROVIDE DIRECTION ON OPTIONS (DISTRICTS: ALL)

In addition to limited conservation benefits, Option 1 is not fully consistent with the goals of the County General Plan and General Plan Update EIR Mitigation Measures. Should the Board direct the County to pursue Option 1, a General Plan Amendment (GPA) will be required to revise goals COS-1, COS-2, and COS-3 if these goals cannot be met with other existing or proposed County programs. The County would also be required to revise the General Plan Update EIR to remove references to the North County Plan, as the EIR assumed the North County Plan would mitigate the General Plan's environmental impacts as an HCP/NCCP. Completion of a GPA and preparation of a revised General Plan Update EIR is estimated to take 16 to 24 months and cost up to \$300,000. This effort would include GPA and EIR document preparation by County staff, stakeholder engagement, public review, and a public hearing with the Board. Annual County implementation costs to acquire, manage, and monitor land in perpetuity as mitigation for County activities (such as those under the Capital Program) are estimated to average up to \$5.4 million per year. Up to \$2 million of this cost may be offset by existing annual MSCP appropriations for acquisitions, management, and monitoring that are currently spent in the North County Plan Area.

While preparation of a GPA and revised General Plan Update EIR would be the lowest cost and timeliest documents for the County to prepare, Option 1 results in longer permit processing timeframes and higher project mitigation costs for private and public projects because there would be no standardized process or an adopted plan for applicants to follow in order to streamline the receipt of incidental take permits. This option is projected to be the costliest to private project applicants (tied with Option 3), as private projects receive none of the economic benefits of a regional conservation plan and must proceed with their own project-by-project permitting and mitigation with the Wildlife Agencies.

Option 2: Conservation Strategy – No Private or Public Covered Activities

Under Option 2, the County would prepare a non-regulatory, regional conservation strategy that provides guidance on how future conservation and mitigation actions could occur. The conservation strategy would not directly result in incidental take permits or regulatory assurances from the Wildlife Agencies for public and private projects, but would be designed to facilitate project-by-project incidental take permit approval by setting specific mitigation requirements that, if followed, may reduce the likelihood that additional mitigation would be required by the Wildlife Agencies. While the conservation strategy would be designed to help streamline the project-by-project mitigation process and would include many of the same conservation elements of an HCP/NCCP, it would not require the same level of monitoring and management commitments to recover threatened and endangered species as the County would no longer seek HCP/NCCP permitting approval from the Wildlife Agencies. As the conservation strategy is not an NCCP, the County and Wildlife Agencies' efforts to prepare the new Planning Agreement would be terminated and the County would no longer be able to issue HLPs to private project applicants or for County-initiated projects.

Should the County develop a conservation strategy under Option 2, General Plan goals COS-1, COS-2, and COS-3 could still be met. However, like under Option 1, the County would be required to prepare a revised General Plan Update EIR as the conservation strategy is not an HCP/NCCP. Preparation of this option is estimated to take approximately 24 to 36 months at a

SUBJECT: RECEIVE THE NORTH COUNTY MULTIPLE SPECIES CONSERVATION PLAN STATUS REVIEW AND OPTIONS ASSESSMENT AND PROVIDE DIRECTION ON OPTIONS (DISTRICTS: ALL)

cost of up to \$2.1 million. This effort would include consultant support, General Plan EIR preparation, conservation strategy and EIR preparation, stakeholder engagement, public review, and public hearings with the Planning Commission and the Board.

A plan prepared under Option 2 is projected to have the lowest annual implementation costs for the County under the assumption that County project designs will be informed by the regional conservation strategy and will avoid or minimize impacts to listed species. This may also result in more favorable mitigation requirements from the Wildlife Agencies than County projects processed under Option 1. Annual County implementation costs to acquire, manage, and monitor land in perpetuity as mitigation for County activities (such as those under the Capital Program) are estimated to average up to \$4.6 million per year. Up to \$2 million of this cost may be offset by existing annual MSCP appropriations for acquisitions, management, and monitoring that are currently spent in the North County Plan Area. This option is also projected to be less costly for private project applicants than projects processed under Option 1, as private project applicants may also achieve more favorable mitigation requirements from the Wildlife Agencies by following the conservation strategy.

Option 3: HCP/2081 (no NCCP) – County-Only Covered Activities

Under this option, the County would prepare a regional HCP for the North County Plan Area that provides ESA coverage for County activities only, such as those conducted under the Capital Program. This option also involves scaling back the County’s regional conservation efforts so that they no longer meet the high regulatory standard of the NCCP Act but instead meet the more achievable mitigation standards under California Fish and Game Code Section 2081(b). Preparing an HCP/2081 for County activities would provide the County some of the sought-after regulatory assurances at a lower implementation cost compared to an HCP/NCCP.

The NCCP Act requires that all NCCPs go beyond mitigation and contribute to the recovery of each covered species to the point where, when combined with the efforts of other NCCPs, the species can be removed from the State endangered species list. Without an NCCP, State take authorization can be received through a more traditional incidental take permit under Section 2081(b) of the California Fish and Game Code. The regulatory standard for a 2081(b) incidental take permit is to “fully mitigate” impacts, which is equivalent to the federal standard under the ESA to “minimize and mitigate to the maximum extent practicable.”

A 2081(b) incidental take permit has several important limitations and differences from an NCCP. Most importantly, the “No Surprises” assurances from the State that the terms of the conservation plan will not change in response to unforeseen circumstances are not available with a 2081(b) incidental take permit, nor can the County cover species on the State permit that are not currently State listed. If a new species becomes State listed in the future, the 2081(b) incidental take permit would need to be amended to include that newly listed species. There would also be little State or federal funding available to support implementation of an HCP/2081 because a conservation plan under this option would only provide mitigation, which State and federal funding cannot be used to support.

SUBJECT: RECEIVE THE NORTH COUNTY MULTIPLE SPECIES CONSERVATION PLAN STATUS REVIEW AND OPTIONS ASSESSMENT AND PROVIDE DIRECTION ON OPTIONS (DISTRICTS: ALL)

A conservation plan prepared under Option 3 would be substantially scaled back from the options that cover both private and public development activities (Options 4 and 5). As the County would only mitigate for public projects, impacted habitat is estimated to range from 3,000 to 4,000 acres. This accounts for impacts from known and anticipated County projects, as well as forecasted future impacts based on those associated with past County projects. Creation of a plan under this option would include preparation of a revised General Plan Update EIR as this option is not an HCP/NCCP and is anticipated to take 24 to 36 months and to cost up to \$3.3 million. This effort would include consultant support, General Plan EIR preparation, HCP/2081 and environmental document preparation, stakeholder engagement, public review, and public hearings with the Planning Commission and the Board. County implementation costs are projected to be relatively low under this option, as the County would pay to acquire, manage, and monitor lands to mitigate for only County impacts. Annual County implementation costs to acquire, manage, and monitor land in perpetuity as mitigation for County activities (such as those under the Capital Program) are estimated to average up to \$4.8 million per year. Up to \$2 million of this cost may be offset by existing annual MSCP appropriations for acquisitions, management, and monitoring that are currently spent in the North County Plan Area.

While County implementation costs for Option 3 are forecasted to be only slightly higher than those under Option 2, for private project applicants Option 3 will result in the same longer permit processing timeframes and higher project mitigation costs observed under Option 1 because there would be no standardized process or an adopted plan for applicants to follow in order to streamline the receipt of incidental take permits. This option is projected to be the costliest to private project applicants (tied with Option 1) as those projects receive none of the economic benefits of a regional conservation plan, must proceed with their own project-by-project mitigation, and would not be able to receive an HLP for impacts to coastal sage scrub.

Option 4: HCP/2081 (no NCCP) – Public & Private Covered Activities

Option 4 also involves scaling back the County's regional conservation efforts so that they no longer meet the higher regulatory standard of the NCCP Act, but do provide some endangered species coverage for both public and private activities under section 2081(b) of the California Fish and Game Code. Since private projects would be covered under this plan option, the County anticipates including mitigation exemptions to reduce the permitting cost burden for single-family home construction and agricultural clearing as are currently included in the South County Plan. Creation of a plan under this expanded option would include preparation of a revised General Plan Update EIR as this option is not an HCP/NCCP and is anticipated to cost up to \$3.4 million and to take approximately 36 to 48 months to complete. This effort would include consultant support, General Plan EIR preparation, HCP/2081 and environmental document preparation, stakeholder engagement, public review, and public hearings with the Planning Commission and the Board.

The 2081(b) incidental take permit pursued under this option would have the same limitations compared to an NCCP as those identified under Option 3: fewer species covered by the State, fewer grant opportunities, and would not achieve the same level of regulatory assurances ("No Surprises"). The County's interim HLP process would also be voided because this option is not an NCCP, leaving projects in process to seek their own incidental take permits from the Wildlife

SUBJECT: RECEIVE THE NORTH COUNTY MULTIPLE SPECIES CONSERVATION PLAN STATUS REVIEW AND OPTIONS ASSESSMENT AND PROVIDE DIRECTION ON OPTIONS (DISTRICTS: ALL)

Agencies or delay permit processing until the HCP/2081 Plan is finalized and approved by the Board and the Wildlife Agencies.

Annual County implementation costs to acquire, manage, and monitor land in perpetuity are estimated to average up to \$7.2 million per year. Up to \$2 million of this cost may be offset by existing annual MSCP appropriations for acquisitions, management, and monitoring that are currently spent in the North County Plan Area. Compared to the projected implementation costs of the other options, Option 4 is anticipated to be the most expensive option for the County to implement. This is because the County would pay to acquire, manage, and monitor lands to mitigate for County impacts and projects receiving mitigation exemptions (single-family home construction and agricultural clearing) at higher mitigation ratios than those achieved under an HCP/NCCP, resulting in a larger investment by the County. Alternatively, Option 4 is anticipated to be the second lowest cost option for private project applicants due to the lack of time delays in permit processing. Instead of being required to coordinate with both the County and Wildlife Agencies separately, project applicants would receive incidental take from the County through the discretionary or ministerial permitting processes at no additional time or cost.

Option 5: Revised North County Plan (HCP/NCCP) – Staff Recommendation

Staff recommends the County prepare a North County Plan that covers public and private activities as both an HCP to satisfy the ESA and an NCCP to satisfy the State NCCP Act and CESA. Under Option 5, the County would build upon the 2017 Preliminary Draft North County Plan to prepare a complete document that would satisfy the permitting requirements of the Wildlife Agencies. Though preparing this option will require the greatest amount of County resources and time (approximately 36 to 48 months and up to \$3.5 million), an HCP/NCCP will provide the greatest regulatory certainty to both public and private projects. In addition, an HCP/NCCP is the only option fully consistent with the General Plan Update EIR, and the only option consistent with the County's Planning Agreement, allowing the County to issue HLPs to approved projects during plan development. This effort would include consultant support, HCP/NCCP and environmental document preparation, stakeholder engagement, public review, and public hearings with the Planning Commission and the Board.

A plan developed under Option 5 as both an HCP and NCCP would provide the greatest regional conservation benefits to species and natural vegetation communities because the NCCP Act requires that all NCCPs go beyond mitigation to contribute to the recovery of each covered species and to help prevent the decline of other species in the future. By conserving beyond what would normally be required for straight mitigation, a large, regionally connected preserve area would be created. This preserve would then be monitored and managed to a higher standard than those created under the other four options.

During public outreach and engagement for the Assessment, stakeholder feedback was generally positive and supportive of Option 5. Of the 32 individuals who submitted comments during the public review period (Attachment E), 26 supported the preparation of the North County Plan as an HCP/NCCP. Stakeholders provided various reasons to justify their support for Option 5, with most focusing on: (1) the unmatched environmental and economic benefits that can be realized

SUBJECT: RECEIVE THE NORTH COUNTY MULTIPLE SPECIES CONSERVATION PLAN STATUS REVIEW AND OPTIONS ASSESSMENT AND PROVIDE DIRECTION ON OPTIONS (DISTRICTS: ALL)

through the adoption of an HCP/NCCP to benefit all stakeholder sectors; and, (2) the only option to fully align with the goals and policies of the County General Plan and General Plan Update EIR Mitigation Measures. Stakeholders also provided feedback on the recommendations made by ICF Consulting should the Board direct the County to move forward with Option 5. This feedback will be used to further refine the draft North County Plan should it move forward.

Though not a complete draft, the 2017 Preliminary Draft North County Plan provides a strong starting point for the County to capitalize on work completed to date. ICF Consulting has evaluated the 2017 Preliminary Draft North County Plan against current HCP/NCCP requirements and provided several recommendations for how it can be strengthened, clarified, and completed for public review should the Board direct the County to pursue Option 5 (*Assessment, Section 3.1*). These recommendations include reorganizing the document to clearly identify the anticipated impacts, conservation objectives, and avoidance and minimization efforts; preparing draft implementation documents, such as the Implementing Agreement and Biological Mitigation Ordinance; and incorporating the use of newer or revised species models to ensure the plan is built upon the best available data.

Based on conversations with County staff and the Wildlife Agencies, ICF Consulting has also identified outstanding topics that need to be further discussed, negotiated, and resolved for the North County Plan to move forward successfully. Many of these resolution items are recurring topics that have resulted in either short-term solutions or impasse over the years. To ensure the North County Plan can effectively move forward, the County and Wildlife Agencies have partnered to create an Issue Resolution and Elevation process for the North County Plan. County and Wildlife Agency staff will continue to meet regularly to collaborate on the North County Plan. When issues arise that cannot be resolved at the staff level, they will be quickly elevated to executive managers for further discussion and resolution. If issues remain unresolved, this elevation process will continue to the Deputy Chief Administrative Officer level, and finally to the North County Plan Board Subcommittee and their equivalent appointed and/or elected officials at the Wildlife Agencies.

ICF Consulting has also made several programmatic recommendations for the County to consider during plan development based on their experience successfully preparing and implementing HCP/NCCPs for other jurisdictions throughout California (*Assessment, Section 3.2*). While some of these recommendations have been partially or fully implemented over the last year (e.g. establishment of an Approach to Problem Solving and Issue Resolution with the Wildlife Agencies), most will need to be further assessed and discussed with the Wildlife Agencies as part of plan development should the Board direct the North County Plan to move forward as an HCP/NCCP. Policy decisions requiring Board input would be presented to the North County Plan Board Subcommittee for discussion and direction should they arise.

Option 5 is projected to have the second highest implementation cost to the County. Though this option would result in more favorable mitigation ratios than the other options, the above and beyond mitigation requirements of the NCCP Act and the inclusion of mitigation exemptions for single-family homes and agricultural clearing, would result in the County acquiring, managing, and monitoring more acres of preserve land than under Options 1, 2, and 3. Annual County

SUBJECT: RECEIVE THE NORTH COUNTY MULTIPLE SPECIES CONSERVATION PLAN STATUS REVIEW AND OPTIONS ASSESSMENT AND PROVIDE DIRECTION ON OPTIONS (DISTRICTS: ALL)

implementation costs are estimated to average up to \$6.3 million per year. Up to \$2 million of this cost may be offset by existing annual MSCP appropriations for acquisitions, management, and monitoring that are currently spent in the North County Plan Area. For private project applicants, Option 5 is anticipated to be the lowest cost option. This can be attributed to more favorable mitigation ratios associated with an NCCP, faster project approvals, and efficiencies and consistencies in mitigation land management.

Plan Preparation & Future County Implementation Costs

Costs for a consultant team to prepare plans under the five options were estimated based on similar conservation projects and are identified in the Fiscal Impact Statement. Funds for the development of plans under Options 1-5 are not included in the Fiscal Year 2020-21 Operational Plan. Should the Board direct staff to pursue one of the options identified in the Assessment, one-time program development costs are estimated up to \$3.5 million in Fiscal Year 2020-21 depending on the option directed, and would be funded by unassigned General Fund fund balance.

The Assessment also includes a detailed implementation cost estimate based on a number of broad assumptions and calculations (*Assessment, Appendix B*). Attachment F summarizes the estimated costs to implement a plan created under each of the five options. These estimates aid in the comparison across plan options but may ultimately vary based on decisions made by the County and option-specific negotiations with the Wildlife Agencies. Future program implementation costs, funding sources, and staffing needs will be further assessed and refined as part of plan development under the option directed by the Board and will be presented to the Board for adoption at a future date. These implementation costs are estimated to total up to \$360.4 million, accounting for inflation, over the 50-year permit term. Therefore, it is expected that the average per year implementation cost would be \$7.2 million after plan adoption. The implementation costs are anticipated to be funded through General Purpose Revenue appropriations from the Board as part of the Capital Program. Under Option 4 and Option 5, it is assumed that County implementation costs would be offset by mitigation fees that are not currently in place but could be enacted by the Board. Implementation funds will be included in future Operational Plans, with annual appropriations beginning as early as Fiscal Year 2023-24 (Option 1) or as late as Fiscal Year 2025-26 (Option 5).

Currently, the Board allocates to DPR approximately \$14.6 million per year to implement the MSCP via three separate funding sources. \$7.5 million is allocated as one-time funding each year for acquisition of open space throughout the three MSCP Plan Areas. In Fiscal Year 2020-21, the \$7.5 million for acquisition was not allocated by the Board due to financial constraints associated with the coronavirus pandemic. DPR receives \$2.5 million as part of ongoing General Purpose Revenue for land management and monitoring costs. DPR allocates an additional approximately \$4.6 million as part of its annual operational budget to implement MSCP-related stewardship activities. Based on current cost projections, it is anticipated that the \$14.6 million annual allocation will not be sufficient to implement Options 1 through 5. Of the existing \$14.6 million spent on MSCP implementation items, it is estimated that roughly \$2 million per year is currently spent towards the North County Plan Area acquisition, management, and monitoring. Therefore, to meet the average estimated implementation cost of up to \$7.2 million per year for

SUBJECT: RECEIVE THE NORTH COUNTY MULTIPLE SPECIES CONSERVATION PLAN STATUS REVIEW AND OPTIONS ASSESSMENT AND PROVIDE DIRECTION ON OPTIONS (DISTRICTS: ALL)

Options 1 through 5, it is anticipated that an additional annual allocation of up to \$5.2 million per year could be required. DPR will continue to pursue alternative sources of funding to supplement annual appropriations.

ENVIRONMENTAL STATEMENT

Receipt of the North County Multiple Species Conservation Plan Status Review and Options Assessment has no potential to result in either a direct physical change to the environment or a reasonably foreseeable indirect physical change to the environment. The proposed Board action is exempt from provisions of the California Environmental Quality Act (CEQA) pursuant to Section 15061(b)(3) of the CEQA Guidelines. Accepting these options does not commit the County to any definitive course of action. Subsequent actions would be reviewed pursuant to CEQA and presented to the Board for consideration prior to implementation.

LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN

Today's proposed action to receive the North County Multiple Species Conservation Plan Status Review and Options Assessment supports the Sustainable Environments/Thriving Initiative in the County of San Diego's 2020-2025 Strategic Plan by enhancing the quality of the environment by focusing on sustainability, pollution prevention, and strategic planning.

Respectfully submitted,



SARAH E. AGHASSI
Deputy Chief Administrative Officer

ATTACHMENT(S)

Note: Due to the size of the attachments, the documents are available online through the Clerk of the Board's website at www.sandiegocounty.gov/content/sdc/cob/bosa.html.

- Attachment A – Multiple Species Conservation Program Plan Areas Map
- Attachment B – County General Plan Goals and General Plan Update EIR Mitigation Measures Fulfilled Through Preparation and/or Adoption of MSCP Plans
- Attachment C – North County Multiple Species Conservation Plan Status Review and Options Assessment
- Attachment D – North County Plan Options Comparison
- Attachment E – Public Documentation
- Attachment F – Estimated Plan Implementation Costs Comparison

SUBJECT: RECEIVE THE NORTH COUNTY MULTIPLE SPECIES CONSERVATION PLAN STATUS REVIEW AND OPTIONS ASSESSMENT AND PROVIDE DIRECTION ON OPTIONS (DISTRICTS: ALL)

AGENDA ITEM INFORMATION SHEET

REQUIRES FOUR VOTES: Yes No

WRITTEN DISCLOSURE PER COUNTY CHARTER SECTION 1000.1 REQUIRED

Yes No

PREVIOUS RELEVANT BOARD ACTIONS:

April 25, 2007 (6), Authorization to Apply for and Accept State and Federal Grant Funding in Support of the Multiple Species Conservation Program; April 7, 2004 (2), Preparation of the North County Multiple Species Conservation Program Subarea Plan Environmental Documentation; December 11, 2002 (6), Consultant for North County Subarea Plan for Multiple Species Conservation Program; December 12, 2001 (7), Consultant for North County Subarea Plan for Multiple Species Conservation Plan; March 22, 2000 (13), Consultant for North County Subarea Plan for Multiple Species Conservation Program Plan; May 12, 1999 (9), Board of Supervisors Policy Establishing a Voluntary Conservation Agreement Program for the MSCP and Direction to Staff to Investigate Additional Economic Incentives for Property Owner Participation; October 22, 1997 (1), Multiple Species Conservation Program Approval of the Plan, Subarea Plan, Implementing Agreement, and Implementing Ordinances; July 17, 1996 (6), Conversion of the North County Open Space Effort from the Multiple Habitat Conservation Program to a Subarea to be Added to the Multiple Species Conservation Program; March 20, 1996 (2), Multiple Habitat Conservation Program for the Unincorporated Area of North San Diego County; May 10, 1994 (56), Multi-Species Conservation Planning Efforts; January 22, 1992 (1), Memorandum of Agreement Coordinating Habitat Conservation Planning in the North County.

BOARD POLICIES APPLICABLE:

N/A

BOARD POLICY STATEMENTS:

N/A

MANDATORY COMPLIANCE:

N/A

ORACLE AWARD NUMBER(S) AND CONTRACT AND/OR REQUISITION NUMBER(S):

N/A

ORIGINATING DEPARTMENT: Planning & Development Services

OTHER CONCURRENCE(S): Department of General Services
Department of Parks and Recreation
Department of Public Works

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SUBJECT: RECEIVE THE NORTH COUNTY MULTIPLE SPECIES CONSERVATION
PLAN STATUS REVIEW AND OPTIONS ASSESSMENT AND PROVIDE
DIRECTION ON OPTIONS (DISTRICTS: ALL)

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