APPENDIX N

BIOLOGICAL OPINION FOR FEE-TO-TRUST (ADDED)

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Carlsbad Fish and Wildlife Office
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Carlsbad, California 92011

In Reply Refer To:
FWS-SDG-06B0010-11F0237

AUG 09 2011

Memorandum

To: Regional Director, Pacific Regional Office, Bureau of Indian Affairs
Sacramento, California

From: Field Supervisor, Carlsbad Fish and Wildlife Office
Carlsbad, California

Subject: Formal Section 7 Consultation for the Proposed Sycuan Band of the Kumeyaay Nation Fee-To-Trust Application and Associated Development Project, San Diego County, California

This memorandum transmits the U.S. Fish and Wildlife Service's (Service) biological opinion based on our review of a proposed Sycuan Band of the Kumeyaay Nation (Tribe) "fee-to-trust" application and associated development project for lands owned by the Tribe in San Diego County, California. The biological opinion addresses the effects of the proposed fee-to-trust land transaction and associated development of these lands on the federally threatened coastal California gnatcatcher (*Polioptila californica californica*, "gnatcatcher") in accordance with section 7 of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*). Formal consultation was initiated by your agency, the Bureau of Indian Affairs (BIA), on September 8, 2009. Subsequently, we received your agency's memorandum of June 24, 2011, amending the scope of the action from your previous consultation request. Therefore, this biological opinion addresses the action identified in your June memorandum and the biological assessment (BA) dated April 2011, which we received on June 28, 2011.

Based on surveys conducted for the proposed fee-to-trust and land development project, the federally endangered San Diego ambrosia (*Ambrosia pumila*), and threatened Otay tarplant (*Deinandra conjugens*) and San Diego thornmint (*Acanthomintha ilicifolia*) are absent from the project site. In addition, within the project area, no critical habitat has been designated for these three species. Therefore, your agency has made a "no effect" determination for the proposed action as it relates to these federally listed plant species and their designated critical habitat.

The federally endangered least Bell's vireo (*Vireo bellii pusillus*, "vireo"), arroyo toad (*Anaxyrus* [*Bufo*] *californicus*), and Quino checkerspot butterfly (*Euphydryas editha quino*, "Quino") are known to occur within the vicinity of the proposed project. However, the vireo does not occur within the direct project footprint, and buffers will be established during the vireo breeding season between construction activities and suitable habitat for this species. Moreover, vireo

occupied habitat along Lake Emma is designated as a "Conservation Area" consistent with biological opinion 1-6-97-F-54 (See *Environmental Baseline* section below).

Though marginally suitable upland aestivation habitat for the arroyo toad occurs within the proposed development footprint, the use of the site by arroyo toads is unlikely due to 1) the topography and distance between known/suitable breeding locations to the project site; and 2) the fact that the project site has been continually disturbed through farming activities. Initial ground-disturbing activities at the proposed equestrian center and secondary access road and housing development sites will occur during the arroyo toad breeding season when toads are less likely to use upland areas. Construction vehicle travel will be limited to daylight hours in these areas to avoid the period in which toads are most active.

In accordance with the *Quino Checkerspot Butterfly Recovery Plan* (Service 2003), the Service generally considers any suitable Quino habitat within a 0.6-mile (≈3,000 feet or1 kilometer) radius of a Quino observation to be the habitat associated with that particular Quino occurrence. Quino have been observed about 2,000 feet to the north of the proposed Dehesa Road housing site (REC 2010). A Quino habitat assessment documented one isolated patch of five Quino host plants [*Plantago erecta* (dotseed plantain)] within this development site. The general lack of host plant and the disturbed and weedy nature of the site (i.e., site is dominated by nonnative annual grasses) make it highly unlikely that this area sustains the northerly Quino occurrence.

The Tribe has committed to conduct protocol surveys in the spring prior to construction to verify that Quino species is absent from the project area (Mitigation Measure 5 in the BA). Based on this commitment and the above information addressing potential impacts to vireo, arroyo toad, and Quino, we concur with your determination that the proposed action is "not likely to adversely affect" (NLAA) these three species. In addition, no designated or proposed critical habitat for vireo, arroyo toad, or Quino occurs within the project's development footprint[1].

This biological opinion addresses impacts to the gnatcatcher, which is the only federally listed species determined to be adversely affected by the proposed fee-to-trust action and associated tribal development project and is based on information provided in the: (1) draft *Environmental Assessment for the Sycuan Band of Kumeyaay Nation Fee-To-Trust* dated August 2009; (2) *Biological Assessment – Sycuan Band of Kumeyaay Nation* dated April 2011; (3) *Biological Technical Memorandum – Sycuan Band of Kumeyaay Nation* dated September 2010; (3) literature relevant to the species and effects of the activities addressed in this biological opinion; and (4) site visits conducted during the consultation process. The complete project file addressing this consultation is maintained at the Carlsbad Fish and Wildlife Office (CFWO).

CONSULTATION HISTORY

On September 8, 2009, we received a letter from your agency requesting initiation of formal consultation on a proposed "fee-to-trust" application and associated development. We met with

[1] Critical habitat for the arroyo toad is designated along the Sweetwater River area of the project that is slated for acquisition.

representatives from the BIA and Tribe on September 29, 2009, and also provided comments on the project's draft Environmental Assessment via a memorandum dated October 8, 2009. Initiation of formal consultation was acknowledged in our response letter (FWS-SDG-06B0010-10TA0022) dated November 5, 2009. In our initiation letter, we concurred with your agency's NLAA determination for the federally listed endangered southwestern willow flycatcher (*Empidonax traillii extimus*); however, we requested additional information to evaluate your request for concurrence with NLAA determinations for several other federally listed species as well as other information necessary for us to complete our biological opinion.

We met with the Tribe and their consultants many times over the past year, as the proposed project was refined. Our discussions during this time period addressed potential impacts to endangered and threatened species, and conservation actions aimed at avoiding and minimizing these impacts. We also engaged in discussions regarding the effect of the Tribe's proposed fee-to-trust application and proposed development project on the Multiple Species Habitat Conservation Program, County of San Diego Subarea Plan (MSCP). Our government-to-government discussions resulted in substantial changes to the project to address our concerns for listed species and to ensure consistency with the MSCP. The Tribe committed to the establishment of a wildlife corridor and a reduction in the number of parcels proposed to be taken into trust from 30 (≈1,966 acres) to 21 (≈1,357 acres) and reduced the total proposed development acreage from 181.89 acres to 144.05 acres. This information was provided in meetings, electronic mail, and letters between November 2009 and June 2011.

A draft biological opinion was provided to the BIA and the Tribe on July 26, 2011. Comments were received from the Tribe on August 4, 2011, and a revised draft addressing the Tribe's comments was provided to the Tribe on August 5, 2011. The Tribe provided the revised draft biological opinion to the BIA. We received comments from the BIA on August 8, 2011, and incorporated the comments into this final biological opinion. The Tribe notified us on August 8, 2011, that they had no further comments on the revised draft biological opinion.

BIOLOGICAL OPINION

DESCRIPTION OF THE PROPOSED ACTION

The proposed action consists of transferring 21 of the Tribe's fee-owned parcels (approximately 1,357 acres) to the United States Government to be held in trust for the Tribe and constructing the tribal development project (Figure 1). An additional 9 parcels (≈608 acres), owned in fee title by the Tribe and located within Sloan Canyon along the Sweetwater River upstream of Sloan Canyon Road Bridge, will be acquired by the Service and California Department of Fish and Game's Wildlife Conservation Board (WLB) and transferred in fee title to the Kumeyaay Diegueño Land Conservancy (KDLC) (Figure 2). KDLC will manage these parcels as open space largely to protect listed species and their associated habitat. The proposed tribal development project includes: implementation of the *Tribal Natural and Cultural Resources Management Plan* (Analytical Environmental Services May 2011; "NRMP"); construction of 50 houses for tribal members; construction of permanent facilities for the Tribe's traditional gatherings and Pow Wow event; construction of a secondary access road for the Sycuan

Reservation (Reservation); and construction of recreational facilities (Figure 2). Each component of the tribal development project is further described below.

Natural and Cultural Resources Management Plan

The Tribe has developed a plan to address management of natural and cultural resources within their fee and trust lands. The NRMP describes how the biologically and culturally significant sites and the diversity of habitats present within the boundaries of the plan will be managed and preserved. The general goals of the NRMP include the following:

- Preclude the degradation of existing natural and cultural resources
- Preferentially conserve rare habitats and those habitats known or likely to be occupied by threatened and endangered species of plants and animals
- Maintain viable wildlife corridors across the Sycuan property
- Preserve riparian corridors
- Preserve all known culturally significant areas

The Tribe's General Council has adopted the NRMP as an environmental ordinance pursuant to Tribal Resolution No 2011-13GC (June 2011) (Attachment 1). In accordance with the NRMP, the Tribe will designate as a "Conservation Area" an approximately 116-acre "wildlife corridor" consistent with the goals of the MSCP (Figures 2 and 3). In addition, the Tribe will manage this corridor consistent with the MSCP goals and objectives identified for this area. The corridor will be no less than 1,000 feet wide at its northern end where the proposed housing development along the northern edge of Dehesa Road was scaled back to accommodate wildlife movement. The wildlife corridor will connect lands north of the proposed tribal trust lands where conservation is targeted by the MSCP south along the upstream end of Lake Emma and then down to the Sloan Canyon parcels that will be conserved and managed by the KDLC. Two other conservation areas will be designated as part of this action, a 34-acre area that includes riparian and coastal sage scrub along the shoreline of Lake Emma and an additional 32 acres of coastal sage scrub south of the lake and adjacent to the San Diego National Wildlife Refuge (Figure 4).

Housing

The tribal development project includes the construction of up to 50 homes for tribal members in three areas. Final driveway access routes, as well as lot size, locations, and orientations for each of the homes, will be determined in consultation with architects, civil engineers, and the Sycuan Fire Department to site each home with regard to grading of pads, local topography, solar exposure, habitat quality, prevailing winds, defensible space for fire protection, accessibility for fire-fighting equipment, and other factors. The outer limits of the development envelopes are described below and include both the building pads and the areas needed for fire protection.

Pow Wow Grounds/Starr Ranch Housing

The Tribe proposes to develop permanent grounds for their annual Pow Wow event and other events in an area east of the existing Sycuan Reservation known as Starr Ranch. This area is

located outside of the MSCP-designated Pre-Approved Mitigation Area (PAMA) and encompasses a development envelope of approximately 30 acres. The Pow Wow Grounds will include a dancing facility, vendor facilities, limited vendor parking, and restrooms. An additional 14 acres in this area will be used for tribal housing (≈15 residences). Infrastructure for the housing and Pow Wow Grounds will be provided through connection to the adjacent existing tribal infrastructure near the Sycuan Casino.

Secondary Access Road and Housing

A secondary access road will be built to increase fire safety and egress in the event of an emergency for existing residents on the Reservation and to provide access to the proposed new housing units. The road will connect to Sloan Canyon Road on the west end near its intersection with Dehesa Road, run along the northern boundary of the proposed equestrian center, through the new housing area, and then connect to an existing road on the Reservation. The secondary access road will use the existing Arizona crossing on Harbison Creek. Up to 15 tribal residences will be built within a 33.5-acre development envelope (see Figure 2).

Dehesa Road Housing

Up to 20 tribal residences will be constructed within approximately 31 acres along the north side of Dehesa Road. The main access point will be located on the west end of the housing development and will be shared with the Outdoor Events Center/Recreational Vehicle (RV) Spaces located immediately across Dehesa Road. Infrastructure will be provided by connections to existing utilities within the existing Dehesa Road corridor or from the Sycuan Resort.

Outdoor Events Center/RV Spaces

An Outdoor Event Center is proposed for an approximately18-acre area south of Dehesa Road and northeast of the golf course. The area will be landscaped and includes a large circular, wall-less, wooden pavilion. The majority of the area will remain open where awnings and chairs could be set up for outdoor events. A parking area on the east side of the events facility will include restrooms, showers, and changing rooms. Approximately 15 RV spaces also are planned for this area.

Equestrian Center

An existing equestrian center on the Reservation will be relocated to agricultural land located at the southeast corner of the intersection of Dehesa and Sloan Canyon roads. The new facility will include an open-walled stable, training rings, and corrals on 17.76 acres, mostly within the floodplain of Harbison Creek.

Conservation Measures

The Tribe has agreed to implement the following conservation measures as part of the proposed action to avoid, minimize, and offset impacts to the gnatcatcher:

1. If clearing and grubbing does not occur within a year of issuance of this biological opinion, a "qualified project biologist"[2] will conduct a minimum of three surveys at least 1 week apart to verify that gnatcatcher numbers have not increased within the coastal sage scrub at the Pow Wow Grounds/Starr Ranch housing area and the secondary access road and associated housing area. The qualified project biologist will also a) assess habitat conditions at the Dehesa Road housing site to determine whether the density of coastal sage scrub has improved sufficiently to support gnatcatchers and b) conduct surveys as described above, if necessary, based on the results of the habitat assessment (i.e., no gnatcatcher surveys will be conducted at the Dehesa Road housing site if nonnative annual grasses still dominate the site). Results of the surveys and habitat assessment will be provided to the CFWO prior to initiation of the proposed habitat removal activities.

2. No clearing or grubbing will occur in the Pow Wow Grounds/Starr Ranch housing, Dehesa Road housing, or secondary road access development, or any other areas with adjacent gnatcatcher suitable habitat during the species' breeding season (February 15 – August 31). In the event, clearing and grubbing activities cannot avoid the non-breeding season, pre-construction surveys will be conducted by a qualified project biologist and procedures followed consistent with Mitigation Measure 9 of the BA (page 72), including consulting with the Service to identify measures to avoid the loss of any active nest(s).

   A qualified project biologist will act as a biological monitor during construction activities that occur within 500 feet of Diegan coastal sage scrub. The qualified project biologist will educate construction crews about the gnatcatcher prior to initiation of any construction activity. If nesting gnatcatchers are found in habitat adjacent to the construction site, all construction will halt temporarily and the Service will be contacted to determine an appropriate course of action to protect any active nests.

3. Noise and night-time lighting in the construction areas adjacent to Diegan coastal sage scrub will be limited to the extent feasible to prevent disturbance to nesting gnatcatchers. Noise levels will be limited to 60 decibels (dBA) to the extent feasible during construction periods. Night-time lighting will be restricted to the minimum area required at the lowest illumination setting for human safety, selectively placed, shielded, and directed away from natural habitats.

4. Implementation of a Stormwater Pollution Prevention Plan (SWPPP) to reduce potential impacts to habitats from erosion and sedimentation (use of silt fences, fiber rolls or other appropriate devices) will ensure potential impacts to gnatcatcher habitat are minimized. The SWPPP will include provisions for handling and storage of flammable, toxic and contaminating agents (including pesticides and herbicides).

[2] A "qualified project biologist" is a trained ornithologist with at least 40 hours in the field observing gnatcatchers and documented experience locating and monitoring gnatcatcher nests.

5. New developments will be built primarily on previously disturbed areas to the extent feasible.

6. New developments will use the location of existing roads to the extent feasible to reduce the amount of new ground disturbance.

7. All necessary utilities, including electric power lines and water and sewer pipelines, will be provided through existing connections to utilities adjacent to the proposed developments or from the Reservation, where possible, and will be installed along the access road corridors to the extent feasible.

8. Fire protection buffers are located within the identified development envelopes.

9. Landscaping in development areas adjacent to native riparian, Diegan coastal sage scrub, and southern mixed chaparral communities will not include invasive or nonnative plant species listed on the California Invasive Plant Council's (Cal-IPC) Invasive Plant Inventory list (Cal-IPC, 2006) to prevent escape of invasive species to the surrounding native habitats. This list includes such species as pepper trees, pampas grass, fountain grass, ice plant, myoporum, black locust, capeweed, tree-of-heaven, periwinkle, sweet alyssum, English ivy, French broom, Scotch broom, and Spanish broom. A copy of the complete list can be obtained from Cal-IPC's web site at http://www.cal-ipc.org. Moreover, landscaping will not use plants that require intensive irrigation, fertilizers, or pesticides adjacent to preserve areas and water runoff from landscaped areas should be directed away from sensitive habitat areas and contained and/or treated within the development footprint.

10. In development areas adjacent to native riparian, Diegan coastal sage scrub, and southern mixed chaparral communities, permanent protective fencing will be installed along any interface with developed areas to deter human and pet entrance into onsite or offsite habitat. Fencing should have no gates (except to allow access for maintenance and monitoring of the biological conservation areas) and be designed to prevent intrusion by pets, especially cats. Signage for the biological conservation areas will be posted and maintained at conspicuous locations. Fencing will be installed prior to completion of project construction.

11. The Tribe will ensure that development lighting adjacent to all onsite or offsite habitat will be directed away from and/or shielded so as not to illuminate native habitats.

12. Staging areas (i.e., refueling, access routes, and spoil sites) will be located in previously disturbed areas within the proposed development envelope to the extent feasible.

13. For any areas disturbed by construction (e.g., staging areas, access points), restoration will occur using shrubs and plant species native to the habitat formerly disturbed. Soil and existing native plant species will be salvaged from the area to be used in restoration activities. Such restoration areas will be administered according to the habitat management strategies in the Tribe's NRMP.

14. A 32-acre area of coastal sage scrub with documented gnatcatcher occurrences will be designated as a "Conservation Area" on the slopes south of Lake Emma in addition to 116 acres within the designated wildlife corridor (see Figure 4) to offset impacts from the proposed development project.

Action Area

According to 50 CFR § 402.02 pursuant to section 7 of the Act, the "action area" means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action. Subsequent analyses of the environmental baseline, effects of the action, and levels of incidental take are based upon the action area. For the purposes of this biological opinion, we have defined the action area to include all of the lands within the Tribe's ownership as depicted on Figure 1.

STATUS OF THE SPECIES

Listing Status and Critical Habitat

The Service listed the gnatcatcher as threatened on March 30, 1993 (58 FR 16742). Habitat loss and fragmentation resulting from urban and agricultural development as well as fire, invasive plants, and predation all contributed to the listing decision. A final revised critical habitat designation for the gnatcatcher was published on December 19, 2007. The action area for the proposed project does not include designated critical habitat for the gnatcatcher.

Species and Habitat Description

The coastal California gnatcatcher, a small, long-tailed member of the thrush family (Muscicapidae), is endemic to cismontane southern California and northwestern Baja California, Mexico (Atwood 1991). The gnatcatcher typically occurs in or near coastal sage scrub, which is composed of relatively low-growing, dry-season deciduous and succulent plants. Characteristic plants of these communities include California sagebrush (*Artemisia californica*), California buckwheat (*Eriogonum fasciculatum*), laurel sumac (*Malosma laurina*), lemonadeberry (*Rhus integrifolia*), yellow bush penstemon (*Keckiella antirrhinoides*), and various sages (*Salvia* spp.), encelias (*Encelia* spp., and cacti (*Opuntia* spp.) (Weaver 1998). Gnatcatchers may also use chaparral, grassland, and riparian plant communities where they occur adjacent to or intermixed with coastal sage scrub, especially during the non-breeding season (Campbell et al. 1998), but gnatcatchers are closely tied to coastal scrub for reproduction (Atwood 1993).

Because coastal sage scrub is patchily distributed and variable in both structure and composition throughout the range of the species, gnatcatchers are not uniformly distributed within available coastal sage scrub. Moreover, all coastal scrub is not equal with respect to gnatcatchers. Gnatcatchers are patchily distributed, and Winchell and Doherty (2008) found the density of gnatcatchers was highest in high-quality habitat and decreased as habitat quality decreased (TAIC 2002).

Gnatcatchers are non-migratory and exhibit strong site tenacity (Atwood 1990). Gnatcatcher pairs strongly defend territories during the breeding season against other gnatcatchers and predators, and some will defend territories throughout the year (Preston et al. 1998a). Breeding season territories range in size from less than 2.5 acres to 25 acres (Atwood et al. 1998, Preston et al. 1998), with mean territory size generally greater for inland populations than coastal populations (Preston et al. 1998). In the non-breeding season, the area used by individual gnatcatchers may be almost twice as large as that used during the breeding season (Preston et al. 1998).

Status and Population Trend

Gnatcatchers were considered locally common in the mid-1940s, but they had declined substantially in the United States by the 1960s (Atwood 1980). Although observed declines in numbers and distribution of the gnatcatcher resulted from numerous factors, habitat destruction, fragmentation, and degradation are the principal reasons for the Federal listing of the gnatcatcher as threatened in 1993 (58 FR 16742). In 1993, the Service estimated that about 2,562 pairs of gnatcatchers remained in the United States. Of these, 30 pairs (1.2 percent) occurred in Los Angeles County, 757 pairs (29.5 percent) occurred in Orange County, 261 pairs (10.2 percent) occurred in Riverside County, and 1,514 pairs (59.1 percent) occurred in San Diego County. However, these estimates are not statistically valid because they were conducted using methods not supported by probability theory (Service 2010). Additionally, gnatcatcher population sizes are known to fluctuate from year to year (Atwood and Bontrager 2001), which further complicates any trend assessment.

In 2005, using more rigorous sampling techniques, the Service (Winchell and Doherty 2008) estimated an arithmetic mean of 1,324 pairs of gnatcatchers over an 111,006-acre area on public and quasi-public lands of Orange and San Diego counties based on data collected in spring of 2002. In 2007, the Service repeated the surveys in San Diego County and estimated 1,667 pairs within their study area. The population estimates described above were calculated prior to catastrophic fires in San Diego County in 2003 and in San Diego and Orange counties in 2007. These fires are assumed to have temporarily reduced the overall gnatcatcher population because of the temporary loss of gnatcatcher occupied habitat. In the 2007 firestorm, about 28,173 acres of coastal sage scrub burned in Orange County and about 84,202 acres of coastal sage scrub burned in San Diego County in several separate locations, including much of the adjacent habitat to the north of the proposed Dehesa housing site (SANDAG 2007). Surveys were repeated for San Diego County in 2009; however, the data analysis is not complete.

Threats and Conservation Needs

Habitat destruction, fragmentation, and degradation are the primary threats to the gnatcatcher (Service 1993a and 2010). These threats are caused primarily by urban development, fire, and invasion of nonnative plants. Regional conservation plans, such as the MSCP, have been designed to help minimize these effects. Large blocks of habitat on public and private lands have been secured and are being managed for the benefit of the gnatcatcher. Long-term management is required to address the numerous threats posed by the urban edge and ensure the

persistence of the species. Some long-term management actions that will address identified threats include development and implementation of fire management plans, homeowner education programs (for residences adjacent to occupied habitat), predator control, cowbird trapping, routine invasive vegetation removal, limited public access in areas of high quality habitat, and control of irrigation water and other urban run-off adjacent to preserved habitat. Monitoring of gnatcatcher distribution over time will assist in determining the effectiveness of management actions at reducing threats and will allow for management to be adapted in the event that threats have not been adequately reduced.

Further information regarding the status, distribution, and threats to the gnatcatcher can be found in the C*oastal California Gnatcatcher 5-Year Review Summary and Evaluation* (Service 2010).

ENVIRONMENTAL BASELINE

Regulations implementing the Act (50 CFR § 402.02) define the environmental baseline as the past and present impacts of all Federal, State, or private actions and other human activities in the action area. Also included in the environmental baseline are the anticipated impacts of all proposed Federal projects in the action area that have undergone section 7 consultation and the impacts of State and private actions that are contemporaneous with the consultation in progress. The action area is located within the MSCP that was developed to conserve both the diversity and function of the ecosystem in southwestern San Diego County through the preservation and management of large blocks of interconnected habitat and smaller areas that support rare vegetation communities. We issued the County of San Diego (County) a 50-year permit pursuant to section 10(a)(1)(B) of the Act for the MSCP that addresses the conservation needs of 85 species, including the gnatcatcher. The MSCP identifies priority areas for conservation (PAMA) and other areas for future development. Additionally the MSCP includes management and monitoring requirements for the conservation of the "Covered species and habitats" within the preserves. To date, approximately 70,000 acres of habitat have been conserved within the County's Subarea Plan area, which is approximately 70 percent of the County's conservation goal (County of San Diego 2010).

With the exception of the proposed Pow Wow Grounds/Starr Ranch housing, the undeveloped fee-owned lands are identified as being within the PAMA (Figure 5). The MSCP identifies the Tribe's undeveloped fee-owned property (excepting the Pow Wow Grounds/Starr Ranch housing) as a key regional linkage for numerous covered species while simultaneously providing core areas for several sensitive biological resources. The PAMA within the action area is identified as necessary to assemble the MSCP preserve and meet the County's Subarea Plan conservation goals. Habitat has been conserved for MSCP purposes to the north of the Dehesa housing area. The San Diego National Wildlife Refuge and California Department of Fish and Game both own land that abuts the tribal property to the south of Lake Emma and the Sweetwater River including McGinty Mountain and Sycuan Peak (Figure 4). Gnatcatchers have been detected along the Sweetwater River downstream of Sloan Canyon Bridge and in the coastal sage scrub habitat south of Lake Emma.

The vegetation types within the boundaries of the project are shown in Table 1 below. The proposed development envelopes are located within three distinct areas: 1) the Pow Wow Grounds/Starr Ranch housing, 2) the secondary access road and associated housing, and 3) the Dehesa Road housing. All three sites contain areas of native upland habitat, including suitable habitat for the gnatcatcher. However, the quality of habitat for gnatcatchers is variable at each of the three sites. The Dehesa Road housing site has been heavily disturbed and is dominated by nonnative annual grass with some sparse, patchy coastal sage scrub (i.e., 6.22 acres of coastal sage scrub and 24.93 acres of disturbed coastal sage scrub). Sage scrub plants include California sagebrush (*Artemisia californica*), San Diego sunflower (*Viguiera laciniata)*, wishbone bush (*Mirabilis laevis*), laurel sumac, and spice-bush *(Cneoridium dumosum*). This site has limited potential to support gnatcatchers, except as part of a larger use area or as dispersal habitat.

The secondary access road and housing site has patches of higher quality habitat (i.e., 14.56 acres of coastal sage scrub). The lower western and northwestern portions of the parcel are dominated by a developed ranch, which has no suitable gnatcatcher habitat. The southwest end of the parcel (i.e., north-facing slope) is dominated by mixed coastal sage scrub/chaparral and is not highly suitable to support gnatcatchers on its own, although the area has potential to be part of a larger use area. The southeast portion of the property has a more dominant coastal sage scrub character but is still a chaparral transitional habitat. The northeastern portion of the property supports sparse to dense patches of coastal sage scrub that are dominated by California sage brush, San Diego sunflower, and wishbone bush. San Diego sunflower becomes more pronounced and California sagebrush becomes less pronounced proceeding upslope to the north, with the sagebrush being most abundant at the bottom of the valley. This southeast portion of this parcel has the most potential to support gnatcatchers; however, none were detected during the gnatcatcher survey conducted for the project.

Of the three development envelopes, the Pow Wow Ground/Starr Ranch site supports the best habitat for gnatcatchers and includes 11.2 acres of coastal sage scrub and 24.88 acres of disturbed coastal sage scrub. The area appears to have been historically disturbed but supports sparse to dense coastal sage scrub dominated by California sagebrush, which as a result is suitable habitat for gnatcatchers. The northern "lobe" of the site has relatively dense coastal sage scrub dominated by California sagebrush at the western end, while the eastern end is dominated by chamise *(Adenostoma fasciculatum*) with some California lilac (*Ceanothus* sp.), scrub oak *(Quercus* sp.), laurel sumac, and California sagebrush. A gnatcatcher survey was conducted during January 2011, and one pair of gnatcatchers was observed within the eastern most portion of the northern lobe of the site (Service 2011).

In 1997, the Service completed a consultation with the U.S. Army Corps of Engineers (Corps) that addressed impacts to federally listed species, including the gnatcatcher, to address the potential impacts from issuance of a section 404 Clean Water Act permit to Sloan Canyon Sand Company for activities associated with the Sloan Canyon sand mining operation. The 1997 biological opinion (1-6-97-F-54) addressed the continuation of sand extraction from Lake Emma and was located entirely within the action area. Although no take of gnatcatchers was

Table 1. Existing habitats and proposed impacts within the action area.

Habitat/ Vegetation Community Type*	Tier level***	Existing acreage	Acreage of Impact	Acreage Remaining (No Impact)	% Impact	Mitigation Ratio***
Terrestrial Habitats						
Southern Cottonwood-willow Riparian Forest	1	58.35	0	58.35	0	N/A
Southern Coast Live Oak Riparian Forest	1	4.24	0	4.24	0	N/A
Disturbed Riparian	1	28.44	0	28.44	0	N/A
Diegan Coastal Sage Scrub	2	492.28	31.94	460.34	6.49	1.5:1
Disturbed Coastal Sage Scrub	None; classified as 2	56.76	49.85	6.84	87.84	1.5:1
Southern Mixed Chaparral	3	194.36	4.21	190.14	2.17	1:1
Eucalyptus Woodland	4	3.30	3.30	0	100	N/A
Urban/ Developed	4	356.94	13.76	343.40	3.79	N/A
Orchard	4	7.47	0	7.47	0	N/A
Disturbed Habitat	4	67.10	40.97	26.14	61.05	N/A
Aquatic/ Wetland Habitats**						
Fresh Water (Lake Emma)	1	75.42	0	75.42	0	N/A
Aquatic Habitats within or near Development Envelopes or Sycuan Resort including: [a]	1	12.81 (total)	0	12.81	0	2:1
Fresh Water (Pond)	1	0.18	0	0.18	0	2:1
Riverine (Intermittent Channels)**	1	N/A	0	N/A	0	2:1
Ephemeral Drainages**	1	N/A	0	N/A	0	2:1
Emergent Wetland	1	9.01	0	9.01	0	2:1
Seasonal Wetland	1	0.13	0	0.13	0	2:1
Wetland Swale	1	0.14	0	N/A	0	2:1
Tamarisk Scrub	4	0.11	0	0.11	0	N/A
Southern Willow Scrub	1	N/A	0	N/A	0	2:1
Total	N/A	1,357.47	144.05	1,213.42	10.61	N/A

Notes: * Habitat nomenclature based on Table 4 "Terrestrial Vegetation Communities in San Diego County Based on Holland's Descriptions" in the County of San Diego Guidelines for Determining Significance and Report Format and Content Requirements.

** Habitat nomenclature based on Cowardin Classification System

*** Tier level is based on Attachment K of the County of San Diego Biological Mitigation Ordinance, which the Tribe used as guidance for determining significance in the Biological Assessment to show consistency with MSCP. Valuation of habitat types under the tribal NRMP considers this tiering system.

[a] Acreages for aquatic habitats outside of the existing or proposed development areas are included in the balance of the surrounding terrestrial habitat.

anticipated from construction of the project, a riparian area along the edge of Lake Emma was set aside to address project impacts to the vireo. This area of Lake Emma is memorialized in the Tribe's NRMP as a Conservation Area. In a letter to the Corps dated January 26, 2011, we concluded that all relevant terms and conditions of the 1997 biological opinion had been fulfilled and indicated that we considered the project file closed.

EFFECTS OF THE ACTION

Effects of the action refer to the direct and indirect effects of an action on the species, together with the effects of other activities that are interrelated and interdependent with that action, which 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, are later in time, and still reasonably certain to occur.

Direct Effects

The proposed action will permanently impact approximately 144 acres of land supporting coastal sage scrub, chaparral, grassland, and other vegetation communities as summarized in Table 1. Loss of 36 acres of coastal sage scrub during the non-breeding season[3] will permanently remove feeding, breeding, and/or sheltering habitat for the gnatcatcher pair that use the proposed Pow Wow/Starr Ranch housing site. Gnatcatchers are non-migratory and highly site tenacious (Braden unpublished data 1992-1997). Adult gnatcatchers do not generally disperse from one territory to establish alternate territories; rather, the majority of gnatcatchers inhabit the same general territory year after year (Braden unpublished data 1992-1997). Territory size of an animal (e.g., a gnatcatcher) is the result of a dynamic equilibrium between the individual need for spatially distributed resources (e.g., food, water, shelter, nest sites, mates) and the energy an individual expends in acquisition and defense of those resources (Brown 1964, Carpenter et al. 1983, Gill and Wolf 1975, Myers et al. 1979). It follows logically that reductions in habitat area may disrupt essential behaviors such as breeding, feeding, and/or sheltering, which in turn may cause injury or mortality of individuals. This principle is illustrated by the seasonal variation in gnatcatcher breeding and post-breeding seasonal territories (home ranges), reflecting the changing size needed to meet the particular breeding, feeding, and sheltering requirements of the species as resources fluctuate seasonally and annually. For example, Bontrager (1991) noted an 82 percent increase in home-range size during the non-breeding season (when food resources are less abundant), Preston et al. (1998) found a 78 percent increase in post-breeding home-range size, and Braden et al. (1994) found an 86 percent increase in home-range size during the non-breeding season. Therefore, reduction of available habitat is likely to reduce the carrying capacity for the local population of gnatcatchers by reducing the available resources for survival of individual birds. Gnatcatchers need sufficiently large territories for adequate foraging and sheltering opportunities to reduce predation and increase probability of survival and successful reproduction.

Removal of coastal sage scrub at the Pow Wow Ground/Starr Ranch housing site may force the gnatcatcher pair now using this site to expand its existing territory or establish a new territory.

[3] If the loss of breeding habitat (i.e., coastal sage scrub) occurs during the breeding season, impacts such as interruption of courtship, nest building, destruction of eggs, and disturbance or death of unfledged young would be expected. However, per Conservation Measure 1, clearing and/or grubbing of coastal sage scrub will occur outside of the gnatcatcher breeding season (defined as occurring between February 15 and August 31) and, thus, the project should not result in the direct take of nesting birds, eggs, or chicks.

Gnatcatchers that successfully establish territories in adjacent habitat are expected to experience reduced productivity (e.g., delayed initiation or prevention of nest building, fewer nesting attempts per season, overall reduction in reproductive output) due to reduced availability of foraging and breeding habitat and increased territorial interactions. If displaced birds cannot find suitable habitat to forage and shelter in, we anticipate they will be more vulnerable to predation and otherwise may die or be injured.

Overall, we anticipate that impacts will occur to only one gnatcatcher pair (e.g., two individuals) due to the permanent loss of 36 acres of coastal sage scrub at the proposed Pow Wow Ground/ Starr Ranch housing site. The loss of one gnatcatcher pair represents less than 1 percent of the rangewide estimate of gnatcatcher pairs, and we anticipate that gnatcatchers will continue to occupy the areas outside the development footprint along the Sweetwater River downstream of Sloan Canyon Bridge and in the coastal sage scrub south of Lake Emma; thus, the project is not expected to result in an appreciable reduction in the numbers, reproduction, or distribution of the species in the action area rangewide.

Clearing or grubbing activities are not anticipated to result in the death or injury of any gnatcatchers or nests (chicks and eggs) since these activities will occur outside the breeding season, and a qualified project biologist will be present to ensure that gnatcatchers are not directly killed or injured during vegetation removal and other construction activities.

Implementation of the proposed project will also result in the loss of an additional 46 acres of coastal sage scrub through development of the Dehesa Road housing and secondary access road and associated housing sites. However, much of this habitat is low quality and unoccupied by resident gnatcatchers based on recent surveys (Service 2011).

Based on research by the Service (Winchell and Doherty 2008), low quality habitat may provide refugia and dispersal linkages. Dispersal of juveniles generally requires a corridor of native vegetation that provides certain foraging and sheltering requisites and that connects to larger patches of appropriate sage scrub vegetation (Soulé 1991). These dispersal corridors facilitate the exchange of genetic material and provide a path for re-colonization of extirpated areas (Soulé 1991, Galvin 1998).

Loss of low quality habitat at the two disjunct development envelopes will not preclude dispersal from adjacent potentially occupied habitat areas because there are still large blocks of higher quality habitat remaining throughout the project site. In addition, the proposed project includes the establishment of a 116-acre wildlife movement corridor that will provide a north south connection through the action area. Therefore, we do not anticipate the loss of 46 acres of coastal sage scrub at these two locations to disrupt gnatcatcher dispersal or movement or to result in additional harm (i.e., incidental take) to individual gnatcatchers.

Gnatcatcher populations expand and contract between years and, as a result, gnatcatcher numbers may increase in areas of suitable coastal sage scrub. In addition, low quality habitat within the development envelopes may recover and become more suitable for gnatcatchers as the shrub cover improves. Thus, gnatcatcher numbers may increase in areas supporting coastal sage scrub

and/or that gnatcatchers could move into areas of coastal sage scrub deemed unoccupied by this analysis. If the clearing and grubbing activities do not occur within a year of issuance of this biological opinion, the Tribe has committed to conducting additional surveys to confirm that gnatcatcher numbers and occupied areas are consistent with those used in this analysis.

As part of the proposed action, the Tribe will offset the permanent loss of gnatcatcher habitat (82 acres of coastal sage scrub), as well as additional upland habitats such as grassland (as summarized in Table 1), through the preservation of 32.58 acres of gnatcatcher occupied coastal sage scrub in Conservation Area 1 (Figure 4) and 94.33 acres of native vegetation (primarily chaparral and riparian) within the 116-acre wildlife corridor (Figure 3). Although conservation of gnatcatcher and upland habitat will not avoid or minimize impacts to the individual gnatcatchers impacted by project implementation, this action will permanently protect a total of 40.2 acres of coastal sage scrub and maintain a north south connection through the action area to support gnatcatcher dispersal across the broader landscape.

Indirect Effects

Indirect effects include lighting associated with the project that may potentially degrade adjacent gnatcatcher habitat. Light that alters natural light patterns in ecosystems can lead to increased predation, disorientation, and disruption of inter-specific interactions (Longcore and Rich 2004). If night work is necessary, night lighting will be of the lowest illumination necessary for human safety, selectively placed, shielded and directed away from natural habitats. The permanent lighting associated with the proposed development will be shielded and directed away from adjacent open space. These actions will minimize the impact of lighting on gnatcatcher behavior in adjacent habitat to the point where such effects are insignificant.

Noise and vibrations associated with the use of heavy equipment during construction and operations of the proposed facilities may disrupt gnatcatcher behaviors in adjacent habitat by masking intraspecific communication and startling birds (see Dooling and Popper 2007 for a discussion of observed effects of highway noise on birds). Noise in construction areas adjacent to avoided Diegan coastal sage scrub will be limited to 60 decibels (dBA) to the extent feasible to prevent disturbance to nesting gnatcatchers. A qualified project biologist will also be present to monitor construction activities that occur within 500 feet of Diegan coastal sage scrub and to ensure that no unanticipated impacts to gnatcatchers occur as a result of construction adjacent to avoided gnatcatcher habitat.

Additional indirect effects include an increase of erosion and sedimentation, introduction of invasive species, and human encroachment. Invasive species are now recognized as a threat to biodiversity in native plant communities, second only to direct habitat loss and fragmentation (Scott and Wilcove 1998). Nonnative, weedy species may outcompete and exclude native species, potentially altering the structure of the vegetation, degrading or eliminating upland habitat used by the gnatcatcher, and providing food and cover for undesirable nonnative animals (Bossard et al. 2000). Furthermore, the increased irrigation required by many common landscaping species may provide suitable conditions for the establishment of introduced Argentine ants (*Linepithema humile*) within the site and adjacent biological open space areas.

Argentine ants are known to invade nests of native avian species and can directly cause chick mortality. In addition, Argentine ants may reduce resources for birds through the elimination of arthropod prey in areas where they have invaded (Suarez et al. 2005). Impacts from increased erosion and sedimentation will be minimized through the implementation of the SWPPP. Impacts from invasive species will be minimized through the implementation of the conservation measures. In particular the Tribe has committed to avoid planting invasive species or plants that require intensive irrigation, fertilizers, or pesticides adjacent to preserve areas. In addition, water runoff from landscaped areas will be directed away from sensitive habitat areas and contained and/or treated within the development footprint.

Effect on Recovery/Consistency with MSCP

The project should not impede recovery of the gnatcatcher. Conservation and recovery of the gnatcatcher is largely being planned for via the development and implementation of regional plans like the MSCP. Most of the range of the gnatcatcher within southern California is covered by these plans. Five regional plans that cover the gnatcatcher are now in place, and three more are in development. Although these plans allow for incidental take of the gnatcatcher through destruction and curtailment of habitat, these plans also regulate and mitigate such actions. These plans, including the MSCP, are making substantial contributions to the conservation of the gnatcatcher by creating a network of managed preserves with core habitat areas that are linked.

The proposed Sycuan fee-to-trust application and associated development project is consistent with the goals and objectives of the MSCP. The one pair of gnatcatchers that will be harmed by removal of its primary breeding, feeding, and sheltering habitat is located outside of the planned preserve for MSCP. With regard to the development envelopes, MSCP anticipated approximately 25 percent of any one parcel within the PAMA may be impacted and that the impacts would be sited in the least sensitive areas, to the extent feasible. The Tribe conducted a thorough analysis of the habitats within their ownership and identified those areas with the least biological value for development. These development envelopes were located, to the extent possible, within previously developed, disturbed, or nonnative habitats. The 144.05 acres of habitat proposed for development is significantly less than 25 percent of the overall acreage being addressed. Furthermore, because substantial areas of suitable habitat will remain adjacent to the impact areas, we do not anticipate the project to extirpate any gnatcatcher populations in the project area.

Permanent impacts to gnatcatchers and their habitat will be offset through the conservation of a total of 126.91 acres of coastal sage scrub, chaparral, and riparian habitat. In addition, the north/south regional linkage will be protected and managed as part of the Tribe's NRMP within the 116-acre wildlife corridor identified in Figure 2. Approximately half of the area (608 acres) identified as PAMA in tribal ownership will be acquired by the Service and the WCB from the Tribe as a willing seller. This action, including conservation of Sloan Canyon, will provide perpetual protection through a conservation easement of lands within the core reserve of the MSCP, and the land will be owned in fee and managed and monitored by KDLC consistent with the goals and objectives of the MSCP. The remaining acreage within the PAMA will be managed by the Tribe as part of their NRMP. These significant conservation actions by the

Tribe to ensure consistency with the MSCP will support recovery of the gnatcatcher and a suite of other listed and non-listed native species covered by this important Subarea Plan.

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. We are unaware of any future non-Federal actions that are reasonably certain to occur within the action area and may affect gnatcatchers.

CONCLUSION

After reviewing the current status of the gnatcatcher, the environmental baseline for the action area, effects of the proposed action, and the cumulative effects, it is our biological opinion that the proposed action is not likely to jeopardize the continued existence of the gnatcatcher. We reached these conclusions by considering the following:

- The proposed onsite conservation measures will avoid the potential for loss of active nests and eggs, and the wounding or killing of adult and juvenile gnatcatchers during vegetation removal activities

- The project will permanently impact only 82 acres of coastal sage scrub out of the thousands of acres of gnatcatcher habitat rangewide.

- Only one pair of gnatcatchers will be impacted by the proposed project; and

- Onsite preservation of 32 acres of occupied gnatcatcher habitat in the action area in addition to the 94 acres of habitat within the wildlife corridor will offset the direct loss of lesser quality gnatcatcher habitat and benefit gnatcatcher populations within the action area through perpetual management. The long-term conservation provided by the project supports the overall recovery of the gnatcatcher.

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 or collect, or attempt to engage in any such conduct. Harm is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering. Harass is defined 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) of the Act, taking that is incidental to and not intended as part of the proposed action is not considered to be prohibited taking under the Act provided that such taking is in compliance with the terms and conditions of this incidental take statement.

The measures described below are non-discretionary and must be undertaken by the BIA or the Tribe in order for the exemption in section 7(o)(2) to apply. The BIA has a continuing duty to regulate the activity that is covered by this incidental take statement. If the BIA (1) fails to assume and implement the terms and conditions, or (2) fails to retain oversight to ensure compliance with these terms and conditions by the Tribe, the protective coverage of section 7(o)(2) may lapse. The measures described below for gnatcatcher are non-discretionary and must be undertaken by the BIA so that they become binding conditions of any grant or permit issued to the Tribe, as appropriate, for the exemption in section 7(o)(2) to apply.

To monitor the impact of incidental take, the BIA and/or the Tribe must report the progress of the action and its impact on the species to the Service as specified in the incidental take statement [50 CFR §402.14(i)(3)].

AMOUNT OR EXTENT OF TAKE

The take threshold for gnatcatchers is based on the number of gnatcatcher pairs and the amount of gnatcatcher habitat impacted. If the take threshold is exceeded, it will trigger reinitiation of consultation. Take of gnatcatcher is authorized as follows:

Incidental take of one pair of gnatcatchers is expected in the form of harm, as defined in 50 CFR § 17.3, due to the direct loss 36 acres of occupied coastal sage scrub at the proposed Pow Wow Ground/Starr Ranch housing site. The take threshold will be met if more than 36 acres of coastal sage scrub is removed during clearing and grubbing activities at the site or if more than one gnatcatcher pair is observed within this specific development area.

An additional 46 acres of coastal sage scrub at the Dehesa Road housing and secondary access road and associated housing sites will be removed. No incidental take of gnatcatchers is anticipated or authorized at these two additional sites, which are not known to support resident gnatcatchers.

No death or injury of nestlings or eggs from habitat clearing and construction activities is anticipated; therefore, none is exempted from the section 9 take prohibitions under the Act.

EFFECT OF TAKE

In the accompanying biological opinion, we determined that these levels of anticipated take are not likely to result in jeopardy to the gnatcatcher.

REASONABLE AND PRUDENT MEASURES

The Tribe will implement conservation measures as part of the proposed action to minimize the incidental take of gnatcatchers. In addition to these conservation measures, the following reasonable and prudent measure is necessary to monitor and report the effects of the incidental take on gnatcatchers:

1. The Tribe will monitor and report on compliance with the established take thresholds for gnatcatcher associated with the proposed action.

TERMS AND CONDITIONS

To be exempt from the prohibitions of section 9 of the Act, the Tribe must comply with the following terms and conditions, which implement the reasonable and prudent measure described above.

1.1 During the removal of gnatcatcher habitat, to include all 82 acres of coastal sage scrub, the qualified project biologist will be on site to monitor and report on project actions to stay within the take threshold limits of the project. The Tribe shall provide the BIA and CFWO a report within 30 days of completing the clearing and grubbing activities documenting the extent of gnatcatcher habitat removed and any observations of gnatcatchers within the impacted areas. The purpose of this notification is to ensure that impacts to gnatcatcher habitat from the proposed project do not exceed the take thresholds.

1.2 If the level of take exempted in this biological opinion is exceeded at any time, the qualified project biologist shall immediately (within 24 hours) contact the BIA and CFWO. This includes any observations of resident gnatcatchers within coastal sage scrub at the Dehesa Road housing and secondary access road and associated housing sites since the anticipated take level in this area is zero.

DISPOSITION OF SICK, INJURED, OR DEAD SPECIMENS

Upon locating dead, injured, or sick individuals of threatened or endangered species, initial notification must be made to our Division of Law Enforcement in either San Diego, California, at 619-557-5063 or in Torrance, California, at 310-328-6307 within 3 working days. Written notification must be made within 5 calendar days and include the collection date and time, the location of the animal, and any other pertinent information. Care must be taken in handling sick or injured animals to ensure effective treatment and care, and in handling dead specimens to preserve biological material in the best possible state. The remains of intact specimens shall be placed with educational or research institutions holding the appropriate State and Federal permits. Remains shall be placed with the San Diego Natural History Museum, San Diego. Arrangements regarding proper disposition of potential museum specimens shall be made with the institution by the authorized biologist prior to implementation of the action.

In addition, the CFWO shall be notified immediately (within 24 hours) 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 CFWO contact person is Susan Wynn, who can be contacted at the letterhead address at 760-431-9440.

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. We have not identified any additional conservation measures, other than those already committed to by the Tribe, to further avoid and minimize adverse effects of the proposed action on gnatcatcher.

REINITIATION NOTICE

This concludes formal consultation regarding the Sycuan fee-to-trust application and associated development project as outlined in materials submitted to us. 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; and (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.

With regard to (2) above, if the results of the preconstruction Quino survey are positive, or if resident gnatcatchers are observed in areas deemed unoccupied by gnatcatchers in this biological opinion, further consultation with the Service may be warranted.

If you have any questions regarding this biological opinion, please contact Fish and Wildlife Biologist Susan Wynn of this office at 760-431-9440, extension 216.

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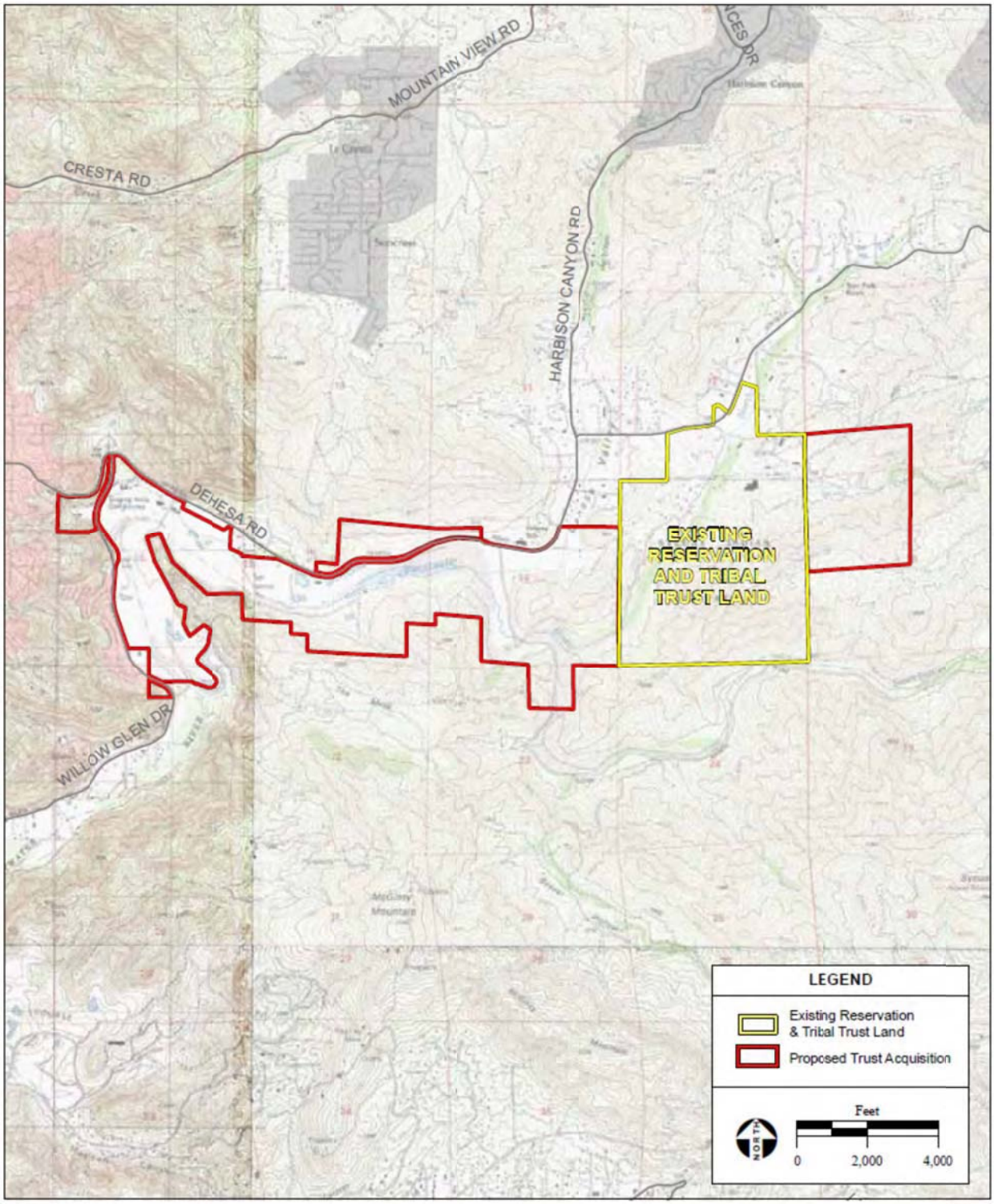

Figure 1. Project site and vicinity

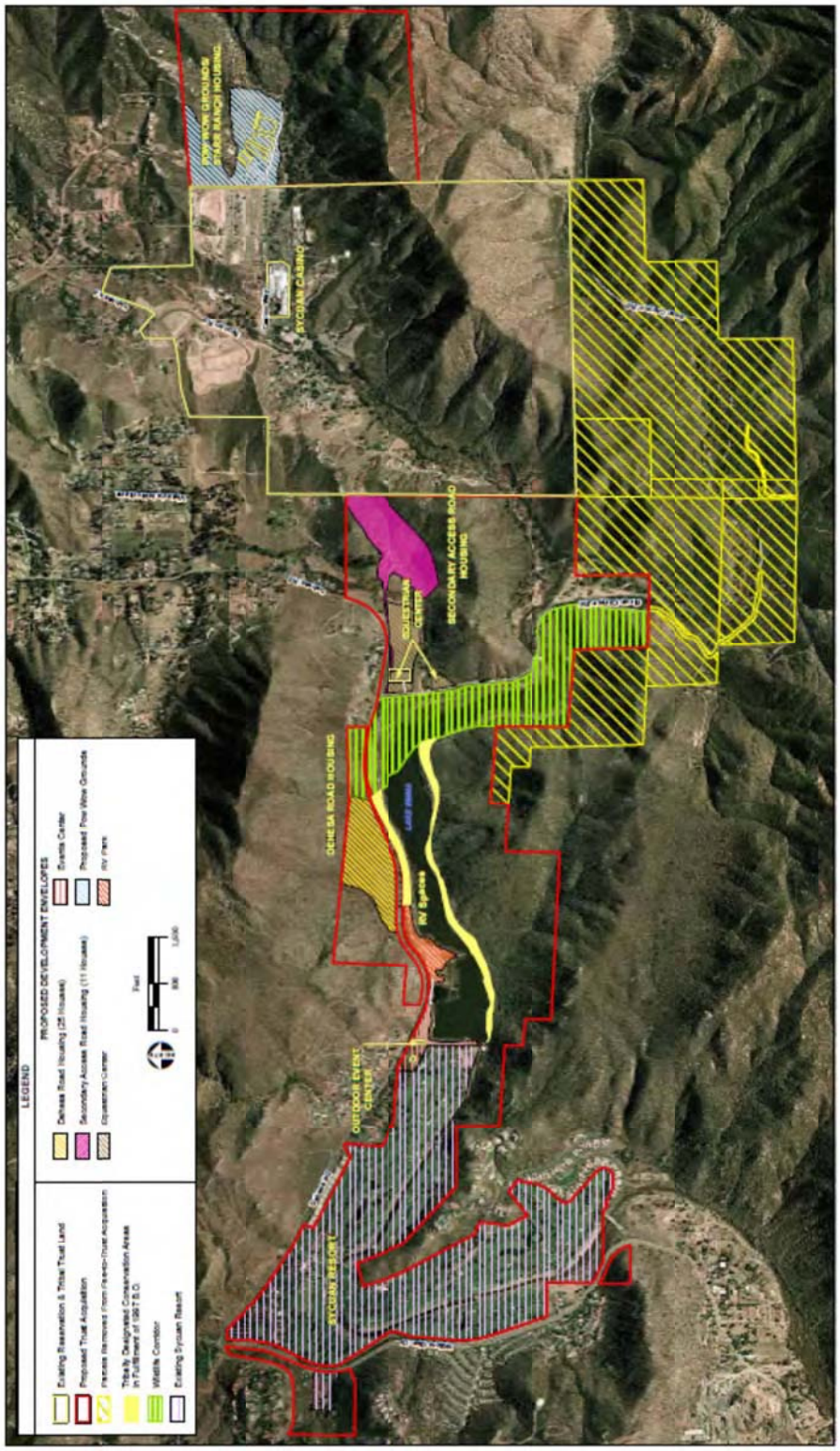

Figure 2. Tribal development project, wildlife corridor, and KDLC acquisition

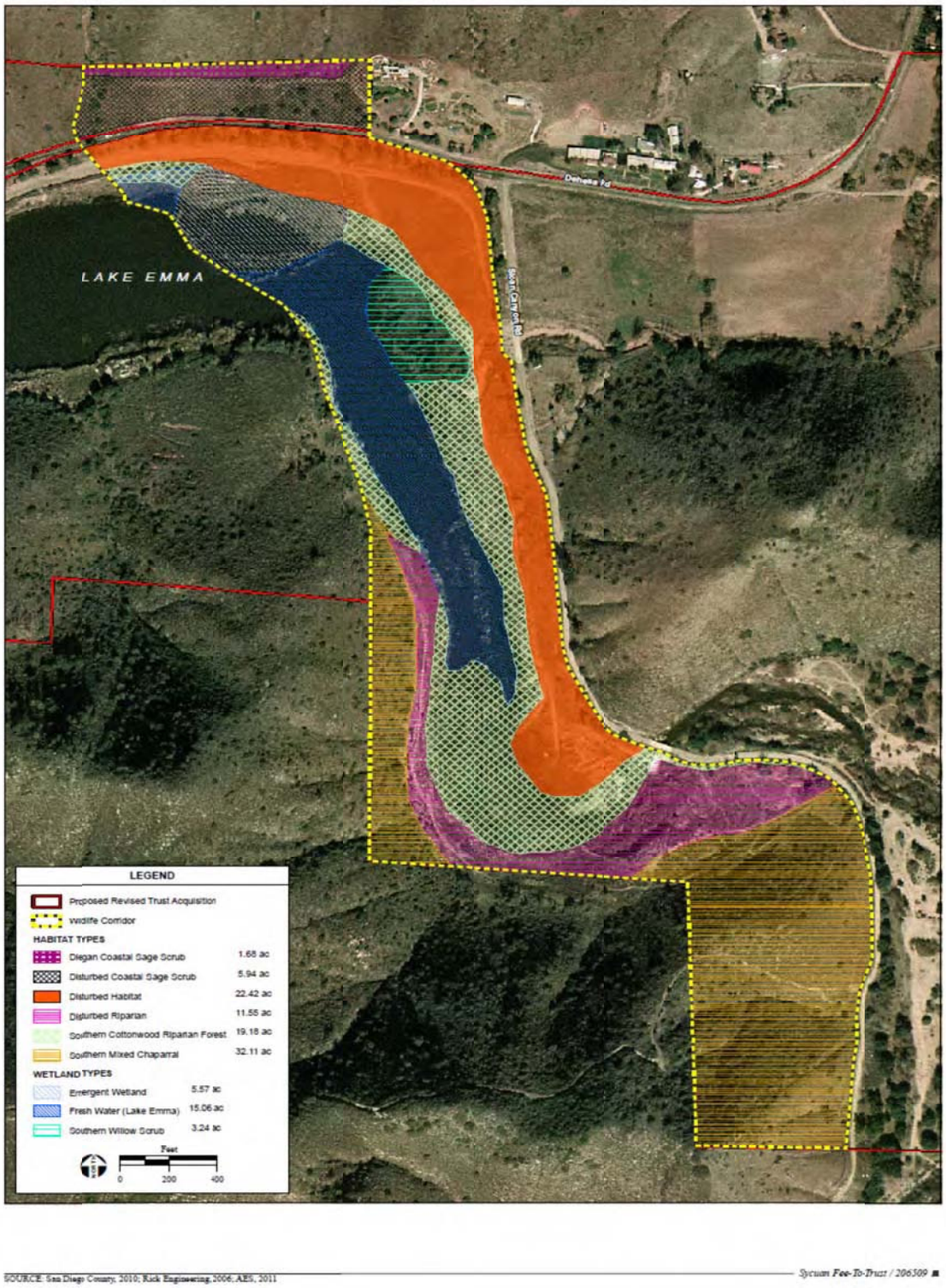

Figure 3. Wildlife corridor

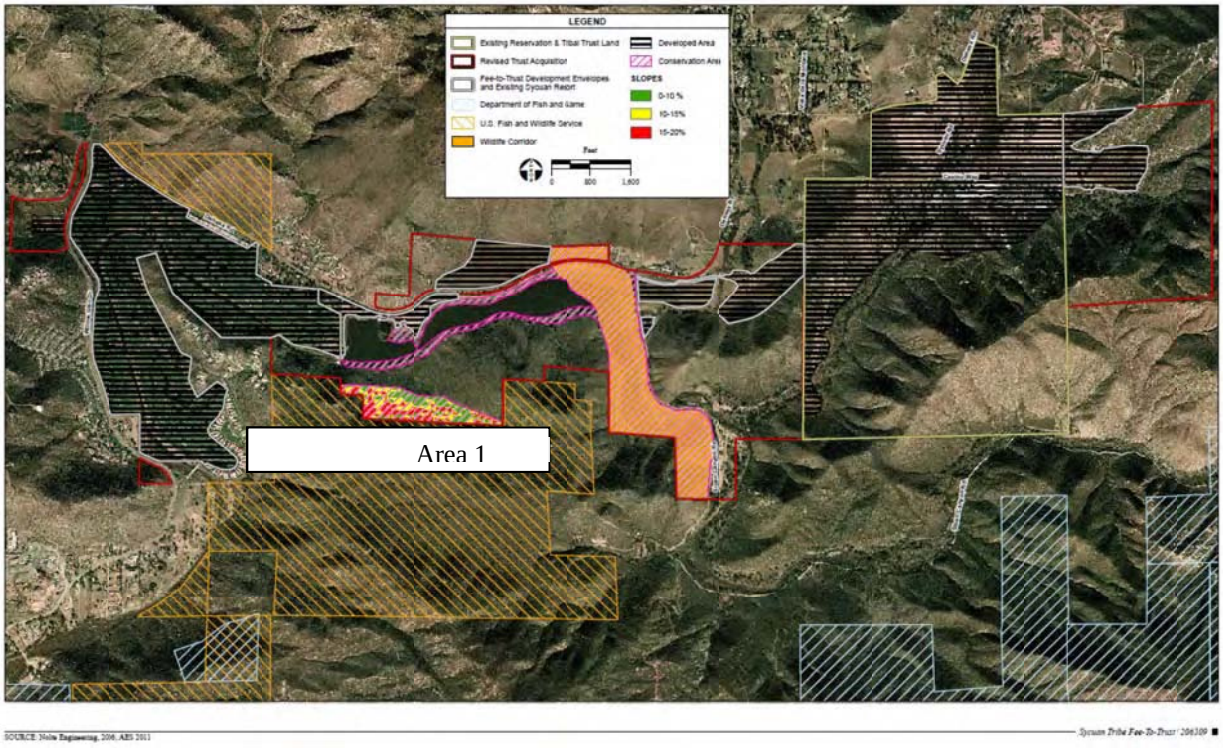

Figure 4. Conservation Area 1 (32 ac of coastal sage scrub)

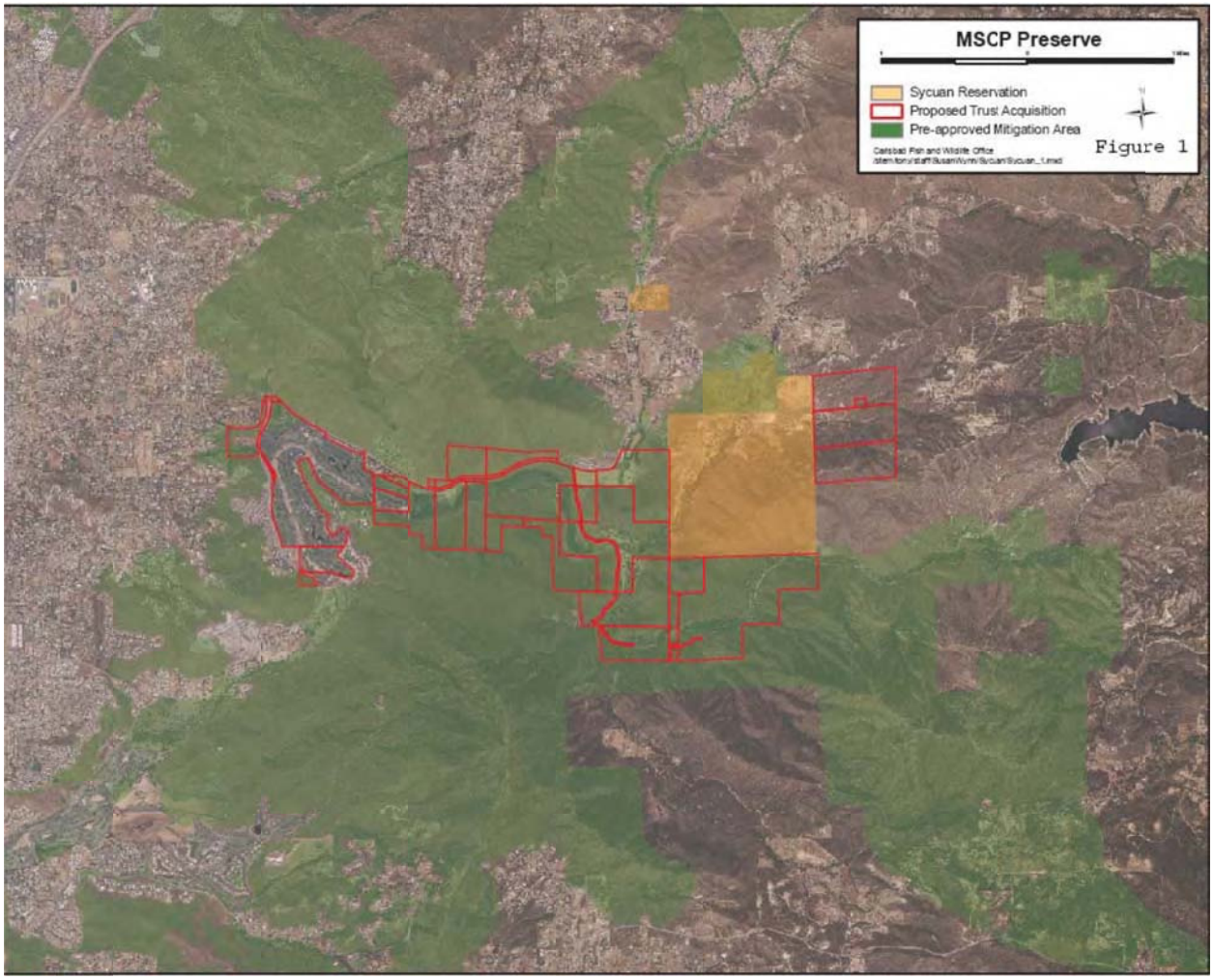

Figure 5. Project site and County of San Diego's MSCP PAMA