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

3-201
(1/97)

FEDERAL FISH AND WILDLIFE PERMIT

1. PERMITTEE

ANTONINI TRUST
11374 TUXFORD STREET
SUN VALLEY, LOS ANGELES COUNTY, CA 91352

2. AUTHORITY-STATUTES
16 USC 1539(A)

REGULATIONS *(Attached)*
50 CFR 17.22
50 CFR 13

3. NUMBER
TE015986-0

4. RENEWABLE	5. MAY COPY
[X] YES	[X] YES
[ ] NO	[ ] NO

6. EFFECTIVE	7. EXPIRES
8/27/99	8/27/2089

8. NAME AND TITLE OF PRINCIPAL OFFICER *(If #1 is a business)*
MARIO E. ANTONINI
TRUSTEE

9. TYPE OF PERMIT
ENDANGERED SPECIES

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED
City of Rialto, County of San Bernardino, California, on lands described in the Habitt Conservation Plan prepared for the Edward Antonini Residuary Trust, Angelus Block company, Inc., and E-Z Mix, Inc.

11. CONDITIONS AND AUTHORIZATIONS:

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

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

C. VALID FOR USE BY PERMITTEE NAMED ABOVE.

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

[X] ADDITIONAL CONDITIONS AND AUTHORIZATIONS ALSO APPLY

12. REPORTING REQUIREMENTS

ISSUED BY	TITLE	DATE
Elizabeth H. Stevens	Elizabeth H. Stevens DEPUTY MANAGER, CA/NV OPERATIONS OFFICE	8/27/99

E. All sections of Title 50 *Code of Federal Regulations*, §§ 13, 17.22, and 17.32 are conditions of this permit (Attachment 1).

F. The authorization granted by this permit is subject to compliance with, and implementation of, the final Habitat Conservation Plan (HCP), and the executed Implementation Agreement (IA), for Angelus Block Company, Inc., E-Z Mix, Inc., and the Edward Antonini Residuary Trust, in connection with development of approximately 65 acres in the City of Rialto, San Bernardino County, California. The HCP and IA are hereby incorporated into the permit.

G. Except as conditioned below, the permittees and their designated agents are authorized under the Federal Endangered Species Act of 1973, as amended (Act), to incidentally take (harass; or harm through habitat loss, including injury or kill) the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*), listed as endangered under the Act, to the extent that take of this species would otherwise be prohibited under section 9 of the Act and its implementing regulations, or pursuant to a rule promulgated under section 4(d) of the Act. Take must be incidental to the construction and operation of the Industrial Project on the 65-acre Development Area, and management of the approximately 30.5 acre Conservation Area, as described in the HCP, and as conditioned herein. Pesticide and herbicide use is not covered by this permit.

Conditions

(i) This permit is not effective until authorized individuals from Angelus Block Company, Inc., E-Z Mix, Inc., and the Edward Antonini Residuary Trust have signed the IA.

(ii) Prior to any ground disturbance on lots 1-3, Antonini Trust shall provide evidence to the Service of recordation of deed restrictions for the Conservation Area.

(iii) Prior to any ground disturbance on lot 1-3, Antonini Trust shall provide the Service with proof of the purchase of the United States Treasury Bond. Antonini Trust shall transfer the Endowment to a Conservation Organization, pursuant to the terms of the IA. Permittees agree that the Endowment may need to be replaced by an alternative funding mechanism, the cost of which shall not exceed $195,251, if necessary to select an acceptable Conservation Organization.

(iv) The Conservation Bank Credits will be available for purchase after the permittees have completed the initial trash and weed removal throughout the Conservation Area (required within 6 months of permit issuance), where appropriate, in coordination with the Service.

(v) Prior to the commencement of construction activities, the Applicants shall notify the Service that fencing and signing, and the education program have been successfully implemented.

H. Upon finding dead, injured, or sick endangered or threatened wildlife species, the permittees or their designated agents must notify orally within 1 working day the Service's Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California 92008, telephone (760) 431-9440. Written notification to the Carlsbad Fish and Wildlife Office must be made within 3 working days and must include the date, time, and location of the specimen and any other pertinent information. Dead animals may be marked in an appropriate manner, photographed, and left on site. Should any sick or injured animals survive, the Service should be contacted regarding final disposition of the animals. In the event that a species has been taken in contravention of any Federal, State, or local law, all relevant information shall be reported within 24 hours to the Carlsbad Fish and Wildlife Office or to the Service's Division of Law Enforcement in San Diego, (619) 557-5063.

I. Annual reports shall be prepared as described in the HCP, due by December 31 of each year, beginning in 2000 and continuing until at least 2004. At the end of the 5th year, the conservation organization shall submit a status report to the Service. If the performance criteria have not been met as established in the enhancement/restoration plan prepared by the land manager for the Conservation Area and approved by the Service's Carlsbad Fish and Wildlife Office, maintenance or re-seeding shall be prescribed and monitoring will be extended until performance criteria are met. Upon completion of the 5-year maintenance and monitoring period, the conservation organization shall implement a long-term maintenance program that will include its own reporting schedule.

One copy of the annual report, and any subsequent reporting, shall be submitted to the Field Supervisor of the Carlsbad Fish and Wildlife Office, and one copy shall be submitted to the Assistant Regional Director, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232.

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

Attachment

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 10465, Feb. 22, 1977; 42 FR 32377, June 24, 1977; 44 FR 54006, Sept. 17, 1979; 44 FR 59083, Oct. 12, 1979; 45 FR 56673, Aug. 25, 1980; 45 FR 78154, Nov. 25, 1980; 46 FR 42680, Aug. 24, 1981; 48 FR 31607, July 8, 1983; 48 FR 57300, Dec. 29, 1983; 50 FR 39687, Sept. 30, 1985; 50 FR 45408, Oct. 31, 1985; 54 FR 38147, Sept. 14, 1989]

Subpart C—Permit Administration

§ 13.21 Issuance of permits.

(a) No permit may be issued prior to the receipt of a written application therefor, unless a written variation from the requirements, as authorized by § 13.4, is inserted into the official file of the Bureau. An oral or written representation of an employee or agent of the United States Government, or an action of such employee or agent, shall not be construed as a permit unless it meets the requirements of a permit as defined in 50 CFR 10.12.

(b) Upon receipt of a properly executed application for a permit, the Director shall issue the appropriate permit unless:

(1) The applicant has been assessed a civil penalty or convicted of any criminal provision of any statute or regulation relating to the activity for which the application is filed, if such assessment or conviction evidences a lack of responsibility.

(2) The applicant has failed to disclose material information required, or has made false statements as to any material fact, in connection with his application;

(3) The applicant has failed to demonstrate a valid justification for the permit and a showing of responsibility;

(4) The authorization requested potentially threatens a wildlife or plant population, or

(5) The Director finds through further inquiry or investigation, or otherwise, that the applicant is not qualified.

(c) *Disqualifying factors.* Any one of the following will disqualify a person from receiving permits issued under this part.

(1) A conviction, or entry of a plea of guilty or nolo contendere, for a felony violation of the Lacey Act, the Migratory Bird Treaty Act, or the Bald and Golden Eagle Protection Act disqualifies any such person from receiving or exercising the privileges of a permit, unless such disqualification has been expressly waived by the Director in response to a written petition.

(2) The revocation of a permit for reasons found in § 13.28 (a)(1) or (a)(2) disqualifies any such person from receiving or exercising the privileges of a similar permit for a period of five years from the date of the final agency decision on such revocation.

(3) The failure to pay any required fees or assessed costs and penalties, whether or not reduced to judgement disqualifies such person from receiving or exercising the privileges of a permit as long as such moneys are owed to the United States. This requirement shall not apply to any civil penalty presently subject to administrative or judicial appeal; provided that the pendency of a collection action brought by the United States or its assignees shall not constitute an appeal within the meaning of this subsection.

(4) The failure to submit timely, accurate, or valid reports as required may disqualify such person from receiving or exercising the privileges of a permit as long as the deficiency exists.

(d) *Use of supplemental information.* The issuing officer, in making a determination under this subsection, may use any information available that is relevant to the issue. This may include any prior conviction, or entry of a plea of guilty or nolo contendere, or assessment of civil or criminal penalty for a violation of any Federal or State law or regulation governing the permitted activity. It may also include any prior permit revocations or suspensions, or any reports of State or local officials. The issuing officer shall consider all relevant facts or information available, and may make independent inquiry or investigation to verify information or substantiate qualifications asserted by the applicant.

(e) *Conditions of issuance and acceptance.* (1) Any permit automatically incorporates within its terms the conditions and requirements of subpart D of this part and of any part(s) or section(s) specifically authorizing or governing the activity for which the permit is issued.

(2) Any person accepting and holding a permit under this subchapter B acknowledges the necessity for close regulation and monitoring of the permitted activity by the Government. By accepting such permit, the permittee consents to and shall allow entry by agents or employees of the Service upon premises where the permitted activity is conducted at any reasonable hour. Service agents or employees may enter such premises to inspect the location; any books, records, or permits required to be kept by this subchapter B; and any wildlife or plants kept under authority of the permit.

(f) *Term of permit.* Unless otherwise modified, a permit is valid during the period specified on the face of the permit. Such period shall include the effective date and the date of expiration.

(g) *Denial.* The issuing officer may deny a permit to any applicant who fails to meet the issuance criteria set forth in this section or in the part(s) or section(s) specifically governing the activity for which the permit is requested.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977; 47 FR 30785, July 15, 1982; 54 FR 38148, Sept. 14, 1989]

§ 13.22 Renewal of permits.

(a) *Application for renewal.* Applicants for renewal of a permit must submit a written application at least 30 days prior to the expiration date of the permit. Applicants must certify in the form required by § 13.12(a)(5) that all statements and information in the original application remain current and correct, unless previously changed or corrected. If such information is no longer current or correct, the applicant must provide corrected information.

(b) *Renewal criteria.* The Service shall issue a renewal of a permit if the applicant meets the criteria for issuance in § 13.21(b) and is not disqualified under § 13.21(c).

(c) *Continuation of permitted activity.* Any person holding a valid, renewable permit, who has complied with this section, may continue the activities authorized by the expired permit until the Service has acted on such person's application for renewal.

(d) *Denial.* The issuing officer may deny renewal of a permit to any applicant who fails to meet the issuance criteria set forth in § 13.21 of this part, or in the part(s) or section(s) specifically governing the activity for which the renewal is requested.

[54 FR 38148, Sept. 14, 1989]

§ 13.23 Amendment of permits.

(a) *Permittee's request.* Where circumstances have changed so that a permittee desires to have any condition of his permit modified, such permittee must submit a full written justification and supporting information in conformity with this part and the part under which the permit was issued.

(b) *Service reservation.* The Service reserves the right to amend any permit for just cause at any time during its term, upon written finding of necessity.

(c) *Change of name or address.* A permittee is not required to obtain a new permit if there is a change in the legal individual or business name, or in the mailing address of the permittee. A permittee is required to notify the issuing office within 10 calendar days of such change. This provision does not authorize any change in location of the conduct of the permitted activity when approval of the location is a qualifying condition of the permit.

[54 FR 38148, Sept. 14, 1989]

§ 13.24 Right of succession by certain persons.

(a) Certain persons, other than the permittee are granted the right to carry on a permitted activity for the remainder of the term of a current permit provided they comply with the provisions of paragraph (b) of this section. Such persons are the following:

(1) The surviving spouse, child, executor, administrator, or other legal representative of a deceased permittee; and

(2) A receiver or trustee in bankruptcy or a court designated assignee for the benefit of creditors.

(b) In order to secure the right provided in this section the person or persons desiring to continue the activity shall furnish the permit to the issuing officer for endorsement within 90 days

from the date the successor begins to carry on the activity.

[54 FR 38149, Sept. 14, 1989]

§ 13.25 Permits not transferable; agents.

(a) Permits issued under this part are not transferable or assignable. Some permits authorize certain activities in connection with a business or commercial enterprise and in the event of any lease, sale, or transfer of such business entity, the successor must obtain a permit prior to continuing the permitted activity. However, certain limited rights of succession are provided in § 13.24.

(b) Except as otherwise stated on the face of the permit, any person who is under the direct control of the permittee, or who is employed by or under contract to the permittee for purposes authorized by the permit, may carry out the activity authorized by the permit, as an agent for the permittee.

[54 FR 38149, Sept. 14, 1989]

§ 13.26 Discontinuance of permit activity.

When a permittee, or any successor to a permittee as provided for by § 13.24, discontinues activities authorized by a permit, the permittee shall within 30 calendar days of the discontinuance return the permit to the issuing office together with a written statement surrendering the permit for cancellation. The permit shall be deemed void and cancelled upon its receipt by the issuing office. No refund of any fees paid for issuance of the permit or for any other fees or costs associated with a permitted activity shall be made when a permit is surrendered for cancellation for any reason prior to the expiration date stated on the face of the permit.

[54 FR 38149, Sept. 14, 1989]

§ 13.27 Permit suspension.

(a) *Criteria for suspension.* The privileges of exercising some or all of the permit authority may be suspended at any time if the permittee is not in compliance with the conditions of the permit, or with any applicable laws or regulations governing the conduct of the permitted activity. The issuing officer may also suspend all or part of the privileges authorized by a permit if the permittee fails to pay any fees, penalties or costs owed to the Government. Such suspension shall remain in effect until the issuing officer determines that the permittee has corrected the deficiencies.

(b) *Procedure for suspension.* (1) When the issuing officer believes there are valid grounds for suspending a permit the permittee shall be notified in writing of the proposed suspension by certified or registered mail. This notice shall identify the permit to be suspended, the reason(s) for such suspension, the actions necessary to correct the deficiencies, and inform the permittee of the right to object to the proposed suspension. The issuing officer may amend any notice of suspension at any time.

(2) Upon receipt of a notice of proposed suspension the permittee may file a written objection to the proposed action. Such objection must be in writing, must be filed within 45 calendar days of the date of the notice of proposal, must state the reasons why the permittee objects to the proposed suspension, and may include supporting documentation.

(3) A decision on the suspension shall be made within 45 days after the end of the objection period. The issuing officer shall notify the permittee in writing of the Service's decision and the reasons therefore. The issuing officer shall also provide the applicant with the information concerning the right to request reconsideration of the decision under § 13.29 of this part and the procedures for requesting reconsideration.

[54 FR 38149, Sept. 14, 1989]

§ 13.28 Permit revocation.

(a) *Criteria for revocation.* A permit may be revoked for any of the following reasons:

(1) The permittee willfully violates any Federal or State statute or regulation, or any Indian tribal law or regulation, or any law or regulation of any foreign country, which involves a violation of the conditions of the permit or of the laws or regulations governing the permitted activity; or

(2) The permittee fails within 60 days to correct deficiencies that were the cause of a permit suspension; or

(3) The permittee becomes disqualified under § 13.21(c) of this part; or

(4) A change occurs in the statute or regulation authorizing the permit that prohibits the continuation of a permit issued by the Service; or

(5) The population(s) of the wildlife or plant that is subject of the permit declines to the extent that continuation of the permitted activity would be detrimental to maintenance or recovery of the affected population.

(b) *Procedure for revocation.* (1) When the issuing officer believes there are valid grounds for revoking a permit, the permittee shall be notified in writing of the proposed revocation by certified or registered mail. This notice shall identify the permit to be revoked, the reason(s) for such revocation, the proposed disposition of the wildlife, if any, and inform the permittee of the right to object to the proposed revocation. The issuing officer may amend any notice of revocation at any time.

(2) Upon receipt of a notice of proposed revocation the permittee may file a written objection to the proposed action. Such objection must be in writing, must be filed within 45 calendar days of the date of the notice of proposal, must state the reasons why the permittee objects to the proposed revocation, and may include supporting documentation.

(3) A decision on the revocation shall be made within 45 days after the end of the objection period. The issuing officer shall notify the permittee in writing of the Service's decision and the reasons therefore, together with the information concerning the right to request and the procedures for requesting reconsideration.

(4) Unless a permittee files a timely request for reconsideration, any wildlife held under authority of a permit that is revoked must be disposed of in accordance with instructions of the issuing officer. If a permittee files a timely request for reconsideration of a proposed revocation, such permittee may retain possession of any wildlife held under authority of the permit until final disposition of the appeal process.

[54 FR 38149, Sept. 14, 1989]

§ 13.29 Review procedures.

(a) *Request for reconsideration.* Any person may request reconsideration of an action under this part if that person is one of the following:

(1) An applicant for a permit who has received written notice of denial;

(2) An applicant for renewal who has received written notice that a renewal is denied;

(3) A permittee who has a permit amended, suspended, or revoked, except for those actions which are required by changes in statutes or regulations, or are emergency changes of limited applicability for which an expiration date is set within 90 days of the permit change; or

(4) A permittee who has a permit issued or renewed but has not been granted authority by the permit to perform all activities requested in the application, except when the activity requested is one for which there is no lawful authority to issue a permit.

(b) *Method of requesting reconsideration.* Any person requesting reconsideration of an action under this part must comply with the following criteria:

(1) Any request for reconsideration must be in writing, signed by the person requesting reconsideration or by the legal representative of that person, and must be submitted to the issuing officer.

(2) The request for reconsideration must be received by the issuing officer within 45 calendar days of the date of notification of the decision for which reconsideration is being requested.

(3) The request for reconsideration shall state the decision for which reconsideration is being requested and shall state the reason(s) for the reconsideration, including presenting any new information or facts pertinent to the issue(s) raised by the request for reconsideration.

(4) The request for reconsideration shall contain a certification in substantially the same form as that provided by § 13.12(a)(5). If a request for reconsideration does not contain such certification, but is otherwise timely

and appropriate, it shall be held and the person submitting the request shall be given written notice of the need to submit the certification within 15 calendar days. Failure to submit certification shall result in the request being rejected as insufficient in form and content.

(c) *Inquiry by the Service.* The Service may institute a separate inquiry into the matter under consideration.

(d) *Determination of grant or denial of a request for reconsideration.* The issuing officer shall notify the permittee of the Service's decision within 45 days of the receipt of the request for reconsideration. This notification shall be in writing, shall state the reasons for the decision, and shall contain a description of the evidence which was relied upon by the issuing officer. The notification shall also provide information concerning the right to appeal, the official to whom an appeal may be addressed, and the procedures for making an appeal.

(e) *Appeal.* A person who has received an adverse decision following submission of a request for reconsideration may submit a written appeal to the Regional Director for the region in which the issuing office is located, or to the Director for offices which report directly to the Director. An appeal must be submitted within 45 days of the date of the notification of the decision on the request for reconsideration. The appeal shall state the reason(s) and issue(s) upon which the appeal is based and may contain any additional evidence or arguments to support the appeal.

(f) *Decision on appeal.* (1) Before a decision is made concerning the appeal the appellant may present oral arguments before the Regional Director or the Director, as appropriate, if such official judges oral arguments are necessary to clarify issues raised in the written record.

(2) The Service shall notify the appellant in writing of its decision within 45 calendar days of receipt of the appeal, unless extended for good cause and the appellant notified of the extension.

(3) The decision of the Regional Director or the Director shall constitute the final administrative decision of the Department of the Interior.

[54 FR 38149, Sept. 14, 1989]

Subpart D—Conditions

§ 13.41 Humane conditions.

Any live wildlife possessed under a permit must be maintained under humane and healthful conditions.

[54 FR 38150, Sept. 14, 1989]

§ 13.42 Permits are specific.

The authorizations on the face of a permit which set forth specific times, dates, places, methods of taking, numbers and kinds of wildlife or plants, location of activity, authorize certain circumscribed transactions, or otherwise permit a specifically limited matter, are to be strictly construed and shall not be interpreted to permit similar or related matters outside the scope of strict construction.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977]

§ 13.43 Alteration of permits.

Permits shall not be altered, erased, or mutilated, and any permit which has been altered, erased, or mutilated shall immediately become invalid. Unless specifically permitted on the face thereof, no permit shall be copied, nor shall any copy of a permit issued pursuant to this subchapter B be displayed, offered for inspection, or otherwise used for any official purpose for which the permit was issued.

§ 13.44 Display of permit.

Any permit issued under this part shall be displayed for inspection upon request to the Director or his agent, or to any other person relying upon its existence.

§ 13.45 Filing of reports.

Permittees may be required to file reports of the activities conducted under the permit. Any such reports shall be filed not later than March 31 for the preceding calendar year ending December 31, or any portion thereof, during which a permit was in force, unless the regulations of this subchapter B or the provisions of the permit set forth other reporting requirements.

§ 13.46 Maintenance of records.

From the date of issuance of the permit, the permittee shall maintain complete and accurate records of any taking, possession, transportation, sale, purchase, barter, exportation, or importation of plants obtained from the wild (excluding seeds) or wildlife pursuant to such permit. Such records shall be kept current and shall include names and addresses of persons with whom any plant obtained from the wild (excluding seeds) or wildlife has been purchased, sold, bartered, or otherwise transferred, and the date of such transaction, and such other information as may be required or appropriate. Such records shall be legibly written or reproducible in English and shall be maintained for five years from the date of expiration of the permit.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977; 54 FR 38150, Sept. 14, 1989]

§ 13.47 Inspection requirement.

Any person holding a permit under this subchapter B shall allow the Director's agent to enter his premises at any reasonable hour to inspect any wildlife or plant held or to inspect, audit, or copy any permits, books, or records required to be kept by regulations of this subchapter B.

[39 FR 1161, Jan. 4, 1974, as amended at 42 FR 32377, June 24, 1977]

§ 13.48 Compliance with conditions of permit.

Any person holding a permit under subchapter B and any person acting under authority of such permit must comply with all conditions of the permit and with all appllicable laws and regulations governing the permitted activity.

[54 FR 38150, Sept. 14, 1989]

§ 13.49 Surrender of permit.

Any person holding a permit under subchapter B shall surrender such permit to the issuing officer upon notification that the permit has been suspended or revoked by the Service, and all appeal procedures have been exhausted.

[54 FR 38150, Sept. 14, 1989]

§ 13.50 Acceptance of liability.

Any person holding a permit under subchapter B assumes all liability and responsibility for the conduct of any activity conducted under the authority of such permit.

[54 FR 38150, Sept. 14, 1989]

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

Subpart A—Introduction

Subpart B—Importation and Exportation at Designated Ports

Subpart C—Designated Port Exception Permits

Subpart D—(Reserved)

Subpart E—Inspection and Clearance of Wildlife

270—52 FR 21480; June 5, 1987.
271—52 FR 21484; June 5, 1987.
274—52 FR 22589; June 12, 1987.
275—52 FR 22933; June 16, 1987.
276—52 FR 22936; June 16, 1987.
277—52 FR 22939; June 16, 1987.
285—52 FR 32929; September 1, 1987.
286—52 FR 34917; September 16, 1987.
291—52 FR 36270; September 28, 1987.
293—52 FR 37420; October 6, 1987.
295—52 FR 41440; October 28, 1987.
297—52 FR 42071; November 2, 1987.
298—52 FR 42657; November 6, 1987.
300—52 FR 44401; November 19, 1987.
301—52 FR 46087; December 4, 1987.
302—53 FR 3565; February 5, 1988.
303—53 FR 3567; February 5, 1988.
305—53 FR 4629; February 17, 1988.
306—53 FR 10884; April 4, 1988.
307—53 FR 11612; April 7, 1988.
308—53 FR 11615; April 7, 1988.
309—53 FR 23742; June 23, 1988.
310—53 FR 23745; June 23, 1988.
311—53 FR 23748; June 23, 1988.
314—53 FR 27137; July 18, 1988.
315—53 FR 27141; July 18, 1988.
318—53 FR 32827; August 26, 1988.
319—53 FR 32830; August 26, 1988.
321—53 FR 33996; September 1, 1988.
324—53 FR 34701; September 7, 1988.
325—53 FR 34705; September 7, 1988.
326—53 FR 35080; September 9, 1988.
329—53 FR 37972; September 28, 1988.
330—53 FR 37975; September 28, 1988.
331—53 FR 37978; September 28, 1988.
332—53 FR 37982; September 28, 1988.
333—53 FR 38451; September 30, 1988.
335—53 FR 38456; September 30, 1988.
339—53 FR 38474; September 30, 1988.
341—53 FR 45861; November 14, 1988.
343—54 FR 2134; January 19, 1989.
344—54 FR 5938; February 7, 1989.
346—54 FR 10154; March 10, 1989.
347—54 FR 14967; April 14, 1989.
352—54 FR 29658; July 13, 1989.
353—54 FR 29663; July 13, 1989.
354—54 FR 29730; July 14, 1989.
355—54 FR 30554; July 21, 1989.
356—54 FR 31196; July 27, 1989.
361—54 FR 35305; August 24, 1989.
362—54 FR 38947; September 21, 1989.
364—54 FR 38950; September 21, 1989.
367—54 FR 39857; September 28, 1989.
368—54 FR 39863; September 28, 1989.
370—55 FR 433; January 5, 1990.
371—55 FR 4157; February 6, 1990.
372—55 FR 4159; February 6, 1990.
373—55 FR 12790; April 5, 1990.
374—55 FR 12793; April 5, 1990.

381—55 FR 12797; April 5, 1990.
385—55 FR 13491; April 10, 1990.
386—55 FR 13911; April 13, 1990.
389—55 FR 24246; June 15, 1990.
392—55 FR 25599; June 21, 1990.
395—55 FR 29370; July 19, 1990.
397—55 FR 32255; August 8, 1990.
398—55 FR 32257; August 8, 1990.
402—55 FR 39864; September 28, 1990.
403—55 FR 39867; September 28, 1990.
406—55 FR 49050; November 26, 1990.
409—55 FR 50187; December 5, 1990.
413—56 FR 1453; January, 14, 1991.
414—56 FR 1457; January, 14, 1991.
418—56 FR 1936; January, 18, 1991.
420—56 FR 16024; April 19, 1991.
422—56 FR 19959; May 1, 1991.
424—56 FR 21091; May 7, 1991.
425—56 FR 21096; May 7, 1991.
429—56 FR 32983; July 18, 1991.
430—56 FR 34154; July 26, 1991.
434—56 FR 46239; September 11, 1991.
435—56 FR 47694; September 20, 1991.
436—56 FR 47699; September 20, 1991.
437—56 FR 48751; September 20, 1991.
438—56 FR 48755; September 20, 1991.
439—56 FR 49636; September 30, 1991.
440—56 FR 49639; September 30, 1991.
441—56 FR 49643; September 30, 1991.
445—56 FR 49853; October 2, 1991.
448—56 FR 55785; October 29, 1991.
450—56 FR 57849; November 14, 1991.
451—56 FR 60937; November 29, 1991.
452—56 FR 60940; November 29, 1991.
453—56 FR 61182; December 2, 1991.
457—57 FR 1403; January 14, 1992.
458—57 FR 2053; January 17, 1992.
460—57 FR 14653; April 22, 1992.
461—57 FR 14785; April 22, 1992.
463—57 FR 19819; May 8, 1992.
464—57 FR 20588; May 13, 1992.
465—57 FR 20592; May 13, 1992.
466—57 FR 20595; May 13, 1992.
467—57 FR 20787; May 15, 1992.
468—57 FR 21564; May 20, 1992.
470—57 FR 21574; May 20, 1992.
471—57 FR 24199; June 8, 1992.
472—57 FR 27858; June 22, 1992.
473—57 FR 27863; June 22, 1992.
474—57 FR 27867; June 22, 1992.
476—57 FR 30168; July 8, 1992.
477—57 FR 44340; September 25, 1992.
478—57 FR 44708; September 29, 1992.
480—57 FR 46339; October 8, 1992.
481—57 FR 46344; October 8, 1992.
482—57 FR 46747; October 28, 1992.
490—58 FR 8242; February 12, 1993.
491—58 FR 11552; February 26, 1993.
497—58 FR 18035; April 7, 1993.

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500—58 FR 25754; April 27, 1993.
501—58 FR 25758; April 27, 1993.
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507—58 FR 37443; July 12, 1993.
509—58 FR 40547; July 28, 1993.
510—58 FR 40551; July 28, 1993.
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515—58 FR 49879; September 23, 1993.
519—58 FR 52030; October 6 1993.
521—58 FR 53807; October 10/18/93.
523—58 FR 62050; November 24, 1993.
524—58 FR 69480; December 27, 1993
528—59 FR 5510; February 4 1994.
529—59 FR 8141; February 18 1994.
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532—59 FR 10324; March 4, 1994.
535—59 FR 13840; March 23, 1994.
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553—59 FR 49031; September 26, 1994.
555—59 FR 49863; September 30, 1994.
556—59 FR 50857; October 6, 1994.
558—59 FR 56333; November 10, 1994.
559—59 FR 56350; November 10, 1994.
560—59 FR 59177; November 16, 1994.
564—59 FR 60568; November 25, 1994.
565—59 FR 62352; December 5, 1994.
567—59 FR 64623; December 15, 1994.
570—60 FR 61; January 3, 1995.
572—60 FR 3562; January 18, 1995.
575—60 FR 6684; February 3, 1995.
578—60 FR 12846; March 7, 1995.
581—60 FR 10697; March 15, 1996.
584—61 FR 31058; June 19, 1996.
586—61 FR 41023; August 7, 1996.
587—61 FR 43184; August 21, 1996.

[48 FR 34182, July 27, 1983]

EDITORIAL NOTE 1: FOR FEDERAL REGISTER citations affecting the table in §17.12(h), see the listing above.

EDITORIAL NOTE: FOR FEDERAL REGISTER citations affecting §17.12, see the List of CFR Sections Affected appearing in the Finding Aids section of this volume.

Subpart C—Endangered Wildlife

§ 17.21 Prohibitions.

(a) Except as provided in subpart A of this part, or under permits issued pursuant to §17.22 or §17.23, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed, any of the acts described in paragraphs (b) through (f) of this section in regard to any endangered wildlife.

(b) *Import or export.* It is unlawful to import or to export any endangered wildlife. Any shipment in transit through the United States is an importation and an exportation, whether or not it has entered the country for customs purposes.

(c) *Take.* (1) It is unlawful to take endangered wildlife within the United States, within the territorial sea of the United States, or upon the high seas. The high seas shall be all waters seaward of the territorial sea of the United States, except waters officially recognized by the United States as the territorial sea of another country, under international law.

(2) Notwithstanding paragraph (c)(1) of this section, any person may take endangered wildlife in defense of his own life or the lives of others.

(3) Notwithstanding paragraph (c)(1) of this section, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, or a State conservation agency, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take endangered wildlife without a permit if such action is necessary to:

(i) Aid a sick, injured or orphaned specimen; or

(ii) Dispose of a dead specimen; or

(iii) Salvage a dead specimen which may be useful for scientific study; or

(iv) Remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing

the specimen unharmed, in a remote area.

(4) Any taking pursuant to paragraphs (c) (2) and (3) of this section must be reported in writing to the U.S. Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19183, Washington, DC 20036, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from Service.

(5) Notwithstanding paragraph (c)(1) of this section, any qualified employee or agent of a State Conservation Agency which is a party to a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties take those endangered species which are covered by an approved cooperative agreement for conservation programs in accordance with the Cooperative Agreement, provided that such taking is not reasonably anticipated to result in:

(i) The death or permanent disabling of the specimen;

(ii) The removal of the specimen from the State where the taking occurred;

(iii) The introduction of the specimen so taken, or of any progeny derived from such a specimen, into an area beyond the historical range of the species; or

(iv) The holding of the specimen in captivity for a period of more than 45 consecutive days.

(d) *Possession and other acts with unlawfully taken wildlife.* (1) It is unlawful to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any endangered wildlife which was taken in violation of paragraph (c) of this section.

Example. A person captures a whooping crane in Texas and gives it to a second person, who puts it in a closed van and drives thirty miles, to another location in Texas. The second person then gives the whooping crane to a third person, who is apprehended with the bird in his possession. All three have violated the law—the first by illegally taking the whooping crane; the second by transporting an illegally taken whooping crane; and the third by possessing an illegally taken whooping crane.

(2) Notwithstanding paragraph (d)(1) of this section, Federal and State law enforcement officers may possess, deliver, carry, transport or ship any endangered wildlife taken in violation of the Act as necessary in performing their official duties.

(e) *Interstate or foreign commerce.* It is unlawful to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity, any endangered wildlife.

(f) *Sale or offer for sale.* (1) It is unlawful to sell or to offer for sale in interstate or foreign commerce any endangered wildlife.

(2) An advertisement for the sale of endangered wildlife which carries a warning to the effect that no sale may be consummated until a permit has been obtained from the U.S. Fish and Wildlife Service shall not be considered an offer for sale within the meaning of this section.

(g) *Captive-bred wildlife.* (1) Notwithstanding paragraphs (b), (c), (e) and (f) of this section, any person may take; import or export; deliver, receive, carry, transport or ship in interstate or foreign commerce, in the course of a commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered wildlife that is bred in captivity in the United States, provided the principal purpose of these activities is to facilitate captive breeding, and provided the following conditions are met:

(i) The wildlife is a species having a natural geographic distribution not including any part of the United States, or the wildlife is a species that the Director has determined to be eligible in accordance with paragraph (g)(5) of this section;

(ii) The purpose of such activity is to enhance the propagation or survival of the affected species;

(iii) Such activity does not involve interstate or foreign commerce, in the course of a commercial activity, with respect to non-living wildlife;

(iv) Each specimen of wildlife to be imported is uniquely identified by a band, tattoo or other means that was reported in writing to an official of the Service at a port of export prior to export from the United States, and

(v) Any person subject to the jurisdiction of the United States who engages in any of the activities authorized by this paragraph does so in accordance with paragraphs (g) (2), (3) and (4) of this section.

(2) Any person subject to the jurisdiction of the United States seeking to engage in any of the activities authorized by this paragraph must first register with the Service (Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240). Requests for registration must be submitted on an official application form (Form 3–200) provided by the Service, and must include the following information:

(i) The types of wildlife sought to be covered by the registration, identified by common and scientific name to the taxonomic level of family, genus or species;

(ii) A description of the applicant's experience in maintaining and propagating the types of wildlife sought to be covered by the registration, or in conducting research directly related to maintaining and propagating such wildlife;

(iii) A description, if appropriate, of the means by which the applicant intends to educate the public about the ecological role and conservation needs of the affected species;

(iv) Photograph(s) or other evidence clearly depicting the facilities where such wildlife will be maintained; and

(v) A copy of the applicant's license or registration, if any, under the animal welfare regulations of the U.S. Department of Agriculture (9 CFR part 2).

(3) Upon receiving a complete application, the Director will decide whether or not the registration will be approved. In making his decision, the Director will consider, in addition to the general criteria in §13.2(b) of this subchapter, whether the expertise, facilities or other resources available to the applicant appear adequate to enhance the propagation or survival of the affected wildlife. Each person so registered must maintain accurate written records of activities conducted under the registration and must submit to the Director a written annual report of such activities.

(4) Any person subject to the jurisdiction of the United States seeking to export or conduct foreign commerce in captive-bred endangered wildlife which will not remain under the care of that person must first obtain approval by providing written evidence to satisfy the Director that the proposed recipient of the wildlife has expertise, facilities or other resources adequate to enhance the propagation or survival of such wildlife and that the proposed recipient will use such wildlife for purposes of enhancing the propagation or survival of the affected species.

(5)(i) The Director shall use the following criteria to determine if wildlife of any species having a natural geographic distribution that includes any part of the United States is eligible for the provisions of this paragraph:

(A) Whether there is a low demand for taking of the species from wild populations, either because of the success of captive breeding or because of other reasons, and

(B) Whether the wild populations of the species are effectively protected from unauthorized taking as a result of the inaccessibility of their habitat to man or as a result of the effectiveness of law enforcement.

(ii) The Director shall follow the procedures set forth in section 4(b) and section 4(f)(2)(A) of the Act and in the regulations promulgated thereunder with respect to petitions and notification of the public and governors of affected States when determining the eligibility of species for purposes of this paragraph.

(iii) In accordance with the criteria in paragraph (g)(5)(i) of this section, the Director has determined the following species to be eligible for the provisions of this paragraph:

Laysan teal (*Anas laysanensis*).

[40 FR 44415, Sept. 26, 1975, as amended at 40 FR 53400, Nov. 18, 1975; 41 FR 19226, May 11, 1976; 44 FR 31580, May 31, 1979; 44 FR 54007, Sept. 17, 1979; 58 FR 68325, Dec. 27, 1993]

§ 17.22 Permits for scientific purposes, enhancement of propagation or survival, or for incidental taking.

Upon receipt of a complete application, the Director may issue a permit authorizing any activity otherwise prohibited by §17.21, in accordance with the issuance criteria of this section, for scientific purposes, for enhancing the

propagation or survival, or for the incidental taking of endangered wildlife. Such permits may authorize a single transaction, a series of transactions, or a number of activities over a specific period of time. (See §17.32 for permits for threatened species.) The Director shall publish notice in the FEDERAL REGISTER of each application for a permit that is made under this section. Each notice shall invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application. The 30-day period may be waived by the Director in an emergency situation where the life or health of an endangered animal is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published in the FEDERAL REGISTER within 10 days following issuance of the permit.

(a)(1) *Application requirements for permits for scientific purposes or for the enhancement of propagation or survival.* Applications for permits under this paragraph must be submitted to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201, by the person wishing to engage in the activity prohibited by §17.21. Each application must be submitted on an official application (Form 3–200) provided by the Service and must include as an attachment, all of the following information:

(i) The common and scientific names of the species sought to the covered by the permit, as well as the number, age, and sex of such species, and the activity sought to be authorized (such as taking, exporting, selling in interstate commerce);

(ii) A statement as to whether, at the time of application, the wildlife sought to be covered by the permit (A) is still in the wild, (B) has already been removed from the wild, or (C) was born in captivity;

(iii) A resume of the applicant's attempts to obtain the wildlife sought to be covered by the permit in a manner which would not cause the death or removal from the wild of such wildlife;

(iv) If the wildlife sought to be covered by the permit has already been removed from the wild, the country and place where such removal occurred; if the wildlife sought to be covered by the permit was born in captivity, the country and place where such wildlife was born;

(v) A complete description and address of the institution or other facility where the wildlife sought to be covered by the permit will be used, displayed, or maintained;

(vi) If the applicant seeks to have live wildlife covered by the permit, a complete description, including photographs or diagrams, of the facilities to house and/or care for the wildlife and a resume of the experience of those person who will be caring for the wildlife;

(vii) A full statement of the reasons why the applicant is justified in obtaining a permit including the details of the activities sought to be authorized by the permit;

(viii) If the application is for the purpose of enhancement of propagation, a statement of the applicant's willingness to participate in a cooperative breeding program and to maintain or contribute data to a studbook;

(ix) The information collection requirements contained in this paragraph have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018–0022. This information is being collected to provide information necessary to evaluate permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations, on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a)(1) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in §13.21(b) of this subchapter, the following factors:

(i) Whether the purpose for which the permit is required is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit;

(ii) The probable direct and indirect effect which issuing the permit would have on the wild populations of the wildlife sought to be covered by the permit;

(iii) Whether the permit, if issued, would in any way, directly or indirectly, conflict with any known program intended to enhance the survival probabilities of the population from which the wildlife sought to be covered by the permit was or would be removed;

(iv) Whether the purpose for which the permit is required would be likely to reduce the threat of extinction facing the species of wildlife sought to be covered by the permit;

(v) The opinions or views of scientists or other persons or organizations having expertise concerning the wildlife or other matters germane to the application; and

(vi) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application.

(3) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this paragraph shall be subject to the special condition that the escape of living wildlife covered by the permit shall be immediately reported to the Service office designated in the permit.

(4) *Duration of permits.* The duration of permits issued under this paragraph shall be designated on the face of the permit.

(b)(1) *Application requirements for permits for incidental taking.* Applications for permits under this paragaph must be submitted to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201, by the person wishing to engage in the activity prohibited by §17.21(c). Each application must be submitted on an official application (Form 3–200) provided by the Service and must include as an attachment all of the following information:

(i) A complete description of the activity sought to be authorized;

(ii) The common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, if known;

(iii) A conservation plan that specifies:

(A) The impact that will likely result from such taking;

(B) What steps the applicant will take to monitor, minimize, and mitigate such impacts, the funding that will be available to implement such steps, and the procedures to be used to deal with unforeseen circumstances;

(C) What alternative actions to such taking the applicant considered and the reasons why such alternatives are not proposed to be utilized; and

(D) Such other measures that the Director may require as being necessary or appropriate for purposes of the plan;

(iv) The information collection requirements contained in this paragraph have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018–0022. This information is being collected to provide information necessary to evaluate permit applications. This information will be used to review permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations, on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether or not a permit should be issued. The Director shall consider the general criteria in §13.21(b) of this subchapter and shall issue the permit if he finds that: (i) The taking will be incidental; (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (iii) the applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided; (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; (v) the measures, if any, required under paragraph (b)(1)(iii)(D) of this section will be met; and (vi) he has received such other assurances as he may require that the plan will be implemented. In making

his decision, the Director shall also consider the anticipated duration and geographic scope of the applicant's planned activities, including the amount of listed species habitat that is involved and the degree to which listed species and their habitats are affected.

(3) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this paragraph shall contain such terms and conditions as the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation plan including, but not limited to, monitoring and reporting requirements deemed necessary for determining whether such terms and conditions are being complied with. The Director shall rely upon existing reporting requirements to the maximum extent practicable.

(4) *Duration of permits.* The duration of permits issued under this paragraph shall be sufficient to provide adequate assurances to the permittee to commit funding necessary for the activities authorized by the permit, including conservation activities and land use restrictions. In determining the duration of a permit, the Director shall consider the duration of the planned activities, as well as the possible positive and negative effects associated with permits of the proposed duration on listed species, including the extent to which the conservation plan will enhance the habitat of listed species and increase the long-term survivability of such species.

(c) *Objection to permit issuance.* (1) In regard to any notice of a permit application published in the FEDERAL REGISTER, any interested party that objects to the issuance of a permit, in whole or in part, may, during the comment period specified in the notice, request notification of the final action to be taken on the application. A separate written request shall be made for each permit application. Such a request shall specify the Service's permit application number and state the reasons why that party believes the applicant does not meet the issuance criteria contained in §§ 13.21 and 17.22 of this subchapter or other reasons why the permit should not be issued.

(2) If the Service decides to issue a permit contrary to objections received pursuant to paragraph (c)(1) of this section, then the Service shall, at least ten days prior to issuance of the permit, make reasonable efforts to contact by telephone or other expedient means, any party who has made a request pursuant to paragraph (c)(1) of this section and inform that party of the issuance of the permit. However, the Service may reduce the time period or dispense with such notice if it determines that time is of the essence and that delay in issuance of the permit would: (i) Harm the specimen or population involved; or (ii) unduly hinder the actions authorized under the permit.

(3) The Service will notify any party filing an objection and request for notice under paragraph (c)(1) of this section of the final action taken on the application, in writing. If the Service has reduced or dispensed with the notice period referred to in paragraph (c)(2) of this section, it will include its reasons therefore in such written notice.

[50 FR 39687, Sept. 30, 1985]

§ 17.23 Economic hardship permits.

Upon receipt of a complete application, the Director may issue a permit authorizing any activity otherwise prohibited by § 17.21, in accordance with the issuance criteria of this section in order to prevent undue economic hardship. The Director shall publish notice in the FEDERAL REGISTER of each application for a permit that is made under this section. Each notice shall invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application. The 30-day period may be waived by the Director in an emergency situation where the life or health of an endangered animal is threatened and no reasonable alternative is available to the applicant. Notice of any such waiver shall be published in the FEDERAL REGISTER within 10 days following issuance of the permit.

(a) *Application requirements.* Applications for permits under this section must be submitted to the Director by the person allegedly suffering undue economic hardship because his desired activity is prohibited by § 17.21. Each

application must be submitted on an official application form (Form 3–200) provided by the Service, and must include, as an attachment, all of the information required in § 17.22 plus the following additional information:

(1) The possible legal, economic or subsistence alternatives to the activity sought to be authorized by the permit;

(2) A full statement, accompanied by copies of all relevant contracts and correspondence, showing the applicant's involvement with the wildlife sought to be covered by the permit (as well as his involvement with similar wildlife), including, where applicable, that portion of applicant's income derived from the taking of such wildlife, or the subsistence use of such wildlife, during the calendar year immediately preceding either the notice in the FEDERAL REGISTER of review of the status of the species or of the proposal to list such wildlife as endangered, whichever is earliest;

(3) Where applicable, proof of a contract or other binding legal obligation which:

(i) Deals specifically with the wildlife sought to be covered by the permit;

(ii) Became binding prior to the date when the notice of a review of the status of the species or the notice of proposed rulemaking proposing to list such wildlife as endangered was published in the FEDERAL REGISTER, whichever is earlier; and

(iii) Will cause monetary loss of a given dollar amount if the permit sought under this section is not granted.

(b) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued under any of the three categories of economic hardship, as defined in section 10(b)(2) of the Act. In making his decisions, the Director shall consider, in addition to the general criteria in § 13.21(b) of this subchapter, the following factors:

(1) Whether the purpose for which the permit is being requested is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit;

(2) The probable direct and indirect effect which issuing the permit would have on the wild populations of the wildlife sought to be covered by the permit;

(3) The economic, legal, subsistence, or other alternatives or relief available to the applicant;

(4) The amount of evidence that the applicant was in fact party to a contract or other binding legal obligation which;

(i) Deals specifically with the wildlife sought to be covered by the permit; and

(ii) Became binding prior to the date when the notice of a review of the status of the species or the notice of proposed rulemaking proposing to list such wildlife as endangered was published in the FEDERAL REGISTER, whichever is earlier.

(5) The severity of economic hardship which the contract or other binding legal obligation referred to in paragraph (b)(4) of this section would cause if the permit were denied;

(6) Where applicable, the portion of the applicant's income which would be lost if the permit were denied, and the relationship of that portion to the balance of his income;

(7) Where applicable, the nature and extent of subsistence taking generally by the applicant; and

(8) The likelihood that applicant can reasonably carry out his desired activity within one year from the date a notice is published in the FEDERAL REGISTER to review status of such wildlife, or to list such wildlife as endangered, whichever is earlier.

(c) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this section shall be subject to the following special conditions:

(1) In addition to any reporting requirements contained in the permit itself, the permittee shall also submit to the Director a written report of his activities pursuant to the permit. Such report must be postmarked or actually delivered no later than 10 days after completion of the activity.

(2) The death or escape of all living wildlife covered by the permit shall be immediately reported to the Service's office designated in the permit.

(d) Duration of permits issued under this section shall be designated on the face of the permit. No permit issued under this section, however, shall be valid for more than one year from the date a notice is published in the FEDERAL REGISTER to review status of such wildlife, or to list such wildlife as endangered, whichever is earlier.

[40 FR 44415, Sept. 26, 1975, as amended at 40 FR 53400, Nov. 18, 1975; 40 FR 58307, Dec. 16, 1975; 50 FR 39688, Sept. 30, 1985]

Subpart D—Threatened Wildlife

§ 17.31 Prohibitions.

(a) Except as provided in subpart A of this part, or in a permit issued under this subpart, all of the provisions in § 17.21 shall apply to threatened wildlife, except § 17.21(c)(5).

(b) In addition to any other provisions of this part 17, any employee or agent of the Service, of the National Marine Fisheries Service, or of a State conservation agency which is operating a conservation program pursuant to the terms of a Cooperative Agreement with the Service in accordance with section 6(c) of the Act, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take those threatened species of wildlife which are covered by an approved cooperative agreement to carry out conservation programs.

(c) Whenever a special rule in §§ 17.40 to 17.48 applies to a threatened species, none of the provisions of paragraphs (a) and (b) of this section will apply. The special rule will contain all the applicable prohibitions and exceptions.

[43 FR 18181, Apr. 28, 1978, as amended at 44 FR 31580, May 31, 1979]

§ 17.32 Permits—general.

Upon receipt of a complete application the Director may issue a permit for any activity otherwise prohibited with regard to threatened wildlife. Such permit shall be governed by the provisions of this section unless a special rule applicable to the wildlife, appearing in §§ 17.40 to 17.48, of this part provides otherwise. Permits issued under this section must be for one of the following purposes: Scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or incidental taking, or special purposes consistent with the purposes of the Act. Such permits may authorize a single transaction, a series of transactions, or a number of activities over a specific period of time.

(a)(1) *Application requirements for scientific purposes, or the enhancement of propagation or survival, or economic hardship, or zoological exhibition, or educational purposes, or special purposes consistent with the purposes of the Act.* Applications for permits under this paragraph must be submitted to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201, by the person wishing to engage in the prohibited activity. Each application must be submitted on an official application (Form 3–200), provided by the Service, and must include, as an attachment, as much of the following information which relates to the purpose for which the applicant is requesting a permit:

(i) The Common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, and the activity sought to be authorized (such as taking, exporting, selling in interstate commerce);

(ii) A statement as to whether, at the time of application, the wildlife sought to be covered by the permit (A) is still in the wild, (B) has already been removed from the wild, or (C) was born in captivity;

(iii) A resume of the applicant's attempts to obtain the wildlife sought to be covered by the permit in a manner which would not cause the death or removal from the wild of such wildlife;

(iv) If the wildlife sought to be covered by the permit has already been removed from the wild, the country and place where such removal occurred; if the wildlife sought to be covered by permit was born in captivity, the country and place where such wildlife was born;

(v) A complete description and address of the institution or other facility where the wildlife sought to be covered by the permit will be used, displayed, or maintained;

(vi) If the applicant seeks to have live wildlife covered by the permit, a complete description, including photographs or diagrams, of the facilities to house and/or care for the wildlife and a resume of the experience of those persons who will be caring for the wildlife;

(vii) A full statement of the reasons why the applicant is justified in obtaining a permit including the details of the activities sought to be authorized by the permit;

(viii) If the application is for the purpose of enhancement of propagation, a statement of the applicant's willingness to participate in a cooperative breeding program and to maintain or contribute data to a studbook;

(ix) The information collection requirements contained in this paragraph have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018–0022. This information is being collected to provide information necessary to evaluate permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations, on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (a)(1) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in § 13.21(b) of this subchapter, the following factors:

(i) Whether the purpose for which the permit is required is adequate to justify removing from the wild or otherwise changing the status of the wildlife sought to be covered by the permit;

(ii) The probable direct and indirect effect which issuing the permit would have on the wild populations of the wildlife sought to be covered by the permit;

(iii) Whether the permit, if issued, would in any way, directly or indirectly, conflict with any known program intended to enhance the survival probabilities of the population from which the wildlife sought to be covered by the permit was or would be removed;

(iv) Whether the purpose for which the permit is required would be likely to reduce the threat of extinction facing the species of wildlife sought to be covered by the permit;

(v) The opinions or views of scientists or other persons or organizations having expertise concerning the wildlife or other matters germane to the application; and

(vi) Whether the expertise, facilities, or other resources available to the applicant appear adequate to successfully accomplish the objectives stated in the application.

(3) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this paragraph shall be subject to the special condition that the escape of living wildlife covered by the permit shall be immediately reported to the Service office designated in the permit.

(4) *Duration of permits.* The duration of permits issued under this paragraph shall be designated on the face of the permit.

(b)(1) *Application requirements for permits for incidental taking.* (i) Applications for permits under this paragraph must be submitted to the Director, U.S. Fish and Wildlife Service, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 611, Arlington, VA 22201, by the person wishing to engage in the activity prohibited by § 17.31.

(ii) The director shall publish notice in the FEDERAL REGISTER of each application for a permit that is made under this section. Each notice shall invite the submission from interested parties, within 30 days after the date of the notice, of written data, views, or arguments with respect to the application.

(iii) Each application must be submitted on an official application (Form 3–200) provided by the Service, and must include as an attachment, all of the following information:

(A) A complete description of the activity sought to be authorized;

(B) The common and scientific names of the species sought to be covered by the permit, as well as the number, age, and sex of such species, if known;

(C) A conservation plan that specifies:

(*1*) The impact that will likely result from such taking;

(*2*) What steps the applicant will take to monitor, minimize, and mitigate such impacts, the funding that will be available to implement such steps, and the procedures to be used to deal with unforeseen circumstances;

(*3*) What alternative actions to such taking the applicant considered and the reasons why such alternatives are not proposed to be utilized; and

(*4*) Such other measures that the Director may require as being necessary or appropriate for purposes of the plan.

(iv) The information collection requirements contained in this paragraph have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned Clearance Number 1018–0022. This information is being collected to provide information necessary to evaluate permit applications and make decisions, according to criteria established in various Federal wildlife and plant conservation statutes and regulations on the issuance or denial of permits. The obligation to respond is required to obtain or retain a permit.

(2) *Issuance criteria.* Upon receiving an application completed in accordance with paragraph (b)(1) of this section, the Director will decide whether or not a permit should be issued. The Director shall consider the general criteria in §13.21(b) of this subchapter and shall issue the permit if he finds that: (i) The taking will be incidental; (ii) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking; (iii) the applicant will ensure that adequate funding for the conservation plan and procedures to deal with unforeseen circumstances will be provided; (iv) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; (v) the measures, if any, required under paragraph (b)(1)(iii)(D) will be met; and (vi) he has received such other assurances as he may require that the plan will be implemented. In making his decision, the Director shall also consider the anticipated duration and geographic scope of the applicant's planned activities, including the amount of listed species habitat that is involved and the degree to which listed species and their habitats are affected.

(3) *Permit conditions.* In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this paragraph shall contain such terms and conditions as the Director deems necessary or appropriate to carry out the purposes of the permit and the conservation plan including, but not limited to, monitoring and reporting requirements deemed necessary for determining whether such terms and conditions are being complied with. The Director shall rely upon existing reporting requirements to the maximum extent practicable.

(4) *Duration of permits.* The duration of permits issued under this paragraph shall be sufficient to provide adequate assurances to the permittee to commit funding necessary for the activities authorized by the permit, including conservation activities and land use restrictions. In determining the duration of a permit, the Director shall consider the duration of the planned activities, as well as the possible positive and negative effects associated with permits of the proposed duration on listed species, including the extent to which the conservation plan will enhance the habitat of listed species and increase the long-term survivability of such species.

[50 FR 39689, Sept. 30, 1985]

§ 17.40 Special rules—mammals.

(a) [Reserved]

(b) Grizzly bear (*Ursus arctos*)—(1) *Prohibitions.* The following prohibitions apply to the grizzly bear:

(i) *Taking.* (A) Except as provided in paragraphs (b)(1)(i)(B) through (F) of this section, no person shall take any grizzly bear in the 48 conterminous states of the United States.

(B) Grizzly bears may be taken in self-defense or in defense of others, but such taking shall be reported, within 5 days of occurrence, to the Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal

Center, Denver, Colorado 80225 (303/236-7540 or FTS 776-7540), if occurring in Montana or Wyoming, or to the Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1490, 500 Northeast Multnomah Street, Portland, Oregon 97232 (503/231-6125 or FTS 429-6125), if occurring in Idaho or Washington, and to appropriate State and Indian Reservation Tribal authorities. Grizzly bears or their parts taken in self-defense or in defense of others shall not be possessed, delivered, carried, transported, shipped, exported, received, or sold, except by Federal, State, or Tribal authorities.

(C) *Removal of nuisance bears.* A grizzly bear consituting a demonstrable but non immediate threat to human safety or committing significant depredations to lawfully present livestock, crops, or beehives may be taken, but only if:

(*1*) It has not been reasonably possible to eliminate such threat or depredation by live-capturing and releasing unharmed in a remote area the grizzly bear involved; and

(*2*) The taking is done in a humane manner by authorized Federal, State, or Tribal authorities, and in accordance with current interagency guidelines covering the taking of such nuisance bears; and

(*3*) The taking is reported within 5 days of occurrence to the appropriate Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(D) *Federal, State, or Tribal scientific or research activities.* Federal, State, or Tribal authorities may take grizzly bears for scientific or research purposes, but only if such taking does not result in death or permanent injury to the bears involved. Such taking must be reported within 5 days of occurrence to the appropriate Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(E) [Reserved]

(F) *National Parks.* The regulations of the National Park Service shall govern all taking of grizzly bears in National Parks.

(ii) *Unlawfully taken grizzly bears.* (A) Except as provided in paragraphs (b)(1)(ii)(B) and (iv) of this section, no person shall possess, deliver, carry, transport, ship, export, receive, or sell any unlawfully taken grizzly bear. Any unlawful taking of a grizzly bear shall be reported within 5 days of occurrence to the appropriate Assistant Regional Director, Division of Law Enforcement, U.S. Fish and Wildlife Service, as indicated in paragraph (b)(1)(i)(B) of this section, and to appropriate State and Tribal authorities.

(B) Authorized Federal, State, or Tribal employees, when acting in the course of their official duties, may, for scientific or research purposes, possess, deliver, carry, transport, ship, export, or receive unlawfully taken grizzly bears.

(iii) *Import or export.* Except as provided in paragraphs (b)(1)(iii) (A) and (B) and (iv) of this section, no person shall import any grizzly bear into the United States.

(A) *Federal, State, or Tribal scientific or research activities.* Federal, State, or Tribal authorities may import grizzly bears into the United States for scientific or research purposes.

(B) *Public zoological institution.* Public zoological institutions (see 50 CFR 10.12) may import grizzly bears into the United States.

(iv) *Commercial transactions.* (A) Except as provided in paragraph (b)(1)(iv)(B) of this section, no person shall, in the course of commercial activity, deliver, receive, carry, transport, or ship in interstate or foreign commerce any grizzly bear.

(B) A public zoological institution (see 50 CFR 10.12) dealing with other public zoological institutions may sell grizzly bears or offer them for sale in interstate or foreign commerce, and may, in the course of commercial activity, deliver, receive, carry, transport, or ship grizzly bears in interstate or foreign commerce.

(v) *Other violations.* No person shall attempt to commit, cause to be committed, or solicit another to commit

FINAL

HABITAT CONSERVATION PLAN

In Support of the Issuance of a Section 10(a) Permit for Incidental Take of the Endangered Delhi Sands Flower-loving Fly in Connection with the Development of Approximately 65 Acres in the City of Rialto, California

Prepared for:

The Edward Antonini Residuary Trust
Angelus Block Company, Inc.
And
E-Z Mix, Inc.

Prepared by:

Michael Brandman Associates
15901 Red Hill Avenue, Suite 200
Tustin, California 92780
(714) 258-8100

Contact: Gregg Miller, Project Manager

July 1, 1999

TABLE OF CONTENTS

Appendices

LIST OF TABLES

LIST OF EXHIBITS

EXECUTIVE SUMMARY

This Habitat Conservation Plan (HCP) is submitted in support of incidental take permit applications for the federally endangered Delhi Sands Flower-loving Fly (*Rhaphiomidas terminatus abdominalis*) (DSF) in connection with development of approximately 65 acres for industrial and other uses in Rialto, California (Proposed Action). The Site is owned by the Edward Antonini Residuary Trust. The DSF is termed the "Covered Species" because it is the species for which incidental take is to be authorized pursuant to the Proposed Action. The Permit Applicants are: the Edward Antonini Residuary Trust, Angelus Block Company, Inc., and E-Z Mix, Inc.

The Applicant's Proposed Action consists of (1) the development or sale of up to approximately 65 acres (herein after Development Area or Developable Permit Area) of the 96-acre Project Site for industrial, commercial, or other development and the operation of such facilities over a 30-year period, and (2) the implementation of an HCP which establishes an approximately 30.5-acre conservation area (Conservation Area) in the northern portion of the Project Site (including a 5-acre mitigation bank) for conservation of the DSF and perhaps other species.

The Conservation Area would be dedicated in fee title to a wildlife conservation organization at no cost, to be used for the recovery and conservation of the DSF. An endowment fund would be established to provide funds for annual maintenance, adaptive management, and to respond to changed circumstances in the Conservation Area in perpetuity. Five acres of mitigation credits within the Conservation Area will be available for purchase to mitigate for either direct impacts to DSF resulting in take of DSF, or for impacts to DSF habitat, on other properties. Proceeds from the sale of mitigation credits would be used to help defray the Applicants costs in establishing the Conservation Area and endowment fund.

It may be possible to assemble and/or restore approximately 62 acres of contiguous potentially restorable habitat for conservation of the DSF by connecting the approximately 30.5-acre Project Site Conservation Area with other off-site adjacent and nearby habitat which may be dedicated for DSF conservation.

A long-term conservation benefit to the DSF is expected from the Proposed Action. With respect to the DSF, no DSF were observed on the Project Site during three consecutive years of surveys (1995, 1996, and 1997). During 1998 surveys there were 4 observations of DSF on a single day within the proposed Conservation Area. In the view of the Applicants the Delhi Sands soils and the habitat they support that occur on the Site are generally degraded, with small patches of vegetation of a composition and density associated with potential use by DSF in the northern and central portion of the site. These small patches are interspersed within approximately 30 acres of habitat generally unsuitable for DSF. It could be argued that the data from the 1998 surveys indicate that a small (approximately one acre) portion of the Site within the Conservation Area appears occupied by DSF. Thus, it is possible that the removal of approximately 43 acres of potentially

restorable habitat containing Delhi Sands soils as called for in the Proposed Action could result in the take of a small but unknown number of DSF under the ESA over the course of the next thirty years. Although development of the Project Site may result in the take of a small but unknown number of DSF under the ESA, for purposes of this HCP and Section 10(a) permit application, the level of take is defined as the loss of any and all DSF that are taken incidentally during activities associated with the Proposed Action across the 96 acre Project Site.

SECTION 1
INTRODUCTION

The Edward Antonini Residuary Trust ("Antonini Trust") owns approximately 96 contiguous acres in the City of Rialto, County of San Bernardino, California ("Project Site" or "Site") (Exhibit 1). The Site is zoned for heavy industrial use. The Site is located in Section 36, Township 1 south, Range 5 west of the U.S. Geological Service (USGS) "San Bernardino South" 7.5 minute quadrangle. The Site is located south of Interstate 10 in the City of Rialto ("City") and is bounded to the west by Riverside Avenue and Industrial Drive, the southeast by Agua Mansa Road and the south by the intersection of Riverside Avenue and Agua Mansa Road (Exhibit 2). The northern boundary of a Southern California Edison ("SCE") easement forms the north/northeastern boundary of the Site. This easement lies within the Site, and the underlying fee interest is owned by the Antonini Trust (Exhibit 3).

The Site consists of two adjoining parcels (Exhibit 3). The Site was purchased in 1989 by the Antonini Trust. A parcel map was approved by the City for the larger of the two parcels (approximately 87.5 acres in size) on the Site in 1991. The final parcel map was approved by the City on March 17, 1998. This larger parcel is currently subdivided into 22 lots for heavy industrial use. The second parcel lies to the immediate east of the first, and is approximately 8.4 acres in size. Two access streets would traverse portions of the larger parcel, entering from the western boundary along Industrial Drive or Riverside Avenue and terminating approximately midway across the larger parcel in cul-de-sacs. Approximately 21 acres of the Site along the entire northeastern boundary are subject to a public utility easement for electrical transmission purposes granted to SCE.

The Site lies within the Agua Mansa Enterprise Zone ("AMEZ"), an approximately 9,000-acre area within portions of the cities of Colton, Rialto, and Riverside and the counties of Riverside and San Bernardino. These five jurisdictions have executed a Joint Powers Agreement establishing the Agua Mansa Industrial Growth Association ("AMIGA"). The AMEZ seeks to encourage industrial development of this area through various tax and other economic incentives. There are approximately 4,000 acres of vacant land remaining in the AMEZ.

The Antonini Trust is preparing to proceed with the development of the larger parcel for industrial uses. Lots 11, 12, 13, 14 and 15 are currently anticipated to be used for a sacking plant and facility for concrete, preblended mortar, asphalt and associated materials. This facility, known as the E-Z Mix East Complex, would be operated by Angelus Block Company, Inc. ("Angelus Block"). Lots 4, 5, 6, 7, 8, 9, and 10 are intended for use by Angelus Block for a paver production plant. A portion of Lot 1 is intended for use as a concrete block plant. The other lots are expected to be sold to other industrial users for development.

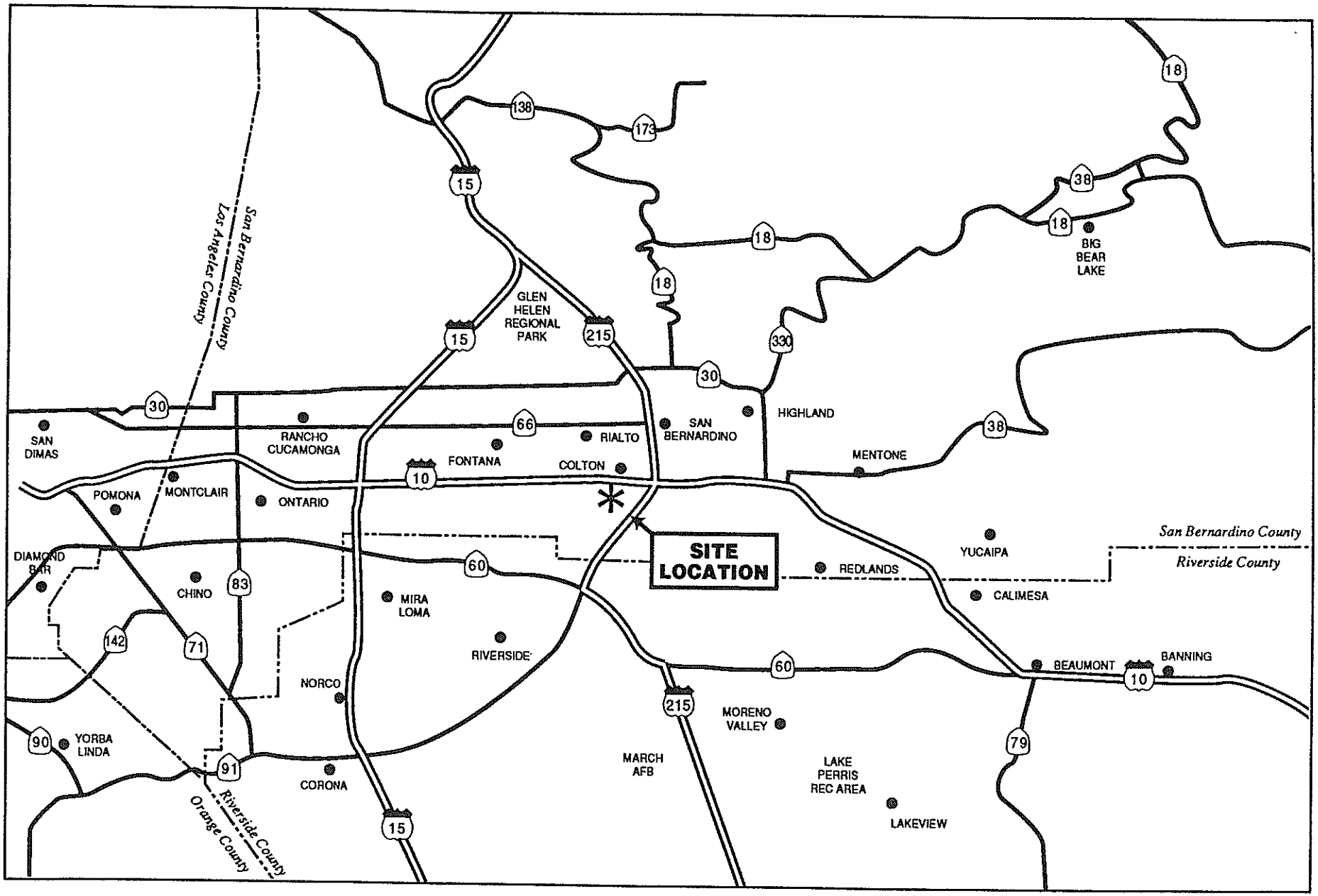
In 1990 and 1992, SCE executed agreements with Angelus Block, acknowledging that Angelus Block could conduct grading operations and store concrete block and related product and equipment and items within the area subject to SCE's nonexclusive easement for electrical transmission purposes without interfering with SCE's rights pursuant to its easement. Angelus Block's manufacturing facilities and the parcel map for the Site have been designed to utilize the areas within the SCE easement for Angelus Block's operational needs. Concrete block, related product and equipment storage would occur on either side of a 16-foot wide road bisecting the length of the SCE easement area. The road would be used to access the three SCE transmission towers and the material stored in this area.

The Site has obtained the necessary local government entitlements for development and use for industrial purposes. Additional grading, building pad construction, interior road extensions, associated utilities installation, and storm drain system construction must still be conducted. Given the amount of land set-asides proposed in the HCP, it is estimated that less than 10 industrial users could ultimately be located on the Site.

Subsequent to the City's approval of the parcel map in 1991, the USFWS listed the DSF as endangered under the ESA. A final rule listing the DSF as "endangered" under ESA was published by the USFWS in the Federal Register on September 23, 1993 (USFWS 1993). The DSF is not a listed species under the California Endangered Species Act ("CESA"). In fact, CESA does not permit the listing of insects under the statute. The site is located within the 40-square mile area of the believed historic range of the DSF. Delhi Sands soils are present on most of the Site (USDA 1980), as depicted in Exhibit 4; more detailed soil surveys of the Site have not been done. Approximately 67 acres of the 87.5-acre parcel contain Delhi Sands soils and are thus potentially restorable as DSF habitat.

Angelus Block engaged Michael Brandman Associates (MBA) to conduct focused surveys in 1995, 1996, 1997 and 1998 for the DSF on the entire 96-acre Project Site according to then-applicable USFWS survey protocol during the species' single annual flight period (August - September), since the Project Site was located within the believed historic range of the species. The 1998 surveys were conducted according to protocols pre-approved by USFWS (see Section 3).

The Project Site's vegetation is dominated by ruderal (weedy) species which have re-colonized the site since the Site was disced for fuel reduction in April 1997. Most of the Site is dominated by the native annual bur-sage and the non-native Russian thistle (*Salsola tragus*) and mustard (*Hirshfeldia incana*). Other generally distributed common species are the non-native grasses, wild oats (*Avena fatua*), ripgut brome (*Bromus diandrus)*, and foxtail chess (*Bromus madritensis ssp. rubens*). In the small eroded washes and a few other small patches, a few additional native species are prevalent, including California croton (*Croton californicum)*, tarweed (*Hemizonia fasciculata*), and fiddleneck, (*Amsinckia intermedia*). The native telegraph weed (*Heterotheca grandiflora*) is common in places. In a few sparsely vegetated sandy unpaved roadways and in small patches of relatively open sand distributed occasionally to frequently within the



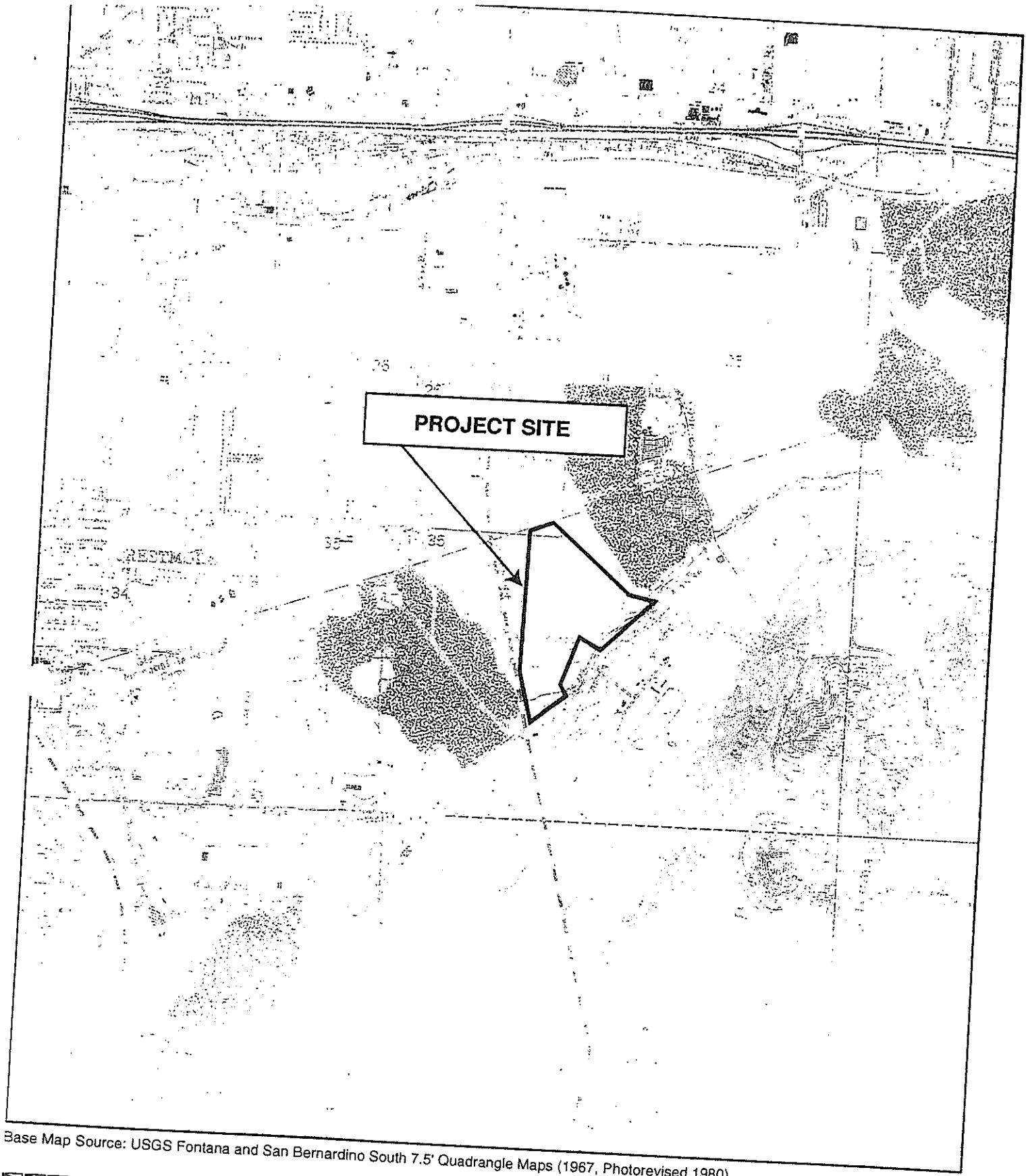
NORTH

Michael Brandman Associates

20620002 • 4/98

Exhibit 1

Site Vicinity Map



Base Map Source: USGS Fontana and San Bernardino South 7.5' Quadrangle Maps (1967, Photorevised 1980).

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SCALE IN FEET

Mich[illegible]randman Associates

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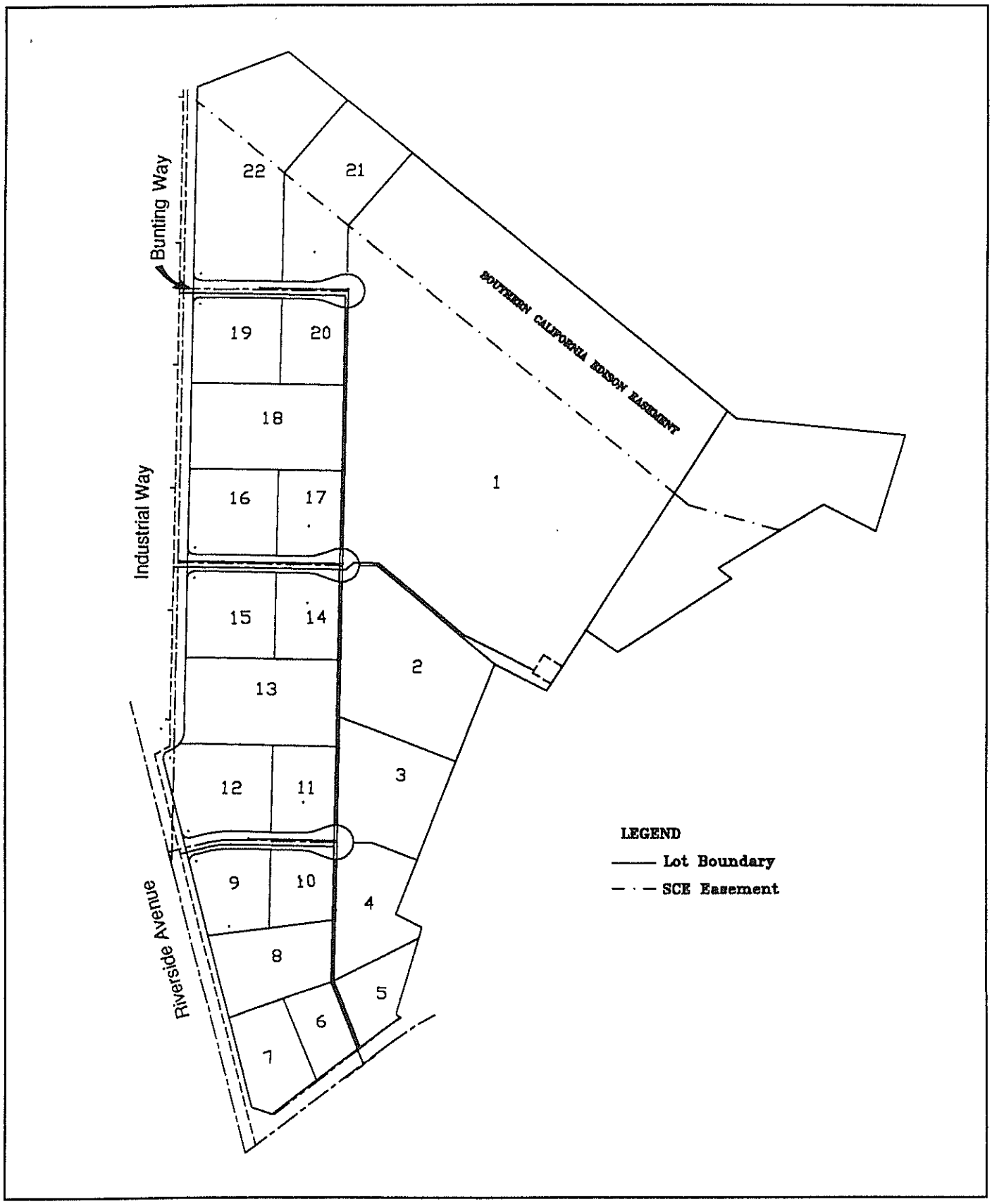
Exhibit 2

Site Location Map

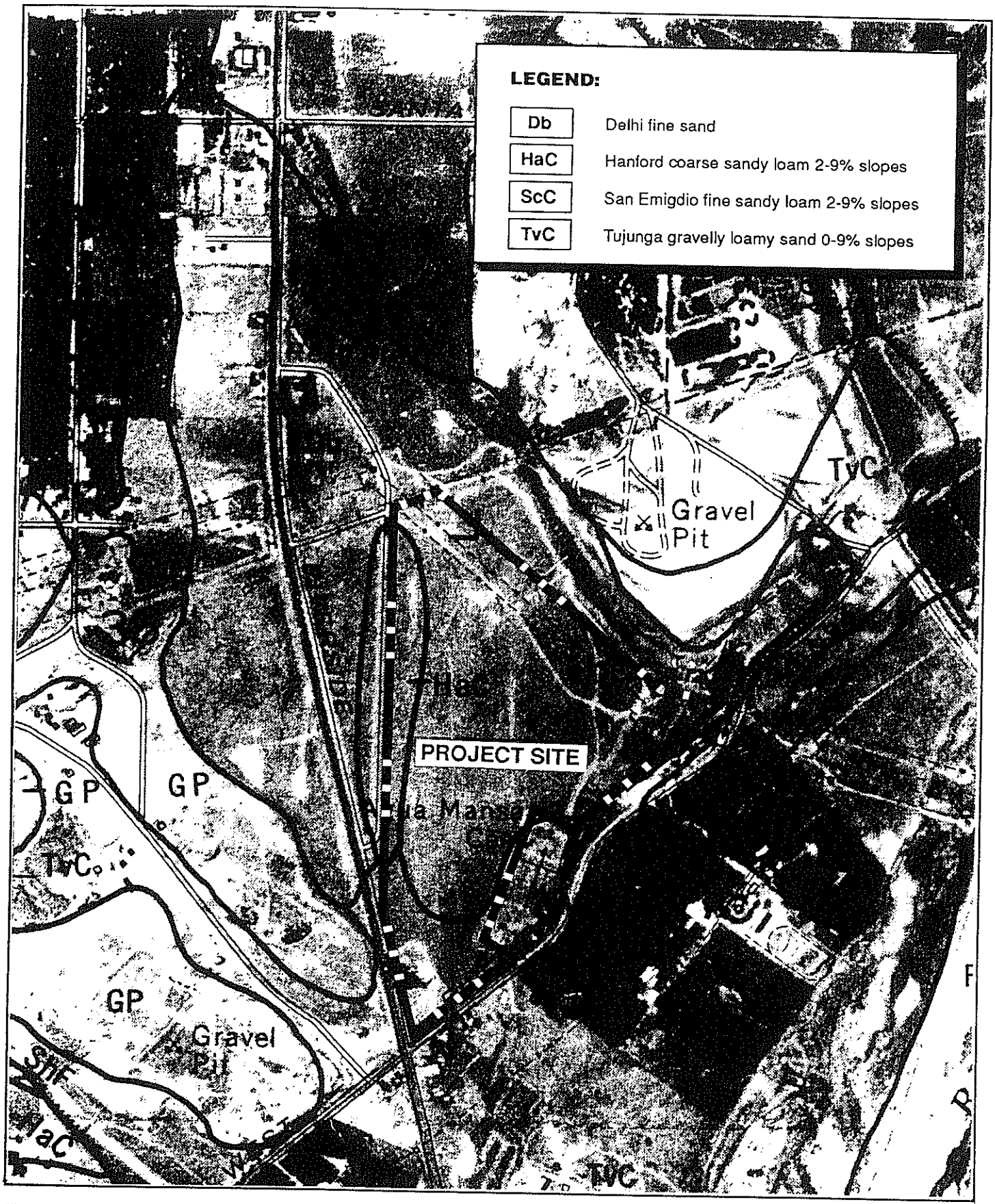
ANTONINI TRUST / ANGELUS BLOCK • DELHI SANDS FLOWER-LOVING FLY HCP/EA



Michael Brandman Associates

NORTH

Exhibit 3
Site Plan



Michael Brandman Associates

Exhibit 4

Project Site and Vicinity Soils

otherwise typically dense vegetation cover, a few additional native species are prevalent, including California croton, tarweed, and fiddleneck. Vegetation of this particular character is largely found dispersed across a 20- to 30-acre area in the northwestern portion of the Project Site that contains the proposed Conservation Area. Castorbean (*Ricinis communis*) and annual sunflower (*Helianthus annuus*) are common in the drainage ditch bordering Agua Mansa Road. The slope along the upper one-half of the Site's southeastern border is covered with a dense growth of non-native grasses, among which occur sparsely most of the other plant species mentioned above, as well as brittlebush (*Encelia farinosa*), valley cholla (*Opuntia parryi*), calabazilla (*Cucurbita foetidissima*), wild cucumber (*Marah macrocarpus*), jimson weed (*Datura wrightii*), and a few individuals of California buckwheat (*Eriogonum fasciculatum*).

Of the relatively low total of 41 species of plants detected on the Project Site, 19 are non-native, and seven of the remaining 22 natives are weedy in nature. Vegetation cover on the Site varies from 100 percent to less than 5 percent; most of the Site supports cover exceeding 90 percent. Overall, the herbaceous/grass layer averages about 80 percent cover. Adult DSF do not appear to use areas of dense cover where annual grasses or native buckwheat exceed 50% cover (USFWS 1997). Sparse vegetation (less than 50% cover) and sandy substrates are the primary habitat requirements of flies in the genus *Rhaphiomidas* (USFWS 1997). Vegetation cover in the 10- 20 percent range appears to be optimal cover for *Rhaphiomidas* flies (USFWS 1997). (In the view of the Applicants, most of the Project Site is considered to provide generally unsuitable habitat for the DSF particularly the portions of the Site that do not include the proposed Conservation Area.)

Prior to 1998, three consecutive years (1995-97) of DSF surveys were completed for the Site in accordance with the field methods called for in the USFWS recommended survey protocol (although surveys in 1996 did not begin until the third week of that year's flight season). Over 216 hours of surveys were conducted during appropriate survey periods and under weather conditions suitable for observation of DSF by trained biologists with experience with DSF. Appendices A, B and C contain copies of the survey reports. During the 1995-97 surveys no DSF were detected on the Site. The 1995-97 survey data indicated that the Site was not occupied by DSF, nor was the Site used for feeding, sheltering, breeding, or other behavioral patterns essential to the species, although several sightings of the DSF have been made on other properties in the vicinity of the Project Site (see Exhibit 5). The data on the Site's habitat conditions and the known habitat associations of DSF supported the 1995-97 survey results. Details of MBA's 1995, 1996 and 1997 surveys are discussed at greater length in Section 3.

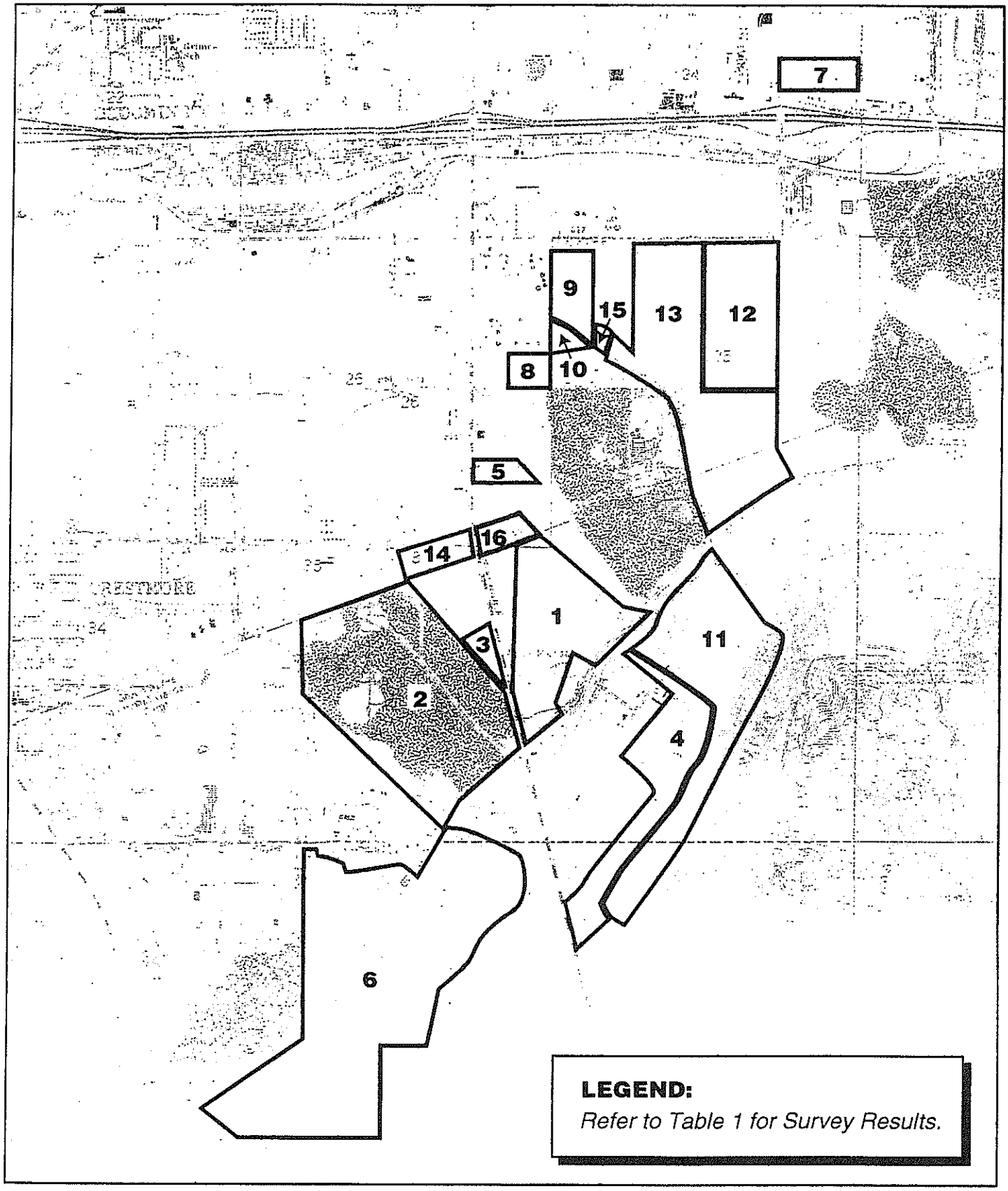
The Applicants began preparing an HCP for the property in 1997, after three years of surveys showed no DSF on the Site. Although the three years of data indicated that the Project Site was not occupied, the Applicants still desired to obtain a Section 10(a) Permit in order to facilitate a more orderly and certain development schedule regarding future development of the Site. Complete build-out of the site is expected to occur over a period of years. Given the mobile nature of the species, the observations of the species on certain properties

in the vicinity of the site and the potential for changing biological conditions on surrounding properties and the project site over a period of years, such certainty was desired for proper land use planning and investment.

After the initial HCP was prepared and at the request of USFWS, additional focused surveys were conducted in 1998. Forty hours of surveys were conducted in 1998 on the Site during appropriate survey periods and under weather conditions suitable for observation of DSF by MBA. During the 1998 surveys there were 4 DSF observations on a single day of the surveys. No DSF were observed mating, ovipositing, or feeding. The nature of the four observations indicate that most likely 3 individual DSF were present: 2 males and 1 female. The observations all occurred in a localized area of the Site within the proposed Conservation Area (Exhibit 6), in an area which had recently been disturbed between June 1996 and February 1997 for the construction of an underground water pipeline). Details of the 1998 surveys are discussed at greater length in Section 3. (Appendix D contains a copy of the 1998 survey report). Thus, it could be argued that development of the Project Site may result in the take of a small but unknown number of DSF under the ESA.

The USFWS Habitat Conservation Planning Handbook provides that the level of incidental take authorized by a Permit can be expressed either in terms of individual members of the species to be taken, or in terms of habitat acres in cases where the number of individuals is unknown or indeterminable. Using the number of habitat acres is appropriate for these Permit Applications because it is not possible to determine the number of DSF individuals which may be taken over the life of the permit. It is not possible to determine the number of DSF that may be taken because: (1) DSF spend the majority of their lives beneath the soil and there are no reliable methods to determine subsurface numbers that would not harm or injure DSF; (2) DSF have been detected on only one day during the most recent of four years of surveys of the Site conducted during the adult flight season, making judgements about ongoing presence or occupation of the Site by DSF problematic; and (3) relatively little is known generally about DSF biology. The Proposed Action will result in the loss of approximately 43 acres of Delhi Sands soil, which is the fundamental component of DSF habitat. The vast majority of this acreage (more than 90 to 95%) however is unsuitable for the DSF. The Applicants request the take to be authorized by the present Permits be stated as any and all DSF that are taken incidentally within the meaning of the ESA as a result of activities associated with the Proposed Action as described in Section 2 of this HCP on the 96 acres of the Site.

Although the three above-described facilities are planned for portions of the Site, this HCP is designed to accommodate any type of industrial, commercial, or other development and operation by any entity within the portion of the Site to be permitted for incidental take, namely the 15 lots and the 8.4-acre parcel in the eastern portion of the Site identified in Exhibit 7. Although E-Z Mix, Inc. is currently contemplating using Lots 11-15 for its sacking plant facility (also known as the "E-Z Mix East Complex") and Angelus Block is contemplating the use of a portion of Lot 1 for its concrete block plant and Lots 4-10 for its paver plant, this HCP is designed to allow for alternative industrial uses of these lots as well. As will be described in Section 5 of this HCP, the paver plant has been redesigned twice in the course of the biological analysis of the HCP



Base Map Source: USGS Fontana and San Bernardino South 7.5' Quadrangle Maps (1967, Photorevised 1980).

Michael Brandman Associates

NORTH

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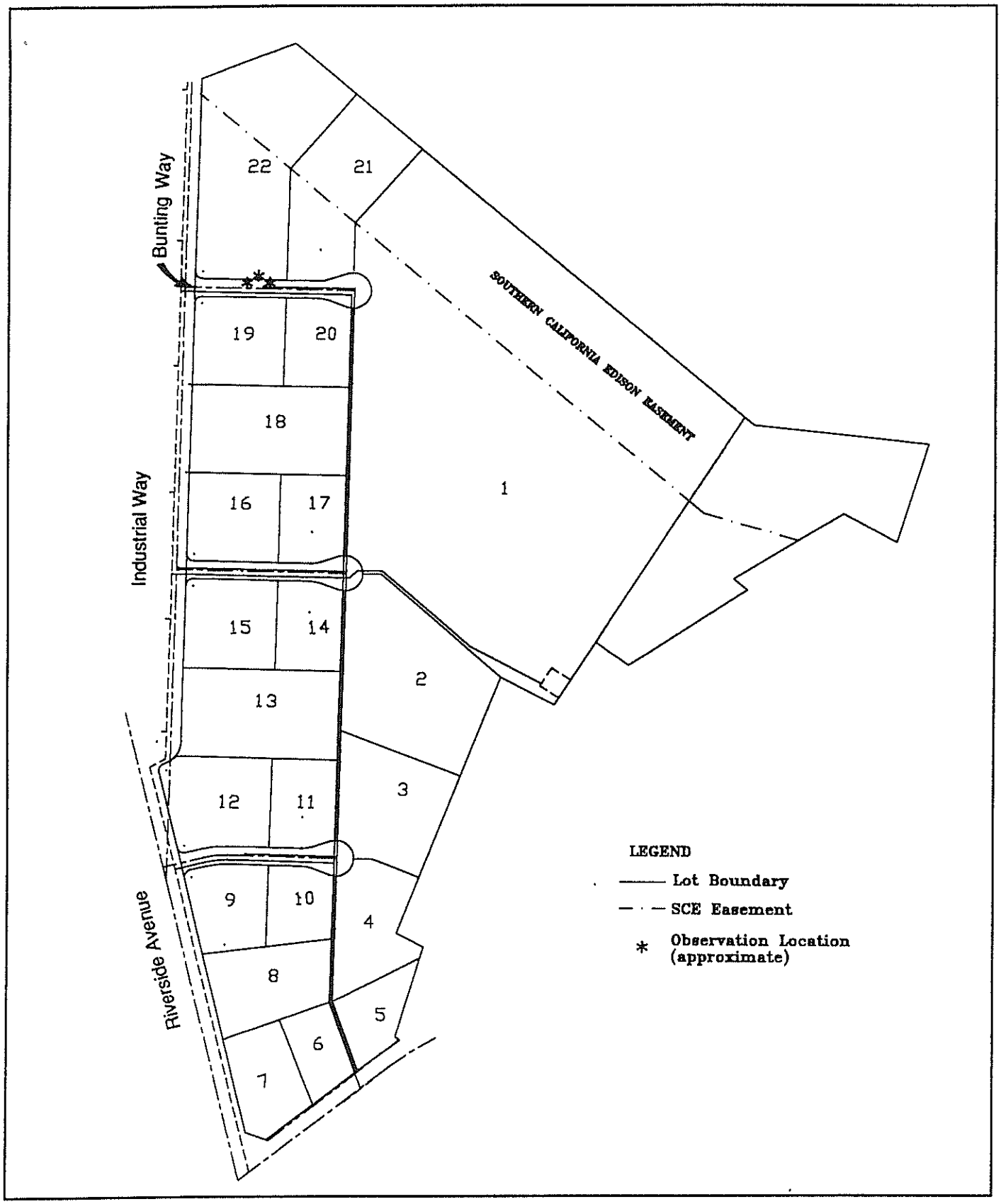
SCALE IN FEET

Exhibit 5

Delhi Sands Flower-Loving Fly Survey Sites



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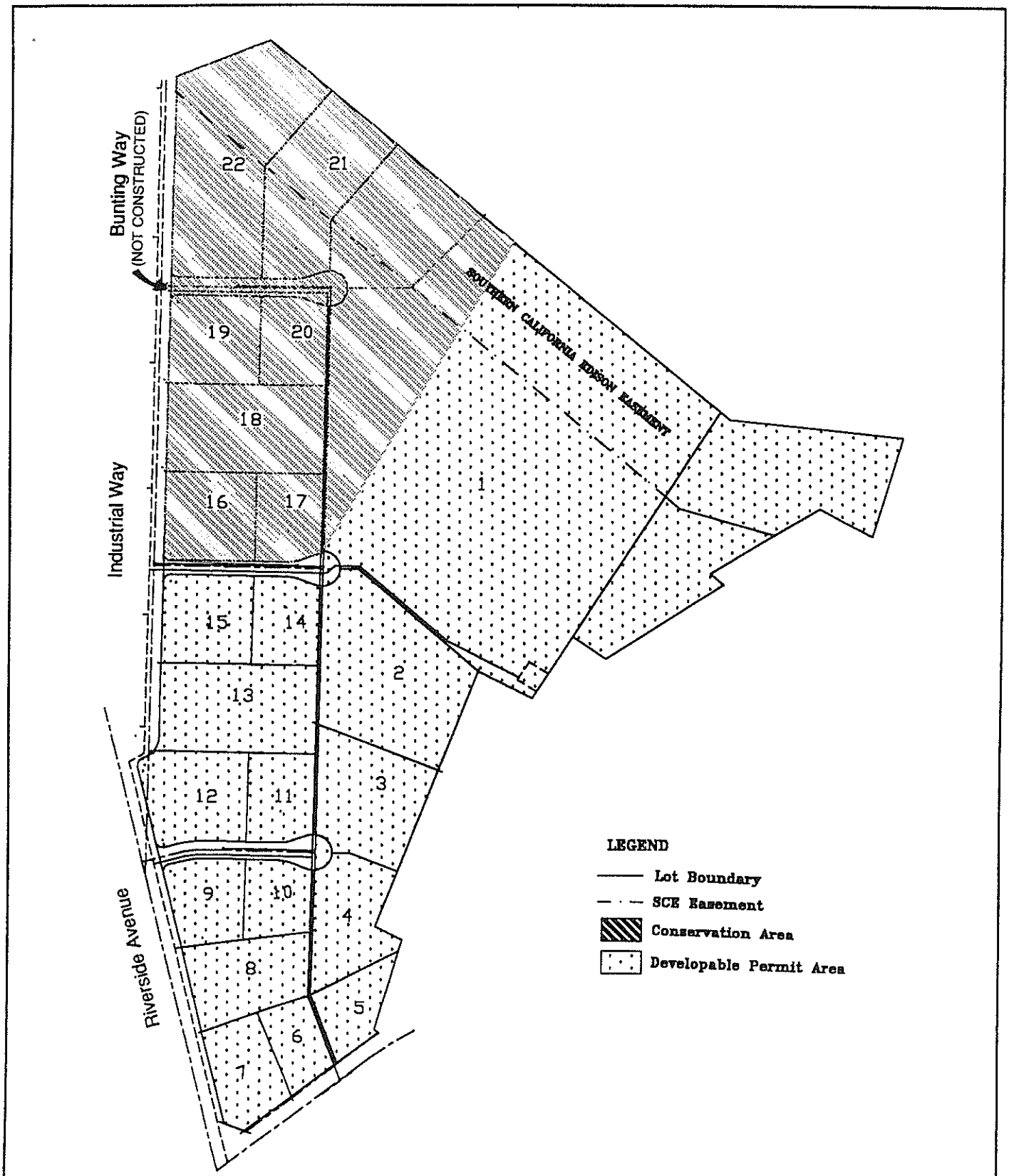
Michael Brandman Associates

Exhibit 6

Delhi Sands Flower-loving Fly 1998 Observations



Note: Entire Project Site is to be covered by Incidental Take Authorization.

Michael Brandman Associates

NORTH

Exhibit 7

Proposed Conservation Area

to be located on Lots 4-10, as opposed to its originally designed location on Lots 21 and 22 and subsequently redesigned location on Lots 16-20.

As noted previously, the Applicants initiated this HCP even though three years of focused survey indicated that the DSF was absent for the site. The USFWS final Recovery Plan for the DSF promotes the adoption of voluntary conservation efforts by private landowners for the DSF. The Applicants recognized that land management activities and land use decisions by private landowners can assist in the recovery of the DSF if specifically designed for that purpose. Alternatively, some land management practices or land use decisions would not promote such recovery and can even be detrimental to recovery efforts. A major purpose of this HCP is to promote and ensure land management practices and land-use decisions which will benefit the DSF. The conservation of land in the HCP will benefit the DSF.

As noted above, portions of the Site may be sold to other industrial users. Moreover, full build-out may not be realized for many years. Thus, another major purpose of this HCP is to provide certainty to the development of a portion of the Site with respect to the potential for any future ESA constraints relative to the DSF.

The Section 10(a) permits will provide certainty that future development of various parcels on the Project Site will not result in a violation of Section 9 of the ESA. Such certainty is important to enable future development decision-making and financial commitments to proceed in an orderly fashion. In return for such assurances, the Permit Applicants would establish an approximately 30.5-acre conservation area for the DSF in the northern portion of the Project Site (the "Conservation Area"). The Applicants would also provide an endowment fund that would provide funds for annual maintenance, adaptive management, and to respond to changed circumstances in the Conservation Area in perpetuity. The Conservation Area is depicted in Exhibit 7. By ensuring for the conservation of a portion of the Project Site in perpetuity and by providing for this enhancement and expansion of DSF populations, the Applicants seek assurance that additional regulatory burdens will not be imposed upon them beyond these measures expressly provided for in the HCP. As set forth in the Implementing Agreement (IA), the permits will provide that landowners within the Project Site will be covered for DSF take resulting as an artifact of increased use of the Conservation Area through the implementation of this HCP. The Conservation Area would be enhanced and dedicated in fee title to a wildlife conservation organization or agency at no cost, to be used for the recovery and future conservation of the DSF. The IA also provides for the ability of the Applicants or their assigns to further enhance or use the Conservation Area for the benefit of other future listed species provided that: (1) USFWS approves such enhancement or use of the Conservation Area, and (2) such actions would not be expected to decrease the value of the Conservation Area for the DSF. If the USFWS determines in writing that such proposed enhancement would negatively impact the DSF, the USFWS may preclude such enhancement by the Permittees. Also, a 5-acre mitigation bank will be established as part of the approximately 30.5-acre Conservation Area.

Should DSF be drawn to or become established in the Conservation Area, the Applicants will be covered for any incidental take of any such DSF which may occur from development within the permit area or operations on the Site as the result of conservation efforts undertaken by the Applicants.

This HCP is designed to provide a net benefit to the DSF in perpetuity by preserving approximately 30.5 acres of potentially restorable habitat for the conservation of the DSF (containing some currently potentially suitable habitat for the DSF) and providing funds for maintenance of the Conservation Area. An endowment fund would be established to provide funds for annual maintenance, adaptive management, and to respond to changed circumstances in the Conservation Area in perpetuity. Currently, there is no protected habitat for the DSF on the Site. The proposed Conservation Area is immediately adjacent to other potentially restorable DSF habitat off-site that is being considered as a permanent conservation area for the DSF. The location of the Conservation Area on the Site has been selected to be contiguous with adjacent habitat which is being considered for dedication for DSF conservation. Assembling an approximately 62-acre contiguous DSF reserve may be possible by connecting the approximately 30.5-acre Project Site Conservation Area with adjacent off-site and nearby areas being considered for dedication for DSF conservation. This is more fully discussed in Section 3 of this HCP.

The HCP and Section 10(a) permits provide a means of achieving finality and certainty, allowing development of the Site to proceed without further concern regarding potential impact to DSF on the Site. The HCP and Section 10(a) permits will enable the Permit Applicants to set aside and conserve a portion of the Site to promote the recovery and conservation of the DSF.

SECTION 2
PURPOSE AND NEED FOR ACTION

The Permit Applicants have applied to the USFWS for Section 10(a)(1)(B) incidental take permits (Permits). The Permits would authorize incidental take of the DSF in the course of otherwise lawful activities associated with construction and operation of a variety of facilities on approximately 65 acres of the Site as well as management of a 30.5-acre Conservation Area. This HCP is intended to meet and exceed the requirements for issuance of permits under Section 10(a)(1)(B) of ESA for "take" of DSF that may occur during the course of development of and operations on the Project Site and other activities associated with the Proposed Action over time. Such incidental take authorization is desired by the Permit Applicants in order to provide sufficient certainty for future development and respond to the possibility that some incidental take could occur on the Site in connection with development, the Applicants' own conservation efforts, or through changes to the biological conditions of the surrounding property and/or Project Site.

The Applicants are committing to promote the long-term conservation of the DSF by dedicating fee title to approximately 30.5 acres that would be used for recovery and conservation of the DSF in the northern portion of the Site and providing an endowment fund for enhancement, annual maintenance, biological monitoring, reporting, adaptive management, and to respond to changed circumstances in the Conservation Area in perpetuity. The Conservation Area will be restricted through legal instrument, such as a Declaration of Restrictions, to require that the area be used for conservation purposes. As described more fully in Section 4 of this HCP, the Applicants will fence the Conservation Area and construct a sand retention fence along its southern boundary. The Conservation Area may be able to be combined with other property in the area for the conservation of the DSF. The Permits would also result in a significant contribution to the recovery and long-term conservation of the DSF by establishing in perpetuity an approximately 30.5 acre conservation area containing small scattered patches of suitable DSF habitat within a matrix of dense non-native vegetation (which habitat can be enhanced for the DSF) in an area that is geographically well positioned to be used for such purpose. The HCP is expected to provide a long-term net benefit to the DSF, especially considering the expected low level of effects on the DSF from the Proposed Action. The Applicants consider implementation of this HCP in connection with the Permits to be an effective means to promote the conservation needs of the DSF while serving the need for landowner certainty.

The needs and goals of the USFWS are to: (1) recover listed species, (2) ensure compliance with ESA, the National Environmental Policy Act (NEPA), and other applicable federal laws and regulations, and (3) obtain a voluntary and effective contribution towards securing the long-term viability of the DSF.

The actual number of DSF that might be taken as a result of the Proposed Action--although small, if any, is impossible to know with certainty. Approximately 43 acres of currently unoccupied but potentially restorable DSF habitat would be lost as a result of the Proposed Action. Although no DSF were observed during three

consecutive years (1995-97) of focused DSF surveys, there were four (4) DSF observations on a single day during additional focused surveys conducted in 1998. The four (4) observations appear to represent three (3) DSF.

PROPOSED ACTION

The Permit Applicants propose to develop or sell approximately 57 acres of the larger parcel of the Site for industrial or other uses. An approximately 30.5-acre Conservation Area in the northern portion of the Site would be transferred in fee title to a conservation or wildlife organization or agency at no cost, to be used to promote the conservation of the DSF (see Exhibit 7). Concurrent with the issuance of the Section 10(a) Permits and prior to any ground disturbance on Lots 1, 2, or 3, the Conservation Area will be restricted in perpetuity by a legal instrument such as a recorded Declaration of Restrictions or similar mechanism, and the Applicants will provide an endowment fund, the annual proceeds of which will be used for ongoing maintenance, adaptive management, enhancement, monitoring, reporting, and to respond to changed circumstances in the Conservation Area. The Applicants would also construct a chain link fence around the Conservation Area to prevent unauthorized access, construct a solid fence along the southern boundary of the Conservation Area to prevent soil loss, and perform initial weed and trash removal to increase the suitability of the Conservation Area for the DSF. In consultation with the USFWS, Permittees shall conduct initial weed and trash removal, where appropriate, throughout the Conservation Area within six months of the effective date. Provided that field experience on the Project Site demonstrates it is practicable, such chain link fencing will also use silting screens along lower portions of the fence to assist with Delhi series sand retention within the Conservation Area. The Conservation Area will be posted with signs indicating that the area is environmentally sensitive and that trespassing is prohibited. The smaller 8.4-acre parcel is not currently planned for development.

As described and detailed more fully in the Implementing Agreement, a five (5) acre conservation bank will be established within the approximately 30.5 acre Conservation Area concurrent with, and as part of, the USFWS's approval of the HCP and the placement of a deed restriction on the Conservation Area for DSF conservation purposes. Antonini Trust will be able to sell conservation credits to other persons, companies, organizations, etc., ("Credit Purchasers") to satisfy, in whole or part as evaluated by the USFWS, their off-site mitigation needs associated with land disturbance activity within the Colton Recovery Unit. (The Colton Recovery Unit is identified in the USFWS's 1997 Final Recovery Plan for the DSF.) The Conservation Bank will have a total of five (5) acres of conservation credits to sell, and these credits may be sold and transferred in one-tenth (0.10) acre increments, or multiples thereof. The purchase of mitigation credits from the bank will not, of itself, authorize Incidental Take for projects purchasing mitigation credits. Those projects may require independent Incidental Take authorization. The USFWS would determine whether offsite mitigation is acceptable for any particular project within the Colton Recovery Unit and identify the amount of offsite mitigation required by such Credit Purchasers for their activities. Antonini Trust will be responsible for

monitoring the remaining credits available and for maintaining an accounting of the amount, date, etc., of the credits sold and will update the USFWS with this information as required in the Implementing Agreement. Where the USFWS determines that off-site mitigation is appropriate on properties within the Colton DSF Recovery Unit, the conservation credits will be available for purchase to mitigate for either direct impacts to DSF resulting in take of DSF, or for impacts to DSF habitat, on properties within the Colton DSF Recovery Unit.

Two paved streets would be installed on portions of the western half of the Site, extending east from Riverside Avenue or Industrial Drive as shown in Exhibit 3. Curbs and gutters also would be installed. The Developable Permit Area of the Project Site would be graded, and construction and operation of industrial or other facilities would subsequently occur on those lots. Lot sizes are set at a minimum of 48,996 square feet and range to a maximum of 33.4 acres prior to implementation of the HCP. Utilities (electricity, sewer, water and the like) would be installed. All utilities are expected to be installed underground. Water lines already exist under a portion of the proposed Conservation Area. All required drainage facilities would be constructed outside the Conservation Area. The land within the SCE easement but outside the Conservation Area would be used for outdoor product storage. Materials to be stored outdoors are finished concrete block and concrete paver. No portion of the SCE easement within the Conservation Area would be used for storage. A network of access roads would be placed in the storage area, and the storage area may be graded. The only portion of the Site off limits to grading would be the Conservation Area.

Approximately 8.9 acres of the Conservation Area are currently subject to a non-exclusive easement in favor of SCE for solely electrical transmission purposes and would continue to remain so. SCE currently uses this area for such purpose. Limited portions of this 8.9-acre area would continue to be disturbed by SCE during maintenance activities; generally, disturbance can be expected to be confined to movement of equipment and persons on the existing dirt roadway. The existing dirt roadway used by SCE in this area would continue to be available and used by SCE. The roadway is used by SCE vehicles to access transmission towers that are outside of and to the west of the proposed Conservation Area. The dirt roadway is approximately 16 feet wide. Approximately every 6 weeks SCE washes the insulators on the transmission towers using pressurized water. The washing occurs outside the Conservation Area. SCE will not receive authorization for incidental take of DSF within the Conservation Area or the Permit Area by virtue of the Applicants Section 10(a) permits. Thus, SCE would continue to remain precluded from taking any action in the Conservation Area that would result in incidental take of any DSF in the absence of its own independent incidental take authorization from the USFWS.

The Permit Applicants seek incidental take authority for a period of thirty (30) years for the DSF. The number of DSF's that may be killed, harmed or harassed by the Proposed Action is impossible to quantify with precision. On the basis of current data and Site conditions, that number is expected to be low. Over time, some DSF may be impacted by development or operation of any of the facilities on the Site. In any event, the

number impacted is expected to be far less than the number of new DSF produced and/or protected by virtue of the DSF's ultimate use of the Conservation Area, dedicated, enhanced and maintained by the Proposed Action. It could be argued that the biological data from 1998 surveys indicate that a small portion of the Project Site appears occupied by DSF. For purposes of the HCP and Section 10(a) Permit applications, it is assumed that a relatively small number of DSF may be incidentally taken by virtue of the development of a 65 acre Developable Permit Area and the management of the approximately 30.5-acre Conservation Area for species conservation purposes.

The time of full build-out of the Site is not known. Full build-out could take longer than 20 years depending upon economic and market conditions, which cannot be precisely predicted. The Conservation Area and the endowment fund will be established and set aside in perpetuity. The nature of the endowment fund and HCP allow for adaptive management of the Conservation Area to respond to changing conditions associated with the DSF, the Conservation Area, or the surrounding properties. For these reasons, a 30-year duration for the Permit is considered reasonable.

The Project Site is zoned for heavy industrial use. Within the City of Rialto zoning ordinances, heavy industrial uses include but are not limited to manufacturing, assembling, testing or processing of vehicles, batteries, candles, carpets, concrete products, glass, ink, motors, plastics, and steel products. A complete list of the potential uses of the lots within the Permit Area is contained in Appendix G. Any of these operations may occur within the lots within the Permit Area.

This HCP provides that the Permit Applicants would mitigate for any incidental take of DSF resulting from the Proposed Action, including the enhancement of the Conservation Area, through the conveyance of fee title to approximately 30.5 acres in the northern portion of the Site to a conservation or wildlife organization or agency acceptable to the USFWS for purposes of promoting the recovery and conservation of the DSF. Additionally the Applicants would establish an endowment fund to provide for enhancement and annual maintenance, adaptive management and to respond to changed circumstances in the Conservation Area in perpetuity for the benefit of the DSF. This protected land would complement other lands in the immediate area, which are being considered by others for protection as DSF habitat. As noted, it may be possible to assemble approximately 62 acres of contiguous habitat for DSF conservation by connecting the approximately 30.5-acre Project Site Conservation Area with adjacent and nearby potentially restorable habitat which may be dedicated for DSF conservation. Implementation of a DSF habitat restoration plan for the SCE parcels north and west of the Project Site is expected to begin in the near future. The parcels are approximately 19 acres in size and are contiguous with the proposed Conservation Area. This would result in approximately 50 acres of protected habitat for the DSF. Additionally the Owl Company has agreed to set aside 6+ acres of an 11-acre site along Riverside Avenue as dedicated land for DSF conservation. This would result in approximately 56 acres of land conserved for DSF.

MIGRATORY BIRD TREATY ACT

The Applicants recognize that the Section 10(a) Permits, should they be issued by the Service, do not relieve the Applicants from assuring compliance with thee Migratory Bird Treaty Act ("MBTA"). The Applicants will conduct grading or clearing activities within the Permit Area in compliance with the requirements of the MBTA.

SECTION 3
POTENTIAL IMPACT OF THE PROJECT ON THE DSF

ECOSYSTEM DESCRIPTION

The most consistent and characteristic feature of all known sites occupied by the DSF is the presence of fine, sandy soils, often with wholly or partly consolidated sand dunes. These soil types are generally classified as the Delhi series (primarily Delhi fine sand). Delhi series soils cover approximately 40 square miles in several irregular patches extending from the cities of Colton to Ontario and Chino in northwestern Riverside and southwestern San Bernardino Counties (U.S. Soil Conservation Service 1971, 1980). Accordingly, the DSF's historic range may have extended across this 40-square mile area, presumably in a sporadic distribution. Records of museum specimens of DSF, which extend from the eastern margin of the Delhi Sands formation in Colton to near its western limit in Mira Loma, lend support to this historic range assumption.

This region of Delhi series soils, also known as the Colton Dunes, is the largest inland cismontane sand dune formation in southern California. This dune formation has been defined as the Desert Sand-verbena series in Sawyer (1994). Some of the plant species present on the Colton Dunes include California buckwheat, California croton, deer weed (*Lotus scoparius*), and California evening primrose (*Oenothera californica*). The Colton Dunes habitat supports several plants and animals of limited distribution, including Delhi Sands metalmark butterfly (*Apodemia mormo* new subspecies), Delhi Sands Jerusalem cricket (*Stenopelmatus* new sp.), convergent apiocerid fly (*Apiocera convergens*), and Delhi Sands sand roach (*Arenivaga* new sp.), San Diego horned lizard (*Phrynosoma coronatum blainvillei)*, western burrowing owl (*Athene cunicularia hypergia*), Los Angeles pocket mouse (*Perognathus longimembris brevinasus*), and San Diego black-tailed jackrabbit (*Lepus californicus bennettii*).

Much of the Colton Dunes area has been used for agriculture, chiefly grapes and citrus, since the 1800's. More recently, a significant portion of the remaining area has been used for dairies, housing tracts, and commercial/industrial sites. According to the USFWS, the present distribution of the DSF is believed to represent only a small percentage of its former range (USFWS 1993). Habitat has been lost and fragmented due to urbanization, agricultural activities, sand mining activities, illegal dumping, off-road vehicles, and invasion of non-native plants (USFWS 1993, 1997). The majority of remaining sands with restoration potential are degraded to some degree.

As of spring 1997, the known distribution of the DSF was believed restricted to 12 extant populations encompassing approximately 450 acres of suitable habitat (USFWS 1997). According to the USFWS, there presently exists an estimated 1,200 acres of habitat that can support the species (USFWS 1997). The

USFWS currently estimates that approximately several hundred acres of additional land may be restorable to habitat suitable for the DSF (USFWS 1997).

LIFE HISTORY

The DSF undergoes a complete metamorphosis (egg, larva, pupa, and adult). The life span of this animal is unknown. Development to metamorphosis likely takes one year, but it is possible that the larval stage may last 2 years or longer, depending on availability of food, temperature, rainfall, and other environmental conditions. The egg, larva, and pupa stages of the DSF are spent underground. Only the brief adult stage is spent above ground. The adults emerge and become active in the late summer. Collection records for the DSF indicate a single annual flight period during August and early September when daytime temperatures exceed 27 degrees Celsius (80 degrees Fahrenheit) (Ballmer 1989). Lifespan in the adult form is not known (several days to several weeks has been postulated), but adults do not survive beyond the end of the flight period in September (Kiyani 1995).

Adult DSF are active during the warmest portions of the day during periods of direct sunlight, generally from 10 a.m. to 2 p.m. PDT (Ballmer in litt. August 24, 1991). The animals rarely fly during windy or breezy conditions, which typically occur in the afternoon. However, during these periods they have been located by disturbing the vegetation where they are perching (Ballmer ibid). Male DSF generally select sites with open sand allowing several feet of visibility from ground perches, while female DSF select buckwheat and telegraph weed cover (Kiyani 1996b).

Mating among members of this genus was described by Rogers and Mattoni (1993). After mating, the females lay their eggs (oviposit) in suitable sandy soil. Neither the typical number of eggs laid by females nor the potential range laid by females is currently known. Rogers and Mattoni (1993) described their observations of two male and two female captive DSF. The males lived for 3 days in captivity and would not eat. The females lived for 5 and 8 days, respectively. The females became active at 10 a.m. pacific daylight time (PDT) each day, regardless of light conditions and became quiescent about 5 p.m. PDT, except when ovipositing. One of the females was observed to oviposit at about 7:30 p.m. PDT. She laid a total of 40 eggs in the sand. The eggs were about 1.5 x 3 millimeters, almost kidney-shaped, and pure white with a slight pink iridescence.

Female DSF possess specialized egg-laying organs on the last segment on their abdomens. The eggs can be placed between 3 and 5 centimeters beneath the surface of the sand. This adaptation assures that the eggs are placed in a cooler and moister environment than the surface of the sand. Most oviposition takes place in the shade of shrubs, such as the telegraph weed (Rogers and Mattoni 1993). In the few observations of egg laying (ovipositing) by DSF, ovipositing took place within one foot of telegraph weed (Kiyani 1995). However, the

required environmental factors which, when found together, constitute suitable ovipositing sites remain unknown.

It is unknown where the larval form lives below ground or what types of micro-environmental requirements the larval form may require. In captivity, larvae hatched from the eggs in 11 to 12 days (Rogers and Mattoni 1993). The larvae of the DSF and two other *Rhaphiomidas* species were held in captivity by Rogers and Mattoni (1993). All items of food, including synthetic diets that were offered to the animals, were rejected. Rogers and Mattoni (1993) reported that captive larvae refused to feed on small beetle larvae collected from the sand dunes, fruit fly larvae, or sand dune cockroach nymphs. None of the fly larvae became cannibalistic, even when starving. The larvae all died within fifteen days. It remains unclear as to whether the early stages of *Rhaphiomidas* are herbivores, detritivores, or carnivores. The larvae of the closely related genus *Apiocera* have been successfully raised on earthworms in the laboratory (Cazier 1982).

The DSF is a rapid flier and can hover like a hummingbird for nectar extraction. The species has been observed taking nectar and has not been seen to take other fluids. The nectaring events observed have been brief, on the order of 2-10 seconds, and have all been restricted to flowers of the California buckwheat (Kiyani 1997, USFWS 1997).

To date, little is known regarding predators of the DSF. The introduced Argentine ant (*Iriodomyrmex humilis*) has been observed to attack and kill a recently emerged adult DSF (R. Rogers, pers. obs. 1993). Rogers and Mattoni (1993) and Cazier (1985) reported that large asilid flies in the genera *Proctocanthus* and *Promachus* prey upon *Rhaphiomidas* flies. Other predators of the adult flies may include dragonflies and insectivorous birds. Predators of the early stages of the DSF are unknown, but may include ants, subterranean predatory insects, and reptiles.

HABITAT REQUIREMENTS, BEHAVIOR AND POPULATION DYNAMICS

Areas containing sandy substrates with a sparse cover of perennial shrubs and other vegetation constitute a primary habitat requirement for the DSF. Based on observations of several other members of this genus, optimal vegetative cover may be less than 50 percent, and may be in the range of 10-20 percent (USFWS 1997). DSF appear to avoid areas of dense (greater than 75 percent) vegetation cover (Kiyani 1996b).

The specific plant species and densities of such species required to create suitable DSF habitat are currently unknown (Kiyani 1996). Definitive associations of adults with specific plants have not been established. Typically, the most abundant native plant species found where the DSF has been found include California buckwheat, croton, and telegraph weed (Ballmer 1989). Additional native plants found commonly where the

DSF has been found include annual bursage, fiddleneck, vinegar weed (*Lessingia glandulifera*), and sapphire eriastrum (*Eriastrum sapphirinum*).

Invasive non-native vegetation severely degrades or eliminates the habitat of the DSF. Non-native plants of concern include Russian thistle, horehound (*Marribium vulqare*), mustard (*Brassica tournefortii*), cheese weed (*Malva parviflora*), and many species of introduced grasses such as ripgut brome and foxtail chess. These plants may alter the amount of soil moisture or make the substrate physically unsuitable for the survival of the DSF and other native subterranean invertebrates. The diversity and abundance of arthropods have been found to be significantly reduced or absent in coastal dune areas containing exotic plants versus areas with native vegetation (USFWS 1997).

Off-road vehicles (ORVs) are believed to have a negative impact on the DSF and the other plants and animals found in its habitat. (USFWS 1993). ORVs compact the soil, possibly crushing and killing subterranean forms of the species; flatten and destroy vegetation, thereby removing potential food and cover; and increase rates of erosion. The use of even low numbers of ORVs may disturb the feeding, breeding, or resting behavior of adult DSF (USFWS 1997).

Trampling, or disruption of the substrate, is a concern usually overlooked for dune systems. Trampling is deleterious because it destroys the cryptoflora crust, which is important to resisting invasive microorganisms and maintaining soil ecosystem integrity (USFWS 1997).

In addition to directly eliminating habitat, agricultural conversion and residential and commercial development often result in habitat fragmentation, which may negatively affect the dispersal of the DSF. Roads have been found to be a barrier to the movements of some butterflies, beetles, and other arthropods (USFWS 1997). USFWS personnel have reported that adult DSF have been observed to turn or reverse the direction of their flight upon encountering paved roadways. The extent to which paved roads actually present a barrier to DSF movement remains unknown, however. DSF have been reported to fly across construction sites, roads, desilting basins and the like (USFWS 1997).

The number of DSF observed in a population may fluctuate from day to day and from year to year at a given locality. Reliable estimates of population sizes for the DSF are lacking. At the San Bernardino County Hospital preserve, high and low population estimates ranged from 162-106 in 1994, 121-70 in 1995, 140-49 in 1996, and 98-35 in 1997 (Kiyani 1997). Kiyani (1996 a, b) notes a number of assumptions and uncertainties regarding population counts of the DSF, and thus these estimates are considered tentative. At another site in 1989, a direct count of 13 individuals was made within a half-hour over a 10-acre portion of a 150-acre site (USFWS 1997, Ballmer 1989).

DSF CONSERVATION EFFORTS

The USFWS finalized its Recovery Plan for the DSF in 1997 (USFWS 1997). The Plan describes the life history of the DSF, current knowledge about populations, threats to the species, and conservation measures to protect the species sufficiently so that it is downlisted to threatened.

Significantly, the Recovery Plan states that "the likelihood of extinction [of the DSF] remains high, unless habitat protection and captive breeding and release programs are initiated without delay." The USFWS considers the species as having a high threat and low recovery potential (USFWS 1997). The Recovery Plan has identified at least two high-priority actions to promote the recovery and conservation of the species: (1) a captive breeding program to help ensure against the potentially devastating effects of local extirpation at existing occupied sites, and (2) acquisitions of conservation habitat consistent with the Recovery Unit concept. The Recovery Plan defines three geographic areas as recovery units: the Colton, Jurupa, and Ontario Recovery Units. The Project Site lies within the Colton Recovery Unit. The Recovery Plan has a goal of eight protected populations in the three Recovery Units, with four of the populations in the Colton Recovery Unit. The Plan states that two of the protected populations in the Colton Unit should be north of I-10, and two south of I-10.

To date, no areas of critical habitat have been designated for the DSF.

The Recovery Plan has an objective of protecting approximately 350 to 360 acres of DSF habitat within Agua Mansa Enterprise Zone (AMEZ) for DSF conservation (USFWS 1996c, 1997). The Recovery Plan states that approximately 50 of these acres should be in the area of the intersection of Riverside Avenue and Jurupa Avenue. The Recovery Plan states that there is currently no data available to determine the acreage needed for a properly functioning DSF preserve and does not present a biological reason for a preserve size of 50 acres (USFWS 1997).

The Recovery Plan discusses the Agua Mansa Industrial Growth Association (AMIGA) Memorandum of Understanding (MOU), which was signed in 1996 and was originally proposed to serve as the basis for developing a regional HCP for the AMEZ. The AMIGA MOU covers approximately 10,800 acres of land within the AMEZ including roughly 4,000 acres of vacant land (USFWS 1996c). If completed, the AMIGA HCP would provide for approximately 350 acres of protected habitat for the conservation of DSF (USFWS 1996c).

The MOU calls for the AMIGA to make efforts to pursue the development and enactment of an HCP, if feasible, and for the USFWS to work with the AMIGA to that end. After pursuing the formation of an HCP

to cover the entire AMEZ, the AMIGA has indicated that an HCP for the entire AMEZ is not feasible and will not be further pursued. The USFWS has indicated that it hopes the AMIGA will revisit the idea in the future.

The City of Colton has recently signed an MOU (Visy MOU) with the USFWS to explore the possibility of developing an HCP to cover approximately 240 acres for the Visy Paper Company project on land within the AMEZ. The Visy site is northeast of the project site in the city of Colton (Exhibit 5 Numbers 12, 13). The Visy MOU and resulting HCP would conserve approximately 160 acres within the 240-acre site for DSF conservation and allow the remainder to be developed. At this time, no HCP has been submitted or approved.

Currently, it is uncertain whether the AMIGA or Visy HCPs will be developed or implemented. Furthermore, there has been a notice filed with the USFWS by The Southwest Center For Biological Diversity and the Endangered Habitats League, pursuant to the Endangered Species Act, of an intent by these organizations to file a lawsuit over these MOUs. Such a lawsuit, if filed, may prevent completion and implementation of those HCPs under either MOU.

The City of Colton has established a preservation area of 7.5 acres of occupied habitat south of Interstate 10, near the Rialto/Colton border, just north of Santa Ana Avenue (Exhibit 5 Number 15). The conservation value of these 7.5 acres may be enhanced by the proposed dedication and enhancement of the Conservation Area by the Antonini Trust, which will enhance and maintain a contiguous area of additional habitat for DSF in the vicinity.

A DSF habitat restoration plan is being developed for the SCE parcels north and west of the Project Site (Exhibit 5 Numbers 14, 16). SCE and USFWS have been developing the plan, and implementation is expected to begin in the near future. This approximately 19-acre area is contiguous with the north edge of the Project Site. The conservation value of the SCE parcels may be enhanced by the proposed dedication and enhancement of the Conservation Area by the Antonini Trust, as these parcels are contiguous with the Conservation Area. The combined area of contiguous enhanced DSF habitat would be approximately 50 acres if the Proposed Action were to be adapted.

The Owl Company has agreed to set aside 6+ acres of an 11-acre site along Riverside Avenue as dedicated land for DSF conservation (Exhibit 5 Number 3). The remaining portion of the 11-acre site is planned to be developed for possible industrial development and secondary access to an adjoining developed site. This dedication agreement is part of the AMIGA MOU.

As part of the AMIGA MOU, Home Savings of America FSB has agreed to donate $450,000 for DSF habitat acquisition. According to the USFWS, the material terms of this agreement are now the subject of discussions between Home Savings' successor and the USFWS.

PROJECT SITE EXISTING CONDITIONS

Exhibit 7 illustrates the Project Site, depicting the parcels contemplated for industrial development and use and the Conservation Area to be dedicated for the recovery and conservation of the DSF.

A 1989 biological assessment of the Site prepared by Tierra Madre Consultants, Inc. noted that essentially the entire Site evidenced past human-induced disturbance. According to Tierra Madre, a citrus orchard area covered the Site and a windrow of eucalyptus trees lined the western boundary. As of 1989, Tierra Madre noted that virtually all native vegetation was absent from the Site and that domestic sheep grazing was occurring, or had been occurring on the Site recently. A vacant residence with several sheds and a block wall were located in the southern portion of the property. Illegal trash dumping was noted on the Site, particularly in the northern portion. Ballmer described the vegetation of the Site as consisting "mostly of introduced weeds such as *Avena barbata*, *Bromus diandrus*, and *Brassica geniculata*, but native species such as *Eriogonum fasciculatum*, *Croton californicum*, and *Heterotheca grandiflora* are also present in low density" (Ballmer 1989).

The majority of the 96-acre Site consists of the Delhi Sands soil formation (United States Department of Agriculture 1980) (see Exhibit 4). There are an estimated 20 acres of non-Delhi sand soil on the larger 87.5-acre parcel, leaving approximately 67 acres of Delhi Sands soil on the larger parcel. These acreage figures are based on published USDA soil maps, which are mapped at a large scale and thus represent approximations at the mapping scale of the Project Site. Although mapped as Delhi Sands soil, the 8.4-acre parcel does not appear to contain Delhi Sands soil as the parcel slopes down to the river plain and does not have the unconsolidated springy texture of Delhi Sands soil on the larger parcel. In any event, one to two acres of the native soil on the 8.4-acre parcel was removed by sand mining operations between the time of the USDA soil mapping and the purchase of the parcel by Antonini Trust. This results in at most 6 acres of Delhi Sands soil on the 8.4-acre parcel. Thus, there are an estimated 73 acres of Delhi Sands soil on the Project Site.

The topography of the Site consists of relatively level terrain with some rolling swales. Much of the Site was disced for fuel reduction in April 1997. Areas adjacent to the Site support developed and undeveloped land. A few eroded drainage channels interrupt the otherwise relatively level terrain of the Site.

The vegetation of the Site consists generally of a ruderal (weedy) mixture of native and non-native shrubs, forbs, and grasses that are good colonizers of disturbed areas. Vegetation cover on the Site varies from 100 percent to less than 5 percent; most of the site supports cover exceeding 90 percent. Overall the herbaceous/grass layer averages about 80 percent cover. Most of the Site is dominated by the non-native ripgut brome and mustard and the native annual bur-sage and telegraph weed. Other generally distributed common species are the non-native grasses, wild oats, ripgut brome, and foxtail chess. In the small open

sandy areas and a few other small patches not recently disced, a few additional native species are prevalent, including California croton, tarweed, and fiddleneck. Castorbean and annual sunflower are common in the drainage ditch bordering Agua Mansa Road. The slope along the upper one-half of the Site's southeastern border is covered with a dense growth of non-native grasses, among which occur sparsely most of the other plant species mentioned above, as well as brittlebush (*Encelia farinosa*), valley cholla (*Opuntia parryi*), calabazilla (*Cucurbita foetidissima*), wild cucumber (*Marah macrocarpus*), jimson weed (*Datura wrightii*), and a few individuals of California buckwheat.

Native telegraph weed is common in places. In a few sparsely vegetated sandy unpaved roadways and in small patches of relatively open sand distributed occasionally to frequently within the otherwise typically dense vegetation cover, a few additional native species are prevalent, including California croton, tarweed and fiddleneck. Vegetation of this particular character and density is largely concentrated in small patches distributed across a 20- to 30-acre area in the northwestern portion of the Project Site.

Portions of the Site have been disturbed by past activities including citrus farming, grazing, unauthorized ORV use, weed abatement discing for fuel reduction, and illicit trash dumping.

Approximately 2,700 linear feet of underground water pipelines were constructed on the site between June 1996 and February 1997. The construction zone for trenching was 25 to 30 feet wide, with a wider area of soil excavated to provide stable banks surrounding the trenching zone. In some locations, the cutbanks are approximately 100 feet wide. The backfill material over the pipelines was compacted, and currently forms unpaved roadways on the site.

Historically, the Project Site has not been identified as containing a DSF population. In 1989, Greg Ballmer and two other observers investigated the Site on two days during the adult flight period; no flies were observed and Ballmer did not believe that the Site was currently occupied given the degraded and disturbed nature of the Site (Ballmer 1989). The USFWS made similar observations regarding the lack of current suitable habitat on a portion of the Site that was surveyed in 1994 (USFWS 1994a.)

DSF have been observed on lands near the Site. DSF have been observed in the SCE property near Riverside Avenue (Exhibit 5 Number 14, 16) (Ballmer 1989, Riggan 1996). There is an established population on the SCE property on either side of Riverside Avenue (Gould pers. comm.). This area is immediately adjacent to the proposed Conservation Area. Another established population is located approximately 3,000 feet northeast of the Project Site (ENSR 1997). Other sites of reported DSF occurrences within 2 miles of the Project Site are shown in Table 1 and Exhibit 5 and are discussed below.

FOCUSED SURVEY METHODOLOGY AND FINDINGS

As noted previously, although no DSF were observed during focused surveys conducted during 1995, 1996, and 1997, USFWS requested additional focused surveys for DSF in 1998. During the 1998 surveys there were 4 observations of DSF on a single day of the surveys. No DSF were observed mating, ovipositing, or feeding. The observations indicate a minimum of 3 individual DSF were present on the site on the day the observations were made: 2 males, and 1 female.

MBA conducted focused surveys for the DSF to determine the presence or absence of this species on the Site in 1995, 1996, and 1997. These focused surveys were conducted in accordance with the field methodologies of the USFWS' recommended protocol, which recommends, inter alia, that two visits per week for the typical 4-to-6 week flight period of the DSF be conducted during appropriate weather conditions (USFWS 1995). However, surveys in 1996 did not commence until the third week after the first sightings of a DSF were made at the County Hospital Site, so the 1996 surveys started later than that recommended by the USFWS.

No DSF were observed on the Project Site during any of the 1995-97 surveys. Over 216 hours of surveys were conducted during appropriate survey periods and under weather conditions suitable for observation of DSF by trained biologists with experience with DSF during the 1995-97 surveys.

1995 Focused Surveys

All areas of potential DSF habitat were surveyed 4 times per week for 4 weeks for a total of 16 visits, in order to obtain total coverage of the Site. During 1995, surveys commenced within 9 days of the first reported observation of DSF and were conducted on August 18, 22, 24, 25, 27, 30, 31, and September 1, 5, 6, 7, 8, 11, 12, 13, and 14. Weather conditions during the 1995 surveys were conducive to high levels of invertebrate activity. Temperatures ranged from 26 to 46 degrees Celsius (79 to 115 Fahrenheit). Wind speed ranged from 0 to 8 kilometers per hour (0 to 5 miles per hour). Surveys were conducted between 8:00 a.m. and 3:30 p.m. by MBA biologist Amy B. Dickerson. Approximately 104 person-hours of surveys were conducted in 1995.

During the 1995 surveys, potential DSF habitat was walked in search of patrolling males and resting flies of both sexes. Air space above flowering plants was watched carefully for flying insects. Patches of open sand, flowers, and plant stems were examined for resting flies. Flowers were also examined for feeding flies. All insect taxa encountered at flowers were noted (to family, or if possible to genus). Insects unidentifiable visually were captured (when possible) in an insect net for closer examination.

No DSF were observed on the Project Site during the 1995 surveys.

1996 Focused Surveys

During the 1996 surveys the Site was surveyed 2 times per week for 4 weeks for a total of 8 visits. The surveys were conducted on August 24, 25, 29, and 31, and September 1, 8, 9, and 12, 1996. The entire Site was covered on foot between the hours of 9 a.m. and 4 p.m. Weather conditions during the surveys were conducive to high levels of invertebrate activity. Temperatures ranged from 29 to 39 degrees Celsius (84 to 102 degrees Fahrenheit). Wind speed ranged generally from 0 to 17 km/hr (0 to 10 mi./hr). Surveys were conducted by Larry Munsey, an entomologist having specialized experience with the DSF. Approximately 48 person-hours of surveys were conducted in 1996.

No DSF were observed on the Project Site during the 1996 surveys.

1997 Focused Surveys

During the 1997 surveys, the Site was surveyed 2 times per week for 7 weeks for a total of 14 visits. The surveys commenced within 4 days of the first reported sightings of DSF in 1997, and were conducted on August 10, 11, 16, 17, 22, 25, 29, and 30, and September 5, 8, 12, 16, 19, and 20, 1997. The entire Site was covered on foot between the hours of 10 a.m. and 3 p.m. Weather conditions during the surveys were conducive to high levels of invertebrate activity. Temperatures ranged from 24 to 40 degrees Celsius (75 to 104 degrees Fahrenheit). Wind speed ranged generally from 0 to 8 km/hr (0 to 5 mi./hr) with occasional gusts to 17 km/hr (10 mi./hr); skies were generally clear, with a few exceptions when overcast conditions prevailed. Surveys were conducted by Larry Munsey. Approximately 64 person-hours of surveys were conducted in 1997.

No DSF were observed on the Project Site during the 1997 surveys.

1998 Focused Surveys

During the 1998 surveys, the Site was surveyed 2 times per week for 5 weeks, between the hours of 1000 and 1400, commencing 17 August 1998 and concluding 20 September 1998. The surveys were conducted in accordance with USFWS interim general survey guidelines (USFWS 1996b), except for two special modifications pursuant to prior agreement with the USFWS: (1) the survey area was limited to 50 acres, selected in cooperation with USFWS biologists to include all the small patches and other areas containing vegetation of a composition and density associated with potential use by DSF within the site's total 96 acres; (2) the duration of the survey period was 5 (rather than 7) weeks. The survey area included the SCE easement. Surveys were performed by Larry Munsey.

Surveys were conducted on foot, generally following a transect pattern that reflected the location of areas containing patches, regardless of their size, of relatively open, sparsely vegetated Delhi Sands soils. These areas were determined by an on-the-ground habitat assessment conducted by Mr. Munsey in cooperation with USFWS personnel. The areas selected for surveying were selected to encompass all areas of sparsely vegetated sand that could be arguably used by opportunistic DSF. Weather conditions during the surveys were generally conducive to high levels of invertebrate activity. Temperatures typically ranged between 26 and 40 °C (78-104 °F). On a few occasions temperatures during the first one to two hours of the survey period were lower, ranging in the low to mid-20°s C (70°s F). Only in one instance did the low temperature fail to exceed 27 °C (80 °F) by noon (mid-survey), or during any time of the survey-day. Wind speed ranged generally from 0 to 8 km/hr (0 to 5 mi./hr) with occasional gust to 25 km/hr (15 mi./hr). Skies were generally clear, with some exceptions when overcast conditions prevailed. Approximately 40 person-hours of surveys were conducted during the 1998 surveys.

There were four (4) DSF observations on the Project Site during one of the survey-days in 1998. Individual DSF detection's were made on four different occasions between 1145 and 1215, August 27, 1998, each sighting was separated by short intervals of less than a minute to several minutes. Three of the sightings were of a male, and one of a female. Each of the male sightings involved continuous observation for a half-minute to a few minutes in duration. In all instances, these individuals were engaged in "cruising" flight behavior, sometimes coming to brief rest on the ground or a low-lying plant. The female flew from vegetation and was observed for only a few seconds while in flight.

Of the three sightings involving male DSF, the first two sightings conclusively represent separate individuals, due to distinct differences in size and morphology of the DSF. The second and third male sightings suggested the strong possibility of being the same individual, because the sightings occurred quite closely in time and space, and the DSF were indistinguishable in appearance.

The DSF sightings occurred in a sandy unpaved roadway located within the northwestern portion of the Project Site (Exhibit 6). This unpaved roadway lies perpendicular to the site's western border from which it extends eastward for a few hundred meters across the site. All sightings were made within an approximately 50-m (150 feet) radius near the boundary of the property at Industrial Way. The sightings were within the proposed Conservation Area.

The observations suggest that three (3) DSF were present on the Site on August 27, 1998.

INTERPRETATION OF SURVEY FINDINGS

Prior to 1998, focused surveys of approximately 216 hours conducted over three consecutive years (1995, 1996 and 1997) indicated that DSF did not occur on the Project Site. These focused surveys were conducted by biologists familiar with the DSF and conducted according to the scientific methodologies of the recommended protocols, and did not find any DSF on the Site. Although the surveys conducted on the Site in 1996 did not commence at the very outset of the 1996 DSF flight season, MBA believes the survey results for 1996 are reliable because such surveys were conducted during the normal DSF flight season as noted in USFWS protocol, DSF were noted as late as September 2 on nearby properties (Olsen 1996) and the surveys were carried out in accordance with the field methods called for in the USFWS protocol by an entomologist of considerable experience. The 1996 data supports the data from surveys in 1995 and 1997 and the surveys conducted by Ballmer in 1989 during which no DSF were observed (Ballmer 1989). Additionally, surveys by USFWS on a portion of the Site observed no DSF and concluded that the area surveyed was of low suitability for DSF due to the high level of disturbance on the property (USFWS 1994a).

Habitat surveys indicate that the Site generally contains disturbed, degraded habitat which is unsuitable for DSF. Currently most of the Site supports vegetative cover exceeding 90 percent, with percent cover varying from 100 percent to less than 5 percent. Overall, the herbaceous/grass layer averages about 80 percent cover on the Site. As noted previously, DSF appear to avoid areas of dense vegetation cover (greater than 75 percent), with males selecting areas of open sand as perch sites during mating season, and females using buckwheat and telegraph weed for perches and ovipositing immediately adjacent to telegraph weed (Kiyani 1995, 1996a, b, 1997). Although the entire 96-acre Site contains approximately 73 acres of Delhi Sands soils, the vegetation community on the Site is generally unsuitable for DSF. The plant community on Site is dominated by non-native species, has a dense stand structure, and contains little bare ground. Plant communities such as these are considered unsuitable habitat for DSF (USFWS 1997, Ballmer 1989). The data from the 1995-97 focused surveys and the habitat assessments were mutually supportive and reinforcing. The data from the 1995-97 focused surveys supported the conclusion that DSF did not occur on the Site.

It could be argued that data from the 1998 surveys indicate that a small portion of the Site appears occupied by DSF. This small area lies within the proposed Conservation Area along the open sandy unpaved roadway area formed by maintenance activities for an existing underground water line. As noted previously, the unpaved roadway and associated cutbanks were disturbed by construction of underground water pipelines between June 1996 and February 1997. The unpaved roadway area contains open sand and is sparsely vegetated with scattered croton and telegraph weed. This area is within the proposed Conservation Area. This Area is approximately 100 feet wide and 400 feet long and encompasses approximately one acre.

Although the Site generally does not contain suitable habitat for DSF, the Site contains Delhi Sands soil, the fundamental component of DSF habitat. A few of the plant species associated with DSF habitat are scattered sparsely across the Site, but the Site is currently dominated by other plant species, particularly non-natives. Thus, a portion of the Site appears to contain potentially restorable DSF habitat. Removal of non-native plants, opening areas of bare soils, and planting of key native plant species would be basic to restoring DSF habitat on the Site.

As noted previously, there are sparsely vegetated sandy unpaved roadways and small patches of relatively open sand distributed occasionally to frequently in the 20- to 30-acre area in the northwestern portion of the Project Site. These more open areas are within a matrix of otherwise typically dense vegetation cover. Within the scattered open patches a few native species are prevalent, including California croton, telegraph weed, tarweed, and fiddleneck. The USFWS has indicated that the Site provides suitable habitat for the DSF, especially within the Conservation Area.

In general, the ESA does not regulate potentially restorable or unoccupied habitat on private property. For the most part, to qualify as a take under the ESA, the loss of suitable habitat must directly and imminently lead to the injury or death of one or more specific members of the listed species. Data from focused surveys suggest that a relatively small but unquantifiable number of DSF may be killed or injured by the Proposed Action during the term of the Permits.

KNOWN LOCATIONS AND OBSERVATIONS OF DSF IN THE PROJECT SITE VICINITY

The USFWS DSF Recovery Plan states that there are 12 known locations inhabited by DSF. These sites and their population numbers are not described in detail in the Plan (USFWS 1997).

There are nine locations of reported observations of DSF within 2 miles of the Project Site. Reported sightings include single observations of DSF, which may be transient individuals, and multiple observations, which may indicate established populations. Reported observations in the vicinity of the Project Site as of DSF survey year 1997 are shown in Table 1, mapped in Exhibit 5 and described below.

TABLE 1
DELHI SANDS FLOWER-LOVING FLY SURVEY SITES
IN THE PROJECT SITE VICINITY
AS KNOWN IN 1997

Map #	Property Name	Acreage	DSF Observed	Established Population	Reference
1	Angelus Block	96	No	No	MBA 1995, 1996, 1997 Ballmer 1989
2	Owl Company Mine Site	217	No	No	Riggan 1996
3	Owl Company Access Site	11	Yes, 2	Unknown	Riggan 1996
4	Inland Empire Composting	107	No	No	FH&A 1994
5	Trism/Rialto Land Co./Singletary	10	Yes, 2	Unknown	USFWS 1996a
6	Agua Mansa Industrial Center	250	Yes, 3	Unknown	Thomas Olsen 1996
7	Hospital Mitigation Site	9	Yes, many	Yes	Kiyani 1996
8	Santa Fe Buckwheat Parcel	17	Yes, 1 or 2	Unknown	Tierra Madre 1997
9	Santa Fe Sycamore North	19	Yes, many	Yes	Tierra Madre 1997
10	Santa Fe Sycamore South	5	No	No	Tierra Madre 1997
11	Colton/San Bernardino Water Treatment	35	No	No	Thomas Olsen 1997
12	Visy Proposed Project Site	80	Yes, Multiple	Unknown	Woulfe pers. comm.
13	Visy Proposed Conservation Area	160	Yes, many	Yes	ENSR 1997
14	SCE Area #1	9.4	Yes, multiple	Yes	Riggan 1996
15	Colton Transmission Line Mitigation Site	7.5	Yes	Yes	ENSR 1995
16	SCE Area 2	9.6	Yes, 4	Unknown	Ballmer 1989

Focused surveys were conducted during the 1994 and the 1996 DSF flight seasons on the Owl Company Access site (Exhibit 5 Number 3). Three surveys were conducted in 1994. No DSF were observed during the 1994 surveys. Five surveys were conducted in 1996. Two DSF were observed on the Owl Company Access Site during 1996 surveys, and it is not known whether there is an established population at the site (Riggan 1996). The majority of the approximately 11-acre site is composed of Delhi Sands soil. The northern portion of the site is composed of somewhat open dune-like vegetation, while the southern portion is dominated by ruderal vegetation. Six acres of this 11-acre site are to be set aside for DSF conservation, and the remaining acreage of the access site, as well as the 217-acre Owl mine site (Exhibit 5 Number 2), are to be developed (USFWS 1996c).

The habitats on the 107-acre Inland Empire Composting site (Exhibit 5 Number 4) were surveyed in September 1994 to assess suitability for DSF. The site contains riverine deposit soils, does not contain

Delhi Sands soils, and is considered unsuitable for DSF (FH&A 1994). No DSF were observed. Focused surveys for DSF were not conducted.

Six focused surveys for DSF were performed by USFWS personnel and consultants in 1996 on the Trism/Rialto/Singletary property (Exhibit 5 Number 5). A minimum of two DSF were observed on the Trism/Rialto /Singletary property in 1996, it is not known whether there is an established population at the site (USFWS 1996a). The Trism/Rialto/Singletary property is currently undeveloped and contains Delhi Sands soils and some native plants. The USFWS considers the Trism property a potential DSF movement corridor and potentially a breeding site in good years (USFWS 1996a). The site is approximately 9.75 acres in size.

The Agua Mansa Industrial Center site (Exhibit 5 Number 6) was surveyed 12 times during the 1996 DSF flight season. Three DSF were observed in 1996 (Thomas Olsen 1996), it is not known whether an established population exists on the site. The Agua Mansa Industrial Center site is approximately 250 acres in size. Most of the site was disced in June 1996 prior to the surveys. Vegetation on the site before discing had been dominated by non-native grasses. Some of all of the site has been provided Incidental Take authorization by USFWS. The terms of this arrangement are currently the subject of discussions between the USFWS and the property owner(s).

There is a small established population, estimated to be between 35-162 individuals (Kiyani 1987), at the San Bernardino Hospital Mitigation site (Exhibit 5 Number 7). The site has been the location of behavioral studies of DSF for several years (Kiyani 1995, 1996 a, b, 1997). The site contains a stand of native vegetation and open unvegetated sand (Kiyani 1996). Ten acres have been preserved as DSF habitat (USFWS 1997).

DSF have been observed on two parcels of land owned by Santa Fe Pacific Pipeline Partners LP: the 17-acre Buckwheat parcel and the 19-acre Sycamore North parcel (Tierra Madre 1997) (Exhibit 5 Numbers 8, 9). Fourteen surveys were conducted in 1997 on each parcel. Only two DSF were observed on the Buckwheat parcel, and it is not known whether there is an established population or whether these were transient individuals. There have been numerous DSF observed on the Sycamore North parcel including pupal cases and an emerging male indicating there is an established DSF population at this site (Tierra Madre 1997). The Sycamore North parcel is considered high quality occupied DSF habitat (Tierra Madre 1997). A third parcel owned by Santa Fe Pacific Pipeline Partners LP, the 5-acre Sycamore South parcel (Exhibit 5 Number 10), was surveyed along with the other Santa Fe parcels. The Sycamore South parcel has been graded, contains no suitable DSF habitat, and no DSF were observed.

The Colton/San Bernardino Water Treatment site (Exhibit 5 Number 11) does not contain Delhi Sands soil (Olsen 1997). Thus, it was determined that the site does not contain DSF habitat (Olsen 1997). Focused surveys for DSF were not conducted.

The Visy site occupies approximately 240 acres and is divided into an 80-acre project site and a 160-acre conservation area (Exhibit 5 Numbers 12, 13). Six surveys for DSF were conducted in 1997, with results consistent with data collected in 1996. There have been DSF observed at the proposed Visy 80-acre project site, (Woulfe pers. comm.) (Exhibit 5 Number 12). There have been numerous observations of DSF in the proposed 160-acre conservation area (Exhibit 5 Number 13) associated with the proposed Visy project (ENSR 1997). There appears to be an established population in the proposed conservation area (ENSR 1997).

DSF were observed on the SCE Area #1 (Exhibit 5 Number 14) in 1994 by USFWS biologist Jeff Newman (Riggan 1996). Several DSF were observed and used as a check on DSF activity during the 1994 surveys of the Owl Company Access site.

The Colton Transmission Line Mitigation Site (Exhibit 5 Number 15) has been reported as being occupied by DSF (ENSR 1995). Details of site surveys, and DSF observations are not readily available.

The SCE Area 2 (Exhibit 5 Number 16) was surveyed on three days in 1989. Four DSF were observed (Ballmer 1989).

OTHER SPECIAL STATUS SPECIES WITH POTENTIAL TO OCCUR ONSITE

A review of recent listings under the FESA and data from the California Natural Diversity Database (CNDDB) for the San Bernardino South and Fontana USGS topographic quad maps indicate thirty special status species are known to occur within the region of the Site (CDFG 1997). An assessment of the species' respective habitat preferences, conditions on Site, and discussions with USFWS show that twenty of these potentially occur on the Site, as the Site contains appropriate conditions and is in the geographic range of the species. These are briefly described below.

Special status species are native species that have been accorded special legal or management protection because of concern for their continued existence. There are several categories of protection at both federal and state levels, depending on the magnitude of threat to continued existence and existing knowledge of population levels.

Sources used to determine potential occurrence of special status species include: U.S. Fish and Wildlife Service (USFWS 1993; 1994b, 1996d), California Department of Fish and Game (CDFG 1996a,b, 1997, 1998a, b), California Native Plant Society (Skinner and Pavlik 1994) California Wildlife Habitat Relationships Database System (CDFG 1991), Remsen (1978), and Williams (1986).

Plants

The Santa Ana River woollystar (*Eriastrum densifolium ssp. sanctorum*) is listed as endangered under federal and state law. It is an erect, many branched, bright blue flowered, perennial herb. It is found within the Santa Ana River drainage on sandy soils of river floodplains and terraced alluvial deposits. The woollystar has not been observed on the Site and is not expected to occur, as suitable habitat is not present.

Wildlife

The San Diego horned lizard (*Phrynosoma coronatum blainvillei*) is a federal species of concern and a California species of special concern. It is a small, spiny, somewhat rounded lizard that occurs primarily in open or sparse coastal sage scrub and chaparral communities. This species prefers loose friable soil for burrowing. Three factors have contributed to its decline: loss of habitat, overcollecting, and the introduction of exotic ants. In some places, especially adjacent to urban areas, the introduced ants have displaced the native species upon which the lizard feeds. The horned lizard has not been observed on the Site, and is not expected to occur on the Site, as their preferred open habitat is not present.

The silvery legless lizard (*Anniella pulchra pulchra*) is a CDFG species of special concern. It is a small, secretive, snake-like lizard that lives and forages in leaf litter, under debris, or within sandy soil (Stebbins 1985). It occurs in a variety of habitats, including sandy washes, sandy soil, coastal scrub habitats, and woodlands. The silvery legless lizard preys on insect larvae, small adult insects, and spiders (CDFG 1991). This species may occur on the Site as the Site is in the geographic range of the lizard and sandy soil is present.

The northern red diamond rattlesnake (*Crotalus ruber ruber*) is a CDFG species of special concern. This subspecies is most commonly encountered in open scrub habitats such as coastal sage scrub, but it also inhabits grasslands, dry washes, chaparral, and woodlands. The northern red diamond rattlesnake ranges from southern San Bernardino County, south into Baja California, and from sea level to around 5,000 feet (Stebbins 1985). This species may occur on the Site as low value habitat is present.

The white-tailed kite (*Elanus leucurus*) is a fully protected species in California. It feeds on rodents (especially voles) and large insects that it hunts by hovering over suitable habitat. It forages over open grassland and nests in trees in a variety of habitats. Winter roosts usually occur in oaks and other large trees

associated with streams, rivers, and marshlands. This species may occasionally forage over the Site; however, suitable nesting habitat is absent.

The golden eagle (*Aquila chrysaetos*) is both fully protected and a CDFG species of special concern, and is protected by a 1963 amendment to the Bald Eagle Act of 1943. This bird is an uncommon-to-rare permanent resident in open habitats throughout California. It nests in high trees and on rock faces of cliffs, and forages over plains and in open country. This species has been observed flying over the Site; no suitable nesting habitat is present.

The sharp-shinned hawk (*Accipiter striatus*) and Cooper's hawk (*Accipiter cooperii*) both are CDFG species of special concern. Both species breed in woodlands and forests. Cooper's hawk is both a resident and winter visitor in southern California; the sharp-shinned hawk is only a winter visitor. During winter months these two species forage in urban areas. Both may occasionally forage over the Site, there is no nesting habitat on the Site.

The prairie falcon (*Falco mexicanus*) is a CDFG species of special concern. It requires cliffs or rocky outcrops for nesting and dry open areas for foraging. Its prey includes small mammals, small birds, and reptiles. This species may occasionally use the Site for winter foraging; no suitable breeding or nesting habitat is present.

Other raptors that are uncommon to rare in the region may forage on the Site during migration. These include the ferruginous hawk (*Buteo regalis*), northern harrier (*Circus cyaneus*), and merlin (*Falco columbarius*), all CDFG species of special concern, and Swainson's hawk (*Buteo swainsoni*), a state-threatened species.

The western burrowing owl (*Athene cunicularia hypergia*) is a CDFG species of special concern. Formerly common throughout California, its decline was noticeable as early as the 1940s. The burrowing owl lives in the abandoned burrows of ground squirrels and other burrowing animals, modifying the burrows to suit its needs by digging. It is one of the few owl species often seen during the day, perched on fenceposts or at the entrance to burrows. Although the sandy soil conditions of the Site would limit the size and longevity of burrows, a burrowing owl was observed on site near an abandoned, exposed concrete pipe.

The California horned lark (*Eremophila alpestris actia*) is a CDFG species of special concern. This is the southern and central California resident subspecies of the widespread horned lark. California horned larks are found in sparse grasslands, some agricultural areas, and open brush with extensive bare ground. Horned larks nest on the ground in grasslands. Potential California horned lark breeding habitat is present on the Site.

The loggerhead shrike (*Lanius ludovicianus*) is a CDFG species of special concern. This bird prefers open habitats with scattered shrubs, trees, posts, fences, or other perches. It nests in trees or shrubs adjacent to open areas. It preys on large insects such as grasshoppers, and will also take small mammals, birds, and reptiles. This species occurs on the Site.

The California mastiff bat (*Eumops perotis californicus*), pallid bat (*Antrozous pallidus*), and pale big-eared bat (*Plecotus townsendii pallescens*) are CDFG species of special concern. These species require rocky areas, abandoned mines or buildings, or other such habitat for roosting. Suitable roosting habitat for these species does not occur on the Site, but they may forage over the Site.

The San Bernardino kangaroo rat (*Dipodomys merriami parvus)* (SBKR) is listed as endangered under the ESA. The historical range of the SBKR extends from the San Bernardino Valley in San Bernardino County to the Menifee Valley in Riverside County (USFWS 1998). The SBKR is now primarily associated with a variety of sage scrub vegetation, where the common elements are the presence of sandy soils and relatively open vegetation structure (USFWS 1998). Where the SBKR occurs in alluvial scrub, the SBKR reaches its highest densities in early and intermediate seral stages (USFWS 1998). Conversations with USFWS staff indicate that SBKR may have historically occurred on the Project Site, and USFWS requested that surveys be conducted for SBKR.

Focused surveys for SBKR were conducted from November 18 to 22, 1998. A total of 1,240 trap nights were conducted following USFWS protocols by a biologist permitted to conduct SBKR surveys. Traps were placed in those areas that had the greatest likelihood of capturing SBKR based on habitat, soil conditions, and evidence of rodent activity. No SBKR or other kangaroo rats were captured or observed. It is concluded that the SBKR does not occur on the project site.

The Los Angeles pocket mouse (*Perognathus longimembris brevinasus*) is listed as a species of concern by the federal government and a species of special concern by CDFG. The pocket mouse occurs in grasslands and coastal sage habitats within the Los Angeles basin from Burbank and San Fernando to San Bernardino South to Cabazon and Hemet. The Los Angeles pocket mouse has been reported in the region (Tierra Madre 1997). The Los Angeles pocket mouse occurs on Site. Los Angeles pocket mice were captured during the surveys conducted for SBKR.

The San Diego black-tailed jackrabbit (*Lepus californicus bennettii*) is a CDFG species of special concern. Its range includes grasslands, coastal sage scrub, and chaparral in coastal regions of California from Ventura County to northern Baja California. The black-tailed jackrabbit is most active at dawn and dusk and feeds on green vegetation. This species may occur on the Site.

IMPACTS TO THE DSF THAT MAY RESULT FROM THE PROPOSED ACTION

Although it is impossible to project with any meaningful degree of accuracy, it appears most likely that no more than ten (10) DSF may be killed or injured by the Proposed Action. Regardless of the actual number, however the protection in perpetuity of approximately 30.5 acres of DSF habitat is expected to provide a net-benefit to conservation of DSF on the Site as explained below.

The development of the Site will result in the loss of approximately 43 acres of potentially restorable DSF habitat of which it can be argued that one acre appears occupied by DSF. As noted, a small portion of the Site within the proposed Conservation Area appears occupied by DSF. This roadway area is approximately one acre in size. The entire Project Site contains approximately 96 acres in two parcels. The smaller 8.4-acre parcel is not currently planned for development. The larger 87.5-acre parcel has been subdivided and is entitled for development. There are an estimated 20 acres of non-Delhi Sand soils on the larger parcel, leaving approximately 67 acres of Delhi Sands soil as potentially restorable DSF habitat on the larger parcel. These acreage figures are based on published USDA soil maps, which are mapped at a large scale and thus represent approximations at the mapping scale of the Project Site. Although mapped as Delhi Sands soil, the 8.4-acre parcel does not appear to contain Delhi Sands soil as the parcel slopes the river plain and does not have the unconsolidated springy texture of Delhi Sands soil on the larger parcel. In any event, one to two acres of the native soil on the 8.4-acre parcel was removed by the adjacent landfill operation between the time of the USDA soil mapping and the purchase of the Site by the Antonini Trust. This results in at most 6 acres of Delhi Sands soil on the 8.4-acre parcel. The Conservation Area will consist of 30.5 acres; thus, up to approximately 43 acres of unoccupied but potentially restorable DSF habitat could be affected by the proposed development.

The Conservation Area includes the locations where DSF were observed in 1998. The observations were made in an area that was excavated in 1997/98 for construction of an underground water pipeline. The DSF observation locations lie within an easement for an existing underground water line. These locations are included within the Conservation Area even though the easement will be subject to periodic soil and substrate disturbance in the future, as the water line must be accessed from time to time for periodic maintenance by the City of Rialto, and/or the West San Bernardino County Water District. The open, sandy, sparsely vegetated condition where the DSF were observed is likely an artifact of the construction of the pipeline. The open vegetation is strongly associated with the easement and the adjoining cutbanks, while the immediately surrounding vegetation (outside the obvious construction area) is much denser and dominated by nonnative species. Any DSF that may reside within the easement would be potentially injured or killed during periodic or emergency repair activities. Moreover, as active water lines already exist in this area, any DSF in this area could be injured or killed as the result of uncontrollable breaks or leaks in this water system which in turn could lead to a consequent change in soil conditions. Moreover, neither the City of Rialto, nor the West San Bernardino County Water District are receiving incidental take authority by virtue of the Applicants' Section 10(a) permit. Any of the City of Rialto's, or the West San Bernardino County Water District's activities that

may result in incidental take will require a separate take permit for the agency responsible for the take.

There will be no storage of any material in the Conservation Area. Outdoor storage of finished concrete block and concrete paver in the SCE easement outside the Conservation Area is not expected to impact DSF or the Conservation Area. The concrete block and concrete paver are solid and composed of inert concrete and rock. There will be no storage of toxic or hazardous material in the outdoor storage area.

The proposed block plant, paver plant and E-Z Mix East Complex will comply with all air and water quality regulations. The three facilities will receive Portland cement binders and natural aggregate materials that consist of sands and gravels. Aggregates will be received in a moist state and transferred to storage without visible dust emissions. All transfer of dry materials during processing will be done with equipment vented through air pollution equipment approved by the Air Quality Management District (AQMD). The facilities will employ bag houses on the cement processing silos to control dust emissions. The bag house systems will employ mechanical gauges to indicate static pressure differential cross the bags, and will be maintained on a regular basis. Any emissions from the facilities will meet stringent air quality regulations. For these reasons emissions from the facilities are not expected to affect DSF or soils or habitat in the Conservation Area. Currently there are ongoing heavy industrial uses in the area of the Project Site that produce various emissions. These uses include cement production, mining and landfill operations.

Nighttime lighting in those lots near the Conservation Area will be directed away from the Conservation Area in a manner to avoid potential impacts on DSF.

A stormwater drainage system will be constructed for the Project Site that will convey water downhill to the south away from the Conservation Area in the northern end of the Site. Thus, no indirect effects to the Conservation Area are anticipated from stormwater. Accidental spills from facilities constructed on the Project Site are likewise not expected to affect the Conservation Area, as spilled material would be handled by established spill containment procedures approved by regulatory agencies, and spilled material would be expected to flow downhill away from the Conservation Area.

SCE activities within SCE's non-exclusive electric transmission easement within the Conservation Area are not expected to impact DSF or DSF habitat. As previously noted, SCE uses an existing dirt roadway in the proposed Conservation Area to access transmission towers that are outside of and to the west of the proposed Conservation Area in order to conduct periodic inspection and maintenance of these towers and to wash transmission tower insulators. The dirt road is approximately 16 feet wide. Insulator washing is done approximately every 6 weeks using pressurized water. The washing occurs outside the Conservation Area. Thus, SCE maintenance activities are not expected to impact DSF or habitat in the Conservation Area.

SCE has adopted an endangered species sensitivity training program for its employees, called the Endangered Species Alert Program (ESAP). Through the ESAP, SCE employees receive endangered species sensitivity training and are provided a manual identifying SCE transmission areas which contain or are within one mile of locations of endangered species. The ESAP contains procedures to follow in DSF sensitive areas such as the proposed Conservation Area. The ESAP covers topics such as appropriate general activity precautions, appropriate operating procedures in emergencies, and appropriate timing of activities in DSF sensitive areas.

Additionally, SCE is preparing a formal multi-species Habitat Conservation Plan to govern SCE's activities within electrical transmission line easement areas that contain listed species including the DSF. This additional program will be reviewed by USFWS, and when adopted will provide a further measure of protection for DSF from SCE activities within the Conservation Area. Moreover, SCE is not receiving incidental take authority by virtue of the Applicants Section 10(a) permit. Any of SCE's activities that may result in incidental take will require SCE obtain a separate take permit.

Following initial discussions with USFWS, the Conservation Area was redesigned from the original elongated area on the north and east of the Site to a more square-shaped 13.4-acre area in the northwest section of the Site. The redesign of the Conservation Area was done to reduce edge effects by providing a roughly square-shaped area rather than the long narrow area originally planned. Reshaping the Conservation Area increased the ratio of interior acreage to edge distance over the originally proposed design. This resulted in greater ratio of interior area-to-edge that is generally regarded as a more effective conservation reserve design. The design of the 13.4-acre Conservation Area thus increased its conservation value and increased the ability to maintain the restored habitat in a suitable condition over time.

Following further discussions with USFWS, the Conservation Area has been more than doubled in size to approximately 30.5 acres and includes the location where DSF were observed in 1998. This further increases the ratio of interior area-to-edge in the Conservation Area, and maximizes its conservation value. Significantly the Conservation Area is located so as to be contiguous with the SCE property to the north and west, which is likely to be used for DSF habitat restoration and protection in the future.

The proposed approximately 30.5-Acre Conservation Area contains small, sparsely vegetated sandy patches scattered within a matrix of otherwise typically dense vegetation cover. These sparsely vegetated sandy patches contain some native plant species including California croton, tarweed, fiddleneck and telegraph weed.

For the above reasons, the Conservation Area contains the most suitable and appropriately located habitat for DSF conservation found on the Project Site.

Following the further discussions with USFWS, concurrent with the issuance of the Section 10(a) Permits and prior to any ground disturbance on Lots 1, 2, or the Conservation Area will be restricted in perpetuity by a

legal instrument such as a recorded Declaration of Restrictions or similar mechanism, and the Applicants an endowment fund, the annual proceeds of which will be used for ongoing maintenance, adaptive management, enhancement, monitoring, reporting and to respond to changed circumstances in the Conservation Area. The Applicants would also construct a chain link fence around the Conservation Area to prevent unauthorized access, construct a solid fence along the southern boundary of the Conservation Area to prevent soil loss, and perform initial weed and trash removal to increase the suitability of the Conservation Area for the DSF. In consultation with the USFWS, Permittees shall conduct initial weed and trash removal, where appropriate, throughout the Conservation Area within six months of the effective date. Provided that field experience on the Project Site demonstrates it is practicable, such chain link fencing will also use silting screens along lower portions of the fence to assist with Delhi series sand retention within the Conservation Area. The Conservation Area will be posted with signs indicating that the area is environmentally sensitive and that trespassing is prohibited.

Removal of dense nonnative vegetation and exposing bare sands is expected to provide improved habitat for DSF. For example, clearing of vegetation and exposing bare soil without planting on approximately one acre at the San Bernardino Hospital Mitigation Site resulted in DSF use of the cleared area in the subsequent DSF flight season. Moreover a population of the DSF is believed to exist nearby on SCE property near Riverside Avenue.

As noted previously, the USFWS has stated an objective of obtaining approximately 350 to 360 contiguous acres of DSF habitat within the AMEZ to be used for DSF conservation (USFWS 1996c, USFWS 1997). Furthermore, the USFWS has targeted the acquisition of approximately 50 of these acres to occur in an area near the Project Site. The Proposed Action would further this objective by contributing approximately 30.5 acres at no cost which could be directly linked with other properties in the area for DSF conservation.

There are other properties in the vicinity of the Site which are being considered for DSF conservation and may contribute toward the USFWS goal of an approximately 50-acre conservation area. These and other properties in the vicinity of the Project Site are shown in Exhibit 8 and Table 2.

There are approximately 10 acres in the SCE property contiguous with the north side of the Site on the east side of Riverside Avenue (Exhibit 8, Number 4). There are an additional approximately 9 acres in SCE property on the west side of Riverside Avenue (Exhibit 8, Numbers 7, 8). A DSF habitat restoration plan is being developed for the SCE properties. Implementation of the restoration plan is expected to begin in the near future. These SCE lands, protected and enhanced as DSF habitat, when combined with the 30.5 acres of potentially restorable DSF habitat proposed for protection on the Project Site, would provide approximately 50 acres of contiguous protected potential/suitable DSF habitat in the Site vicinity.

Approximately 6+ acres is planned to be protected for DSF conservation on the Owl Company access site (Exhibit 8, Number 10). Although this area is not contiguous with the SCE property to the north, which is expected to be protected as DSF habitat, the 6^{+} acres will contribute to a DSF conservation area in the Project Site vicinity.

There is developed land between Riverside Avenue and Industrial Avenue, which separates the 6^{+}-acre DSF habitat area on the Owl Company access site and the Project Site (Exhibit 8, Numbers 13, 14, 16). This developed land does not provide DSF habitat and does not provide a continuous habitat linkage between the Owl Access site preserve area and any potentially restorable DSF habitat on the Project Site.

TABLE 2
PROJECT SITE VICINITY PARCELS

Exhibit 8 #	Property Owner**	Acreage *	Assessors Parcel #	Current Status	DSF Habitat Value**
1	Angelus Block	96	0260-061-36 0260-061-38/1,2,3,4	Undeveloped	Generally Low (60 Acres Potentially Restorable)
2	Agua Mansa Landfill	4.97	0260-061-35	Disturbed	None
3	Agua Mansa Landfill	14.17	0260-061-33	Disturbed	None
4	SCE	9.76	0258-131-08 0258-131-09 0258-131-11 0258-131-12	Undeveloped	Medium
5	Trism/Rialto Land Co./Singletary	9.75	0258-131-21	Undeveloped	Medium
6	Sooy	3.58	0258-121-34	Disturbed	Low
7	SCE	2.76	0258-121-21	Undeveloped	Medium
8	SCE	6.6	0260-011-42	Undeveloped	Medium
9	HRM Properties	18.4	0260-021-21	Undeveloped	Low
10	Owl Company (access site)	11.37	0260-021-12	Undeveloped	Low
11	Owl Company (highly disturbed site)	217	0260-021-04 0260-021-06 0260-021-07	Developed	Low
12	Empire Oil	.5	0260-161-12 (1)	Landscaped	Low
13	Alden	.5	0260-161-12 (2)	Developed	None
14	Empire Oil	1.01	0260-161-16	Developed	None
15	Empire Oil	.5	0260-161-15	Undeveloped	Low
16	Andrews	1.00	0260-161-10	Developed	None

Exhibit 8 #	Property Owner**	Acreage *	Assessors Parcel #	Current Status	DSF Habitat Value**
17	Horn	1.00	0260-161-09	Undeveloped	Low
18	Horn	1.00	0260-161-08	Undeveloped	Low
19	Williams	1.00	0260-161-07	Developed	Low
20	Alden	1.01	0260-161-06	Undeveloped	Unknown
21	Yoon	.75	0260-161-05	Undeveloped	Unknown
22	Singletary	.76	0260-161-04	Developed	None
23	Yoon	.75	0260-161-03	Undeveloped	Unknown
24	Singletary	.76	0260-161-02	Developed	None
25	Cummins	5.13	0260-161-01	Developed	None
* Acreage from Assessors Parcel Maps, not field verified ** As of Spring 1998					

There is also undeveloped land between Riverside Avenue and Industrial Avenue, which separates the 6^{+}-acre DSF habitat area on the Owl Company access site and the Project Site (Exhibit 8, Numbers 12, 15). This undeveloped land does not provide DSF habitat: it is largely underlain by non-Delhi Sands soil (USDA 1980) (see Exhibit 4); and contains ruderal weedy, non-native vegetation. The undeveloped land is also separated from the Owl Company access site and the Project Site by Riverside and Industrial Avenues, fragmenting a potential habitat linkage. Thus, this undeveloped land does not provide a continuous habitat linkage between the Owl Access site preserve area and any potentially restorable DSF habitat on the Project Site.

A continuous habitat connection between the Owl Access site preserve area and the Project Site could be provided by a corridor of DSF habitat across the 18.4-acre HRM property (Exhibit 8, Number 9) linking the SCE easement to the north with the Owl Access site. The HRM property currently contains largely ruderal vegetation dominated by non-native plants, but does contain some remnant native plants. The HRM site contains Delhi Sands soils (USDA 1980), and is thus potentially restorable as DSF habitat.

With these other potential DSF conservation areas a contiguous DSF conservation area could be assembled by connecting the approximately 30.5-acre Project Site Conservation Area, the 19-acre SCE easement properties, approximately 5 acres of 18.4-acre HRM property, and the 6^{+}-acre DSF preserve area on the Owl Access site. The contiguous DSF conservation area would comprise approximately 62 acres. Establishment of this potential conservation area would be aided significantly by dedication and enhancement of the 30.5-acre Conservation Area on the Project Site.

The Proposed Action will remove approximately 43 acres of potentially restorable DSF habitat. Implementation of the HCP however, will enhance the survival and recovery of the DSF by permanently preserving approximately 30.5 acres of potentially restorable habitat for DSF, providing for enhancement opportunities for the area to benefit the DSF, and providing an endowment for the annual maintenance and

adaptive management of the habitat for the DSF in perpetuity in an area expected to offer long-term conservation value for the DSF.

An Implementing Agreement will be executed between the USFWS and Applicants to assure funding for and successful implementation of the HCP.

SECTION 4
CONSERVATION PLAN

The overall goal of this HCP is to enhance and protect potential habitat for the DSF in the Conservation Area in perpetuity and to enable the DSF to utilize the Conservation Area for long-term survival of the species. To accomplish this goal, the HCP sets the following objectives to be achieved during the life of the Permits.

1. Set aside and protect in perpetuity approximately 30.5 acres of potential habitat in the northern portion of the Project Site as a Conservation Area for DSF as shown in Exhibit 7..

2. Enhance and maintain the habitat value of the Conservation Area for DSF over the entire Conservation Area, by controlling human access, and debris, and removing non-native plants. Measurable performance standards for enhancement and maintenance of the Conservation Area will be identified in the enhancement/restoration plan prepared by the conservation organization/land manager and approved by the USFWS.

3. Increase the number of DSF on the Conservation Area such that a population of DSF can be sustained upon expiration of the Permits.

4. Establish a nonwasting endowment sufficient to generate at least $10,000/year in perpetuity for the: (1) ongoing maintenance, adaptive management, enhancement, and monitoring of the Conservation Area, (2) reporting of these activities, and (3) to respond to changed circumstances in the Conservation Area.

Specifically:

1. Angelus Block will redesign the proposed Angelus Block paver plant facility to relocate this facility to Lots 4-10. Angelus Block will redesign its block plant to utilize a smaller portion of Lot 1, thereby allowing approximately 6 acres of Lot 1 to be added to the Conservation Area. Lots 16-22 will also be made part of the Conservation Area, thereby maximizing the amount of conserved acreage in the area biologically preferred according to the USFWS.

2. The Permit Applicants will designate approximately 30.5 acres of the site (as depicted in Exhibit 7) as a Conservation Area for the DSF. The Conservation Area constitutes the best location on the Site for enhancement restoration measures to promote the long-term conservation of the DSF.

3. The Antonini Trust will dedicate fee title to the Conservation Area, at no cost, to a wildlife

conservation organization or agency or land manager which meets with the approval of the USFWS, and which will commit to managing habitat within the Conservation Area to benefit the DSF. Concurrent with the issuance of the Section 10(a) Permits and prior to any ground disturbance on Lots 1, 2, or 3, the Conservation Area will be restricted in perpetuity by legal instrument, such as a recorded Declaration of Restrictions. This Declaration of Restrictions, or other legal instrument, will be permanent and will provide that the Conservation Area will be restricted to conservation purposes for the DSF and its habitat, and the conservation of other sensitive species which may also benefit from this land without detriment to the DSF.

4. The Permit Applicants will construct a chain link fence around the Conservation Area to prevent unauthorized access, construct a soil retention fence or wall along the southern boundary of the Conservation Area to prevent soil loss, and perform initial weed removal in the Conservation Area and initial trash removal throughout the Conservation Area. In consultation with the USFWS, Permittees shall conduct initial weed and trash removal, where appropriate, throughout the Conservation Area within six months of the effective date. This work will be done outside the August-September adult DSF flight season. The intent of this initial activity is to provide some initial removal of non-native vegetation (such as mustard, Russian thistle, horehound) and to provide more open areas within the Conservation Area to benefit the DSF. The USFWS will identify for the Applicants the preferred plant species and recommended areas within the Conservation Area where such activity would be conducted. In consultation with the Service, the non-native vegetation removal is expected to be conducted through methods which may include hand clearing, use of weed-wackers, use of mowers, or some combination of these. The Conservation Area will be posted with signs indicating that the area is environmentally sensitive and that trespassing is prohibited

5. The Permit Applicants will establish a non-wasting perpetual maintenance endowment ("Endowment") for the benefit of the Conservation Area within 60 days of issuance of the Permits. The Endowment will provide funds for enhancement, annual maintenance, adaptive management, enhancement, monitoring, reporting and to respond to changed circumstances in the Conservation Area. The Endowment has been established at a level to account for inflation. The Endowment will be able to provide funding of at least $10,000/year in perpetuity for the Conservation Area. The management and maintenance of the Conservation Organization will include weeding of non-native plants, planting of native plants, redistribution of sand across the area, fence repair, and trash removal in perpetuity. The management and maintenance of the Conservation Area will be done by the Conservation Organization in perpetuity. Any funds not spent from the annual income from the Endowment at the end of any year will be placed in an interest-bearing Adaptive Management Account by the Permittees or the Conservation Organization managing the

Conservation Area (or an Endowment manager acceptable to the Permittees and USFWS), or invested in an alternative manner, and will be allowed to accumulate, as prudent, to be used as necessary to respond to any future Changed Circumstances and shall be used solely to maximize the Conservation Area's value for the DSF. The Conservation Organization and the USFWS will consult with one another to determine what is prudent in this regard. If, during the term of the Permits, the managing entity of the Endowment is dissolved, a new managing entity will be selected by the Permittees in consultation with and approval of the USFWS.

6. Five acres of mitigation credits within the Conservation Area will be available for purchase to mitigate for either direct impacts to DSF resulting in take of DSF, or for impacts to DSF habitat, on other properties. The mitigation credits may be sold in one-tenth acre (0.10 acre) units. Proceeds from the sale of mitigation credits would be used to help defray the Applicants' costs in establishing the Conservation Area and endowment fund. The purchase of mitigation credits from the bank will not, of itself, authorize Incidental Take for projects purchasing mitigation credits. Those projects may require independent Incidental Take authorization.

7. The Antonini Trust will construct chain-link fencing around the perimeter of the Conservation Area. The Permit Applicants will continue to maintain this fence until the Conservation Area is dedicated in fee title to a conservation organization, as detailed below.

8. The Applicants or their assigns reserve the right to further enhance or use the Conservation Area for the benefit of other future listed species provided that: (1) USFWS approves such enhancement or use of the Conservation Area, and (2) such actions would not be expected to decrease the value of the Conservation Area for the DSF. If the USFWS determines in writing that such proposed enhancement would negatively impact the DSF, the USFWS may preclude such enhancement by the Permittees.

9. The Conservation Area will be avoided during construction operations on the remaining lots of the Site. In addition, the Antonini Trust will place warning signs at appropriate locations along the fence and perimeter of the Conservation Area, informing the public that this area is protected habitat and considered off-limits to the general public, in an effort to discourage entry into the Conservation Area by unauthorized individuals.

10. Access to the Conservation Area will be limited to SCE, the City of Rialto, and the West San Bernardino County Water District. SCE will access the Conservation Area via use of the 16-foot wide access road that is within SCE's electrical transmission easement inside the Conservation Area (and such other related easement uses). The City of Rialto

and the West San Bernardino County Water District will access the Conservation Area via Lot 1, the dedicated Bunting Way, and Fortuna Way for utility maintenance. SCE, the City of Rialto, and the West San Bernardino County Water District will not receive authorization for incidental take of DSF within the Conservation Area or the Permit Area by virtue of the Applicants Section 10(a) permits. Thus, SCE The City of Rialto, and the West San Bernardino County Water District would continue to remain precluded from taking any action in the Conservation Area that would result in incidental take of any DSF in the absence of their own independent incidental take authorizations from the USFWS. Otherwise, only conservation and habitat or species restoration efforts will be permitted within the Conservation Area.

11. The Antonini Trust will contact representatives of SCE, the City of Rialto, and the West San Bernardino County Water District and explain the importance of the Conservation Area for wildlife conservation and DSF conservation and recovery in particular. The Antonini Trust will make its best efforts to obtain written acknowledgement from SCE that it will inform appropriate SCE employees of the need to keep its equipment and activities within the Conservation Area limited to the access road.

12. The Permit Applicants will consult with the Rialto Fire Department (RFD) concerning vegetation management for fuel reduction. There will be areas of non-flammable material (paved parking and roads) immediately outside the Conservation Area. The cul-de-sac immediately south of the Conservation Area will be 60 feet wide with an additional 25 feet setback south of the cul-de-sac. Parking and storage of non-flammable product is planned adjacent to the Conservation Area on the Project Site. The RFD has stated that it consults with USFWS concerning vegetation control in areas of potential DSF habitat and generally follows USFWS recommendations (Barajas pers. comm.). The RFD makes recommendations on a site-specific basis based on a site visit and discussions with property owners and the USFWS.

13. The Applicants and/or their agents will undertake the following actions during construction to minimize direct and indirect effects of construction activities on biological resources:

- If not otherwise yet installed, temporary fencing will be installed around the Conservation Area prior to commencement of construction activities, including grubbing and clearing of vegetation.

- Construction limits will be fenced or flagged and signed prior to construction activities to avoid the inadvertent disturbance of outlying areas.

- If construction activities occur during the DSF flight period, a biologist approved

by USFWS will monitor the Construction Area. The monitoring biologist will have the authority to halt construction to prevent or avoid take of listed species and/or to ensure compliance with all avoidance, minimization and mitigation measures.

- Activities such as grading, stockpiling and excavating of soil, parking and storage of equipment, and ingress and egress of vehicles and personnel will not be permitted within the fenced Conservation Area and will be limited to the designated construction zones.

- The proper use and disposal of oil, gasoline, and diesel fuel will be enforced.

- All construction personnel will be take part in an education program. Construction personnel will be advised that the DSF is listed under the Act and the importance of staying out of the Conservation Area. All construction related avoidance minimization and mitigation requirements will be identified and discussed including construction limits and conservation measures.

- All trash associated with construction or personnel on the site will be properly contained and disposed.

- Construction activities that occur within a minimum distance of 50 feet from the Conservation Area will be monitored to ensure that dust accumulation on the plants is minimized.

14. The Applicants will replace any temporary fencing with permanent chain link fencing along the north, east and west boundaries of the Conservation Area within 120 days of issuance of the Permits. This work will be done outside the August-September adult DSF flight season. Provided that field experience on the Project Site demonstrates it is practicable, such chain link fencing will also use silting screens along lower portions of the fence to assist with Delhi series sand retention within the Conservation Area. Within 30 days of issuance of the Permits, Antonini Trust or Angelus Block shall provide an irrevocable letter of credit in the amount of $10,000 to ensure funding to establish a soil holding fence, wall or similar structure along the southern boundary of the Conservation Area. Antonini Trust or Angelus Block shall establish this soil holding fence, wall or similar structure along the southern boundary of the Conservation Area within one year of issuance of the Permits.

15. For lighting requirements under the Applicants' control and to the extent practicable and consistent with the needs for safety, security, and safe operation of the facilities, outdoor nighttime lighting for those facilities on those lots bordering the Conservation Area (Lots

1, 14 and 15) will be directed away from the Conservation Area to minimize detrimental impacts to DSF in the Conservation Area during the adult DSF flight season in August and September. The Applicants will consult with the USFWS in the development of the final plan for the outdoor lighting of these particular lots. The Applicants will have final decision-making authority on the design and implementation of such outdoor lighting.

16. The USFWS and Applicants will work cooperatively to find a suitable conservation organization/land manager that will monitor and maintain the Conservation Area. The endowment fund will be used to fund the activities described below:

Three months after a Conservation Organization/land manager is identified, and approved by both the USFWS and permittees an enhancement/restoration plan prepared by the Conservation Organization with assistance from USFWS, that includes weeding, seed collection, success criteria, monitoring, etc. for the Conservation Area will be submitted to the USFWS for review and approval.

- The Conservation Organization will conduct adult focused surveys for the DSF annually in the Conservation Area using a USFWS-approved biologist during the adult flight period. The focused surveys will begin the first flight season after the commencement of construction, but in no event prior to the year 2000. Yearly monitoring efforts will be conducted for the first 3 years and thereafter be evaluated annually by the USFWS in cooperation with the Conservation Organization to determine whether focused surveying for that year would be appropriate. All focused DSF survey results and will be provided to the USFWS within 45 days of completion of surveys.

- The Conservation Organization will conduct monitoring at least biannually for the first 5 years. The emphasis of the monitoring effort will be to assess and report on the status of target weed species and native cover. The removal of non-native target weed species and the collection and broadcasting of native seed will be conducted. The Conservation Organization will provide the USFWS with an annual report to determine the restoration success based on the performance criteria established in the enhancement/revegetation plan.

- Performance standards will include criteria which can be measured. Factors to be evaluated will include: (1) percent vegetation cover by strata; (2) target or management indicator species; (3) target native plant diversity and composition, (if monitoring indicates a high level of non-native plant species, corrective action will be required); (4) evidence of natural reproduction; and (5) percent survivorship.

Five-Year Maintenance and Monitoring Program: The Conservation Organization will monitor progress of the enhancement/revegetation efforts biannually to ensure that yearly performance standards are maintained. The Conservation Organization will conduct seeding or weed removal promptly to meet established performance standards, as necessary. The Conservation Organization shall keep accurate records of the

following:

- Existing conditions of the Conservation Area, including descriptions of vegetation composition, weed species and erosion problems;
- Enhancement/revegetation site preparation and planting techniques utilized: seed quantities, timing, weather conditions, and any problems encountered during planting;
- Maintenance activities implemented, including methods used for weed control, timing and locations of germination for seeded species, and response of vegetation areas to changes in weather conditions;
- Qualitative and quantitative monitoring data related to performance standards;
- Remedial measures and maintenance activities required; and
- Maintenance will be completed as necessary for the five-year period in the Conservation Area. Maintenance requirements to be carried out by the conservation organization in the Conservation Area include:
    - Weed control
    - Debris and trash removal
    - Limiting human access and fence and signage repair

Reporting: The conservation organization shall submit a yearly monitoring report to the USFWS on or by December 31. The monitoring report shall provide all reasonably available data regarding the incidental take. In addition, the report will:

- Describe the progress of the enhancement/revegetation effort;
- Identify any problems encountered, detail corrective measures and evaluate their efficacy;
- Include results of species surveys; and
- Include copies of monitoring and maintenance records.

Continued Maintenance and Monitoring: At the end of the fifth year, the conservation organization shall submit a status report to the USFWS. If the enhancement/revegetation program has met the specified performance standards, the USFWS shall acknowledge the completion of the enhancement/revegetation program. If such a determination cannot be made, maintenance or re-seeding shall be prescribed and monitoring will be extended until performance criteria are met.

Long-term Maintenance: Upon completion of the five-year maintenance and monitoring period, the conservation organization shall implement a long-term maintenance program. The conservation organization shall conduct routine maintenance to maintain fencing and signage, ensure trash removal, and eliminate weed problems.

- Biannual plant surveys of Conservation Area will be conducted by the conservation organization. Photographs will be taken to document habitat conditions.
- Fencing and signage will be monitored by the conservation organization to ensure that both are maintained. Areas where signage is removed or fencing is breached will be monitored as necessary to maintain fencing and sign integrity.
- Focused DSF survey efforts will be evaluated for the long-term monitoring program by the USFWS in cooperation with the conservation organization. The agreed upon protocol will be incorporated into the long-term maintenance and monitoring plan.

An Implementing Agreement (IA) will be executed between the USFWS and the applicants to assure the implementation of the HCP.

For Covered Activities as defined in the IA, the USFWS will acknowledge to the City of Rialto, the County of San Bernardino, and any other appropriate government jurisdiction, agency or department, that the conservation and recovery activities being undertaken by Permittees pursuant to this HCP are sufficient under the Endangered Species Act to alleviate Permittees or Other Subsequent Land Purchasers as set forth in the IA (of land within the approximately 65 acres permitted for incidental take) from any additional conservation measures, biological mitigation measures, financial contributions, land donations or set asides or other land use restrictions which could be sought to be imposed on land within the Permit Area for the DSF through some other regional (i.e., single or multi-jurisdictional) species or habitat conservation plan or Natural Communities Conservation Plan (collectively, "Additional Measures"). However, the Permittees or other subsequent land purchasers are not relieved from obtaining independent incidental take authorization for any future listed species which is listed and which would be incidentally taken by a covered activity under the currently proposed permits in the Permit Area. The USFWS will not recommend that any Additional Measures be required or imposed upon land within the Project Site authorized for DSF incidental take to any government jurisdiction, agency or department, nor shall the USFWS require, recommend or impose such Additional Measures in connection with the approval of any regional species or habitat conservation plan including the Project Site in its boundaries, except as required by law. The Permittees or other subsequent land purchasers will not be precluded from enrolling their ownership of land in the Project Site in some other species or habitat conservation plan as well; provided that such landowner agrees to contribute any necessary additional mitigation for any additional incidental take authority for species in addition to the DSF. The USFWS will fully credit Permittees or other subsequent land purchasers for the biological contribution made for the benefit of listed species in addition to the DSF, if any, for species proposed to be covered under a regional species or habitat plan, in connection with the Permit's HCP when considering whether the Project

Site, or a portion thereof, may also be included in any future conservation plan which may provide incidental take authority for more species than the DSF.

The Permit Applicants have entered into a Consent Decree with the United States pertaining to litigation between Permit Applicants and the United States government concerning activity on the Project Site and its potential for the take of the DSF. This Consent Decree was approved by the United States District Court for the Central District of California in June 1999. Under the terms of that Consent Decree, the Permit Applicants have committed to conduct certain measures to promote the recovery and conservation of the DSF, and in return, the United States government has agreed that certain activities may proceed on a portion of the Project Site without further objection from the federal government. Conservation measures on the Project Site provided for under the Consent Decree include fencing the proposed approximately 30.5 acre Conservation Area, avoiding impacts to the proposed Conservation Area during construction activities on certain Lots outside the Conservation Area, placing a deed restriction for DSF conservation purposes on a portion of the Project Site (including Lots19-22 and the formerly proposed Bunting Drive) and providing biological monitoring of construction areas to minimize any take of DSF if such construction activity is occurring during the 1999 DSF flight season. (The USFWS prepared a Biological Opinion to analyze the potential for take in connection with development on Lots 11-15 and Lots 4-10 under the Consent Decree as well as the mitigation and benefits associated with the conservation measures required by the Consent Decree.) This HCP, the associated Implementing Agreement, the Permits and the associated Biological Opinion, if approved by the Service, will replace the terms and conditions of the Consent Decree and its associated Biological Opinion.

MIGRATORY BIRD TREATY ACT

The Applicants recognize that the Section 10(a) Permits, should they be issued by the Service, do not relieve the Applicants from assuring compliance with thee Migratory Bird Treaty Act ("MBTA"). The Applicants will conduct grading or clearing activities within the Permit Area in compliance with the requirements of the MBTA.

RESPONSE TO UNFORESEEN CIRCUMSTANCES

Provisions for addressing unforeseen circumstances generally are required for long-term permits and HCP programs. (See H.R. Rep. No. 97-835, 97th Cong., 2nd Sess.). Such provisions are appropriate and required where the applicant and USFWS are likely to be faced with changing circumstances during the course of the project or with respect to impacts on the affected species over time. Under the USFWS's recent "No Surprises" rule, any such provisions may not require the Applicants to commit additional land, water, or financial compensation or additional restrictions on the use of land, water, or other natural resources beyond the level otherwise agreed upon in this HCP: provided that the HCP is properly implemented.

It is not likely that the Applicants or the USFWS will be faced with unforeseen circumstances requiring such provisions, inasmuch as: the area of development associated with this project is relatively small (approximately 65 acres); a portion of this Site is expected to be developed within the first year of the Permit; the area of development does not lie within a significant biological corridor for the DSF; the developable land under this HCP currently does not constitute generally suitable habitat for the DSF; and, the amount of take of DSF is expected to be low.

Nevertheless, Section 16.0 of the IA contains provisions for dealing with unforeseen circumstances.

RESPONSE TO CHANGED CIRCUMSTANCES

As necessary and appropriate, an HCP conservation program may include conditional conservation and mitigation measures to be effectuated in the event of the occurrence of reasonably foreseeable "changed circumstances" specifically identified in the Plan. 50 C.F.R. §17.22(b)(5)(i). USFWS regulations define the "changed circumstances" that an HCP may address in this context as "changes in circumstances affecting a species or geographic area covered by a conservation plan that can reasonably be anticipated by plan developers and the Service that can be planned for (e.g., the listing of new species, or a fire or other natural catastrophic event in areas prone to such events)." 50 C.F.R. §17.3.

Given this regulatory framework, four categories of potential "Changed Circumstances" related to the DSF or Project Site that reasonably may be anticipated during the term of the permits bear mention: (1) changes to the vegetative cover or other geophysical conditions on the Site (including those arising from potential periods of drought or excessive rainfall in the HCP area, significant fires within on-Site areas containing Delhi Sands soils, etc.); (2) changes concerning the DSF (including accelerated decline in the number of extant DSF populations or the size of one or more such populations, the future use or occupation of the Conservation Area by DSF, etc.); (3) a further significant reduction in the number of acres of Delhi Sands soils in San Bernardino and Riverside Counties; and (4) listing under the ESA of other species that occur on the Site.

Responding to changed circumstances related to conditions on the Site can be accomplished by adaptively managing the Conservation Area to maximize DSF conservation objectives with the annual proceeds of the endowment fund to be established pursuant to the Proposed Action. Indeed, the flexibility to carry out such "adaptive management" of the Conservation Area should only increase over time, as costs of affirmative measures necessary to monitor and maintain the Conservation Area as suitable habitat should gradually decline after the first 3-5 years. The annual proceeds from the endowment have been set at a level which will produce proceeds which will accumulate over time in a sub-account which will be established to address changed circumstances through adaptive management of the Conservation Area. This approach is particularly well suited to deal with reasonably foreseeable changes to on-Site conditions. For example, in the event fire broke out within the Conservation Area, endowment fund proceeds could be used to revegetate the Conservation Area with native species associated with DSF habitat, thereby providing greater certainty that the Conservation Area would be able to more quickly return to suitable habitat than if natural recolonization were allowed to occur.

If the changed circumstances relate to DSF viability (e.g., a further decline in the number of extant DSF populations or the size of one or more such populations), the Permit Applicants would allow DSF to be introduced within the Conservation Area, but the USFWS would provide adequate assurances to the Applicants that they would not be prejudiced by such introduction (e.g., presence of introduced DSF on the Site would not lead to liability or increased regulatory constraints under the ESA or any other law or regulation). In addition, pursuant to the IA, the Permittees are providing the USFWS with the right of first refusal to buy the Delhi Sands soils, if any, that the Permittees intend to export from the Project Site while preparing lots for development. The USFWS would have thirty days from the date of offer to purchase such soils. Should the DSF's status in the Colton Recovery Unit area worsen to the point of becoming extirpated from the area, funds in the aforementioned adaptive management/changed circumstances sub-account of the endowment fund established by the Proposed Action may be utilized in a captive breeding effort. Moreover, even if any such adverse changes to DSF viability occurred, at least to a reasonably anticipated degree, the Proposed Action is not likely to jeopardize the continued existence of the DSF because (1) to the extent the Site is occupied by DSF, any such occupation is minimal (only four DSF observations on a single day in four years of surveys); and (2) the only area of DSF observation has been placed in the Conservation Area, (3) completion of the Proposed Action will result in a Site that has far superior potential than does the status-quo for both eventual, regular use of the Site by DSF and for making a contribution to long-term DSF recovery.

The preamble to the No Surprises Rule states that the listing of a new species as endangered or threatened, which species occupies the Permit Area, may constitute a changed circumstance. The USFWS shall immediately notify Permittees upon becoming aware that a species which is associated with habitat found on the Permit Area may be or has been proposed for listing. Upon receipt of notice of the potential listing of such species, Permittee(s) or other subsequent land purchasers may, but is/are not required to, enter into negotiations with USFWS regarding necessary modifications, if any, to the HCP required to amend the

Permit(s) to cover the covered species. If Permittee(s) or other subsequent purchasers of land on the Project Site elect(s) to pursue amendment of the applicable Permit, the USFWS will provide technical assistance to Permittee(s) or other subsequent land purchasers to identify any modifications to the HCP that may be necessary to amend the applicable Permit. Paragraph 15.3 of the IA provides more details of the process to be followed in the event of Changed Circumstance and the response to such events. Under either scenario, the Applicants will be granted credit for the conservation value for any newly listed species that has arisen from the establishment and management of the Conservation Area and may seek to have future management of the Conservation Area be modified to benefit the new species (1) if approved by the USFWS and (2) if such modifications would not be expected to meaningfully decrease the value of the Conservation Area for DSF.

SECTION 5
ALTERNATIVE ACTIONS CONSIDERED

Pursuant to 50 C.F.R. Section 17.22(b)(1)(iii)(C), the applicant is to identify in the HCP the alternatives considered to the Proposed Action and the reason why such alternatives were not selected. The alternatives to the Proposed Action (i.e., obtaining Section 10(a) permits and proceeding with development and operation of industrial or other facilities on approximately 65 acres and donating approximately 30.5 contiguous acres of the property for DSF recovery and conservation purposes in the AMEZ area and providing an endowment fund to provide funds for annual maintenance, adaptive management, and to respond to changed circumstances in the Conservation Area in perpetuity) are: (1) abandonment of the industrial facility projects (the "No Project" alternative), (2) abandonment of the industrial facility projects and establishment of a DSF habitat mitigation bank, (3) redesign of some industrial facility projects and establishment of a 24-acre Conservation Area and a habitat mitigation bank within a portion of a dedicated Conservation Area, (4) completion of the industrial facility projects without Section 10(a) permits and HCP (the "No Action" alternative), (5) participation in the AMIGA HCP or San Bernardino Valley-wide Multiple Species Plan, (6) Development of 83 Acres, dedication of a 13.4 Acre Conservation Area, habitat restoration and providing an Endowment Fund for maintenance and management of the Conservation Area, and (7) the Proposed Action.

ALTERNATIVE 1: NO PROJECT

Under this alternative the Angelus Block facilities (the block and paver plants) and the E-Z Mix East Complex would not be constructed on the Site. Nor would the remaining lots be used for other industrial uses or sold to other industrial users.

Under this alternative, the 96-acre Site would remain subject to various forms of human disturbance. Trampling, illegal trash and other dumping and ORV disturbance could negatively impact areas of potentially restorable DSF habitat on the Site. No measures would be taken by the Applicants to secure and enhance or restore any portion of the Site for recovery or conservation of the DSF. Non-native, invasive plant species would continue to dominate the Site

The Antonini Trust purchased the Site in 1989 for industrial uses. The market price paid reflected the zoning of the property for industrial uses. Since the purchase date, the Applicants have spent considerable sums to complete the local entitlements, satisfy the conditions for final map recordation, design the Angelus Block facilities, and satisfy the property tax burden on the Site. Abandonment of the industrial development of the Site would therefore be impracticable and uneconomical in terms of the Applicants realizing their reasonable expectations for the improved Site and community benefits as well as providing an adequate economic return against their considerable costs and expenses.

ALTERNATIVE 2: PROJECT ABANDONMENT AND ESTABLISHMENT OF A DSF MITIGATION BANK ONSITE

Establishment of a DSF habitat mitigation bank on the Site would eventually result in approximately 73 acres of potentially restorable DSF habitat. The success of the mitigation area would be dependent on funding and conservation efforts of others. The certainty of these efforts is not known.

In four years of focused surveys DSF have been observed on one day on the Project Site, and the Site generally provides unsuitable habitat for the DSF in its current disturbed condition.

The market for mitigation bank acreage to offset impacts to DSF is largely unknown. There are no reasonable assurances that the 73-acres of potential mitigation bank credits could produce enough economic return to be a profitable alternative for the Applicants. Furthermore, this alternative would not meet the Applicants' need for a suitable location for the Angelus Block manufacturing facilities.

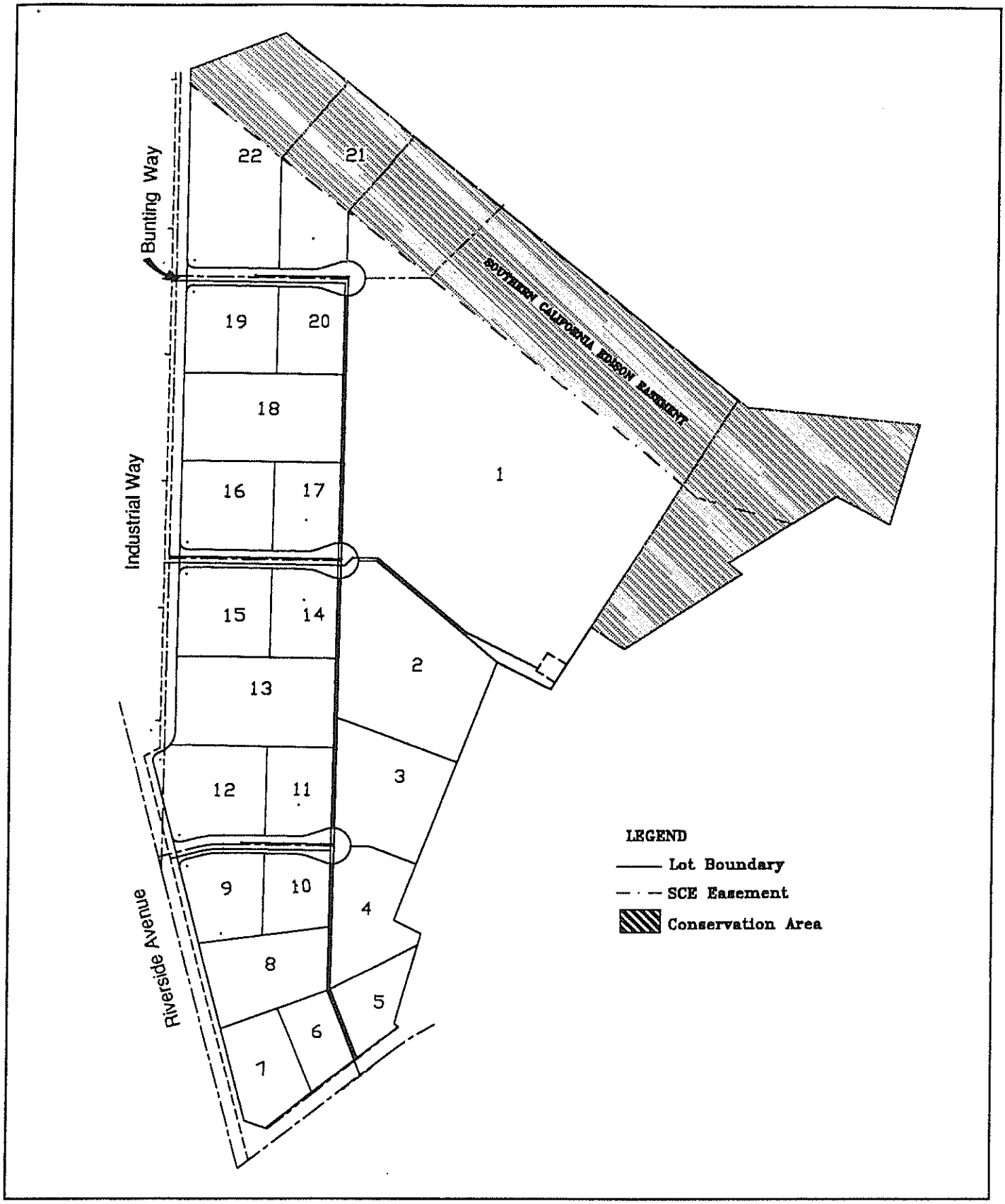
ALTERNATIVE 3: REDESIGN OF SOME OF THE INDUSTRIAL FACILITY PROJECTS AND ESTABLISHMENT OF A CONSERVATION BANK WITHIN A PORTION OF A CONSERVATION AREA

This was the original proposed action under consideration by the Applicants prior to discussions with USFWS in early 1998 and subsequent redesign of the project.

This alternative would identify a 24-acre Conservation Area within the Site, and would dedicate 10 acres of the Conservation Area at no cost. The Conservation Area would consist of approximately 24 acres and would be located along the entire northern/northeastern boundary of the Site, extending from Industrial Drive to Agua Mansa Road on the southeast and include the eastern 8.4-acre parcel (Exhibit 9). This alternative would also establish a DSF conservation mitigation credit bank on the remaining 14 acres within the Conservation Area. This alternative would entail the redesign of the anticipated block plant on Lot 1.

This alternative would provide less total acreage in the Conservation Area than the Proposed Action, and would provide a lower level of conservation benefit to the DSF compared with the Proposed Action. Under this alternative, the long narrow Conservation Area would not minimize "edge effects," would contain land in the bluff area on the south of the Site that is more distant from other land being considered by others for DSF conservation areas, and would not contain the land further west on the Site (portions of Lots 21 and 22 south of the SCE easement) which the USFWS considers more valuable for the DSF.

Alternative 3 would also differ from the Proposed Action in that it would (1) allow the Applicants to suffer less of an economic hardship by virtue of the Applicants' voluntary conservation efforts, and (2) allow Angelus Block to maintain the paver plant at its originally designed location on Lots 21 and 22.



Michael Brandman Associates

Exhibit 9

Alternative 3 Proposed Conservation Area

This alternative was not selected because the USFWS has indicated that it would not issue Incidental Take Permits to the applicants based on this HCP design.

ALTERNATIVE 4: PROJECT COMPLETION WITHOUT A SECTION 10(A) PERMIT (THE "NO ACTION" ALTERNATIVE)

This alternative provides for the Applicants to proceed with project completion without obtaining a Section 10(a) permit authorizing incidental take of the DSF. The applicants believe that this alternative is available inasmuch as the Project Site may not contain DSF or any other listed species, and thus the development of the Site may not result in "take" under the ESA. Focused surveys conducted over three consecutive years (1995-1997) indicated that DSF do not occur on Site. USFWS policy provides that a site is to be considered unoccupied by the DSF if two years of properly conducted DSF surveys yield no DSF observations. Focused DSF surveys in 1998 revealed four observations on a single day. No observations were made on any other day, during a year that has been postulated as being an optimal year for DSF observations. The location of these observations and lack of observations elsewhere suggest that these individuals may have migrated from another site. Also, it is certain that the individuals observed did not survive after September 1998, and it is not known whether any female successfully oviposited any eggs in onto the soil and whether any such eggs would remain viable at this time. Although USFWS might assert that the August 27, 1998 observations established that at least a small portion of the project site is occupied, such occupation is speculative and cannot be established. Accordingly the Applicants believe that they may legally proceed to develop the Site without a Section 10(a) Permit from USFWS. Under this alternative, the Applicants would not provide approximately 30.5 acres in the northern portion of the Site to be used for DSF mitigation. Under this alternative, no potentially restorable DSF habitat would be protected. This alternative was not selected because the applicants believe a more timely and long-term resolution of land use issues can be achieved via the Proposed Action rather than proceeding without a Section 10(a) permit.

ALTERNATIVE 5: PARTICIPATION IN AMIGA HCP OR SAN BERNARDINO VALLEY-WIDE MULTIPLE SPECIES PLAN

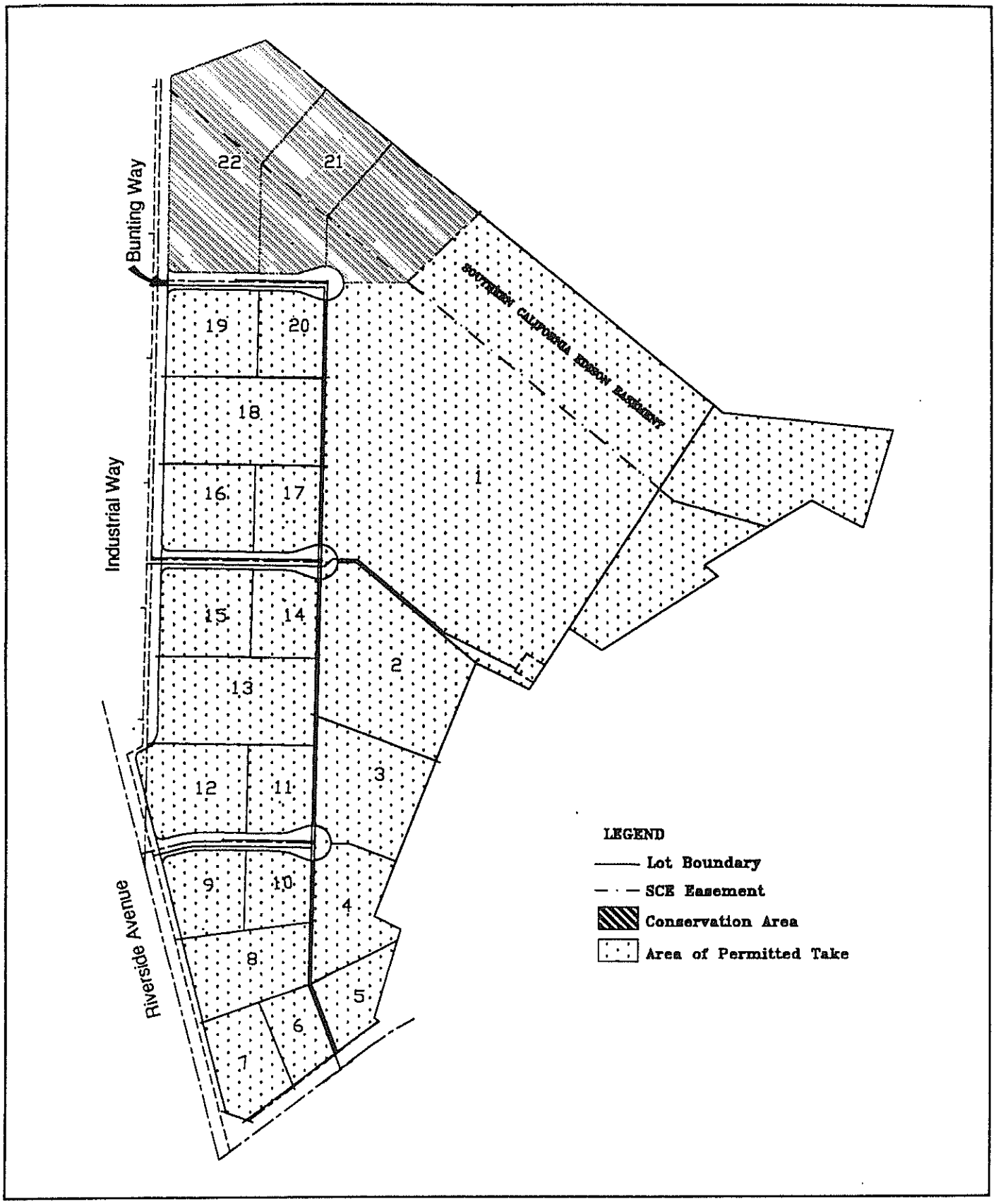
Under this alternative, the Applicants would mitigate for any take of the DSF by participating in a larger HCP plan area established by either the AMIGA or a collection of local jurisdictions under a multi-species HCP for a portion of San Bernardino County, as opposed to their own site-specific HCP. This alternative was rejected, as there is no alternative HCP program in place and neither the AMEZ nor the relevant local jurisdictions in San Bernardino County are likely to establish a program that would be available to the Applicants within the foreseeable future.

ALTERNATIVE 6: DEVELOPMENT OF 83 ACRES, DEDICATION OF A 13.4 ACRE CONSERVATION AREA, HABITAT RESTORATION AND PROVIDING AN ENDOWMENT FUND FOR CONSERVATION MAINTENANCE AND MANAGEMENT

This alternative consists of proceeding with development pursuant to the approved existing entitlements, and obtaining Section 10(a) permits for incidental take of the DSF. This alternative would result in construction within potentially restorable habitat for the DSF. This alternative would dedicate a 13.4-acre Conservation Area to a conservation organization at no cost, and additionally would restore habitat for DSF in the Conservation Area and provide a maintenance endowment in perpetuity for the Conservation Area. The Conservation Area would be located in the most valuable location on the Site for the future recovery and conservation of the DSF. See Exhibit 10. The Conservation Area would be used for the recovery and conservation of the DSF. This alternative would result in construction within approximately 60 acres of potentially restorable DSF habitat. This alternative was not selected because the USFWS has indicated that it would not issue Incidental Take Permits to the Applicants based on this HCP design.

ALTERNATIVE 7: PROPOSED ACTION

This alternative would dedicate an approximately 30.5-acre Conservation Area in the northern portion of the Site that would be transferred in fee title to a conservation or wildlife organization or agency at no cost, to be used to promote the conservation of the DSF (see Exhibit 7). The paver plant, originally redesigned to Lots 16-20, will be redesigned again to be located on Lots 4-10. Lots 16-20 will be added to the Conservation Area. The originally planned Bunting Drive will be eliminated as a paved road and cul-de-sac, and this area will become part of the Conservation Area. The block plant will also be redesigned so that an additional approximately 6 contiguous acres can be added to the Conservation Area. An endowment fund would be established by the Applicants, the annual proceeds of which would be used for habitat enhancement and ongoing maintenance, adaptive management, enhancement, monitoring, reporting and to respond to changed circumstances in the Conservation Area, in perpetuity. The Applicants would also fence the Conservation Area to prevent unauthorized access, construct a solid fence along the southern boundary of the Conservation Area to prevent soil loss, and perform initial weed and trash removal. This alternative would result in construction in approximately 43 acres of potentially restorable DSF habitat.



Michael Brandman Associates

Exhibit **10**

Alternative 6 Proposed Conservation Area

SECTION 6
OTHER MEASURES

Section 10(a)(2)(A)(iv) of ESA provides that an HCP should include any additional measures required by the Secretary of the Interior as being necessary or appropriate for purposes of the HCP. The Applicants have discussed the proposed elements of this conservation plan with the USFWS, and no such additional elements have been identified.

SECTION 7
ORGANIZATIONS AND INDIVIDUALS CONSULTED

Agencies and persons consulted during the course of preparing this HCP are listed below.

U.S. FISH AND WILDLIFE SERVICE

Jon Avery, Carlsbad USFWS Office, Carlsbad, California
Jim Bartel, Carlsbad USFWS Office, Carlsbad, California
Laura Hill, Portland Regional Office, Portland, Oregon
Jeffery M. Newman, Carlsbad Field Office, Carlsbad, California
Mary Beth Woulfe, Carlsbad Field Office, Carlsbad, California

CITY OF RIALTO

Norma Barajas, Rialto Fire Department, Rialto, California

OTHER INDIVIDUALS

Kim Gould, Southern California Edison (SCE)
Dan Pearson, Southern California Edison (SCE)

SECTION 8
REPORT PREPARATION PERSONNEL

The individuals listed below were responsible for preparation of this HCP.

NAME	RESPONSIBILITY	COMPANY AFFILIATION
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Andrew Hartzell	Attorney-at-Law	Hewitt & McGuire, LLP
Gregg B. Miller	Senior Scientist	Michael Brandman Associates
Carey Cramer	Graphic Artist	Michael Brandman Associates

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