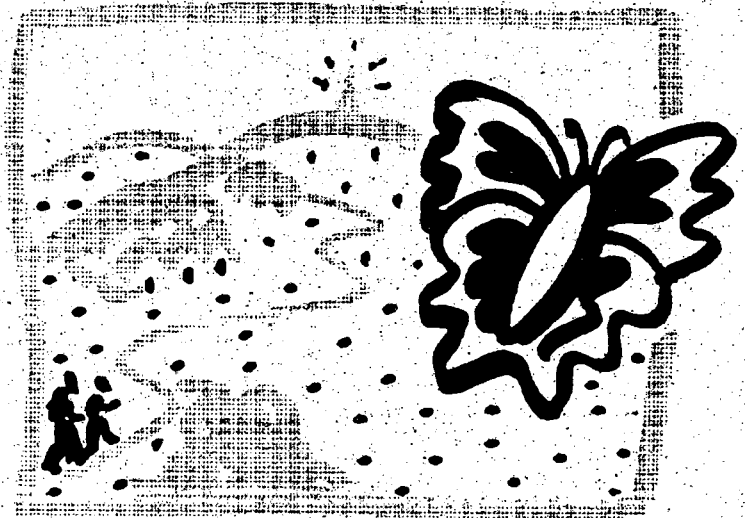


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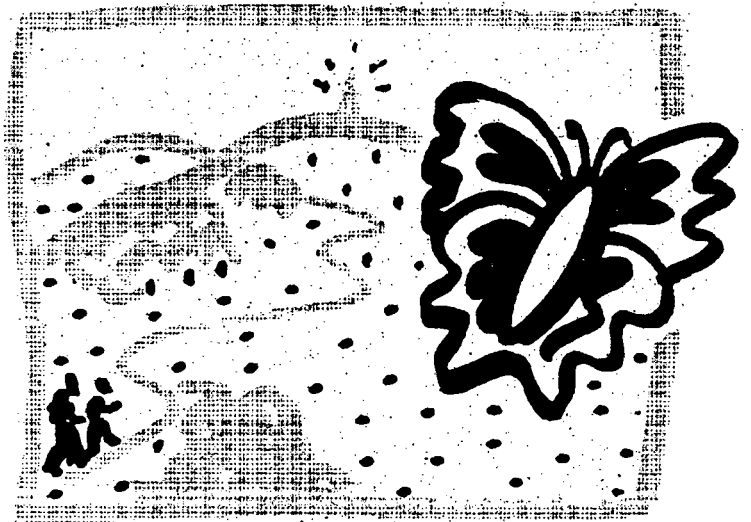


Department of Environmental Management
Planning and Building Division • San Mateo County • California

Agreement

with Respect to the San Bruno
Mountain Habitat Conservation Plan

November 1982



Department of Environmental Management
Planning and Building Division • San Mateo County • California

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AGREEMENT WITH RESPECT TO THE
SAN BRUNO MOUNTAIN AREA HABITAT CONSERVATION PLAN

THIS AGREEMENT is entered into as of the _____ day of _____, 1982, by and among the following parties: the UNITED STATES FISH AND WILDLIFE SERVICE (USF&WS), the CALIFORNIA DEPARTMENT OF FISH & GAME (CDF&G), the CALIFORNIA DEPARTMENT OF PARKS AND RECREATION (Department of Parks and Recreation), the COUNTY OF SAN MATEO (County), the CITY OF BRISBANE (Brisbane), the CITY OF DALY CITY (Daly City), the CITY OF SOUTH SAN FRANCISCO (South San Francisco), VISITACION ASSOCIATES, a California joint venture of Amfac, Inc., and Foremost-McKesson, Inc. (Visitacion), and those persons and entities set forth on Exhibit "A" hereto. (Visitacion, Department of Parks and Recreation, and those persons and entities listed in Exhibit "A" who either own or possess a right to acquire lands within the San Bruno Mountain Area are hereinafter individually referred to as "Landowner" and collectively referred to as "Landowners".)

A G R E E M E N T

FOR AND IN CONSIDERATION of the recitals of fact set forth below, the mutual covenants set forth herein and other consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto do hereby agree as follows:

I. DEFINITIONS

The following terms as used in this Agreement shall be defined as follows:

- A. The term "Administrative Parcel" means a portion of San Bruno Mountain within the Planning Areas which corresponds to present land ownership.
- B. The term "Assessment District" shall mean any assessment district which may be established to collect the annual fees for habitat maintenance as provided in Section VI(4).
- C. The reference to a numbered "Chapter", such as "Chapter VII", is a reference to the chapter of that number in the Habitat Conservation Plan.
- D. The term "Cities" shall mean the cities of Brisbane, Daly City and South San Francisco.
- E. The terms "conserve", "conserving", and "conservation" mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to

the point at which the measures provided pursuant to the Endangered Species Act are no longer necessary. Such methods and procedures include, but are not limited to, activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

- F. The term "Conserved Habitat" means those portions of the San Bruno Mountain Area that are presently or hereafter are to be held in fee ownership by the County and/or the State pursuant to this Agreement as contemplated in Section IV hereinbelow.
- G. The term "County" means San Mateo County, California.
- H. The term "Developable Administrative Parcels" means those administrative parcels within the San Bruno Mountain Area which are or may be available for development. These areas also include lands which are or will be designated, in whole or in part, as Conserved Habitat during the planning process in accordance with this Agreement. The Developable Administrative Parcels are described and shown on the map attached as Exhibit "I" and include:

Area: Guadalupe Hills

Rio Verde Estates
Carter-Martin Road Extension
Rio Verde Heights
Parcel X
Parcel Y
Parcel Z
Northeast Ridge Project
Parcel W
Water Tank In Guadalupe Valley West
PG&E fee
PG&E transmission line easement
San Francisco Water Department
Guadalupe Canyon Parkway
Parcel V

Area: Southeast Ridge

Quarry
Owl & Buckeye Canyon
Brisbane Acres
South Slope Project
PG&E transmission line easement
Hillside School
Juncus Ravine
San Francisco Water Department
California Department of Forestry

Area: Radio Ridge
Antenna Sites
Guadalupe Canyon Parkway
PG&E transmission line easement

Area: Saddle
Reservoir Hill Project
Brisbane School Site
47 Units
Water Tanks on Reservoir Hill
Guadalupe Canyon Parkway

- I. The term "Development Agreement" means an agreement provided for by California law (California Government Code §§65864-65869) which permits a local agency and private landowner to fix their mutual obligations at a point in time.
- J. The term "Development Areas" means those portions of the San Bruno Mountain Area that are excluded from Conserved Habitat and are anticipated to be subject to urban uses.
- K. The term "Endangered Species Act" means the Endangered Species Act of 1973, as amended, 16 U.S.C. §§1531-1543 (hereinafter "the Act").
- L. The term "floor area" shall mean the sum of the gross horizontal areas of the several floors of a building measured from the exterior face of exterior walls, or from the centerline of a wall separating two buildings, but not including interior parking spaces, loading spaces for motor vehicles, or any space where the floor-to-ceiling height is less than six feet.
- M. The term "funding source" means the trust fund defined infra or any assessment district created for the purpose of funding the Habitat Conservation Activity pursuant to the Habitat Conservation Plan or this Agreement or any alternative means of funding the Habitat Conservation Activity agreed to unanimously by the trustees of the trust fund for the purpose of funding the Habitat Conservation Activity.
- N. The term "Habitat Conservation Plan" (hereinafter "HCP") means the "San Bruno Mountain Area Habitat Conservation Plan" as adopted by the County Board of Supervisors on September 14, 1982 (Resolution No. 43770), and as amended on November 9, 1982 (Resolution No. 43988).
- O. The term "Landowners" or "Landowner" shall mean and refer to Visitation and developers or other persons and entities who own or have a right to acquire fee ownership of lands within the San Bruno Mountain Area.
- P. The term "local agency" shall mean any of the following: the County of San Mateo, the City of Brisbane, the City of Daly City and the City of South San Francisco.

- Q. The term "major construction" shall mean any construction of a new building not accessory to an existing building and not within the footprints of an existing building.
- R. "Management Unit" shall mean any management unit as defined in the HCP and shown in Chapter VII of the HCP or any management unit subsequently established for unplanned parcels by the local agency having land use jurisdiction and in accordance with this Agreement.
- S. The term "mitigation" shall have the same definition in this Agreement that it has in the regulations promulgated pursuant to the California Environmental Quality Act (Title 14 California Administrative Code §15032.5) or the National Environmental Policy Act (40 C.F.R. §1508.20) and includes the designation or reservation of land as open space or the provision of money to provide funding for wildlife conservation, protection or enhancement, and further includes the lessening of adverse development impacts through design modification, fencing at the grading perimeter, erosion control, reclamation, habitat enhancement or other protective activities.
- T. The term "Party" shall mean only a signatory to this Agreement.
- U. The term "Plan Operator" shall mean the County of San Mateo (or its successors as Plan Operator) and "Habitat Manager" shall mean the employee or contractor engaged by the Plan Operator to supervise the administration of the Conserved Habitat and the Habitat Conservation Plan.
- V. The term "Planned Parcel" shall mean a parcel for which development plans have been set forth in Chapter VII of the HCP and which is listed as such on Exhibit "L" attached hereto. These parcels have been reviewed and modified, as necessary to preserve natural habitat for Species of Concern and to contribute to and be consistent with this Agreement and the HCP.
- W. The term "Planning Areas" means four areas of San Bruno Mountain defined by characteristic vegetation patterns and distribution of Species of Concern.
- X. The term "Preserved Habitat" shall mean those portions of the San Bruno Mountain Area that will be protected against grading and disturbance and which are now in public ownership or which are identified in Chapter VII for dedication to the State or County.
- Y. The term "public agency" shall mean any one of the following: the County of San Mateo, the City of Brisbane, the City of Daly City and the City of South San Francisco, the State of California Department of Fish and Game, the State of California Department of Parks and Recreation and the United States Fish and Wildlife Service.

- Z. The term "Reclaimed Habitat" means the portions of a Developable Administrative Parcel which are to be disturbed by grading and thereafter reclaimed as viable habitat for the Species of Concern and dedicated to the County or State, as appropriate, as Conserved Habitat pursuant to this Agreement.
- AA. The term "San Bruno Mountain Area" means the approximately three thousand acres in San Mateo County, California, which is the subject of this Agreement, and more precisely shown on the map attached hereto as Exhibit "H".
- BB. The term "San Bruno Mountain Area Ecological Community" means the community of wild plants and animals, including but not limited to the Species of Concern, which exists within the San Bruno Mountain Area.
- CC. The term "Section 10(a) Permit" means the permit issued pursuant to Section 10(a) of the Endangered Species Act of 1973, as amended, as described in Section V hereinbelow.
- DD. The term "Species of Concern" means the species described in Exhibit "C".
- EE. The term "take" shall have the same meaning provided therefore in the Endangered Species Act of 1973, as amended.
- FF. The term "Trust Fund" shall mean the San Bruno Mountain Area Habitat Conservation Trust Fund provided for in Section VI(A)(1) hereinbelow.
- GG. The term "Unplanned Parcel" shall mean those parcels for which development plans have not been set forth in the HCP and which are listed as such on Exhibit "L" attached hereto.

II. RECITALS OF FACT

This Agreement is based upon the following facts:

A. The San Bruno Mountain Area comprises approximately three thousand acres located in the San Francisco, California, metropolitan area within the planning jurisdictions of the Cities and County described above and under private and public ownerships shown on the map and schedule attached hereto as Exhibit "I".

B. Portions of the San Bruno Mountain Area are the habitat of the Mission Blue butterfly (Plebejus icarioides missionensis), the San Bruno Elfin butterfly (Callophrys mossii bayensis) and is potential habitat of the San Francisco Garter Snake (Thamnophis sirtalis tetrataenia), which are listed as "endangered" pursuant to the Endangered Species Act, the Callippe Silverspot butterfly (Speyeria callippe callippe) which was previously considered for listing as "endangered" under the Act, and the other Species of Concern, as well as species perhaps unknown to us.

C. Because of the potential conflict between the protection and conservation of the Mission Blue butterfly and other Species of Concern and proposed or anticipated development activities within the San Bruno Mountain Area, the parties hereto have participated in a planning process convened and directed by the County to develop a Habitat Conservation Plan. The Habitat Conservation Plan is intended to provide for the indefinite perpetuation of the Mission Blue and to protect habitat of the other Species of Concern, including provision for the establishment of public ownership of sufficient habitat area and funding for the ongoing maintenance of such habitat so that portions of the San Bruno Mountain Area may be excluded from such habitat area and be devoted to urban uses (including, among others, residential, community service, commercial and recreational uses).

D. Extensive studies conducted by consultants to the County, together with independent reviews by the USF&WS and CDF&G and their consultants, have concluded that the Habitat Conservation Plan is not likely to jeopardize the continued existence of the Mission Blue and other Species of Concern, that the HCP will, to the maximum extent practicable, minimize the taking, that the taking will be incidental, that the HCP promotes the long-term conservation of the species and that the HCP provides adequate funding and will be fully implemented as discussed in greater detail below.

E. The parties hereto desire to provide for the implementation of the Habitat Conservation Plan and in connection therewith to provide the assurances, permits and undertakings required in connection therewith, as provided below.

F. To the extent that joint powers are being exercised by public entities, this Agreement is also authorized by Sections 6500-6517 of the California Government Code. The parties intend that this Agreement may be implemented, where appropriate, by Development Agreements duly adopted pursuant to Section 65864 of the California Government Code and following and similar binding enactments. This Agreement is also authorized by the local government's statutory authority to limit the use of land, accept or approve open space easements, create assessment districts, enact conservation and open space elements for general plans, to preserve natural resources, including wildlife habitats, and by their authority to exercise general planning and zoning powers (see esp. California Government Code §§51205, 51070, 50575, 65302, 65560 and the California Constitution). The State Department of Fish and Game is acting under the California Endangered Species Act (California Fish and Game Code §§2050-2055) and is also acting under its authority to maintain wildlife management areas, acquire ecological reserves, inventory species, conduct biological research and field investigation to collect information pertaining to conservation, to investigate problems involving wildlife and to investigate, study and determine what areas within the State are most essential and suitable for wildlife production and preservation (see esp. California Fish and Game Code §§900-903, 1000, 1008, 1345, 1525 and 1580). The Secretary of the Interior has authority under the Endangered Species Act to, among other things, determine whether

any species is endangered or threatened and to regulate the taking of an endangered species, to encourage states and other interested parties to develop and maintain conservation programs, including programs for habitat acquisition and maintenance and to issue permits for the taking of endangered species for scientific purposes or to enhance the propagation or survival of the affected species and to enforce the provisions of the Endangered Species Act (16 U.S.C. §1531, et seq.) The Secretary is also acting pursuant to the Fish and Wildlife Coordination Act, 16 U.S.C. §§661-666c, and the Fish and Wildlife Act, of 1956 as amended, 16 U.S.C. §§742a-754.

G. The objectives of the Habitat Conservation Area Plan and this Agreement are:

1. To provide for the protection and enhancement of the San Bruno Mountain Area Ecological Community;
2. To provide for the indefinite perpetuation of the Mission Blue butterfly;
3. To enhance the survival of the Mission Blue butterfly, the Callippe Silverspot, the San Bruno Elfin butterfly, the San Francisco Garter Snake and the other Species of Concern as individual species and as significant elements of the San Bruno Mountain Area Ecological Community;
4. To provide a diversity of wildlife habitats within the San Bruno Mountain Area;
5. As provided in Section V below, to identify areas which can be excluded from Conserved Habitat and devoted to urban uses such as among others, housing, community service, commercial and recreational uses without jeopardizing the existence of the Species of Concern or appreciably diminishing their likelihood of survival or recovery in the wild and to require, in connection with any such exclusions, appropriate mitigation and compensation therefor; and
6. To establish long-term commitments regarding the conservation of the Species of Concern whether or not such species are listed pursuant to the Endangered Species Act.

H. To accomplish the foregoing objectives, the Habitat Conservation Plan, among other things --

1. Will be implemented to maintain the ecological values of the San Bruno Mountain Area, including the Species of Concern, topographic features, the diversity of other plants and animals and the complexity and diversity of ecological communities, including the high proportion of native plants;
2. Will be implemented to maintain the existing diversity of habitat types, including annual and perennial grassland, brushland, north and south facing slopes, exposed and protected areas,

moist and dry areas, and high and low density areas of butterfly larval food and nectar plants;

3. Principally relies on preservation as opposed to manipulation or restoration to accomplish its objectives;

4. Provides for habitat manipulation only in controlled circumstances;

5. Will be implemented to allow for ongoing biological studies and the resolution of scientific and management uncertainties; and

6. Will continue to address the conservation of all Species of Concern (whether listed, unlisted or de-listed, pursuant to state or federal law) as an interrelated community as if all such species were subject to the provisions of the Endangered Species Act.

I. Prior to the adoption of the Habitat Conservation Plan and this Agreement, the continued existence of Mission Blue, the San Bruno Elfin, Callippe Silverspot and other Species of Concern and their habitats within the San Bruno Mountain Area, were threatened by one or more of a variety of factors, including the following:

1. Succession of grasslands to brush and the associated adverse cumulative impact on plant species which are essential to the survival of the Mission Blue and Callippe Silverspot butterflies;

2. Lack of adequate funding for programs to conserve and enhance the Species of Concern and their habitats;

3. Ownership of land within the San Bruno Mountain Area by private persons and governmental agencies without adequate proprietary restrictions to conserve habitat and to regulate its conversion to urban uses such as housing, community service, and commercial and recreational uses;

4. Imminent plans for substantial construction of new housing (or expansion of existing housing), commercial, industrial and recreational facilities on privately owned land within the habitat of the Mission Blue and other Species of Concern;

5. Lack of active and coordinated programs among the local, state and federal agencies with jurisdiction over the San Bruno Mountain Area to provide for the conservation of the Species of Concern and their habitats; and

6. Absence of adequate local, state or federal controls of private recreational activities such as off-road vehicle use and dumping of refuse and garbage within the habitats of the Species of Concern.

J. Based on extensive biological studies and on review of plans for Planned Parcels and analysis by experts in the field and staff biologists of the County, CDF&G and USF&WS (including, but not limited to, the review and analysis with respect to the biological opinion of the USF&WS prepared pursuant to Section 7(b) of the Act, which is attached hereto as Exhibit "Q"), the County, CDF&G, USF&WS and the Cities have found and determined that the implementation of the Habitat Conservation Plan, the actions contemplated and provided for herein and permitted by the Section 10(a) Permit described in Section V below, will carry out the objectives referred to, and ameliorate the threats described in, Section II(I) above, and:

1. Are not likely to jeopardize the continued existence of the Mission Blue butterfly, the San Bruno Elfin butterfly, the San Francisco Garter Snake or otherwise violate the requirements of Section 7(a)(2) of the Act;

2. Will, to the maximum extent practicable, minimize and mitigate the taking of the Mission Blue, San Bruno Elfin and San Francisco Garter Snake and the other Species of Concern and their habitats;

3. Will enhance the survival of and will result in only incidental takings of the Mission Blue butterfly and the Callippe Silverspot butterfly, and will result in only incidental takings of the San Bruno Elfin butterfly, the San Francisco Garter Snake and other Species of Concern;

4. Promote the long-term conservation of the Mission Blue, the San Bruno Elfin, the San Francisco Garter Snake and other Species of Concern;

5. Provide adequate funding and will be fully implemented;

6. Address the conservation of the Species of Concern and their habitat as if such species were listed pursuant to the Endangered Species Act; and

7. Establish a long-term regulatory mechanism which is adequate to provide for the protection and enhancement of the San Bruno Mountain Area Ecological Community and the Species of Concern.

K. Prior to the execution of this Agreement, extensive independent biological studies (including the studies described in Section II(D) above) were conducted to identify all Species of Concern located within the San Bruno Mountain Area. These studies obtained and incorporated the best scientific information available concerning the San Bruno Mountain Ecological Community and the Species of Concern and provide a substantial basis for the recitals of fact, representations, assurances, commitments and covenants set forth herein.

L. It is the desire of all of the parties hereto to provide for the long-term reconciliation of their individual concerns and interests regarding (i) the protection and enhancement of the Species of Concern (including but not limited to endangered species listed under state and federal laws) and the San Bruno Mountain Area Ecological Community (of which the Species of Concern are a constituent element), and (ii) the existing and proposed urban uses within the Area, and to provide assurances to each other in connection therewith so as to encourage and permit such a reconciliation.

III. DESIGNATION OF LAND

The Development Areas and the areas which currently are Conserved Habitat and those which are designated for future dedication as Conserved Habitat in the conditions set forth in Chapter VII are generally shown on the map attached hereto as Exhibit "B". Dedications of privately owned land as Conserved Habitat shall occur only in accordance with the provisions of this Agreement.

It is recognized that the maps included within Chapter VII of the HCP indicating the boundaries of Conserved Habitat assume implementation of the HCP in light of the existing conditions and restrictions included within Chapter VII, but that such maps, boundaries and conditions may be modified or revised in accordance with this Agreement.

The map also reflects the fact that the boundaries of Conserved Habitat within Unplanned Parcels have not been designated and are subject to designation in accordance with this Agreement.

IV. CONSERVED HABITAT

A. Biological Program

The Conserved Habitat is to be managed in accordance with the HCP, including, but not limited to Chapter III of the HCP, which is attached hereto as Exhibit "D". No provisions of the HCP shall be referred to or used to interpret the obligations or provisions of this Agreement with respect to Planned Parcels.

B. Conveyance of Conservation Easement and Declaration of Covenants and Restrictions

The County shall grant to the California Department of Fish and Game, the California Department of Parks and Recreation and to the U.S. Fish and Wildlife Service an easement to enter the Conserved Habitat to enforce the terms of the Agreement and to enforce the conditions of the Section 10(a) Permit. The County shall also restrict the Conserved Habitat by deed or other recorded document so that the land will be used only for habitat purposes and for other uses consistent with use as a habitat. The document shall provide that the restrictions on use can only be relaxed or modified with the unanimous consent of the USF&WS, the California

State Department of Parks and Recreation and the California Department of Fish and Game, the County of San Mateo and the Cities of Brisbane, Daly City and South San Francisco. The forms of restrictions and easement to be used shall be those set forth in Exhibits "E" and "N".

The California Department of Parks and Recreation shall grant to the County, the California Department of Fish and Game and to the U.S. Fish and Wildlife Service an easement to enter the Conserved Habitat to enforce the terms of the Agreement and to enforce the conditions of the Section 10(a) Permit. The California Department of Parks and Recreation shall also restrict the Conserved Habitat by deed or other recorded document so that the land will be used only for habitat purposes and for other uses consistent with use as a habitat. The document shall provide that the restrictions on use can only be relaxed or modified with the unanimous consent of the USF&WS, the California State Department of Parks and Recreation and the California Department of Fish and Game, the County of San Mateo and the Cities of Brisbane, Daly City and South San Francisco. The forms of restrictions and easement to be used shall be those set forth in Exhibits "E" and "O".

C. Operation of Conserved Habitat

1. The County shall hold, use, operate and administer the Conserved Habitat in accordance with the terms of this Agreement and the Habitat Conservation Plan.

2. For the initial five years of the Habitat Conservation Plan, the Plan Operator will consult with the Technical Advisory Committee (TAC), composed of one representative from each of the following: USF&WS, CDF&G, the County of San Mateo, the cities of Brisbane, Daly City and South San Francisco, Visitacion, the Committee to Save San Bruno Mountain and a biologist. The duties of the TAC are to review the operation, implementation and success of the Habitat Conservation Plan as follows:

- Review the work of the Plan Operator, including the results of research, monitoring and habitat enhancement activities and including the planning and design assistance to the Landowners.
- Recommend revisions to plan activities, research, monitoring or enhancement, as necessary.

The TAC shall meet formally at least once a year to review the ongoing implementation of the Habitat Conservation Plan, and more often as appropriate. After the initial five years, the TAC may be continued if the Plan Operator determines that major uncertainties regarding biological activities for habitat maintenance and enhancement remain to be resolved. The TAC may, with unanimous consent of County and Cities, establish a subcommittee of scientific and technical personnel, including representatives of the resource agencies to provide it with needed biological advice.

Each entity named in Section IV(C) (2) above shall appoint its own representative to the Technical Advisory Committee referred to in Section IV(C) (2) hereinabove, except that the County and the Cities shall jointly appoint the biologist.

3. Operating Program. The County shall annually, in consultation with the USF&WS and the TAC, establish an operating program which shall describe all activities which are to be carried out by the County within Conserved Habitat during the following calendar year. In developing its operating program, the County shall give priority to activity which conserves listed endangered species and shall also consider activity which addresses the entire San Bruno Mountain Ecological Community.

4. In order to effect the maximum economy, it is anticipated that the conservation activities will be closely integrated with the activities of San Mateo County as manager of a park on San Bruno Mountain.

5. The day-to-day management of the Habitat Conservation Plan will be handled by the Plan Operator. The Plan Operator will provide personnel and equipment to perform the physical job of planning and design assistance to Landowners and conservation and maintenance of the Conserved Habitat. That work will be done under the supervision of a scientist or other appropriate personnel who will either be hired by the Plan Operator or under contract with the Plan Operator. The scientific consultant will perform whatever periodic review and planning is required by the Habitat Conservation Plan. It is recognized by the parties that the Plan Operator requires broad discretion in the administration and execution of the HCP.

V. DEVELOPABLE ADMINISTRATIVE PARCELS

A. Generally

One purpose of the Habitat Conservation Plan and this Agreement is to identify areas within the San Bruno Mountain Area which should be held or conveyed into public ownership with appropriate restrictions so as to meet the objectives of II(G) above, and in conjunction therewith to:

1. Identify areas which can be excluded from such Conserved Habitat and devoted to urban uses such as, among others, housing, community service, commercial and recreational uses, without jeopardizing the existence of the Species of Concern; and

2. Require that in consideration of such exclusions, and as mitigation and compensation therefor, the Landowner with respect to the Developable Administrative Parcels:

a. Irrevocably offer to dedicate to the public those portions of the Conserved Habitat owned by such Landowner; and

b. Commit to provide certain levels of funding to the Trust Fund or Assessment District, as applicable, as provided below, for the implementation of conservation activities within the Conserved Habitat;

c. Establish buffer areas between the structures within Development Areas and the Conserved Habitat in order to protect the structures from the risk of fire; and

d. Restrict the use of pesticides within the Development Areas.

B. Assurances Provided to Landowners

1. In General

A primary purpose of this Agreement is to provide for the long-term reconciliation of the concerns of the parties regarding (i) the protection and enhancement of the Species of Concern (including but not limited to endangered species listed under state and federal laws) and the San Bruno Mountain Area Ecological Community (of which the Species of Concern are a constituent element, and (ii) the present and prospective urban uses within the area (including but not limited to residential, commercial, industrial and public service uses).

In order to effect such reconciliation and to promote such individual concerns of each of the parties hereto, it is necessary and desirable for each of the parties hereto to provide to the other parties the representations, assurances, commitments and covenants (hereinafter referred to collectively as "Assurances") set forth herein and in turn as an essential condition to providing such Assurances to its detriment, each of the parties has expressly bargained for and required and relied upon the receipt of the Assurances to its benefit from the other parties hereto.

2. Assurances to Landowners

Based on and in return for the covenants and commitments of the Landowners, and the Cities to require that the Landowners, make substantial and valuable conveyances of real property and to pay and arrange for the payment of significant sums of money and to undertake other action in reliance upon the Assurances by the USF&WS, CDF&G, the County and the Cities set forth herein, USF&WS, CDF&G, the County and the Cities covenant, agree and assure the Landowners that as permitted by the Endangered Species Act, as amended, and authority under other applicable Acts, statutes, ordinances, orders and regulations:

a. Compliance with the terms of this Agreement in the development and use of lands constitutes compliance with the provisions of the Endangered Species Act (including the requirements imposed by Sections 7(a)(2) and 9 of such Act); and.

b. Except as expressly set forth herein (including, but not limited to, Section V(C)(5) -- Unplanned Parcels, Section VIII(A)(3) -- Remedies and Enforcement, or Section IX -- Amendments), no further mitigation or compensation is necessary or will be required by any of the parties hereto within or with respect to the Developable Administrative Parcels to provide for the conservation, protection or enhancement of the San Bruno Mountain Area Ecological Community, including, but not limited to, the Species of Concern.

3. Further Governmental Action

Nothing herein shall be construed to limit or prohibit any governmental agency from providing any additional measures or taking additional actions at its own cost with respect to the protection or enhancement of the San Bruno Mountain Area Ecological Community (including the Species of Concern). In the event that said governmental agencies or any of them find or determine that additional measures or actions beyond those provided in this Agreement are desirable or necessary, to the full extent allowed by law, such governmental agency shall not require or attempt to require Visitacion Associates or the other Landowners to take any action or limit them or the development or use of their land beyond the terms hereof. The foregoing shall not be construed to limit any governmental agency from: (i) taking private property in accordance with the provisions of law for such purposes, provided that the Landowner is fully and justly compensated for such taking; or (ii) regulating the use of land within the San Bruno Mountain Area for purposes unrelated to the conservation, protection or enhancement of the San Bruno Mountain Area Ecological Community or the Species of Concern.

C. Planning of Developable Administrative Parcels

1. Landowners shall comply with the terms of Chapter VII of the HCP and of the Section 10(a) Permit, to the extent that those terms apply to the Landowner's parcel. Landowners shall observe and comply with the procedures set forth in Section V(D)(2) of this Agreement. Prior to any further construction or grading after the date hereof within any portion of any Developable Administrative Parcel, the Landowner of the lands affected may request a Development Agreement or other agreement with respect to such lands with the local agency having general planning jurisdiction providing for the implementation and performance of such Landowner's obligations with respect to the conservation of the Species of Concern as described in Chapter VII of the Habitat Conservation Plan with regard to such lands. As to Planned Parcels, at the request of the respective Landowner, the Cities may enter into a Development Agreement consistent with the terms of this Agreement. Each development agreement entered into which covers any of the Planned or Unplanned Parcels shall contain the paragraph set forth in Exhibit "M". In this regard, it is understood by the parties hereto that neither this Agreement with respect to the San Bruno Mountain Area Habitat Conservation Plan nor the Habitat

Conservation Plan constitute a Development Agreement, as contemplated by Government Code §65864, et seq.

2. In connection with the development of a Developable Administrative Parcel, and in compliance with the conditions of Chapter VII with respect to such area, the respective Landowners shall comply with the following:

a. Conserved Habitat

i. The boundaries of Conserved Habitat to be offered for dedication by the Landowner to the County shall be as described in said Chapter VII of the Habitat Conservation Plan, subject to the provisions of Section IX(A) hereinbelow.

ii. Reclamation Plan. In the event that the development of any Developable Administrative Parcel entails the grading of any Reclaimed Habitat to be dedicated as Conserved Habitat pursuant to Chapter VII of the Habitat Conservation Plan, the Landowner agrees to prepare a Reclamation Plan for the Reclaimed Habitat Area to be approved by the local agency having general planning jurisdiction, in consultation with the Plan Operator, prior to any such grading. The Reclamation Plan shall provide for runoff controls, reclamation, quality, placement and type of replacement vegetation, and adequate bonding to secure proper performance.

The Section 10(a) Permit provides, and the parties hereto agree, that no grading shall occur within the Conserved Habitat other than in specifically designated Reclaimed Habitat areas. The applicant for a grading permit shall sign a statement acknowledging that grading in the Preserved Habitat may be a crime. The statement shall be in substantially the following form:

"I understand that grading is being permitted by federal authority in certain areas which may contain an endangered species -- the Mission Blue butterfly, the San Bruno Elfin butterfly or the San Francisco Garter Snake. I also understand that grading is permitted only inside areas which have been fenced. I understand that grading beyond the fenced area is not permitted and that it may be punishable as a federal crime to grade beyond the fenced area if such grading kills or injures butterfly eggs, larvae or adult butterflies, or kills or injures San Francisco Garter Snakes."

There shall be no grading within 300 feet of any point on a boundary of the Conserved Habitat which is required by Chapter VII of the Habitat Conservation Plan to be fenced until a fence has been erected on the boundary of the Conserved Habitat for a reasonable distance and a pre-grading conference is held. Signs shall be posted on the fence every 100 feet which shall state, in the following language, that grading beyond the fence is not permitted and may result in the imposition of criminal penalties:

"NOTICE: Grading beyond this fence could result in a violation of federal law (16 United States Code, §§1531-1543) and could result in a fine of \$20,000.00 and imprisonment for one year (16 United States Code, Section 1540(b))."

At the pre-grading conference, the prohibition against grading beyond fenced areas shall be explained. The parties to the pre-grading conference shall include, in addition to the local agency, at a minimum, the contractors, developers, foremen, heavy equipment operators and the Habitat Manager.

iii. Phasing of Dedication. The offer of dedication of Conserved Habitat may be phased at the option of the Landowner but shall occur prior to or concurrently with the recordation of the final subdivision tract map for the area to be dedicated. Title shall be dedicated in fee to the County or the State, as appropriate.

b. Buffer Areas. The buffer areas to be provided for in a Development Agreement or other agreement are described with respect to each Development Area in Chapter VII of the Habitat Conservation Plan where said buffer areas have been established. The specified width of the buffer areas may be amended by agreement between the affected Landowner and the respective local agency having jurisdiction where such local agency determines that alternative fire protection is provided (for example, fire hydrants and access for fire vehicles).

c. Pesticide Control. Each Landowner with respect to each Development Area or portion thereof shall provide for the recordation of a covenant burdening and running with the land in favor of the local agency having jurisdiction in substantially the following form:

"No pesticides shall be applied to or used on, or permitted or caused to be applied to or used on any portion of the lands covered hereby in those circumstances where the use of such pesticides would require a special governmental agency permit, or which are applied by aircraft or helicopter, or which are applied on a large-scale basis (that is, in excess of 0.5 acres upon a single application) without the prior written approval of the Plan Operator and prior written notice to the United States Fish and Wildlife Service."

The covenants regarding buffer areas and pesticides shall be recorded with respect to each Development Area or portion thereof prior to or concurrently with the final subdivision tract map.

d. Temporary Access. Temporary access to portions of any Developable Administrative Parcel which are to become Conserved Habitat shall be provided by the respective Landowner to the Plan Operator in order to permit the Plan Operator to monitor plan

compliance and to develop plans for the protection, operation and enhancement of the Conserved Habitat upon reasonable terms and conditions (including waivers of liability, insurance, etc.) and to conduct any activity consistent with the Agreement.

e. Funding Program. Participate in the funding program set forth in Section VI.

3. Section 10(a) Permit

Concurrently with the execution of this Agreement, the USF&WS shall issue to the County and the Cities a permit pursuant to Section 10(a) of the Act authorizing the incidental taking of Mission Blue butterfly, the San Bruno Elfin and the San Francisco Garter Snake in accordance with and as provided by this Agreement, which has been made a condition and part of the Section 10(a) Permit. At the time of issuance of any grading or building permit in compliance with the procedures set forth in Section V(D)(2), with regard to any portion of a Development Area and upon (i) written notification of the Wildlife Permit Office, and (ii) the provision of the written statements described in Section V(C)(2) and the written agreement of the grading contractor and the Landowner to comply with the terms of the Section 10(a) Permit, without further or other action, (the form of the agreement is set forth in Exhibit "P") the benefits, rights, privileges and obligations of the Section 10(a) Permit with respect to the Development Area and Reclamation Area covered by such grading or building permit shall automatically inure to the Landowner thereof, and shall be exercised under the direct supervision of the County or a city. Any Development Agreement or other agreement authorized by Section V(C) hereinabove shall provide for the direct supervision by the Cities and County, as permittees under the Section 10(a) Permit, of the activities of the respective Landowners as they affect Conserved Habitat and the conservation of the Species of Concern as provided herein.

The incidental takings under the Section 10(a) Permit must be performed by an employee or agent of the local government or by a private entity under the direct control of the local government through its land use authority, general police power, or any contractual rights. Each local government may issue grading permits and building permits upon satisfaction of the applicable conditions of the Agreement and of the Section 10(a) Permit, and other local requirements unrelated to wildlife conservation. For purposes of the Section 10(a) Permit, any Landowner (together with its agents, employees and contractors) who has agreed in writing to be bound by the terms of the Agreement and by the conditions of the Section 10(a) Permit by signing a copy of this Agreement and when acting (together with its agents, employees and contractors) under a permit issued in accordance with this Agreement, shall be deemed to be acting under the direct supervision and control of a permittee under the Section 10(a) Permit.

Prior to the issuance of building and grading permits, Landowners may arrange with the respective local agency to conduct

borings, tests and other preliminary site work under the Section 10(a) Permit and the direct supervision of the respective City as the permittee.

The Section 10(a) Permit shall continue in effect for a primary term of thirty (30) years from the effective date of this Agreement and neither the Cities nor the County shall relinquish or seek to terminate the Section 10(a) Permit in whole or in part and the USF&WS shall not terminate, revoke or suspend the Section 10(a) Permit except in accordance with and as provided in this Agreement.

At the conclusion of the primary term referred to above, the Section 10(a) Permit shall be renewed or extended by the USF&WS for such additional term as the USF&WS may prescribe --

a. With respect to any Conserved Habitat held in fee by the County, upon a determination that the renewal of the Section 10(a) Permit, as it applies to such Conserved Habitat, is consistent with the attainment of the objectives of this Agreement described in Section II(G) above and the requirements of Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended;

b. With respect to any Planned Parcel, upon a determination that the extension of the Section 10(a) Permit, as it applies to such Planned Parcel, is consistent with the terms and provisions of this Agreement; and

c. With respect to any Unplanned Parcel, upon a determination that the renewal of the Section 10(a) Permit, as it applies to such Unplanned Parcel, is consistent with the attainment of the objectives of this Agreement described in Section II(G) above and the requirements of Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended.

In the event that the USF&WS determines not to renew or extend the Section 10(a) Permit as provided above with respect to any Conserved Habitat held in fee by the County, any Planned Parcel, or any Unplanned Parcel, the USF&WS shall terminate the Permit but only as to such Conserved Habitat or Planned or Unplanned Parcel, and such termination shall not affect the renewal or extension of the Section 10(a) Permit as it applies to any other Administrative Parcel. If the Permit is terminated as provided herein, the affected Landowner shall be relieved from any and all obligations to provide further mitigation as specified in this Agreement with regard to the affected Administrative Parcel, including, but not limited to, any funding pursuant to Section VI or lands pursuant to Section V(C) (however, such a termination shall not affect the obligations under any covenants then recorded pursuant to Section VI(A)(2)).

As part of the renewal process, the USF&WS shall consider the extent to which Unplanned Parcels remain within the jurisdiction of the city permittees. The USF&WS will not renew the Permit for any city in which all development has been completed on the Developable Administrative Parcels within that city. All

obligations of an existing city permittee shall cease under this Agreement upon deletion of the city from a Section 10(a) Permit; provided, that whatever right and responsibility a city has to participate in governing an assessment district or other funding source shall continue after its deletion from the Section 10(a) Permit. At the option of a city, it may relinquish its rights to a Section 10(a) Permit prior to the expiration of the primary term, or any extension thereof, but only if development has been completed in Planned Parcels.

4. Special Provision for San Bruno Elfin and Other Species of Concern

Prior studies have determined in detail the habitat of the Mission Blue and Callippe Silverspot butterflies and more generally the habitat of the San Bruno Elfin butterfly. The San Francisco Garter Snake has not recently been observed in the San Bruno Mountain Area. The remaining Species of Concern have been observed generally as either not being present in the Developable Administrative Parcels or so widely distributed that the conversion of the Development Areas to urban uses as contemplated herein will not significantly and adversely affect the existence of such species when taking into consideration the conservation of habitat provided hereby. Accordingly, in addition to the specific requirements of Chapter VII, the following conditions will be observed in the development and use of the Developable Administrative Parcels:

a. Prior to any development within the "hatched area" shown on the map attached hereto as Exhibit "J", the Landowner shall engage a qualified biologist to conduct a survey to determine whether the proposed development will result in the taking of any San Bruno Elfin butterflies. If it is determined that such a taking will occur, the Landowner shall be required to obtain an amendment to this Section 10(a) Permit under and in accordance with the provisions of the Endangered Species Act. Prior to any development within the area shown on the map attached hereto as Exhibit "K", the Landowner shall engage a qualified biologist to conduct a survey to determine whether the proposed development will result in the taking of any San Francisco Garter Snakes. If it is determined that such a taking will occur, the Landowner shall be required to obtain an amendment to this Section 10(a) Permit under and in accordance with the provisions of the Endangered Species Act. If the Snake is found inside any of the suitable or marginal habitat areas on County-owned or State-owned land shown on Exhibit "K", the County agrees to enhance that habitat area.

b. If a San Francisco Garter Snake is found outside of the area shown in Exhibit "K", but inside a Development Area, incidental taking of the Snake is permitted under the Section 10(a) Permit. Incidental takings of the San Bruno Elfin, outside of the "hatched area" shown on Exhibit "J", are authorized under the Section 10(a) Permit.

5. Unplanned Parcels. Unplanned Parcels are subject to and shall comply with the provisions of Chapter III, Part 4 (pages

III-22 to III-28), of the HCP, which is attached hereto as Exhibit "D".

D. Obligations of Local Agencies

1. Monitoring and Supervision

The County and the Cities shall carefully and expeditiously monitor and supervise compliance by the Landowners with the obligations set forth in this section and in Chapter VII of the Habitat Conservation Plan with respect to the lands over which they have jurisdiction:

a. As set forth in this Section with respect to their respective duties as permittees under the Section 10(a) Permit; and

b. Pursuant to their regulatory authority with respect to land use.

It is expressly acknowledged that such authority includes the right to, among other things, issue "stop work orders" in the event that grading goes beyond the boundary of Development Areas into the Conserved Habitat.

2. Land Use Approvals

Without limiting the generality of the foregoing:

a. At or prior to the initial project approval (including applications in connection with zoning, specific plans, subdivision tract maps, use permits, planned developments, building and grading permits) with respect to projects which have not yet received such approvals (e.g., Reservoir Hill has received such approval), copies of all application materials dealing with HCP compliance will be sent by the local agency to the USF&WS, CDF&G and the Plan Operator. These agencies shall have 30 days to comment upon the application before a local agency public hearing is held to consider compliance of the proposed action with the Agreement and with the Section 10(a) Permit conditions. The local agency shall hold a noticed public hearing of the proposed action on compliance with the Agreement. Notice shall be given as provided in California Government Code §§65854 and 65854.5, or any successor statutes. This hearing will be held in conjunction with any other local public hearing scheduled to consider the development proposal.

b. After the noticed public hearing, the local agency shall impose on the applicant the conditions required by this Agreement and by the Section 10(a) Permit (in addition to other conditions permitted by law). In no case shall an agency approve an application without first making written findings that the application complies with the Section 10(a) Permit and this Agreement. Such a finding of compliance with the HCP fulfills the agency's obligation under CEQA to assess the impact, including the cumulative impact, of the project on the Species of Concern. The

local agency shall apply the provisions of the HCP, Chapter III, pages 22-28, to the Unplanned Parcels.

c. Developers who plan construction in the San Bruno Mountain Area will submit their plans to the appropriate local agency and follow the development procedures. However, prior to the first discretionary approval (and, where no discretionary approval is required prior to any grading or any major construction or any change in land use on any parcel, whichever comes first), at least one public hearing must be held to determine whether the proposed action on the parcel complies with the Section 10(a) Permit and with this Agreement. Whenever a subsequent public hearing is required by the normal planning or approval procedures, the local agency shall take no action at that hearing without first making written findings that the proposed action complies with the Section 10(a) Permit and this Agreement. The local agency shall take no subsequent discretionary action without first finding that the action complies with this Agreement, but if a public hearing is not otherwise required by this Agreement or by applicable law, such discretionary action may be taken and such findings may be made without a public hearing being held. The following examples are given as an aid in interpreting this section:

i. If a project receives an initial discretionary approval from a city at a public hearing at which the required findings are made, then this Agreement requires no further public hearings. However, if the city's usual planning process requires additional public hearings, then at each such hearing prior to taking action, the city must find that the proposed action complies with the Section 10(a) Permit and with this Agreement. If the city's usual planning process allows discretionary action, subsequent to the first public hearing, to be taken without additional public hearings, then the city must find that the subsequent actions comply with the Section 10(a) Permit and this Agreement prior to taking action, but need not make the findings at a public hearing.

ii. Some projects would normally proceed without any public hearings. Projects which require only a city building permit are one example. In those cases, this Agreement requires that at least one public hearing be held prior to any grading, major construction or change in land use. At that public hearing, the city must find that the proposed grading, major construction or change in land use complies with the Section 10(a) Permit and with this Agreement. Until the city makes such findings, the grading, major construction or change in land use shall not take place.

VI. FUNDING PROGRAM

A. Funding

As set forth in greater detail below, funding will be provided in three ways:

- o Interim funding will begin upon the execution of this Agreement, and will be paid by the Landowners. Upon full implementation of the program, it is anticipated that the total amount of interim funding paid by the Landowners will be approximately \$50,000.00 per year.
- o Funds will also be raised through fees charged to the developers for monitoring of development, and for consultation provided to the developers, by the Plan Operator. The fees charged will cover the Plan Operator's costs and expenses and will also provide some extra money for operation and enhancement of the Conserved Habitat.
- o Permanent and ongoing funding for habitat operation, maintenance and enhancement will be provided by a \$20.00 annual charge per dwelling unit within the Development Areas and a \$10.00 annual charge per 1,000 square feet of floor area of private non-residential development on the mountain. As the construction is completed and permanent funding is imposed, interim funding will be phased out.

1. Funding Source

Concurrently with the execution of this Agreement, the County and the Cities shall either enter into a trust agreement in the form of that attached hereto as Exhibit "F" and thereby and thereupon establish the "San Bruno Mountain Area Habitat Conservation Trust Fund" (hereinafter "Trust Fund") or form an Assessment District or provide for other appropriate funding sources as provided in Section VI(4) below. The funding source shall have the duty to use the funds for habitat conservation on San Bruno Mountain so as to provide for the conservation of the Mission Blue, Callippe Silverspot and other Species of Concern and the San Bruno Mountain Area Ecological Community.

The trustees of the Trust Fund shall be the Managers for the County and the Cities who shall act and administer the Trust Fund solely for the purpose of providing the County with funds for the protection and enhancement of the Species of Concern by the operation, maintenance and enhancement of the Conserved Habitat for such purposes, all as set forth in greater detail in said Trust Agreement.

The funds will be paid annually to the funding source, as appropriate, and dedicated solely to habitat conservation activity. Upon full implementation of the program, it is anticipated that the amount of annual funding will be in excess of \$60,000.00, which has been determined to be sufficient for habitat conservation. The exact amount of annual funding cannot be calculated because Landowners will begin participation in the funding program at different times. The Trust will consist of one representative each from San Mateo County, Brisbane, Daly City and South San Francisco. The Trustees of the Trust shall have the duty to use the funds for habitat conservation on San Bruno Mountain so as to provide for the conservation of the Mission Blue, Callippe Silverspot and other

Species of Concern and the San Bruno Mountain Area Ecological Community.

2. Funding by Covenants and Restrictions Assessment

In connection with the subdivision, development and use of the Developable Administrative Parcels, the respective local agency having jurisdiction shall require, and in any event (except as provided in Section X(N)) each Landowner with respect to each Development Area, or portion thereof, shall record, a covenant with respect to such Developable Administrative Parcels, or portion thereof, in the form attached as Exhibit "G" hereto. Such covenant shall be recorded with respect to such Developable Administrative Parcel, or portion thereof, prior to the dedication of Conserved Habitat (or portion thereof), and concurrently with (i) the recording of the final subdivision tract map (or condominium plan if appropriate) creating lots or units for sale to the public; or (ii) at least 10 days prior to the issuance of a certificate of occupancy with respect to structures located within such Developable Administrative Parcels or portion thereof for which no subdivision tract map or condominium plan will be recorded after the date of this Agreement. Such covenants shall be incorporated by reference into the deeds or conveyances transferring such lots or units from the Landowner to the next purchaser in such manner as to effectively create mutual, equitable servitude and a covenant running with the land providing for the payment commencing with the next following calendar month of the sums indicated in Exhibit "G" hereto in perpetuity); to be in January 1, 1983, dollars, adjusted annually for inflation by reference to the Employment Cost Index - West or its successor published by the U.S. Bureau of Labor Statistics to the Trust Fund by the owner of each residential unit or lot within the Developable Administrative Parcels, all as provided in said Exhibit "G" hereto.

3. Interim Funding

a. Establishment of Fund and Initial Contributions.

Prior to the time when the permanent funding becomes available, the parties desire to establish an Interim Funding (Interim Fund) in the amount of at least \$50,000.00 per year for preliminary habitat restoration activities, native plant seeding and species population monitoring, and other habitat enhancing and monitoring activities. It is anticipated that additional interim funding will come from new projects, contributions from public agencies and from fees for monitoring and consultation, so that the interim funding will probably be in excess of \$50,000.00 per year.

b. Landowner Contributions. As a contribution to the Interim Fund, each of the following Landowners shall pay to the Plan Operator the amount of money set forth below opposite its name monthly in advance, commencing with the later of (i) the approval of a specific plan, rezoning for residential or commercial purposes, PUD, or tentative subdivision map for any portion of the Developable Administrative Parcel set forth opposite the respective

Landowner's name below; or (ii) the execution of this Agreement by each Landowner.

| <u>Landowner/Developable Administrative Parcel</u> | <u>Monthly Payment</u> | <u>Pro Rata Limit</u> |
|--|------------------------|---------------------------|
| Cadillac-Fairview Homes West: Northeast Ridge Project | \$ 1,956.67 | \$ 23,480.00 |
| W.W. Dean & Associates: South Slope Project | 781.67 | 9,380.00 |
| Presley: Reservoir Hill | 681.67 | 8,180.00 |
| Foxhall Investment, Ltd: Rio Verde Estates and Rio Verde Heights | 746.67 | 8,960.00 |

With respect to all other Developable Administrative Parcels, the Landowner with respect thereto, upon the approval of any PUD, tentative subdivision tract map, building permit, grading permit, conditional use permit or special use permit shall be required to commence and continue paying to the Plan Operator for the Interim Fund, in the same manner and to the same extent provided above with respect to the Landowners specified in this subsection 3(b), a charge in the amount of \$20.00 per year for every residential unit and \$10.00 per year per 1,000 square feet of non-residential floor area proposed to be developed under the approval sought, subject to the limitations and provisions of subsections 3(c) and 3(d) below.

Said payments shall continue to be made by the Landowners described in subsection 3(b) until and unless terminated or suspended in accordance with subsections 3(c) and 3(d) below.

c. Failure to Meet Funding Obligation. In the event that any of the Landowners described in subsection 3(b) above fails to meet its interim habitat funding obligation, the obligation to make payments required under subsection 3(b) above shall terminate and the respective Landowner shall thereafter have no obligation to make further payments and the Landowner shall lose its rights and benefits under the Section 10(a) Permit; provided, that in the event of and upon the commencement of any new proceedings or the revival of any prior proceeding for development approvals with respect to such area, the respective Landowner seeking such approvals shall commence to pay to the Plan Operator the amounts payable under subsection 3(b) as provided in that subsection. In addition, as a condition precedent to the commencement or revival of such proceedings, the respective Landowner shall pay to the Plan Operator all amounts which would have been paid (but which were not paid) by the Landowner prior to such time under subsection 3(b) above, but for the prior abandonment. As a condition precedent to termination of such benefits and payment obligation, the Plan Operator shall deliver to the respective Landowner written notice

of said Landowner's failure to pay the amount due. Such Landowner shall have 30 days thereafter to cure the failure to pay. In the event that such Landowner fails to cure such default, the obligation to pay and the entitlement to benefits shall terminate.

d. Termination of Interim Funding. As the funding provided in Section VI(A)(2) becomes available, the Interim Funding provided for in Section VI(A)(3) shall be phased out as provided below.

The payments pursuant to subsection 3(b) above by a specifically named Landowner with respect to the related Developable Administrative Parcel shall be (i) reduced by the amounts payable into the Trust Fund or the Assessment District pursuant to Section VI(A)(2) which are in excess of the "Pro Rata Limit" amount set forth opposite the respective Landowner's name; and (ii) terminated when said amounts in excess of the respective "Pro Rata Limit" exceeds for any calendar year the amounts payable by the respective Landowner into the Interim Fund for the same year. Thereupon and thereafter, the respective Landowner shall have no further obligation to make payments into the Interim Fund.

The payments required to be made by other Landowners not specifically named in subsection 3(b) above, shall be (i) reduced by payments relating to the respective Developable Administrative Parcel made into the Trust Fund pursuant to Section VI(A)(2); and (ii) terminated when such Section VI(A)(2) payments exceed the Interim Fund payments for any calendar year.

4. Alternate Means of Collection

Notwithstanding the foregoing funding mechanism, the parties to this Agreement recognize and agree that the Landowners' charge/assessment set forth in Section VI(A)(2) above, may be satisfied through collection on the annual County property tax bill of an equivalent amount. Such collection may be through an assessment levied by a public entity or district such as a landscape and lighting district pursuant to Streets and Highways Code §§22500-22679, an open space maintenance district pursuant to Government Code §§50575-50628, or some other mutually agreed upon funding source. All parties agree to cooperate in good faith in the formation of such a funding source as is selected by the Cities and the County and the Landowners shall consent to the formation of any such funding source so selected.

5. Monitoring and Consultation Funding

During the construction phase of development, the Plan Operator shall monitor grading with respect to Conserved Habitat and Reclaimed Habitat and consult with the respective Landowner performing such development work, as provided in this Agreement. As part of the normal and customary procedures for the regulation of land development activities, the City having land use regulation jurisdiction shall require, and in any event (except as provided in Section X(N)), the respective Landowner shall pay the costs of such

monitoring and consultation by the Plan Operator. Landowner's payment for such monitoring consultation to the Plan Operator shall be determined as follows and include:

a. 133% of the actual salary paid to employees or contractors for performing the work on behalf of the Plan Operator prorated with respect to the amount of time actually spent in monitoring such Landowner's development (which thereby takes into consideration indirect employee and contractor time related costs); plus

b. 150% of the amounts determined under subsection 5(a) above which shall cover and only be expended by the Plan Operator for preliminary operation and enhancement of the Conserved Habitat; plus

c. Actual out-of-pocket expenses incurred by the Plan Operator in connection with the monitoring of such Landowner's development for the use of equipment, supplies and materials.

The total amount of the charge as determined above shall be paid by the respective Landowner to the Plan Operator upon demand. At the Habitat Operator's option, as a deposit against such charges, a reasonable sum may be required to be paid by the respective Landowner.

6. Governmental Agency Contributions

The County, as Plan Operator and owner of portions of the Conserved Habitat, shall provide in-kind services directly and in connection with the administration of its lands generally. CDF&G and USF&WS will also provide funds and in-kind support subject to the availability of funds and personnel.

In addition, the Cities and the other public agencies which are parties to this Agreement should seek ways to provide support.

VII. PUBLIC AGENCY OBLIGATIONS AND PROGRAMS

The public agencies which are party to this Agreement shall have the following obligations and responsibilities:

A. County

The County shall:

1. Hold, use, operate and administer the Conserved Habitat as provided in Section IV;

2. Assist in the implementation and observation of this Agreement with respect to the Developable Administrative Parcels as provided in Section V and in connection therewith shall:

a. Monitor the effect of all activities within Developable Administrative Parcels on adjacent Conserved Habitat and provide advice and direction to the Landowner to assist his compliance with the terms of this Agreement;

b. Designate vegetation materials for use by Landowners in the implementation of Reclamation Plans required by this Agreement; and

3. Participate in the funding program as provided in Section VI;

4. Cooperate in and observe the provisions of Section IX with respect to the amendment of this Agreement; and

5. Generally use and exercise the rights and authority available to it in furthering the purposes of and assuring compliance with the terms of this Agreement as provided in Section VIII and otherwise.

6. The County, as a permittee, has the duty to comply with and also to enforce the conditions of the Section 10(a) Permit and the terms of this Agreement. That enforcement authority includes the issuance of stop work orders.

7. In accordance with this Agreement, San Mateo County shall accept offers by Landowners for dedication of Conserved Habitat in fee to the County.

8. The County shall, within its jurisdictional boundary, issue and enforce a stop work order immediately upon notice of any grading outside the grading boundaries as shown on the approved grading plan. The County may exercise this authority based upon the Agreement, the police power, the Section 10(a) Permit, the grading permit itself and any contractual agreements with developers to enforce the HCP, the Section 10(a) Permit and/or the grading permit.

9. The parties recognize that the County requires broad discretion in the operation of the HCP and by listing the above obligations it is not intended to restrict that discretion.

B. Cities

The Cities shall:

1. Cooperate with the County in the operation and administration of the Conserved Habitat as provided in Section IV;

2. Assist in the implementation and observation of this Agreement with respect to the Developable Administrative Parcels as provided in Section V;

3. Participate in the funding program as provided in Section VI;

4. Cooperate in and observe the provisions of Section IX with respect to the amendment of this Agreement; and

5. Generally use and exercise the rights and authority available to it in furthering the purposes of and assuring compliance with the terms of this Agreement as provided in Section VIII and otherwise.

6. The Cities, as permittees, have the duty to comply with and also to enforce the conditions of the Section 10(a) Permit and the terms of this Agreement within their respective jurisdictional boundaries. That enforcement authority includes the issuance of stop work orders.

7. The city with jurisdiction shall issue and enforce a stop work order immediately upon its determination that there has been grading outside the grading boundaries as shown on the approved grading plan. Local agencies may exercise this authority based upon the Agreement, the police power, the Section 10(a) Permit, the grading permit itself and any contractual agreements with developers to enforce the HCP, the Section 10(a) Permit and/or the grading permit.

C. USF&WS and CDF&G

Subject to the availability of funds and personnel, USF&WS and CDF&G will coordinate their endangered species program with this Habitat Conservation Plan to include, among other things, the following:

1. The preparation and implementation of recovery plans for the Mission Blue and San Bruno Elfin butterflies and the San Francisco Garter Snake, which are not inconsistent with the provisions of this Agreement;

2. The review of the status of the Mission Blue, San Bruno Elfin, San Francisco Garter Snake, consistent with this Agreement, in accordance with provisions of the Endangered Species Act;

3. The conducting of any plant surveys;

4. Assistance in the conducting of annual population surveys of the Mission Blue, San Bruno Elfin and Callippe Silver-spot butterflies;

5. Any survey of the San Francisco Garter Snake or other Species of Concern;

6. Cooperate in the preparation and publication of public information brochures;

7. Cooperate in and observe the provisions of Section IX with respect to the amendment of this Agreement; and

8. Generally use and exercise the rights and authority available to it in furthering the purposes of and assuring compliance with the terms of this Agreement as provided in Section VIII and otherwise.

VIII. REMEDIES AND ENFORCEMENT

A. Remedies in General

Generally, except as set forth in Section VIII(A)(1) below, each of the parties hereto shall have all of the remedies available in equity (including specific performance and injunctive relief) and at law to enforce the terms of this Agreement, Section 10(a) Permit and grading permit and to seek remedies and compensation for any breach hereof, consistent with and subject to the other terms hereof.

1. The governmental entities shall not be liable in damages to any party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary duty or obligation imposed by this Agreement or any other cause of action arising from this Agreement. Notwithstanding the foregoing:

a. All governmental entities shall retain whatever liability they would possess for their present and future acts, or failure to act, without the existence of this Agreement;

b. All parties shall retain whatever liability they possess as holders of interests in land; and

c. All parties shall have the right to equitable relief, including but not limited to, injunctive relief, specific performance and declaratory relief, regarding any breach of this Agreement or otherwise.

The parties agree that nothing in this Agreement constitutes a taking of private property without the payment of just compensation. The parties shall have all remedies available with respect to any future actions of the governmental entities which result in a taking of private property without the payment of just compensation.

2. The parties acknowledge that the Species of Concern are unique, that their loss as species would be irreplaceable and that therefore injunctive and temporary relief may be appropriate in certain instances involving a violation of this Agreement; and

3. Violations may result in requiring reclamation of any improperly graded area, donation to the County of undisturbed habitat within the permit area equivalent to the habitat improperly graded, forfeiture of bonds, revocation of the grading permit (and concomitantly the authorization for taking under that grading

permit) and/or any other appropriate and available remedies in the discretion of the local public entity.

4. Without limiting the generality of the foregoing, the local agencies' and the USF&WS's (in accordance with the requirements of Section VIII(B)(3)) enforcement authority includes the authority to issue stop work orders. Landowners agree to stop grading work immediately upon the issuance of a stop work order duly and properly issued by the local agencies having jurisdiction or by the Plan Operator with respect to protection of the preserved habitat, and agree that they will cause their agents or employees (including contractors) who are responsible for violations, to stop grading work immediately upon issuance of such stop work order. Immediately upon the issuance of any stop work order by any public agency, such agency shall provide written notice of such order to the affected Landowner.

5. Landowners agree to participate in the funding program as set forth in this Agreement.

B. Section 10(a) Permit

1. Authority of County and Cities

In addition to the provisions of Section VIII(A), the County and Cities shall be empowered to exercise all legal and equitable remedies available to them in assuring that the terms of the Development Agreement or other agreement, this Agreement and the Section 10(a) Permit are complied with. The County or such City shall not have the right or authority to terminate or suspend the Section 10(a) Permit. The Cities and the County shall have the right to revoke, terminate or suspend the Landowner's right to enjoy or have the benefit, rights and privileges under the Section 10(a) Permit by terminating or suspending building and grading permits or taking action under any Development Agreement or other agreement entered into with a Landowner which may have the practical effect of terminating or suspending the Landowner's authority or right to "take" Species of Concern. If a City or the County takes such action, the Landowner shall immediately deliver to that City or County the copy of the Section 10(a) Permit under which the Landowner is operating. Said local agency shall, however, promptly notify USF&WS in writing of any action which would provide the basis for such revocation, termination or suspension. The Cities and the County shall not unilaterally surrender or relinquish the Section 10(a) Permit.

2. Violations Limited to Lands Involved

a. The violation of the Section 10(a) Permit with respect to any Management Unit, or portion thereof, shall not adversely affect or be attributed to, nor shall it result in the loss or diminishment of any right, privilege or benefit hereunder, of any Landowner or local agency with respect to any other Management Unit, or portion thereof. The past conduct of a violator with respect to one management unit may be considered in determining the

appropriate remedies with respect to such violator's activities with respect to another Management Unit.

b. Performance Bond. In the event that the development of any Development Area entails grading within 200 feet of any Conserved Habitat, the Landowner shall post a bond in favor of the Cities, the Plan Operator and the San Bruno Mountain Area Habitat Conservation Trust Fund or Assessment District securing performance of the following obligations:

i. The Landowner shall not grade any Conserved Habitat except as provided in this Agreement;

ii. In the event that any Landowner does grade any Conserved Habitat (including, but not limited to Preserved Habitat) in violation of this Agreement, such Landowner shall expeditiously comply with the reasonable directives of the Plan Operator to restore the improperly graded area; and

iii. In the event of a breach of the obligations described in subsections (i) and (ii) above, it would be impracticable or extremely difficult to fix the actual damages resulting from the breach and therefore the Landowner shall pay to the Trust Fund or to the Assessment District or alternate funding source liquidated damages, and not as a penalty, the sum of \$20,000.00 per acre of Conserved Habitat that is improperly graded. The liquidated damages per acre shall be prorated according to the amount of Conserved Habitat that is improperly graded, but in no event shall be less than \$2,000.00. These sums represent a reasonable endeavor by the parties hereto to estimate a fair compensation for the foreseeable losses that might result from a breach of such obligations.

The amount of any bond obtained pursuant to this provision shall be no less than \$25,000.00 per acre of Conserved Habitat, other than areas constituting Reclaimed Habitat, that occurs within 200 feet of any area that is to be graded. Such bond shall be posted by the Landowner and required by the local agency having planning jurisdiction prior to the initiation of such grading.

3. Permit Revocation, Termination and Suspension

a. Suspension

i. The USF&WS may suspend the Section 10(a) Permit for any violation of the Permit or this Agreement.

ii. Except where the USF&WS determines that emergency action is necessary to protect any endangered or threatened species, the USF&WS shall not suspend the Section 10(a) Permit without first: (a) requesting the appropriate City or the County to take appropriate remedial or enforcement action; and (b) providing to the affected City or County permittee and to each affected Landowner under the direct control of the affected

permittee, notice in writing of the facts or conduct which may warrant the suspension and an opportunity to demonstrate or achieve compliance with the Permit and this Agreement.

iii. Any suspension under this subsection 3(a) shall be lifted immediately upon the reasonable determination by the USF&WS that the violation(s) has been effectively redressed. As soon as possible, but no later than 10 working days, after any suspension under this subsection, the USF&WS shall consult with the affected permittee(s) and each affected Landowner under the direct control of an affected permittee concerning actions to be taken to effectively redress the violation(s) that necessitated the suspension. At the conclusion of such consultations, the USF&WS shall make a determination of the actions necessary to effectively redress the violation(s). In making this determination, the USF&WS shall consider the conservation needs of the species concerned and any comments or recommendations received during the consultations. As soon as possible, but no later than 10 working days, after conclusion of the consultations, the USF&WS shall transmit to the affected permittee(s) and to each affected Landowner under the direct control of an affected permittee, written notice of the USF&WS determination of the actions necessary to effectively redress the violation(s). Upon full performance of the necessary actions specified by the USF&WS in its written notice, the USF&WS shall immediately lift the suspension.

iv. It is the intent of the parties hereto that in the event of any suspension of the Section 10(a) Permit, all parties shall act expeditiously to cooperate to lift any suspension of the Section 10(a) Permit to carry out the objectives of this Agreement. Notwithstanding any provision of this subsection B(3), no suspension of the Section 10(a) Permit, or the rights, benefits or privileges of the Section 10(a) Permit shall extend beyond a period of 180 days, unless the USF&WS makes the determinations required by subsection 3(b) below.

b. Revocation or Termination

i. The USF&WS shall not revoke or terminate the Section 10(a) Permit for a violation of the Permit or this Agreement unless the USF&WS determines that such violation:

(a) involves a taking of an endangered or threatened species; (b) has significantly and adversely affected such species throughout its range; (c) cannot be effectively redressed by other remedial or enforcement action, including remedies resulting from the process specified in Section VIII(B) (3) (b) (ii); and (d) destroys more than 5% of the total Conserved Habitat in that Administrative Parcel.

ii. The USF&WS shall not revoke or terminate the Section 10(a) Permit without first: (a) requesting the appropriate City or the County to take appropriate remedial or enforcement action; and (b) providing to the affected City or County permittee and to each affected Landowner under the direct control of the affected permittee, notice in writing of the facts or conduct which

may warrant the revocation or termination and a reasonable opportunity (but not less than 60 days) to demonstrate or achieve compliance with the Permit and this Agreement.

c. Other Permit Rights, Benefits or Privileges

The provisions of subsections 3(a) and 3(b) of this Section shall also apply to any suspension, revocation or termination by the USF&WS of any rights, benefits or privileges of the County, Cities or Landowners under the Section 10(a) Permit. The USF&WS shall have the express authority under the Section 10(a) Permit to enforce the provisions of the Section 10(a) Permit and this Agreement as provided above directly with respect to each individual Landowner and the specific Management Unit involved or any agents, contractors or employees of such Landowner. Such enforcement authority shall include suspension, revocation and termination of the rights of such individual Landowner, or his employees, agents or contractors, under the Section 10(a) Permit, all subject to and in accordance with the terms, conditions and limitations of this Agreement, without having to proceed against the Permittees or the other Landowners.

d. No Further Mitigation

i. In the event that USF&WS or CDF&G attempts to require, contrary to the terms and provisions of Section V(B) of this Agreement, additional mitigation or compensation beyond those provided in this Agreement, any affected Landowner may, in addition to all other remedies available, at its option terminate this Agreement with respect to such Landowner's lands, whereupon the Section 10(a) Permit shall terminate with respect to such lands and such Landowner shall be relieved from any and all obligations to provide further mitigation or compensation as provided in this Agreement, including, but not limited to, any funding pursuant to Section VI or lands pursuant to Section V(C).

ii. In the event that the USF&WS or the CDF&G revokes or terminates the Section 10(a) Permit or the rights, benefits or privileges of the Section 10(a) Permit, the affected Landowner shall be relieved from any and all obligations to provide further mitigation or compensation as provided in this Agreement, including, but not limited to, any funding pursuant to Section VI or lands pursuant to Section V(C).

e. Severability

Subject to the provisions of subsection B(2)(b) of this Section, suspension, revocation or termination of the Section 10(a) Permit (or any rights, benefits or privileges of the Section 10(a) Permit) as to a specific Management Unit shall not result in suspension, revocation or termination of the Section 10(a) Permit or affect the benefits, rights or privileges of any Landowner with respect to another Management Unit, subject to the provision set forth above that past conduct by a violator with respect to one Management Unit may be considered in determining the appropriate

remedies with respect to such violator's activities with respect to another Management Unit. In any event, full compensation, remedial action or mitigation and penalties may be sought from the appropriate Landowner for a violation of the Section 10(a) Permit or this Agreement.

f. Emergency Action

Should the Section 10(a) Permit expire or terminate for any reason, the County of San Mateo will continue to be authorized to take emergency action, in response to an actual or threatened disaster, to protect human health or safety. To the extent possible, such actions should be consistent with the HCP.

C. Limitations and Extent of Enforceability

It is acknowledged that this Agreement is to provide for the conservation of the Species of Concern and the mitigation and compensatory measures required in connection with the development and conversion of the Development Areas to urban uses. Accordingly, to the extent permitted by law, no further mitigation or compensation for the conservation of the Species of Concern will be required by any of the governmental parties hereto.

Nothing herein contained shall be deemed to limit the power of Cities and County to regulate the use of the lands subject hereto for purposes other than and not related to conservation of the Species of Concern and their habitats subject to such other limitations as may apply to such power under the Constitution and laws of the United States or the State of California or as may be imposed pursuant to the implementation of any provision hereof.

Notwithstanding the terms of this Agreement, any person may take endangered wildlife in defense of his or her own life or the lives of others. The County of San Mateo or any City or Cities may take emergency action in response to an actual or threatened disaster. To the extent possible, such actions should be consistent with the HCP.

Nothing herein is intended to limit the authority of the United States Government to invoke the penalties provided for in the Endangered Species Act, 16 U.S.C. §1540.

D. Enforceability by Landowners

It is acknowledged and agreed by the parties hereto that any assurances and commitments provided to the Landowners which have executed this Agreement, by the County, the Cities, CDF&G and USF&WS with respect to the extent and limitation of conservation measures which will be required in connection with the development and use of the Development Areas are:

1. Intended to be relied upon by the Landowners;

2. Made with full knowledge of the extent and effect thereof;

3. Made in exchange for valuable and adequate consideration to be provided by the Landowners in the form of money, dedication of lands and other covenants and commitments; and

4. Made with the understanding that such assurances and commitments will not be amended, changed or increased except in accordance with this Agreement.

E. Enforcement By Other Persons

1. The parties to this Agreement intend to provide that, except as against the Cities, persons who are entitled to enforce the Endangered Species Act are also entitled to enforce the provisions of this Agreement. Such persons shall be entitled to enforce the terms of this Agreement against all parties to the Agreement, except the Cities.

2. The parties acknowledge that the provisions of the Endangered Species Act can be enforced against all parties to this Agreement, including the Cities, as provided in the Endangered Species Act. The parties acknowledge that they have no power to, and do not intend to, exempt the Cities from the enforcement provisions of the Endangered Species Act.

3. Therefore, the parties further agree:

a. **Exclusion of Cities**

i. The rights and duties of the Cities are of limited duration as specified in this Agreement; and as permittees and as otherwise set forth in this Agreement, the actions of the Cities are specifically related to the regulation and control of the takings of endangered species;

ii. Nothing in this Agreement is intended to create any enforcement or other rights against the Cities either jointly or severally for any person or entity not a signatory to this Agreement;

iii. Execution of this Agreement by the Cities does not constitute any agreement or admission, either implicit or explicit, by the Cities that any person not a party to this Agreement may seek judicial relief based on the provisions of Section VIII(E)(1) to compel a City to perform any obligation in this Agreement; and

iv. It is the intention of the parties hereto that nothing in this Agreement permits a City to be made a party to litigation which may be brought against another party to this Agreement as a result of the provisions of Section VIII(E)(1).

v. No party to this Agreement shall have the right to cross-complain against any City entity, individually or jointly, in the event of any lawsuit initiated by any person or entity not a signatory to this Agreement against any party to this Agreement.

vi. The Cities have entered into and executed this Agreement upon the representation of all other parties to this Agreement that persons not a signatory to this Agreement shall not have the right to enforce this Agreement on a contractual basis against the Cities hereto. But for this representation, the Cities would not have entered into this Agreement. The representation to the Cities herein shall survive and be enforceable until this Agreement is canceled or terminated and shall continue against all other signatories even if their obligations under this Agreement have otherwise ceased.

4. Notice of Action; Limitation of Actions

a. If any person or party intends to initiate litigation against any party to this Agreement, such person must first serve a Notice of Necessary Biological Action (Notice) on such party, stating:

i. What obligations such party is failing to meet, with specific reference to the HCP or this Agreement or other laws; and

ii. What corrective action is proposed.

b. No action at law or equity may be taken by a person or party until 60 days after the date that the Notice was served unless irreparable injury to the Conserved Habitat necessitates immediate action. In that event, any such person or party instituting litigation must serve a Notice of Necessary Biological Action twenty-four (24) hours before litigation.

c. Any lawsuit to be filed must be filed within 120 days of the date of service of a Notice of Necessary Biological Action or else any such cause of action or right shall be deemed to cease and terminate and of no further force or effect, and no right to assert such right or cause of action shall exist.

5. In the event that litigation is initiated under or based in whole or in part on this Agreement by a person who is not a party to this Agreement:

a. The obligations of any Landowners therein, to pay sums under Section VI, shall be suspended during the pendency of any court order, other than a final judgment, which stops such Landowner's development activity within a Development Area. If the court finally determines that the Landowner has violated this Agreement, such affected Landowner shall pay the sums which accrued and would have been otherwise payable during such period of suspension, otherwise the Landowner shall have no obligation to pay the sums which accrued and would have been otherwise payable.

b. In the event that a person not a party to this Agreement seeks an injunction or equitable relief against any party to this Agreement, a bond shall be required as provided by applicable California or federal law.

IX. AMENDMENTS

This Agreement may be amended only in accordance with the provisions of this Section IX.

A. Amendment of Volume II, Chapter VII, of HCP Provisions

It is necessary to establish a procedure whereby this Agreement and the Section 10(a) Permit can be amended. However, it is extremely important that the cumulative effect of amendments will not jeopardize any endangered species or other Species of Concern. The fundamental purpose of this Agreement is to provide permanent protection for those species and for their Conserved Habitat. No amendments which conflict with that purpose will be approved. Amendments must be evaluated based on their effect on the habitat as a whole. The Plan Operator must be consulted on all proposed amendments.

The provisions of Volume II, Chapter VII of the HCP, with respect to: (i) the boundary of the Conserved Habitat or Development Area; or (ii) any conditions set forth in Chapter VII regarding any Administrative Parcel may be amended only in accordance with this Section IX(A).

1. Amendments to Plans in Development Areas

It is acknowledged that upon the written request of the respective Landowner, the local agency having land use regulatory jurisdiction is authorized in accordance with applicable law to approve amendments to development plans for Development Areas which do not occur in Conserved Habitat (including designated Reclaimed Habitat) and which do not alter the conditions with respect to such development set forth in Chapter VII.

2. Amendments for Minor Boundary Adjustments

Upon the written request of the respective Landowner after consultation with the Habitat Manager, the local jurisdiction is authorized to approve minor boundary adjustments in the Reclaimed or Preserved Habitat upon information notice, sent to the cities of Daly City, Brisbane and South San Francisco, the County of San Mateo, the California Department of Fish and Game, the California Department of Parks and Recreation and the U.S. Fish and Wildlife Service set forth in the preceding section, if the amendment would result in:

a. Reestablishing a boundary, not more than 30 nominal feet measured on the ground surface, except as provided in Chapter VII on either side of that boundary as delineated on a tentative

subdivision map approved by a local public entity in accordance with Chapter VII (or on either side of that boundary shown in Chapter VII, as determined by the local agency, if no subdivision map has yet been approved); and

b. The cumulative loss per Administrative Parcel from all minor boundary adjustments is not greater than 5% of the total Conserved Habitat in that Administrative Parcel, as presently shown in Chapter VII.

3. Amendments for Exchange of Equivalent Conserved Habitat Prior to Grading

Amendments to Chapter VII may be prepared for the exchange of land designated as Conserved Habitat within land designated as a Development Area within the same Administrative Parcel, only if no grading has yet occurred after issuance of the Section 10(a) Permit in the proposed new Conserved Habitat and upon a written finding by local jurisdiction that the amendment will provide new Conserved Habitat which is essentially equivalent in biological value and acreage to the habitat which will be lost as a result of the amendment. Any decisions approving such proposed amendments must be in writing and must be made by both the local jurisdiction and the USF&WS.

4. Unforeseen Circumstances

a. In reconciling their interests, and in identifying the measures in the Habitat Conservation Plan, the parties have used their best efforts to anticipate and take into consideration future changes in circumstances affecting the San Bruno Mountain Ecological Community and Species of Concern. The following procedures shall be followed, however, with respect to unforeseen circumstances which either (i) appreciably reduce the likelihood of survival of the Mission Blue butterfly, San Bruno Elfin butterfly or San Francisco Garter Snake, or (ii) result in new species being listed under the Endangered Species Act whose conservation necessitates additional emphasis in the HCP or the Plan Operator's operating program for Conserved Habitat areas.

b. In response to any unforeseen circumstances as set forth in subsection (a) above, any party to this Agreement may request the other parties to this Agreement to meet to discuss appropriate modifications or amendments to: the HCP as applied to Conserved Habitat areas, the Plan Operator's operating program, the Trust Fund Agreement or any provision of this Agreement. Any party to this Agreement who fails to vote upon any such proposed changes shall be bound by the terms and conditions of any modification or amendment adopted pursuant to the provisions of this Section IX(A) (4).

c. The parties to this Agreement shall, to the maximum extent possible, attempt to reach a consensus in response to the unforeseen circumstances described in subsection (a) of this section. No modification or amendment proposed under subsection

(b) of this section shall be adopted and become effective without the unanimous consent of all parties to this Agreement who voted upon such modifications or amendment.

d. Notwithstanding the provisions of subsection (c) of this section, upon a written finding by the USF&WS that an emergency exists wherein either the continued implementation of the HCP, as applied to the Conserved Habitat areas, or the Plan Operator's operating program, appreciably reduces the likelihood of survival of a species listed under the Endangered Species Act, such plan or program shall be immediately modified in accordance with the recommendations of the USF&WS. Within 30 days after the modification of such plan or program, the USF&WS shall hold an informal noticed public hearing in San Mateo County for the purpose of setting forth its justification for requesting a modification of the HCP or the Plan Operator's operating program and taking public comment thereon. Such requested modifications shall be withdrawn within 30 days after the hearing unless the USF&WS presents, in writing, substantial evidence which demonstrates that the modifications were (i) necessary for the conservation of a species listed under the Endangered Species Act, (ii) could not be accomplished through the continued implementation of the existing HCP or Plan Operator's operating program, and (iii) represented the minimal modifications available which would not appreciably reduce the likelihood of survival of the affected listed species. Upon the issuance of such findings, the requested modifications shall remain in force and effect until such time as the USF&WS determines that the emergency threat to the existence of the affected listed species has been avoided.

B. All Other Amendments

All other amendments are subject to approval as follows: (a) upon the prior written agreement of the fee title owners of the lands directly affected; (b) after a noticed public hearing held by the local agency having regulatory land use authority (notice to be given pursuant to California Government Code §§65854 and 65854.5, or any successor statutes), and (c) upon written approval of the jurisdiction with local land use authority, the County of San Mateo (only with respect to impacts on Conserved Habitat) and the U.S. Fish and Wildlife Service, and (d) supported by a biological study demonstrating that the amendment does not conflict with the primary purpose of the HCP to provide for indefinite, long-term perpetuation of the Mission Blue, Callippe Silverspot and other Species of Concern, and (e) will be considered an amendment to the Section 10(a) Permit, subject to any other procedural requirements of federal law or regulation which may be applicable to amendment of such a permit. Amendments in planned Administrative Parcels may be approved only at three calendar year intervals. Amendments in unplanned Administrative Parcels are not subject to the three year limit, until after they become planned parcels. Approval of amendments pursuant to this Section IX(B) is subject to the consent of only those entities mentioned in this Section IX(B) and no other entities.

Amendments in planned Administrative Parcels may be proposed and approved according to the following schedule:

| <u>Proposed Amendment Must Be Submitted By</u> | <u>Decision On Proposed Amendment Must Be Made By</u> |
|--|---|
| 1. June 30, 1985 | December 31, 1985 |
| 2. June 30, 1988 | December 31, 1988 |
| 3. June 30, 1991 | December 31, 1991 |
| 4. June 30, 1994 | December 31, 1994 |
| 5. Etc. | |

Amendments shall be proposed by June 30 and decisions shall be made by December 31 at three year intervals as set forth herein and continuing on like dates forever.

Notwithstanding the foregoing, proposed amendments in the provisions of Volume II with respect to: (i) the boundary of the Conserved Habitat or Development Area; or (ii) any conditions set forth in Chapter VII regarding any Administrative Parcel may be considered at any time until such Administrative Parcel has been planned and is the subject of a specific plan or tentative subdivision tract map approval, after which time the time limits set forth above for consideration of amendments shall apply.

C. Taking Effect of Amendments

1. Upon the satisfaction of the conditions precedent and the approvals required as set forth above in this Section IX, the provisions of this Agreement shall be thereupon amended.

2. The local agency required to approve such proposed amendment shall maintain a copy of such amendments which have become effective, together with all written determinations and approvals required hereunder in connection therewith in its official records and shall also forthwith provide to the County, USF&WS, CDF&G and the affected Landowner a copy thereof together with certified copies of all other written approvals and determinations required in connection therewith and a certified statement that the required amendment procedures have been fully and properly complied with. Landowners and their lenders, purchasers, investors, partners, joint venturers, successors and assigns may rely upon such a certified statement and the parties hereto shall be estopped from denying the effectiveness of any such amendment for which a certified statement has been so issued.

X. MISCELLANEOUS PROVISIONS

A. Successors and Assigns

The terms, provisions and conditions of this Agreement shall be binding on the parties hereto and their successors and assigns, and shall inure to the benefit of the parties hereto and such

successors and assigns as may be expressly assigned the benefits hereof by any party hereto.

B. Notices

Notices provided for herein shall be delivered to the person set forth above or shall be deemed given five days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed as follows, or such other address of which any party hereto may from time to time give notice to the other parties:

1. County of San Mateo

Attention: Director of Environmental Management
County Office Building
Redwood City, CA 94063; and

County of San Mateo
Attention: District Attorney
Hall of Justice and Records
Redwood City, CA 94063

2. City of Brisbane

Attention: City Manager
44 Visitacion Avenue
Brisbane, CA 94005; and

City of Brisbane
Attention: City Attorney
44 Visitacion Avenue
Brisbane, CA 94005; and

3. City of South San Francisco

Attention: City Manager
400 Grand Avenue
South San Francisco, CA 94080; and

City of South San Francisco
Attention: City Attorney
400 Grand Avenue
South San Francisco, CA 94080

4. City of Daly City

Attention: City Manager
Sullivan Avenue & 90th Street
Daly City, CA 94015; and

City of Daly City
Attention: City Attorney
Sullivan Avenue & 90th Street
Daly City, CA 94015

5. The "State", acting by and through the California Department of Fish and Game and the California Department of Parks and Recreation

Attention: Director
California Department of Fish and Game
1416 Ninth Street
Sacramento, CA 95814

Attention: Regional Director
California Department of Parks and Recreation
2211 Garden Road
Monterey, CA 93940

6. The U.S. Fish and Wildlife Service

Attention:
U.S. Fish and Wildlife Service
500 N.E. Multnomah Street, Suite 1692
Portland, OR 97232

Federal Wildlife Permit Office
P. O. Box 3654
Arlington, VA 22203

7. Visitacion Associates

Attention: M. Sherman Eubanks, President
Visitacion Associates
One Post Street
San Francisco, CA 94104; and

c/o Lindell L. Marsh
Nossaman, Krueger & Knox
695 Town Center Drive, Suite 1630
Costa Mesa, CA 92626;

8. Presley of Northern California, Inc.

Attention: Michael McKissick, President
Presley of Northern California, Inc.
39 Quail Court, Suite 303
Walnut Creek, CA 94596

9. W. W. Dean & Associates

Attention: William Dean, President
Les Mabry
W. W. Dean & Associates
151 West 20th Avenue
San Mateo, CA 94402

10. Foxhall Investment, Ltd.

Attention: George Menzoian
Foxhall Investment, Ltd.
1500 Hillside Boulevard
Colma, CA 94014

11. Cadillac-Fairview Homes West

Attention: Richard E. Garlinghouse
Cadillac-Fairview Homes West
Four Embarcadero Center, Suite 3620
San Francisco, CA 94111

C. Entire Agreement

This Agreement supersedes any and all other agreements either oral or in writing, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matter, and each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained herein shall be valid or binding. This Agreement shall supersede the agreement of 1981 between the County, Presley of Northern California, Inc., and Visitacion, which agreement is hereby terminated and is of no further force or effect.

D. Interpretation

This Agreement was prepared as the implementing program and part of the Habitat Conservation Plan. Because the then provisions of the Habitat Conservation Plan were not intended to be a legal document and the desirability of having single document which could be considered and focused upon by all of the parties for legal effect and consistency in defining the regulatory and proprietary rights, obligations, privileges and authority of the many affected parties, this Agreement shall constitute the sole evidence and basis for the interpretation of its terms and provisions. Without limiting the generality of the foregoing, the other provisions of the Habitat Conservation Plan shall not be referred to in the interpretation of any provision of this Agreement except where such provision makes specific reference to such provision of the Habitat Conservation Plan and then only to the extent of such reference.

E. Attorneys' Fees

If any action at law or in equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, all parties to the litigation shall bear their own attorneys' fees and costs. Attorneys' fees and costs against the United States shall be governed by applicable federal law, including the Equal Access to Justice Act (28 U.S.C. §2412).

F. Counterpart

This Agreement may be executed on any number of counterparts. A complete original copy of this Agreement with all counterparts signature pages attached thereto and all amendments thereto, together with amendments to Volume II of the Habitat Conservation Plan pursuant to Section IV hereinabove shall be maintained in the official records of San Mateo County.

G. Term of Agreement

Except as otherwise provided in this Agreement, the term of this Agreement shall commence and this Agreement shall take effect upon the execution and delivery of this Agreement by USF&WS, CDF&G, the County, the Cities and Visitacion and shall continue in effect until terminated in writing by all of the aforementioned governmental agencies and all of the Landowners listed on Exhibit "A" who then continue to hold fee title to lands within the San Bruno Mountain Area.

H. Non-Severability

In the event that prior to the grading of any portion of its Developable Administrative Parcel, a Landowner is unable to develop portions of such Developable Administrative Parcel as a consequence of (i) this Agreement or any portion hereof or any agreement provided for hereunder being determined to be invalid or unenforceable, or (ii) the imposition of any further requirements, regulations or restrictions within or with respect to a Developable Administrative Parcel for the protection or conservation of Species of Concern in addition to any other remedy which it may possess, such Landowner shall have the right upon written notice to the other parties hereto to withdraw from this Agreement and to thereupon be released from any and all further liabilities or obligations hereunder.

I. Failure of Ecosystem

All of the parties to this Agreement agree that all of its terms will remain enforceable even if any of the Species of Concern (including the Mission Blue, the San Bruno Elfin, Callippe Silver-spot and San Francisco Garter Snake) become extinct and even if the Endangered Species Act is repealed or otherwise becomes inoperative. This is because the parties have viewed San Bruno Mountain as an ecosystem and intend, by this Agreement, to try to preserve the entire ecosystem and all of its components. Failure of part of the ecosystem shall not void this Agreement.

J. Default

A default by any party in an obligation set forth herein shall not result in, or be the basis for, the termination or rescission of this Agreement.

K. Savings Clause

It is the intention of the Cities and County to enter into this Agreement to the extent permitted by law.

L. Exercise of Responsibility

All parties will carry out their responsibilities under this Agreement expeditiously and carefully.

M. Effective Date

The provisions of this Agreement shall take effect only upon its execution by all parties.

N. Non-Signatory Properties

It is recognized that certain properties may become covered by this Agreement and the federal Section 10(a) Permit issued contemporaneously with the approval of this Agreement, the owners of which are not signatories hereto. It is the intention of the parties to facilitate the development of these properties consistent with the Federal Endangered Species Act by allowing them to be included within the Permit and the funding mechanisms provided for herein. Notwithstanding any other provision of this Agreement, any such property or property owner shall not be bound by any funding requirement established pursuant to this Agreement unless such property owner voluntarily so elects at the time approval for subdivision or other development approval of that property is sought. A property owner who seeks any discretionary development approval shall agree as a condition of such approval to participate in the funding mechanism established pursuant to this Agreement in order to receive the benefits conferred by the Section 10(a) Permit. It is recognized that such property owners may elect to be excluded from the Permit and be covered by otherwise applicable law, including the Federal Endangered Species Act.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above and agree to abide by its terms.

UNITED STATES FISH AND
WILDLIFE SERVICE

Dated:

By: _____

STATE OF CALIFORNIA (Acting
by and through the CALIFORNIA
DEPARTMENT OF FISH AND GAME)

Dated: NOV 15 1982

By: EC Juelent

STATE OF CALIFORNIA (Acting
by and through the DEPARTMENT
OF PARKS AND RECREATION)

Dated: NOV 29 1982

By: *Tom Dyer*

COUNTY OF SAN MATEO

Dated: NOV 16 1982

By: *Edward J. Barron*

CITY OF BRISBANE

Dated: NOV 15 1982

By: *William E. Lawrence*

CITY OF SOUTH SAN FRANCISCO

Dated: NOV 15 1982

By: *Walter Dublo*

NOV 16 1982

CITY OF DALY CITY

Dated: NOV 16 1982

By: *Albert M. Teglia*

VISITACION ASSOCIATES, a
California joint venture of
Amfac, Inc., and
Foremost McKesson, Inc.

Dated: NOV 16 1982

By: *M. Sherman Eubanks*

M. Sherman Eubanks
President

PRESLEY OF NORTHERN CALIFORNIA,
INC.

Dated: NOV 16 1982

By: *Michael McKissick*

Michael McKissick, President

W. W. DEAN & ASSOCIATES

Dated: NOV 16 1982

By: *William Dean*

William Dean, President

FOXHALL INVESTMENT, LTD.
A California Limited Partnership
by SKY PROPERTIES COMPANY,
A California Corporation,
General Partner

Dated: NOV 16 1982

By:


George Menzobian

CADILLAC-FAIRVIEW HOMES WEST

Dated: NOV 16 1982

By:


Richard E. Garlinghouse

EXHIBITS

TO

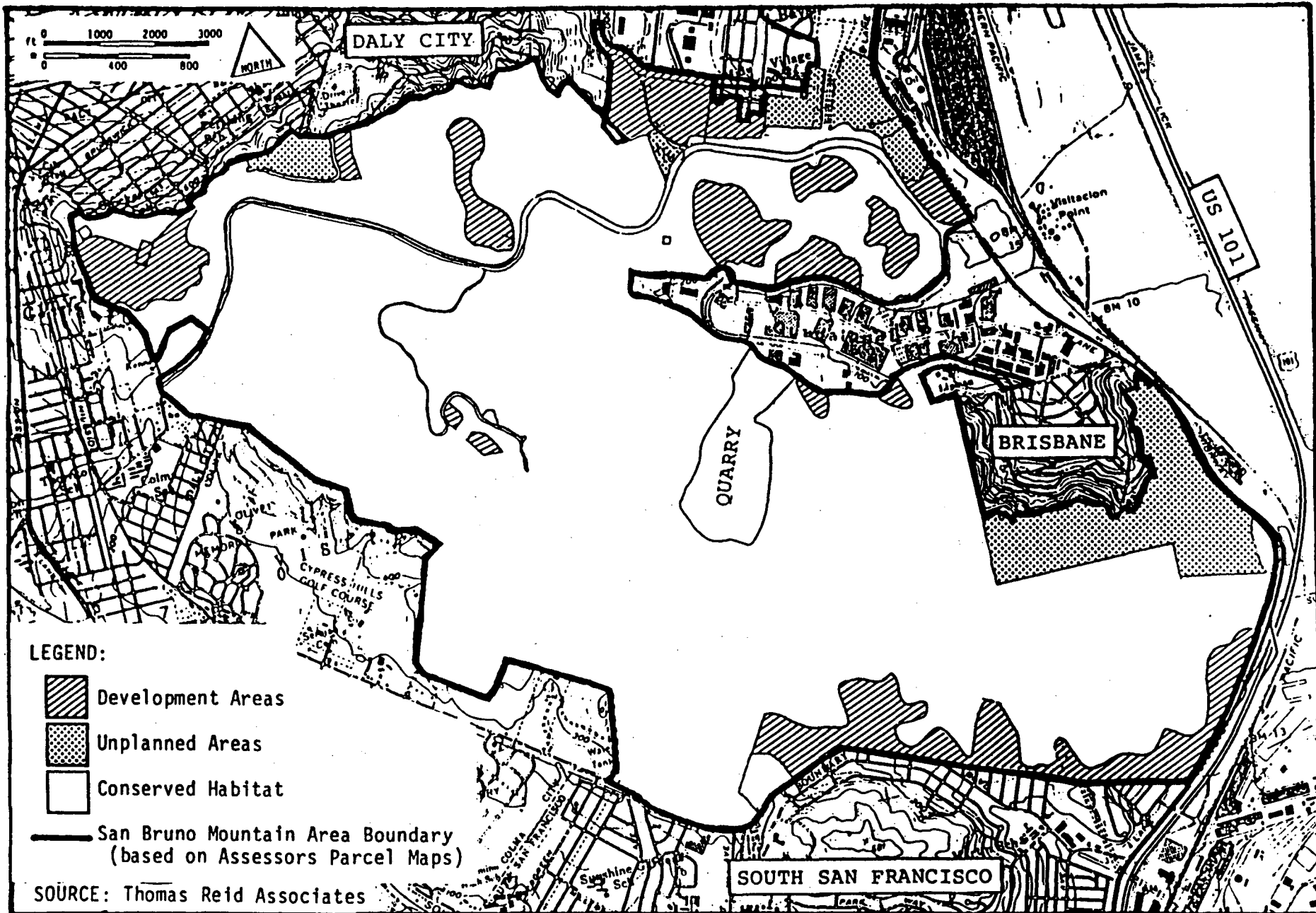
AGREEMENT WITH RESPECT TO THE

SAN BRUNO MOUNTAIN AREA HABITAT CONSERVATION PLAN

EXHIBIT "A"

List of Landowners

1. County of San Mateo
2. California Department of Parks and Recreation
3. Visitacion Associates
4. Cadillac-Fairview Homes West
5. W. W. Dean
6. Presley of Northern California, Inc.
7. George Menzoian



MAP OF SAN BRUNO MOUNTAIN AREA SHOWING DEVELOPMENT AREAS AND CONSERVED HABITAT
 EXHIBIT "B"

EXHIBIT C
SPECIES OF CONCERN

Animals

1. The Mission Blue butterfly (Plebejus icarioides missionensis)
- State and Federally listed endangered species
2. The San Bruno Elfin butterfly (Callophrys mossii bayensis)
- State and Federally listed endangered species
3. The Bay Checkerspot butterfly (Euphydryas editha bayensis)
- Candidate for the Federal endangered species list
4. The Callippe Silverspot butterfly (Speyeria callippe callippe)
- formerly under Federal proposal for endangered status, proposal expired July 3, 1980
5. The San Francisco Tree Lupine Moth (Grapholitha edwardsiana)
- formerly under Federal proposal for threatened status, proposal expired July 3, 1980
6. The San Francisco Garter Snake (Thamnophis sirtalis tetrataenia)
- State and Federally listed endangered species
7. The Solitary Bee (Dufourea stagei) has never been proposed for listing

Plants - Larval Food

1. Plantago erecta - larval food plant for the Bay Checkerspot
2. Sedum spathulifolium - larval food plant for San Bruno Elfin
3. Lupinus albifrons- larval food plant for the Mission Blue
4. Lupinus variicolor- larval food plant for the Mission Blue
5. Lupinus formosus- larval food plant for the Mission Blue
6. Viola pedunculata- larval food plant for the Callippe Silverspot
7. Lupinus arboreus - larval food plant for Tree Lupine Moth
8. Orthocarpus densiflorus - larval food plant for the Checkerspot

Other Plants - Host Plant, Rare, Endemic, and Range Limit

1. Lomatium utriculatum - host plant
2. Orthocarpus floribundus - San Francisco Owl's Clover; range limit; under federal review
3. Helianthella castanea - endemic; under federal review
4. Silene verecunda verecunda - The Dolores Campion; range limit; under federal review
5. Erysimum franciscanum var. franciscanum - The San Francisco Wallflower; range limit; under federal review
6. Arabis blepharophylla - Coast Rock Cress; range limit; under federal review
7. Arctostaphylos imbricata - Manzanita; endemic; under federal review
8. Arctostaphylos montaraensis - Montara Manzanita; endemic; under federal review
9. Arctostaphylos pacifica - endemic; under federal review
10. Arctostaphylos uva-ursi - Bear-berry; range limit
11. Vaccinium arbuscula - Huckleberry; range limit
12. Lathyrus vestitus - Pacific Pea; endemic
13. Clarkia rubicunda - Farewell to Spring; range limit
14. Chorizanthe pungens var. Hartwegii - Spine-flower; endemic

EXHIBIT C -- SPECIES OF CONCERN

15. Grossularia leptosma - Bay/Canyon Gooseberry; range limit
16. Castilleja franciscana - Franciscan Paint Brush; range limit
17. Ligusticum apiifolium - Lovage; range limit
18. Maianthemum dilatatum - False Lily of the Valley; range limit
19. Allocarya chorisiana - endemic
20. Sambucus callicarpa - Red Elderberry; range limit
21. Silene scouleri - range limit
22. Chrysopsis villosa - Golden Aster; range limit; host plant
23. Cirsium quercetorum - Brownie Thistle; range limit; host plant
24. Grindelia maritima - Steyermark; endemic; under federal review
25. Layia hieracioides - endemic
26. Pentachaeta bellidiflora - endemic; under federal review
27. Senecio aronicoides - Butterweed; range limit
28. Tanacetum camphoratum - Dune Tansy; endemic; under federal review
29. Eriogonum latifolium - Wild Buckwheat; host plant
30. Brodiaea pulchella - Blue Dicks; host plant
31. Carduus sp. - host plants
32. Silybum marianum - Milk Thistle; host plant
33. Pteridium aquilinum - Braken Fern; host plant
34. Monardella villosa - Coyote Mint, Pennyroyal; host plant
35. Horkelia californica - California Horkelia; host plant
36. Scabiosa atropurpurea - Pincushion Plant; host plant

EXHIBIT "D" -- BIOLOGICAL PROGRAM

A. ISSUES

The purpose of the Habitat Conservation Plan is to provide for the indefinite perpetuation of the Mission Blue and Callippe Silverspot butterflies on San Bruno Mountain, as well as to conserve and enhance the value of the Mountain as a whole as a remnant ecosystem or biological refuge which contains other rare or unusual species in addition to the two butterflies. To achieve this purpose, the Plan must be founded on an adequate understanding of the ecology of the two butterflies, the other species of concern, and the biological processes which affect the Mountain as a whole. The biological study conducted in 1980 and 1981 has provided sufficient biological information to serve as the basis for this Plan.

In providing for conservation of the Mission Blue and Callippe Silverspot the more pervasive goal is to simultaneously provide for the perpetuation and enhancement of the grassland habitat which supports the butterflies, including its high proportion of native plants, local and regional endemics, and the animals which utilize the grassland. The focus of preservation is on the grassland because this is thought (Kuchler, 1977) to be the ancestral native habitat of the area, it supports the endangered butterflies and many other species, and it is threatened by the encroachment of the brush community and the spread of gorse and eucalyptus. While the brush community also contains rare and endemic species such as the San Bruno Elfin butterfly and the three unusual manzanitas, and the Plan also contains strenuous provisions to protect these resources, the brushland is thought to be favored biologically by the present conditions on SBM and not under the same threat of replacement as the grassland.

The HCP is not simply a Plan to preserve rare butterflies, but a Plan to preserve the grassland habitat of which they are a small, but important part. The principles which guide the Plan and many aspects of its operation would remain unchanged even if the Mission Blue and/or Callippe Silverspot were to go extinct on the Mountain (most likely due to forces -- such as droughts -- beyond the Plan's control). The principles of the Plan -- preserving existing habitat types, manipulation and enhancement only to restore to natural condition disturbed or degraded habitats are valid whether or not the butterflies are specially considered. These principles are intended to perpetuate the total set of ecological values on the Mountain which distinguish it from other open space within the SF Bay region, particularly as the habitat of nearly 400 native plants, many animals and most likely rare or unique species which we have not yet discovered.

The study concluded that the Mission Blue (and Callippe) is a single population inhabiting San Bruno Mountain. The population has been divided by man's prior disturbance (i.e. Industrial Park and Guadalupe Canyon Parkway) into two major population clusters or "colonies". These colonies are not independent of one another. There is movement between them which genetically links them (see Biological Study for complete discussion). The largest colony is found along the Southeast Ridge; 1981 estimates placed 60% of the Mission Blue and 75% of the Callippe Silverspot populations there. The other colony is two miles to the north on the Guadalupe Hills, where about 30% of the Mission Blue and 25% of the Callippe populations occurred in 1981 (see Figures

BIOLOGICAL PROGRAM

III-1 and 2). The Mission Blue is also found scattered at low density throughout the Mountain's grassland and in three other small, but distinct colonies on Radio Ridge, Reservoir Hill and Twin Peaks (2.2 miles north of SBM, in San Francisco). All of the San Bruno Mountain colonies have some genetic interchange. It is unlikely that there is interchange between the Twin Peaks colony and the San Bruno Mountain colonies.

The total number of flying adults of Mission Blue inhabiting San Bruno Mountain during the 1981 flight season was roughly 18,000; the Callippe population was estimated at 11,000 and 8,000 adults for the 1980 and 1981 flight seasons, respectively. Migration data gathered during the biological study indicate one population sharing genetic contiguity; there are no smaller, isolated sub-units. Both seasonal and daily estimates of population size show that the populations are well above the minimum reproductive size believed necessary for genetic stability; they are not likely to go extinct simply because they are already too small. A high proportion of long-distance movement is the basis for genetic interchange between colonies and for re-establishing colonies lost from small areas of habitat.

The SBM grassland has high relief — steep hillsides, sharp ridges, deep swales, and exposed hilltops. The relief is important to both butterflies as it determines both the distribution of the larval food plants and the adult nectar plants. Lupine, the larval food plant of the Mission Blue, grows best on rocky outcrops, in poor soils where grass grows poorly, and in areas of recent disturbance such as roadcuts, landslides and rodent diggings. Violet, the Callippe larval food plant, grows best in openings in grassland where it is not overgrown by dense grass or brush.

Both species depend on a mixture of high and low density habitat within the SBM grassland, but for different reasons. Mission Blue can find basic requirements (mating, nectaring, egg-laying) within a very small area (less than one acre), but since the lupines shift location somewhat from year to year, succeeding generations of Mission Blue must shift also. The Callippe resource, on the other hand, is scattered over a larger area (usually more than five acres) so Callippe is forced to use more of the the habitat on a daily basis.

Callippe is a "hilltopping" species; males "patrol" hilltops and females instinctively fly uphill to mate and downhill to lay eggs. The importance of hilltops to Callippe dictates that hilltops or ridgelines must be maintained as habitat in a viable conservation plan. Mission Blue is commonly found in dense clusters on certain hilltops, but the orientation is an accidental result of the high density of lupine also found on these hilltops, not a behavioral response to hilltops.

Both species will cross small distances of unsuitable habitat, such as scattered brush or trees, small paved roads and dirt roads. However, dense brush or plantings of trees (such as the Eucalyptus groves on Northeast Ridge), major paved roads and residential lots act as severe barriers to Mission Blue, and significant barriers to Callippe as well. The butterfly response to barriers indicates that corridors (see Glossary) of suitable habitat must be preserved within developed areas, to preserve habitat contiguity with major expanses of open space, thereby avoiding fragmenting the existing continuous populations.

FIGURE III - 1
GENERAL POPULATION AND HABITAT DISTRIBUTION — MISSION BLUE — 1981

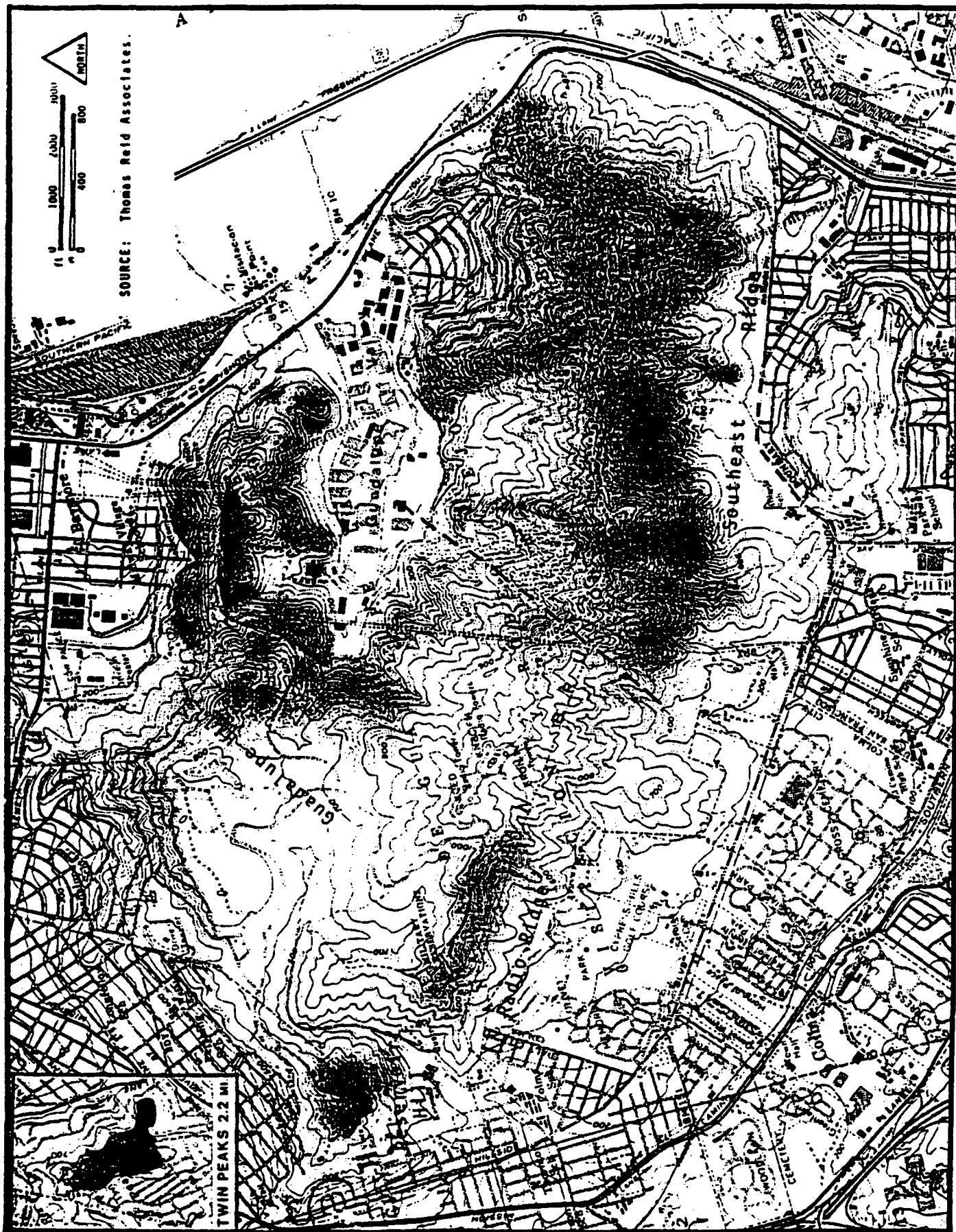


FIGURE III - 2
GENERAL POPULATION AND HABITAT DISTRIBUTION — CALLIPPE — 1981



The distribution of plants and animals we see today on SBM is the result of the replacement of the ancestral perennial bunch grassland with a European annual grassland, followed by many decades of grazing, and the removal of grazing in the mid-1960's. The larval food plants of Mission Blue (lupines) and some of their nectar plants (thistles) are favored by grazing since larger plants are not eaten by cattle and also thrive in disturbed areas and in poor soil which results from intensive grazing. The lower average vegetation height in grazed grassland may make the low-growing violets more accessible to Callippe as well. Grazing also controls the spread of brush as young seedlings invading grasslands are grazed.

Since grazing and its biological effects on the landscape have ended, natural processes are promoting the spread of brush and reducing the density of lupines, violets and butterfly nectar plants within the grassland. These processes, combined with vegetation damage by trespassing off-road vehicles, significantly threaten the long-term survival of these insects and their grassland habitat on San Bruno Mountain. Elements of the Plan aimed at modifying natural succession and protecting the area from vandalism are expected to enhance significantly the prospects for long-term survival of these species and the grassland habitat in general.

Ninety-seven percent (97%) of the Mission Blue's current habitat as reflected by population distribution is on San Bruno Mountain and 3% of the habitat is on Twin Peaks. Owners of 88% of the total habitat have entered into this HCP and have agreed to dedicate 75% of the Mission Blue's current habitat to permanent, undisturbed open space. The owners will destroy 14% of the present habitat in the process of developing their property; at least one quarter of this may be reclaimed after grading. Owners of the remaining 12% of the land (including Twin Peaks) have not entered into any agreements, and will be prohibited by the Endangered Species Act and local regulation from destroying any habitat they own. Thus, 87% of the Mission Blue's habitat is protected (75% by dedication and 12% by regulation).

The Callippe Silverspot is similarly protected. All of the Callippe's habitat is on San Bruno Mountain. Owners of 89% of the Callippe's habitat have entered into this HCP and will dedicate 82% of the habitat to permanent open space; 8% of it will be developed. Owners of the remaining 11% of the habitat are prohibited by local regulation from taking any of the butterflies. Thus, 93% of the Callippe's habitat is protected (82% by dedication and 11% by regulation).

Another endangered butterfly species, the San Bruno Elfin (Callophrys mossii bayensis) is found on San Bruno Mountain. This insect is dependent on a single host, and the adults seldom stray very far from this host; as such it occurs in rather distinct colonies. Little interchange takes place between colonies (Robert Langston, 1982). Figure III-3 shows the nine colonies known to Robert Langston in 1982. The shaded portion of the map indicates the extent of the Elfin's habitat as mapped by R. A. Arnold in the 1982 San Bruno Mountain Recovery Plan.

It is the intent of the HCP not to cause the taking of any San Bruno Elfin butterflies, therefore within the potential habitat areas shown in Figure III-3, no takings of the Elfin can occur. Anywhere development is contemplated in potential habitat areas further studies must be done to assess the separate impact on this species. In addition, the HCP requires that the

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Habitat Manager be aware of these potential habitat areas. In addition, if the Habitat Manager is not already familiar with the Elfin, he will become so, in order that research and monitoring of this insect can take place annually. Should San Bruno Elfin be found outside the areas designated in Figure III-3, impacts should be avoided if possible, however, incidental takings outside of designated potential habitat areas will be covered by the 10(a) Permit.

Another rare butterfly found on San Bruno Mountain is the Bay Checkerspot (Euphydryas editha bayensis). This insect is currently proposed for listing on the Federal Endangered Species list; a decision on this listing is expected to take place in 1983. The Checkerspot has a limited distribution on the Mountain; its known range is entirely within the County Park portion of the Mountain, at the top of Southeast Ridge. As indicated in Chapter VII of this HCP, the Park has no plans to develop or build trails within the area containing Bay Checkerspot habitat. The Habitat Manager will be monitoring these insect on an annual basis to more fully identify their distribution and habits on the Mountain.

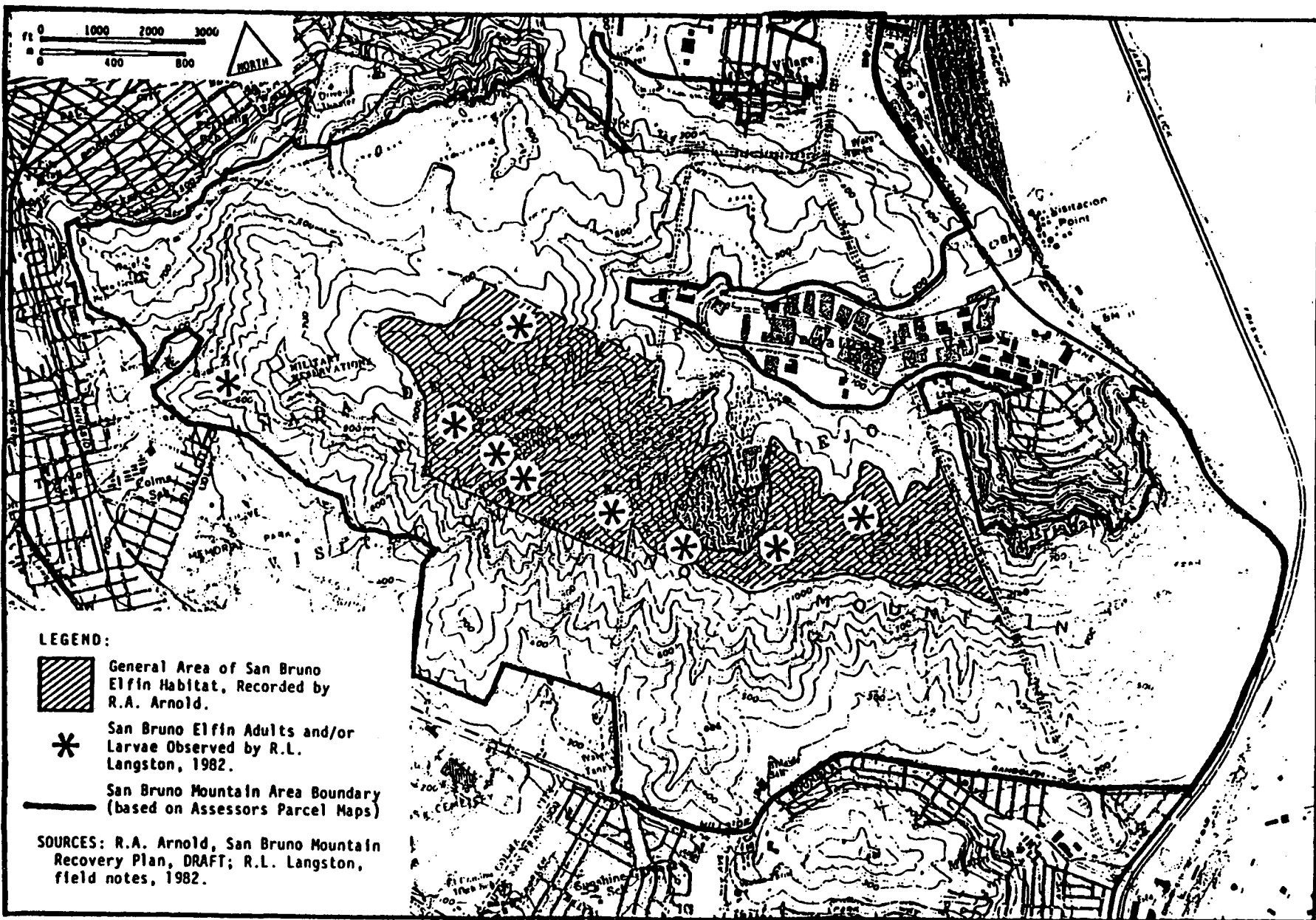
After publication of the Draft HCP, San Mateo County asked its biological consultant, Thomas Reid Associates, to research the presence and potential habitat of the Federally listed Endangered San Francisco Garter Snake on San Bruno Mountain.

The U.S. Fish and Wildlife Service in conjunction with the California Department of Fish and Game has been searching for the snake on the Mountain since early 1982. The main emphasis of their searches is in the State and County portions of the Park, near and within the bog area of the Saddle. They have also been consulting Ted Papenfuss, Ph.D. Up to now, no snakes have been found. The efforts of the Federal and State government have been coordinated with the HCP.

Thomas Reid Associates contacted Ted Papenfuss, Ph.D., Research Herpetologist from U.C. Berkeley and respected authority on the San Francisco Garter Snake, to prepare a map of the snake's potential habitat on the Mountain. After field work, he was able to prepare such a map (See Figure III-4). Although no official sightings of the the snake have been recorded in recent years, the areas indicated on the map are where further research should be done.

As with the San Bruno Elfin, within the snake's potential habitat areas shown in Figure III-4, if the snake is found, no takings can occur. Anywhere development is contemplated in potential habitat areas, further studies must be done to assess the separate impact on this species. In addition, the HCP will require that the Habitat Manager be aware of these potential habitat areas, and that he become familiar with its appearance and habits so that he can help assess the presence of the snake on the Mountain. Should a snake be found outside of these areas, impacts should be avoided if possible, however, incidental takings outside of designated potential habitat areas will be covered by the 10(a) Permit.

FIGURE III - 3
GENERAL POPULATION AND HABITAT DISTRIBUTION — SAN BRUNO ELFIN



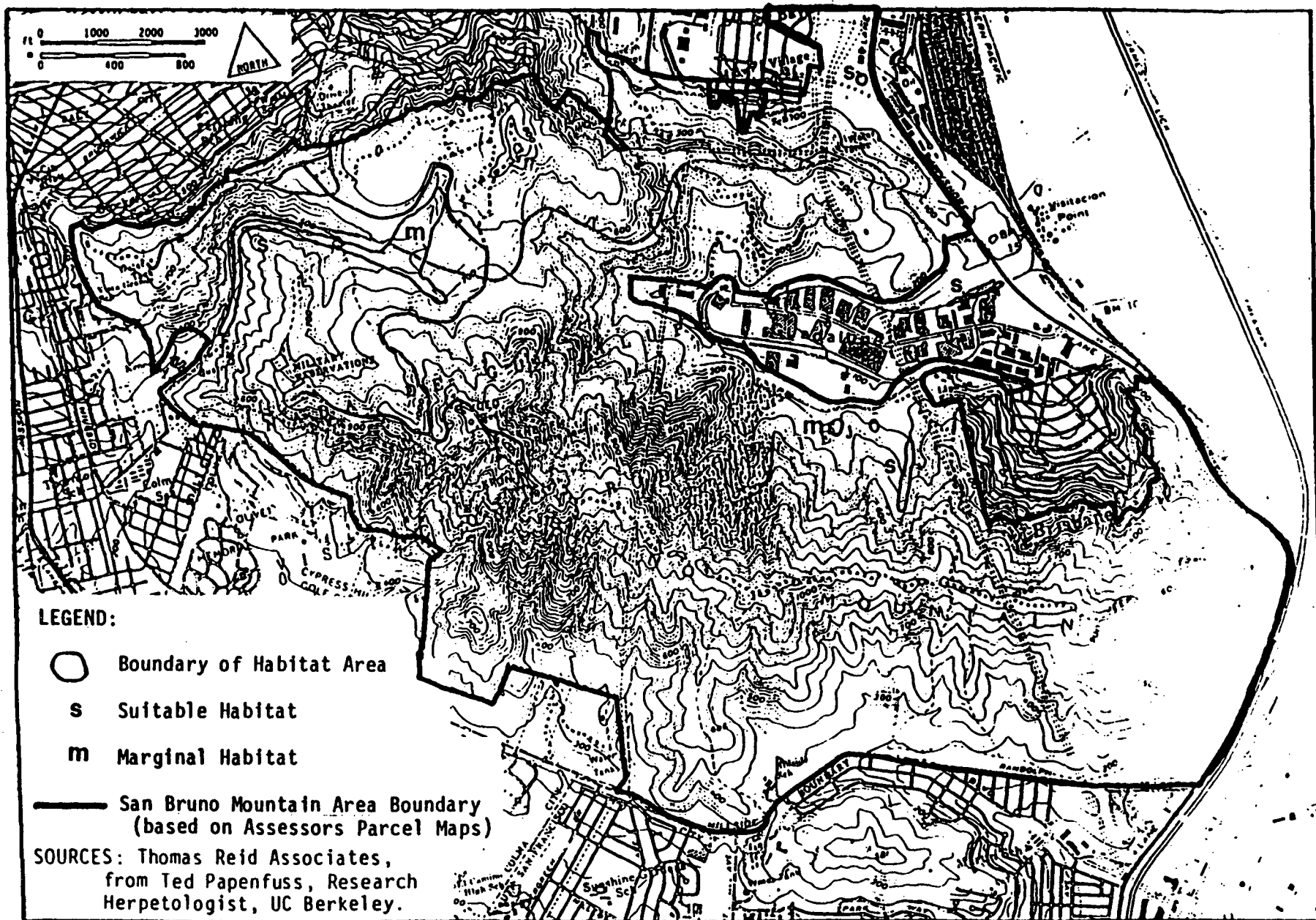


FIGURE III - 4
POTENTIAL HABITAT OF THE SAN FRANCISCO GARTER SNAKE

B. GUIDING PRINCIPLES

The application of habitat conservation strategies to the San Bruno Mountain area in concert with a certain amount of development will be guided by a broad set of conservation and planning principles. The principles are formulated to maximize the Plan's success in conserving both the endangered species of interest and the overall ecological fabric of the Mountain. Each specific conservation technique applied to the management units within each administrative parcel on the Mountain will be in accordance with these principles.

The following is a list of the more important guiding principles for the implementation of the habitat conservation program; they are not listed by priority. Each is described in more detail below:

1. Preservation of ecological values
2. Preservation of existing diversity
3. Reliance on preservation rather than restoration
4. Habitat manipulation for enhancement
5. Phasing
6. Resolution of Uncertainties
7. Ongoing review

Preservation of existing ecological values is one of the foremost objectives of the Plan. The ecological values to be preserved comprise all of the features of San Bruno Mountain which result from its unusual climate, steep topography, and past relative freedom from urban development. These values include the endangered species of concern, the unusually large number of other rare or endemic plants and animals, the complexity and diversity of ecological communities including the high proportion of native plants and high degree of utilization by wildlife. Since the Mountain has experienced the effects of man's activities increasingly in recent times, including livestock grazing, arson, the quarry, the telecommunications facilities, and roads (most significantly Guadalupe Canyon Parkway), the ecological value of the Mountain has been reduced from its ancestral, or "pristine" condition. Nonetheless, since it is extremely difficult to theoretically reconstruct what this ancestral condition would have been, and virtually impossible to recreate it, a realistic and much more workable goal is to attempt to preserve the known values of the present-day "biological refuge".

As mentioned, part of the ecological value of San Bruno Mountain is its diversity of species, community types, and topographic features. This diversity is reflected in the very occurrence of the endangered species and local endemic plants of special concern. To preserve its ecological values, a second guiding principle is to preserve in open space existing diversity in terms of annual and perennial grassland, brushland and grassland (particularly brushland harboring species of concern such as the San Bruno Elfin), north and south-facing slopes, exposed and protected areas, moist and dry areas, high and low density areas of butterfly larval food plants and nectar plants.

Diversity is also related to stability in ecological systems. Although the precise nature of the relationship is still under study by ecologists, it is generally thought that part of the stability of ecological systems stems from the complexity and overlap in their food webs (the food and feeding relationships among animals and plants). (Odum, 1971, Ehrlich et al. 1977).

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Removal of species from the food web simplifies the system and may make it more prone to collapse*. For example, the loss of a large predator leads first to an outbreak of its herbivorous prey, which then may defoliate and kill its food plants and subsequently starves. From the point of view of both the ecological value of the diversity on San Bruno Mountain and its long-term

The principle of reliance on preservation (as opposed to manipulation or restoration) is an extremely important one. Preservation of existing ecological conditions is preferable to attempting to recreate these conditions after disturbance or elsewhere (e.g. clearing brush to create grassland) for several reasons. Preservation is less expensive than restoration. Even more importantly, there is always uncertainty as to whether a restoration or habitat enhancement effort will produce the desired result or whether it will adversely affect another species. Although the habitat enhancement techniques recommended in this plan have been tested in range management or other enhancement programs reported in the literature, their application to San Bruno Mountain is still, in many ways, an experiment with unknown results. (This is why, as discussed below, we also recommend a conservative, or step-wise approach to habitat manipulation). The underlying problem is that biological systems and their interaction with the physical environment are so complex that one cannot know or control all of the variables which could affect the success of the enhancement strategy.

Even in the absence of development, strict conservation of all of San Bruno Mountain would not guarantee that the species of concern or the existing ecological communities would survive in perpetuity. As described in Chapter VI of the Biological Study Report the natural process of succession (see Glossary), which has been taking place since the removal of grazing, is causing the gradual spread of the brush community at the expense of grassland, and is also changing the proportion of broadleaf to grass species within the grassland. Both of these trends can, in themselves, jeopardize the long-term persistence of the endangered species on San Bruno Mountain. Therefore, to maximize the probability that these species will persist, habitat manipulation is a viable alternative to strict conservation in those localities where it can be demonstrated by monitoring that succession is having a detrimental effect on particular species.

Within the framework of a plan founded on conservation principles, one can adopt a case by case program of habitat manipulation. Within habitat areas that are simply preserved it is always possible to apply future manipulation for enhancement, but once habitat is altered, it is not possible to guarantee restoration of its former condition. Specifically, we have strong evidence that graded areas can be restored to Mission Blue and Callippe habitat, but the HCP should not rely on such action to maintain the species.

* The role of diversity in ecosystem stability is one of the basic scientific principles reflected in the Endangered Species Act itself. In a broad sense, part of the purpose of the SBM HCP is to preserve the stability of biological systems by offsetting a tendency toward loss of diversity exemplified by the extinction of a butterfly subspecies. Man is a part of the biological system and derives some of his quality of life from it. maintenance, preservation of the diversity makes sense as a conservation plan principle.

Therefore, to minimize foreclosure of future options, the initial approach is to assume that all graded areas within development parcels will be lost as habitat; hence the plan stresses the need to conserve as much area as possible in open space. The open space should further conform to the following conservation principles: (1) it should preserve large habitat areas (2) it should preserve the existing diversity of habitat types, including high and low density resource areas for the butterflies of concern, and of physical conditions (slope, exposure) (3) it should preserve contiguity between open space areas on all major portions of the mountain (Planning Areas) and (4) it should preserve connections between open space within conserved habitat. To maintain the level of genetic interchange between colonies and small sub-units of the Mountain's population necessary to maximize the chances for species survival, it is critical to prevent true fragmentation of the current population and isolation of any open space areas which are expected to harbor endangered species in the long term. Therefore, in the review of current development proposals, the final layout of development and the implementation measures for management units described in Chapter VII of this Plan all incorporate these specific conservation principles. Likewise, they should be used in evaluating and modifying all future development proposals.

As an adjunct to preservation habitat manipulation for enhancement is justifiable in instances where the manipulation fulfills one or more of the following explicit criteria:

1. When the manipulation helps to compensate for the nearby loss of habitat to development, such as the re-establishment of lupine outside the development area on Reservoir Hill where lupine now supports Mission Blue.
2. When the manipulation reverses past disturbance or accelerates the rate of natural recovery from past disturbance, as areas invaded by gorse, areas planted in eucalyptus, roadcuts or other slopes prone to erosion, dirt bike trails etc.
3. When the manipulation reverses a natural process, such as succession of grass to brush, or loss of broadleaf species from grassland which further threatens the existence of endangered species on San Bruno Mountain;

The approach to manipulation is to prioritize areas for enhancement in the order of the criteria given: that is, the first sites targeted for enhancement are those where habitat destruction due to advanced development plans is imminent, such as on Reservoir Hill (RH). Also since the present day Mission Blue colony on RH would be destroyed, it makes sense to spread out the colony and establishing its food plants in an adjacent area to be retained as open space. Similarly, carefully controlled experimental measures to eradicate gorse or revegetate erosion or off-road vehicle scars can both improve overall habitat quality on SBM and provide needed information about the effectiveness of revegetation and invasive species control methods.

Since habitat enhancement through manipulation is still experimental, and secondary to conservation, the approach to manipulation is to use it only when it clearly improves on the existing biological condition of an area according to the criteria listed above, and to proceed in an incremental, or step-wise fashion. Habitat enhancement techniques should generally be tried first on a small, "pilot" or experimental scale to (1) determine if they are biologically effective, (2) refine them so that they are both most effective and cost-

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effective and (3) determine whether they have any undesired effects not anticipated. Once techniques can be demonstrated to work on a pilot scale, they can be employed on a larger scale such as entire management units. In applying habitat manipulation for enhancement only to clearly disturbed or degraded areas, one can be reasonably sure that "healthy" habitat will not be damaged or natural processes within the grassland-brush ecosystem disrupted.

In any application of enhancement strategies there should be an order of preference among the strategies chosen. Strategies should be utilized which are less expensive, have been proven to work in range management, for erosion control, or in other situations with some resemblance to San Bruno Mountain before those which are more expensive and/or highly experimental. A rough grouping of the enhancement techniques discussed in the following section (VI B) from more accepted to more experimental would be as follows:

| | |
|---|---|
| Generally accepted or widely used in range management or highway construction | Chaining and Scraping (of brush or areas succeeding to brush) Herbicides application (for Exotic species and Brush Management) Landscaping Runoff and Irrigation Control Seeding/Propagation (with native or host plants) |
| Widely used but more experimental in this application | Grazing Burning Vandalism/Fire control |
| Not widely used. Experimental in this and all other applications | Soil Modification (Rock Spreading) Relocation of Host Plants Off-site introduction of species of concern Lab Rearing/Cultivation of species of concern (for re-introduction into the wild) |

Phasing is a key feature of both the overall implementation of the Plan and the application of habitat enhancement techniques in Conserved Habitat areas.

1. Conserved Habitat. As described later in this Chapter, the initial years of Plan implementation within Conserved Habitat areas will be characterized by pilot studies of monitoring techniques and habitat enhancement strategies. Later years (5 or more years after start-up) should see the larger scale application of habitat enhancement programs within Conserved Habitat.

Within the Conserved Habitat, uncertainties regarding optimum methods for monitoring populations of species of concern and others, and for implementing and monitoring habitat enhancement will be resolved through the research/pilot program effort carried out during the first few years and critically evaluated by the Technical Advisors to the County. For example, a research program for the Mission Blue and its lupine host plants is already underway on Reservoir Hill and preliminary results should be available by late Spring, 1982.

2. Development Areas. In Development Areas, development mitigation such as dedication of graded areas and erosion control measures will be phased

concurrently with adjacent development activities. The phasing is determined primarily by the financial and engineering needs of development. While longer intervals between development phases would be beneficial to the conservation program, long delay would jeopardize the feasibility of the various projects. Nonetheless, the planned phasing is a commitment on the part of the developers and allows the HCP to anticipate the impact and program mitigation accordingly.

C. ACTIVITIES

1. Research

At the close of the Phase Two Biological Study adequate information had been collected to address the basic scientific questions of the study and to serve as the basis of a planning program to preserve endangered species on San Bruno Mountain. Notwithstanding the considerable knowledge gained through the Biological study, the Habitat Conservation Plan, in concept and in implementation, is novel and in many ways, experimental. There are many biological uncertainties which inescapably remain at the outset of such an ambitious undertaking which can only be resolved through an ongoing program of applied research designed specifically to direct Plan implementation.

As described in III C 2. and III C. 3 some of the activities which fit the general description of research are pilot studies into the most cost effective monitoring and habitat enhancement techniques. The scope and general mechanics of these research topics are described under each activity. The text addresses the need for further study, the anticipated background research, field techniques and analysis that would be employed, and the direct way in which the results would serve the conservation program.

While the Biological Study was not an exhaustive study of the entire ecology of San Bruno Mountain -- as an intensive study of the two butterflies of concern and their habitat requirements it concurrently revealed much about the present day ecological relationships within the grassland and between the grassland and the brush to allow the participants to formulate a Habitat Conservation Plan with a degree of confidence seldom afforded to conservation efforts. While longer term basic research on the Mountain, on any species or ecological question, at the scale and intensity of the 1980-81 effort is prohibited due to a clear lack of funding sources, basic research even at a more modest scale is desirable to improve and update our total understanding of the ecology of the Mountain. Such research within dedicated lands is to be encouraged through the traditional channels of academic research at local colleges and universities. Due to the absolute limits on funding between the private and public sector participants in the Plan, research within the Plan itself must be much more highly focused on furthering the successful operation of the plan. It will therefore necessarily center on such topics as the best methods of monitoring butterfly populations, host plants, endemic plants, spread of brush, effective methods of gorse eradication, cost-effective plant propagation techniques and so forth.

One important aspect of the academic research potential of an ecological reserve on SBM is the potentially valuable contribution from continuing research programs begun on SBM before the HCP. Several scientists in the Bay Area have been observing the plants and animals of SBM for several decades. The data from past research represents an invaluable historical perspective on the enhancement activities of the HCP. While much of the data has been

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analyzed and published (and used in the HCP), more knowledge will be drawn from an organized, synthetic research program conducted over many years. Special consideration should be given to attracting researchers who have historical data on SBM.

One area of basic research which is integral to the long-term implementation of the plan is research into the process of natural succession on the Mountain -- in particular the rate at which brushland is replacing grassland and the rate at which butterfly host plants, such as lupines or violets are being outcompeted by other grassland species. There is much evidence, as described in Chapter VI of the Biological Study Report and elsewhere in this Plan, that these successional trends are occurring and affecting the overall distribution and character of the habitats on the Mountain. Comparison of the vegetation map prepared by the US Geological Survey and US Forest Service in 1932 (Figure III-5) and the map prepared by TRA in 1981 (Figure III-6) document the advance of brush and spread of gorse over a 50-year period. The numerical change (acreage and percent) in this 49-year interval, calculated by planimetry, is given in Table III - 1.

TABLE III - 1
CHANGE IN EXTENT OF VEGETATION TYPES, 1932-1981

| | <u>1932</u> (acres) | Urbanized Since 1932 (acres) | <u>1981</u> (acres) | Change (acres) | Change (Percent) |
|--------------------------|------------------------|---------------------------------------|------------------------|-------------------|---------------------|
| Gorse | 52 | 52 | 334 | +282 | +545 |
| Brush | 600 | 50 | 1141 | +541 | +90 |
| Eucalyptus | 124 | 46 | 206 | +82 | +65 |
| Woodland | 32 | — | 72 | +40 | +125 |
| Cultivated | 95 ^a | | 0 | -95 | |
| Total, non- grassland | 808 | 148 | 1753 | +945 | +117 |
| Total, grassland | 4047 ^b | 1238 | 1811 | -2331 | -55 |
| Total SBM area | 4950 | 1386 | 3564.5 | -1386 | |

^a Left out of the non-grassland sum since it was not natural land in 1932.

^b The area of contiguous grassland in 1932 which is larger than the present study area of 3564.5 acres.

Source: Thomas Reid Associates Figures III - 5; III - 6

FIGURE III - 5
 MAJOR VEGETATION COMPONENTS -- SAN BRUNO MOUNTAIN -- 1932

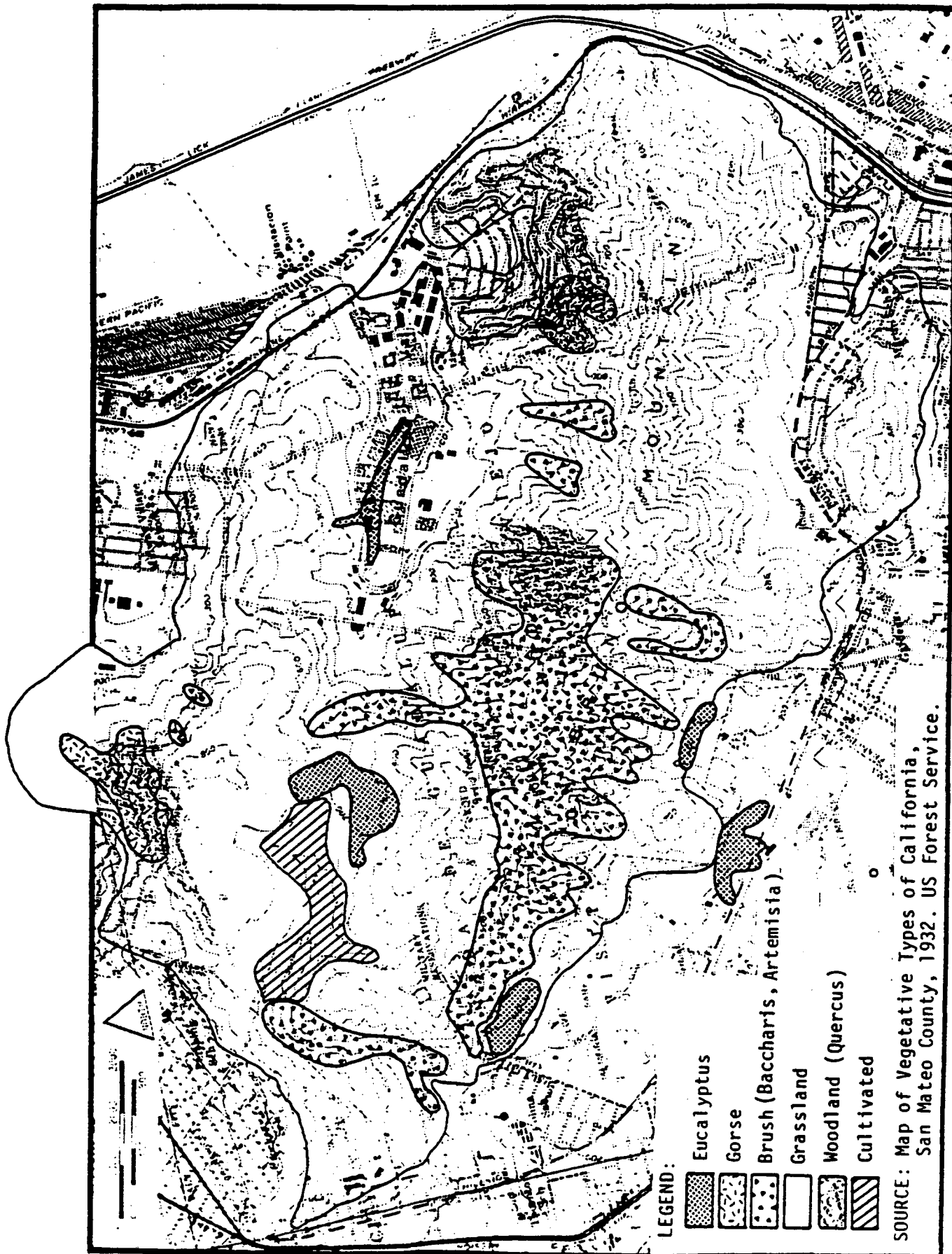
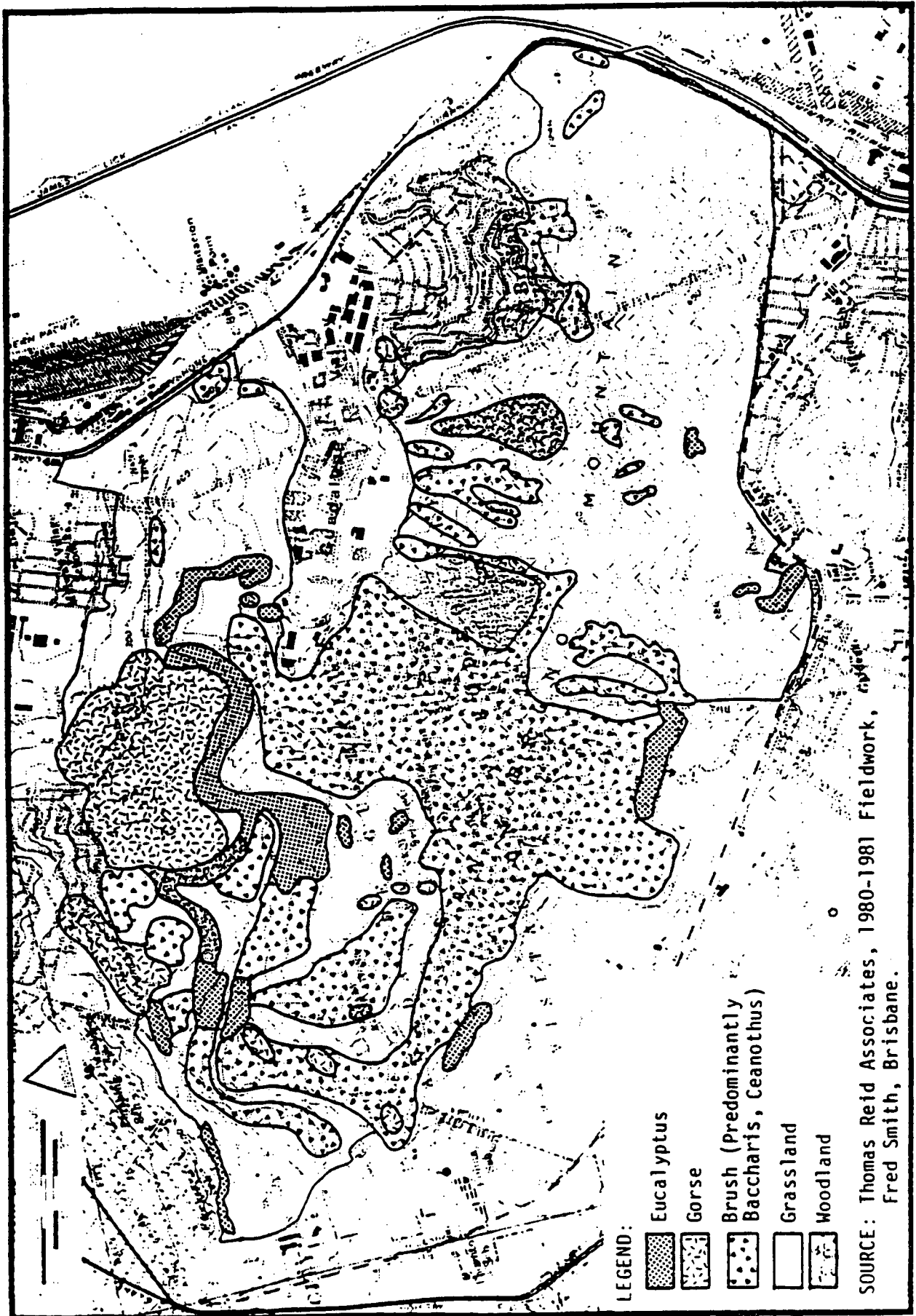


FIGURE III - 6
 MAJOR VEGETATION COMPONENTS -- SAN BRUNO MOUNTAIN -- 1981



As Table III - 1 shows, in 1932 in the San Bruno Mountain area there was more than four times as much grassland as non-grassland; in 1981 the proportions are nearly equal. Almost 950 acres have been taken over by invasive species and native brush; another 1386 have been lost to urbanization. Gorse is by far the most active invader, judging by its proportional increase compared to the other vegetative types. In 1932 the area of contiguous grassland on San Bruno Mountain was substantially larger than the entire present day study area of 3564 acres because of the far smaller extent of urbanization on the periphery at that time.

Since we have no intervening data yet analyzed, we do not know how the process of grassland invasion by other plant types accelerated after grazing ended. We hypothesize that the rate was slower prior to 1965. If the rate of loss was linear over the 49-year interval, then grassland would be disappearing at the rate of 19 acres per year. At this rate, one could expect the remaining grassland to be completely replaced in about 90 years. In reality, ecological processes such as invasion of one plant community by another are not linear, but more likely to be exponential because as the brush expands it presents an ever larger reservoir of seeds and front for expansion.

An exponential model would predict that in the absence of brush or exotics control by deliberate management or incidental annual burning, all of the remaining grassland would be replaced in about 44 years (1.6% per year). In reality, it is doubtful that all of the grassland would be replaced, since there may be localized areas where grassland is ecologically favored. However, it is clear that existing biological processes, unchecked will dramatically reduce the area of grassland habitat in the near future so that the dominant aspect of the Mountain will be brush and exotics.

There is also strong evidence from other biological study sites within the SF Bay region that such processes are occurring (McBride and Heady, 1968; McBride 1974). However, although we have evidence for the overall magnitude of change in vegetation communities over a 50-year period, we do not know the kinetics of the process, particularly the likely acceleration in the rate of brush encroachment since the cessation of grazing, nor the true severity of the impact of this succession on the endangered species of concern.

The degree of habitat manipulation which will be necessary in the long term and the timing of its application depends very strongly on the rate or intensity of this biological process. If the rate is currently relatively slow, so that the species composition of the grassland changes very little in a decade or very few acres are converted to brush, then the need for some types of manipulation to enhance grassland is reduced. In particular areas, activities such as chaining or herbicide control of brush, burning or re-introduction of grazing may be eliminated or deferred into the future. Since conservation is less expensive than manipulation, information gained through a modest research program on succession may save many times the cost of the research on reduced manipulation.

The thrust of the research program would be to more thoroughly document the historical (pre- versus post-grazing) and present rates of brush advance on San Bruno Mountain. Documentation would be achieved through study of all available aerial photographs taken during and after the grazing years. Photos obtained to date are black and white and at small scale, but do show the boundary between grass and brush and allow us to measure its rate of advance

EXHIBIT "P"

UNITED STATES FISH AND WILDLIFE SERVICE FORM AGREEMENT
REGARDING PERMIT COMPLIANCE

Acceptance of this grading permit serves as evidence that you understand and agree to abide by the U.S. Fish and Wildlife Service 10(a) permit _____ and the Agreement as it concerns the Management Unit named above.

A report of activities conducted under authority of this permit must be submitted to the Plan Operator, Director of Environmental Management, County of San Mateo, County Government Center, Redwood City, CA 94063, by December 15th of the year during which this grading permit is in effect so that the Plan Operator can submit an Annual Report to the USF&WS by January 31st of the following year.

You must have a copy of this permit and the attached USF&WS permit in your possession while conducting the authorized activities.

cc: Chief, Federal Wildlife Permit Office
Attn: PRT 2-
Regional Director, Region 1
Attn: SE Coordinator
Plan Operator, County of San Mateo
California Department of Fish and Game

research. Literature work will comprise review of studies done by others which pertain to the work to be done here or which assist in the development of specific techniques (e.g. how large of a tractor is needed, what tools should be used). Small scale experimentation on the Mountain will allow the chance for gauging how successful these experiments will be, and give the opportunity to modify the techniques before the work is done at a larger scale. It will be important that both the effectiveness in enhancing butterfly habitat and the cost-effectiveness of the practices be measured.

Research into both succession and into monitoring and enhancement strategies can be done by the Plan Operator exclusively, or overseen by the Operator with technical advice and assistance from graduate students and undergraduates at local colleges and universities. In each case field work should be preceded by literature research of related experiments, methods of application and cost of experimental techniques to be used in pilot studies.

2. Monitoring

Monitoring is the task, undertaken by the Plan Operator of regular observation of biological processes, development and conservation activities on San Bruno Mountain. The categories of processes and activities that will require monitoring include the following:

- a. Mitigation -- compliance with Plan conditions with respect to development areas.
- b. Population status of endangered species (and other species) including status of habitat resources and components vital to endangered species, i.e., host plants, exotic species encroachment
- c. Research and pilot study progress
- d. Conserved Habitat enhancement programs

The purpose of monitoring is to assure the Plan conditions are being met in practice (as opposed to on paper), and to keep an ongoing record of the progress of implementation which will be the basis for periodic re-evaluation of the Plan and modification of its major activities, as needed. The degree of monitoring will correspond to the intensity of construction work underway and should be structured to provide sufficient information for the ongoing review. Monitoring of initial experimentation will be more intensive than monitoring done after techniques are established.

Initially, the optimum cost effective techniques for monitoring are uncertain. Therefore early monitoring will involve trial methods which are subject to refinement as the Plan Operator and the Technical Advisors determine that they are providing the proper level of information at an appropriate level of effort.

a. Mitigation -- Compliance with Plan Conditions in Development Areas

The major activities associated with the construction phase of development which will require monitoring include grading, erosion and drainage control, and restoration and revegetation of remnant open space temporarily disturbed by grading. Monitoring of grading practices will assure that the grading takes place within prescribed boundaries, that the proper slopes are maintained, and that conserved habitat is protected by fencing, if necessary. Site preparation monitoring will also cover the construction and use of haul

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roads, lay-down areas for materials and equipment, temporary stockpile areas, and spoils disposal (fill or removal). Erosion control monitoring will record whether temporary slope stabilization measures such as hydro-mulching are being employed and whether there appears to be excessive runoff or land slippage. Restoration/revegetation monitoring is to insure that such procedures as topsoil cover, mulching, seeding, seed predation control and watering are properly performed at the appropriate time of year. The specific requirements with respect to Administrative Parcels in development area are set forth in Chapter VII.

As each development project reaches the construction stage, it will require monitoring of the activities described. Thus, the level of effort of construction monitoring will be high during the peak construction years but will taper off once the major projects are completed.

b. Population Status of Endangered Species

Monitoring the status of endangered species is central to the main purpose of the Habitat Conservation Plan -- to preserve endangered species. The population status information will be a key indicator of the success or failure of the Plan and its component parts. The most cost-effective method to monitor butterfly and host plant populations on a long-term basis is to be found through experimentation guided by the experience of the 1980-81 biological study. The major colonies of the Phase Two Biological Study within conserved habitat as well as private lands to be dedicated to the public as conserved habitat should all be monitored. A special subset of the butterfly monitoring program is the assessment of butterfly utilization of areas where habitat manipulation for enhancement has occurred.

The monitoring should allow the Plan Operator to determine whether the populations are essentially stable in numbers, decreasing, increasing or fluctuating and whether the distribution of animals is shifting with only a small proportion of the effort spent in the mark-release-recapture program in the Biological Study. Trial methods include observation and counting along predetermined transects, possibly with simplified marking to avoid duplicate counting. If an observer walks a straight path, duplicate observations should be minimal; sometimes during close observation one can get an impression of whether the animals are being counted more than once. During the flight season each area should be surveyed once a week.

Butterfly host plant populations should probably also be monitored since the butterfly populations are very likely to respond to changes in the abundance or quality of their food resources. It is probably sufficient to monitor only the larval food plants because these insects utilize such a wide variety of nectar plants that it is unlikely that nectar plants alone would become limiting.

The host plants may be monitored generally using the sweep method explained in the biological study (see Glossary). Each area should be swept during the blooming seasons and general distribution maps drawn up. It may be feasible to census host plant populations during the course of butterfly censusing. The observer could then also note insect utilization of host plant in different areas. Where more detailed information is required, the traditional methods of censusing by transect or quadrant may be employed.

Other species of concern should also be monitored - both for effects caused by HCP activities, and to find out more about their population and distribution on San Bruno Mountain. Emphasis should be on monitoring the San Bruno Elfin and Bay Checkerspot butterflies, and the Tree Lupine moth. Also further searches for the San Francisco Garter Snake should take place. Finally, the Habitat Manager should be knowledgeable as to the the description and habits of the rare plants found on the Mountain, so that detailed mapping of these plants can be made.

c. Research and Pilot Study Progress

Monitoring of research and pilot studies on habitat enhancement techniques is an aspect of the research itself. It is the means by which follow-up data are obtained for pilot programs of host plant propagation, grassland seeding, prescribed burning, brush control and so forth.

After the main field effort is completed each year, probably in late summer, the Plan Operator should prepare a report on the three major biological activities of the Plan (research, monitoring, and habitat enhancement). The report will be prepared with the assistance of the Technical Advisory Committee who will present the results of the Plan's scientific effectiveness and cost to the Plan Operator. The TAC can make recommendations to the Board of Supervisors regarding changes in particular activities for different administrative parcels or management units within retained habitat. The Board will then evaluate both the scientific and cost effectiveness of the Plan activities, and adopt changes in Plan implementation accordingly. The changes may involve a shifting allocation of funds among the various activities, or modification of where or how the activities are carried out.

d. Habitat Enhancement Programs

Monitoring of habitat enhancement programs is the basis on which their initial success and continued effectiveness and cost effectiveness will be evaluated. Effectiveness will have two measures: (1) the degree to which the technique produced the intended effect (e.g. the germination success of lupines or violets, or native grasses in a seeded area; the relative abundance of lupines in an area of artificial rocky outcrop produced by rock spreading; the number of brush plants re-sprouting in the first two years after an area is burned or treated with herbicide) and (2) the degree to which endangered species utilize the newly enhanced habitat. The observed population densities from the 1980-81 study can provide a baseline from which to compare insect utilization of enhanced areas as long as the monitoring techniques employed have been carefully worked out to yield data comparable to 1980-81.

Cost effectiveness is measured as the degree of enhancement and utilization achieved for a given level of effort and dollar cost. Standards of cost-effectiveness have yet to be developed; rough standards should be available based on the small-scale pilot phase of the enhancement programs. If certain enhancement programs prove not to be cost effective on large-scale application, new alternatives may have to be sought.

In October 1982, the County Department of Environmental Health (DEH) submitted a memo to the County Planning Department regarding the presence of plague bearing rodents on the Mountain. Their concern was that HCP related enhancement activities (such as brush or exotic species removal) may lead to

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grassland can be re-established and rocky outcrops can be re-opened for invasion (or introduction), of earlier successional plants (i.e., lupine). While some annual grassland and brush habitat will be lost, the net effect should be an increase in host plant populations.

Particular impacts which would be of interest are how fire affects the pH of the soil, what plants will return in the burn, and how fire affects the natural predation processes in the area (e.g. do seed predators avoid the area after the burn, thereby allowing for a greater number of viable seeds).

d. Soil Modification (Rock Spreading)

Description

In this application, soil modification means spreading native aggregate onto slopes within the grassland habitat before and after pre-treatment to create rocky outcrops. The Quarry and/or grading material could be a source for the aggregate. These outcrops would reduce vegetative competition and possibly alter the make-up of the soil, making the area more receptive to the growth of some host plant species. Historically, some of the butterfly host plants (e.g. lupines) have maintained stable populations on rocky outcrops. It should be noted that this technique is strictly experimental in nature and would be initially implemented on a small scale.

Effects

This enhancement technique could be an effective way to create additional stable populations of lupine which in turn would help to support the Mission Blue. In addition, it would extend the effect of seeding since the rock spreading impacts could last anywhere from 20 to 100 years or more before the rock was eventually weathered to finer particles or covered by plant material. There would be some grassland structure loss as well as physical damage to species inhabiting the target sites prior to treatment. This technique may be especially appropriate in the design of roads through conserved habitat areas.

e. Exotic Species and Brush Management

Description

There are various exotic pest species which have invaded several areas of the Mountain. These species are a threat to the existing grassland habitat and must be either eliminated or managed. There are also large areas where brush encroachment is threatening the existing grassland. These areas must be managed by checking advancement and eliminating new seedlings. Techniques such as scraping, chaining, and burning, which are mentioned above, as well as herbicides can be used as management tools.

Effects

There will be some impacts on the plants and animals which depend on the exotic species and brush habitat, therefore careful consideration will take place to determine target areas. Elimination and control of exotics and brush can open up additional areas for native grassland expansion. Brush will not be locally retarded in areas where other species of concern are known to exist. If herbicides are used there may be loss of vegetation other than

exotics and brush; again careful consideration should take place before this measure is approved.

f. Re-introduction of Grazing

Description

Grazing is the utilization of grassland (forage) by domestic livestock such as cattle, sheep, goats or horses. Where appropriate, re-introduction of grazing can be an effective means of maintaining the grassland habitat by eliminating brush and tall grass which would outcompete the butterfly host plants. Because some of the host plants (e.g. lupine) are not palatable to grazing animals, they tend to increase in grazed areas. A grazing regime also crops and limits the seed production of the annual grasses, thereby improving the competitive position of broadleaf species (wildflowers) so that they maintain a higher overall density within the grassland.

Effects

Grazing may retard the re-establishment of bunch grass in some areas, depending on the animals employed. It may also increase human activity on the Mountain. Fences may have to be built and could become obstructive to the wildlife there. Grazing could cause compaction, erosion and some loss of the nutritive value of the soil. Some plants will be favored by grazing, such as the lupines and thistles which are not grazed, but grazing may destroy habitat for others. The specific effects will depend on the type of livestock used; for instance, sheep are considered to be more compatible with native grasses because they do not tend to forage on the bunch grasses as cattle and horses do (Van Kekerix et al., 1978).

g. Vandalism/Fire Control

Description

Development will increase human activity on the Mountain which will in turn likely increase such things as off road vehicle activity (i.e., dirt motorcycles and jeeps), dumping, domestic animal activity, and illegal burning. In the past these activities have been damaging to the grassland, and their control should be part of the habitat enhancement program. Ways to control these activities include policing and patrolling the grassland habitat by helicopter or automobile for possible violations, especially in areas near housing developments, and the use of fencing or other barriers. The intensity of the patrolling should increase during periods when each type of activity is popular. For instance, illegal burning usually takes place after school lets out for the summer, and off-road activity often takes place after the rains in the spring.

Effects

Policing the Mountain will seemingly increase human activity there, but its overall effect will probably be to decrease the human activity, particularly of an illegal sort. If implemented with the correct level of effort, it will expedite the habitat enhancement program; if insufficient it will indeed only add to the disturbance and not sufficiently control detrimental activities. It must, furthermore, be implemented cost-effectively.

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h. Off-Site Introduction of the Species of Concern

Description

Off-site introduction of the species of concern means establishing new butterfly colonies in areas away from San Bruno Mountain. This would be appropriate where the butterfly was once found, but where habitat destruction eliminated a colony. In order to do this suitable habitat would have to be found or created and the butterflies, either collected or lab reared, would have to be transplanted there. Follow-up work would include monitoring the progress of the populations. This measure is recommended only as a last alternative available to preserving the species.

Effects

If successful, this technique could extend the present range of the species of concern; however, over time the populations could become distinct subspecies because of genetic separation. Immediate impacts may include the alteration of habitat that is already supporting other species, although the alterations would not necessarily be unfavorable.

i. Lab Rearing/Cultivation of the Species of Concern

Description

Lab rearing is the cultivation of continuous generations (i.e., adult, egg, larva, adult etc.) of the insects of concern in a laboratory or greenhouse. It could be used in conjunction with the previously discussed technique of off-site introduction and could be useful in supplementing populations on the Mountain. As a last resort it represents a means of preserving the species in its own right (similar to the preservation of large mammals in zoos which may be extinct in the wild).

Lab rearing of butterflies is often done for purposes of studying their biology or as part of a biological control program (e.g. sterile male releases); it is not usually done in order to preserve an endangered species, and is not likely to be a viable method for such a purpose. The biggest problem appears to be maintenance of natural genetic diversity in the lab strain. Through imposition of severe, unnatural conditions, the insects are rapidly "domesticated" -- those which can survive under lab conditions are able to reproduce and dominate the genetic stock of the insects produced. When the animals are released into the wild, they may lack proper behavior, enzymes for detoxifying plant poisons, and physical hardiness.

Lab rearing the butterflies of concern involves collecting gravid female butterflies or unmated pairs and having them produce eggs which when hatched into larvae are raised in the laboratory. It is assumed at this point that the lab reared butterflies could be transplanted back into the field, however research would be required before this was certain. Cultivation of the host plants includes collecting seed or plant cuttings, starting seedlings in peat pots and transplanting them into the field. To support a lab colony of insects, corresponding lab populations of their host plants would also have to be successfully established and maintained. Artificial diets are commonly used in large scale rearings and are available for the Mission Blue (R.A.

Arnold, pers. comm.), but the difficulty of exactly reproducing the chemical and physical (e.g. hairiness) character of the natural food plant exacerbates the problem of maintaining natural genetic viability in the lab (C. Boggs, pers. comm.).

Effects

If successful this technique could increase the populations of the species of concern to some degree. There may be other effects which are unforeseeable at this time. For instance, there is the danger that disease would be introduced by artificially reared insects or plants which could seriously affect the natural populations. A laboratory colony is always a risky substitute for a natural population because it is subject to a far higher danger that a single epidemic of disease or parasitism, or even a mechanical failure in a heating/cooling system could destroy the entire colony. Therefore, it appears that under present circumstances this approach does not warrant further considerations.

j. Landscape Modification

Description

Landscape modification entails changing the terrain of chosen areas to form more hilltops and rocky outcrops. Hilltops are heavily utilized by the Callippe for finding mates, and rocky outcrops provide preferred lupine habitats which in turn support the Mission Blue population. After developing the design for these areas, modification activities would include tractor/bulldozer and seeding work.

Effects

Landscape modification would cause destruction of some grassland structure and may alter the microclimate of the site. If successful it would open more area for propagation of host plants and native grasses, which would then be available to the butterflies. New hilltopping sites may also be created, mitigating to a certain extent any loss of old sites or increasing the number of acceptable mating sites for the Callippe.

4. Planning Assistance and Plan Revision

Introduction

One of the important functions of the Habitat Conservation Plan is to plan both private and public projects on San Bruno Mountain prior to their local agency approvals so as to minimize impact on the species of concern. A primary underlying purpose of Habitat Conservation Plan is the establishment of private sector funding sources to allow appropriate maintenance and enhancement of conserved habitat areas. Accordingly the Plan identifies areas which may be excluded from habitat and devoted to urban uses. The uses occurring in these areas will be a source of funding for maintenance and enhancement in conserved habitat areas. The HCP has evaluated the impacts of such exclusions on the species of concern and specified appropriate mitigation. In addition, the Plan provides for planning assistance to develop further mitigation which will be incorporated into the plans for the development areas:

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- o Design Review
- o Dedication of Conserved Habitat areas
- o Phasing
- o Reclamation (covering Conserved Habitat disturbed during development)
- o Buffers
- o Ongoing restrictions within developed areas (with respect to the use of pesticides and buffer areas)

The parcels subject to development are at various stages of planning and therefore the HCP provides different levels of planning assistance. For this purpose, we identify four stages of planning and development:

o **Stage One.** At this stage, the land owner/developer takes the general plan land use designation (e.g. 500 units of multi-family housing) and works up a preliminary concept plan for the parcel that shows approximate building envelopes, access roads, utilities, and associated grading. Here the HCP provides Design Guides for conserving habitat and for minimizing impact on species of concern. The plan must show which undeveloped lands will be dedicated as Conserved Habitat. The plan should also indicate approximate Phasing for grading and the probable sequence of grading for identified portions of the site.

o **Stage Two.** Nearly all development will require grading to alter landforms and prepare ground for construction. Depending on the project, all site preparation, including grading, may be left to the builder and will occur after the final design stage. Grading causes the direct biological impact of development and is regulated by the HCP. At this stage, the HCP requires a detailed Reclamation Plan for graded areas which provides for fencing (e.g. two strand wire, snow fencing), revegetation, and possible subdivision of Management Units for ease of administration.

o **Stage Three.** This stage involves detailed architectural and engineering plans suitable for actual construction. The HCP requires that the plans incorporate a Buffer Area to protect the developed area from grassland fires and to minimize impacts on the grassland of runoff and irrigation from the developed area. The developer must identify the fire protection and runoff control provisions to be used.

o **Stage Four.** As structures are built and occupied, the HCP provides for some landscaping and maintenance restrictions within the buffer areas to protect adjoining areas of habitat.

a. Design Guides

In the course of the biological study a series of design criteria were formulated to guide developers in preliminary site planning. The rationale behind the guides is discussed in III.B Guiding Principles. The primary requirement for planning development on SBM is that the maximum extent and utility of habitat be retained as Conserved Habitat. The type of land use in adjoining areas to be excluded from habitat is unimportant as long as there is an adequate buffer. The guides for habitat are:

- o Maintain Large Conserved Habitat Areas

- o Maintain Habitat Diversity
- o Maintain Contiguity
- o Corridors Should Connect Large Conserved Habitat Areas

Large Conserved Habitat Areas: Because of the butterflies requirements for both low and high density host plant concentrations, suitable mating and egg laying locations, and extensive flight areas, preservation of large habitat areas is important. This is especially true for the Callippe which has the ability to travel much greater distances than the Mission Blue.

Habitat Diversity: Because some aspects of the insects habitat needs are yet unclear, (i.e., microclimate needs), Conserved Habitat areas should contain a diversity of habitat types. This would include various slope aspects, elevations, hilltops, vegetation types, rocky outcrops, etc. The goal should be to retain the same portions of habitat types existing on the site before the development. This will not only benefit the butterflies of concern but also the entire mountain's unique ecosystem.

Contiguity: Because of the butterflies need to travel to specific areas during their adult flight season (i.e., Callippe requirement for hilltop mating locations), large Conserved Habitat areas should be contiguous and unobstructed.

Corridors: In order to facilitate movement between large contiguous Conserved Habitat areas, suitable corridors should be maintained. These corridors could range from 50 feet to 500 feet wide depending on the length. Based on considerations of statistical distribution of insect movements, the optimum corridor should have a width-to-length aspect ratio of at least 1:2. Depending on the degree of use and existing quality of habitat found in the corridors, they may or may not require some host plant enhancement or other modifications.

Where appropriate, changes can be made during the preliminary plan stage to ensure avoidance of particularly rich habitat and high concentrations of the species of concern. These changes include re-alignment of streets or fences, relocation of structures, and density transfers. Plan modification would serve to prevent major disruption of areas of rich habitat and dense butterfly population. There may be some financial loss incurred by the developer in having to alter development plans. After changes are made in the preliminary plan stage, further modifications in development plans will not be made.

b. Dedication

As part of Stage One, the development plan shall specify the portions of the site to be dedication to the public as Conserved Habitat.

Because of topography and planning requirements, nearly all projects on SBM will have some portion left in natural open space. It is important that this open space be maintained as Conserved Habitat and be protected from further development or other disturbance. For this reason, there must be public control of the habitat. The legal aspects of this donation of land as Conserved Habitat are discussed in Chapter V., Legal Implementation. For convenience, the transfer of control to the public is referred to in this section as "dedication".

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The timing of dedication is important to all parties. Since the HCP allows grading in Conserved Habitat within specified limits, the developer will have a responsibility to carry out the Reclamation Plan. At the same time, or earlier, the HCP Operator will be working in ungraded areas of the Conserved Habitat to expand or improve habitat. Whether dedication occurs before or after grading is complete, both parties will need access to the parcel for specific purposes.

From the private landowner the timing of the conveyance of habitat to the public has implications relating to liability, taxes, and subsequent permit approvals. Development will often be phased, and it is appropriate to tie dedication of a conserved habitat parcel to parallel final construction approval for some portion of the project. Thus, the Stage One plan which shows the project phasing should also designate phasing of the conveyance of associated Conserved Habitat. It is anticipated that this phasing will also be the subject of an agreement between the County and the landowner (See Section V). This requirement is necessary for the Plan Operator to plan a program that can respond to the rate of development reflected by the developer's preliminary phasing.

C. Phasing

As part of Stage One, the development plan shall specify the Phases of development.

Phasing refers to the time schedule of development -- the area that can be graded each year. Ideally a large project would be phased to reduce impact on the species of concern. Phasing offers time to:

- o Spread the impact of habitat loss over more than one generation/flight season;
- o Allow for reclamation of previously disturbed areas before new areas are disturbed;
- o Defer destruction of more important habitat areas until enhancement programs are in effect;

If habitat enhancement techniques are successful, species losses from development will be offset by resource replacement. Thus, phasing can be an effective measure if it allows time for enhancement methodologies to be tested before large scale implementation, and if it allows adequate time for enhancement to mitigate the worst impacts on the species of concern.

Decisions regarding phasing require comparison between the development plans and population distribution and an assessment of economic feasibility. Unfortunately, engineering constraints limit the flexibility of phasing for most projects. The high densities proposed for the building sites require substantial grading in this terrain. Grading is planned to allow the volume of earth cut and earth filled to balance on-site to avoid importing fill or exporting excess earth; each phase of grading is usually chosen to balance as well. A project will need road access, utilities, and sometimes community facilities to serve even the first few units; grading for such infrastructure must accompany the first grading phase. Apart from these considerations, the phasing also reflects the developer's anticipation of the rate at which the structures can be built and sold.

The phases described in the HCP are jointly determined by the developer and Plan Operator and represent the maximum construction rate permitted for the project. The developer is requested to slow construction as much as possible; the specified phasing represents the minimum rate that the developer is willing to accept as a condition of approval. In most cases, the specified annual progression is too rapid to allow complete reclamation of previously disturbed areas.

In addition, the actual construction rate could be slowed by market conditions, and there would then be more time between each phase or less than a complete phase would be built each year. It is anticipated that only in the event of slow construction would the full mitigation benefit of delay be attained.

Plan design changes contingent upon reclamation or enhancement success is impractical because of construction and sales requirements. Contingent design changes should only be required where the Preliminary Design has not had the opportunity to reflect the principles of conservation set forth in the Design Guides. In such cases, the the number of units originally permitted will remain the same but will relocated to areas of lower habitat value.

d. Reclamation Plan

Prior to grading, the landowner shall prepare a Reclamation Plan for all areas in or to be donated as Conserved Habitat which will be graded. The reclamation of the graded areas is the responsibility of the landowner and will comprise provisions for:

- o precise delineation of all disturbance,
- o continuous fencing at the graded perimeter,
- o erosion controls,
- o revegetation with appropriate species, and
- o detailed schedule.

The Stage One Plan must show the areas to be donated as Conserved habitat and the limit of grading that will take place within it. The Reclamation Plan must show the required grading in sufficient detail to permit staking in the field. In addition to the primary graded areas, the Reclamation Plan must show trenches required for utilities, haul or other temporary roads, and earth stockpiles — all places where construction will disturb natural vegetation.

The areas to be graded must be temporarily fenced during construction so that there is a continuous, unambiguous boundary between the graded area and habitat that is to remain undisturbed. The purpose is to ensure that protected habitat is not accidentally destroyed and to make it easier for the HCP Operator to enforce the Reclamation Plan. The fencing must provide a clear, durable boundary (e.g. snow fencing, two strand wire, etc.). Utilities trenches and haul roads need not be fenced as long as disturbance does not exceed 30 feet.

Both revegetation and mechanical methods are used to prevent erosion in graded areas. The measures will be required during construction and after the project is completed. Most of the methods are normally part of a grading ordinance. Methods of erosion control include the following:

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- o developmental design which is compatible with the existing topography, soils and vegetation
- o minimizing soil exposure during the rainy season with the timing of grading and construction and by revegetating or mulching unprotected slopes before they are exposed to possible runoff
- o when grading, retain topsoil and respread on finished slopes
- o retaining natural vegetation whenever feasible
- o diverting runoff away from areas susceptible to erosion, such as steep graded slopes, by using barriers or drainageways
- o minimizing the length and steepness of graded slopes by benching or terracing
- o monitoring of sites to ensure that control methods are effective and to correct problems as needed

Effective control of water runoff will serve to prevent damage to the Mountain caused by erosion. By revegetating denuded areas water will also be trapped by the plants and able to permeate the soil, minimizing the loss of moisture. The use of native species for revegetation would contribute to the conservation of the Mountain's unique ecology, and, depending on the location, may enhance the habitat available for use by the butterflies. Correct implementation of erosion controls will also reduce sediment in drainageways and so reduce the need for maintenance.

Revegetation is the critical step in the restoration of habitat. The methods of plant propagation and revegetation are discussed under IV.B.3 Enhancement Techniques. The revegetation portion of the Reclamation Plan should be formulated with the assistance of the HCP Operator and can be quite detailed.

Generally, revegetation will have different treatments for cut slopes and for fill slopes and different levels of habitat restoration. The difference between cut and fill is simply a matter of soil type and plant material suitability. Enhancement research mountain-wide will guide the basis revegetation strategy. Restoration levels will range from:

- o "moderate", meaning broad scale reseeding with a native grass mixture, through;
- o "high", which would add a broad group of the insects' host plants, to;
- o "intensive", which is thorough planting of host plants in small areas using seedlings and accompanied by soil and microhabitat modification.

The Reclamation Plan will also contain a time schedule for grading which will permit the HCP Operator to take plant materials from areas to be graded for use in habitat enhancement programs.

The Reclamation Plan shall be prepared by the developer. The HCP Operator will provide technical assistance, approve the type of revegetation, and monitor compliance.

e. Buffer (Fire Break)

At the time of the preparation of the Stage Three plan for the development area, the landowner will incorporate the design for a buffer between Conserved Habitat and structures within the development area, and shall provide for the establishment of such a buffer in connection with Stage Four. These shall be approved by the Plan Operator.

The primary buffer purpose is to protect the development from fires occurring in the Conserved Habitat. Any adequate fire protection plan will fulfill this requirement. Although the exact character depends on slope and fuel type, a general buffer for habitat conservation purposes would provide up to 30 feet of firebreak at the edge of the building lot. This can be accomplished in a number of ways, including, but not limited to, a road, parking area, patio, gazebo, shed, vegetable garden, orchard, lawn, embankment, rocky cut slope, or fire resistant vegetation. While many of the insects' host plants could occupy a low fuel buffer, no habitat value is required. There will be some areas in a development which may not be easily protected by a firebreak; in these cases, a hydrant and access for fire trucks may be approved as the fire protection plan. In no case shall buffer required to meet habitat conservation purposes be additive to other requirements of local fire protection authorities, where their combination would exceed 30 feet.

The HCP recognizes the importance of fire in grassland ecology on SBM. While the present Plan does not call for prescribed burning, it may be needed in the future. The Plan does specify a "let burn" policy during the proper time of year for most areas. It is critical that the proximity of structures to Conserved Habitat resulting from development not significantly interfere with the Plan Operator's use of fire as a successional management tool. If the development is not well protected from fire, then there will be greater liability, greater costs of stand-by fire protection, and anxiety on the part of the homeowners that could lead to political opposition to the Plan.

The secondary purpose of the fire buffer is to protect the Conserved Habitat from changes in storm water runoff and from irrigation. The reason is to avoid loss of habitat to vegetation changes associated with greater or non-seasonal water availability. For this reason, an irrigated turf area (fire resistant vegetation) would not be a suitable buffer on a slope above Conserved Habitat, but would be acceptable below Conserved Habitat where ground water would drain away.

Optional buffer planting can provide habitat as well as protection. There is a broad range of landscaping materials which are compatible with the Conserved Habitat remaining around the developed areas; introducing exotics can cause problems later on if they escape into the grassland. Adjacent plantings may prove to be an effective management technique. By using host plants along with vegetation, landscaping can attract butterflies so they travel through corridors adjacent to development and into other areas of Conserved Habitat. Generally, there is no need to physically bar the butterflies from the development areas, but some vegetation barrier may be indicated in some areas.

The use of landscaping materials to reduce fire hazard is a well known technique (UC Division of Agricultural Sciences, leaflet 2401, 1976); however, the use of barriers (e.g. hedges, stone walls) to restrict the penetration of

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the insects of concern and the use of host plants to attract them still need some research. In addition, although not absolutely necessary, the areas may be monitored for butterfly use. It is not certain how much the optional measures will benefit the species of concern, but it is assumed that it will not be detrimental.

The land for the buffer should be provided within the development areas, and not be included in the land donated as Conserved Habitat. The cost of establishing and maintaining the buffer shall be borne by the landowner and its successor in interest. As long as the landscaping scheme was determined within the time frame of the development activities, the costs of landscaping itself should not greatly exceed those that would normally be incurred. Some additional expense may have to be made for research in fire resistant habitat materials; this would be a normal part of the HCP program.

f. Ongoing Restrictions in Development Areas

The development areas shall continue to be encumbered by the recordation of covenants, conditions, and restrictions in favor of the Plan with respect to:

(1) the ongoing maintenance and provision of buffer areas for fire protection purposes, as discussed in sub-paragraph e above; and

(2) the use of pesticides.

With respect to the use of pesticides within development areas to protect landscaping, pesticides requiring a special governmental agency permit, or which are applied by aircraft or helicopter, or which are applied on a large scale basis (in excess of 0.5 acres upon a single application), must be approved, in writing, by the HCP Operator.

The exact degree of restriction needed for pesticides, however, is not known. Not only the butterflies, but other invertebrates (e.g. ants for Mission Blue) may be destroyed by inappropriate pesticide use. Certainly no pesticides should be used in the Conserved Habitat areas. Within the development areas, care should be directed primarily at the means of application. A tentative requirement would be approval for any use of registered pesticides. This would tend to cover large scale use, as by a professional pest operator, and exempt small scale use as by the individual homeowner.

EXHIBIT "E"

AGREEMENT TO RESTRICT USE OF LAND

This Agreement is made this _____ day of _____, 1982, by the undersigned parties.

WHEREAS, the undersigned are the owners of adjoining parcels of land on San Bruno Mountain, as more particularly described in Exhibits "A" (land owned by San Mateo County), "B" (land owned by the California State Department of Parks) and "C" (land owned by Visitacion Associates), attached hereto and incorporated by reference herein; and

WHEREAS, it is the desire and intention of all parties to restrict the use of the County's land and the State's land in compliance with the San Mateo County Habitat Conservation Plan (recorded as document number _____ in the Official Records of San Mateo County), the Agreement signed on _____ (recorded as document number _____ in the Official Records of San Mateo County) and the Section 10(a) permit issued by the U.S. Fish and Wildlife Service on _____, so that all of Visitacion Associates' lands shall be benefited by the preservation of some of the land as habitat and the development of the rest of the land in accordance with the Habitat Conservation Plan, Agreement and Section 10(a) permit and so that the County's land and the State's land shall be similarly benefited;

NOW, THEREFORE, in consideration of the mutual promises of the parties hereto, each to the others as Covenantors and Covenantees, and expressly for the benefit of, and to bind, their successors in interest, the said parties agree as follows:

1. The State of California Department of Parks promises to engage in and permit only those uses on its land which are consistent with the terms and conditions of the San Bruno Mountain Habitat Conservation Plan, the Agreement and the Section 10(a) permit referred to supra;

2. The County of San Mateo promises to engage in and permit only those uses on its land which are consistent with the terms and conditions of the San Bruno Mountain Habitat Conservation Plan, the Agreement and the Section 10(a) permit referred to supra;

3. Term. These covenants are to run with the land and shall be binding on all parties and all persons claiming under them forever.

4. Enforcement. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant either to restrain violation or to recover damages.

5. Severability. Invalidation of any one of these covenants by judgment or court order shall in no wise affect any of the other provisions which shall remain in full force and effect.

6. The restrictions on the use of land established in this Agreement shall not be relaxed, modified or terminated without the written, recorded consent of the U.S. Fish and Wildlife Service, the California State Departments of Parks and Recreation and Fish and Game, the County of San Mateo and the Cities of Brisbane, Daly City and South San Francisco.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

STATE OF CALIFORNIA
DEPARTMENT OF PARKS

By: *Pat Dyer*

COUNTY OF SAN MATEO

By: *Edward J. Bassano*

VISITACION ASSOCIATES

By: *W. Sherman Lubanks*

EXHIBIT "F"

TRUST AGREEMENT

THIS TRUST AGREEMENT is made _____, 1982, by the County Manager of the County of San Mateo, acting in his official capacity, and the City Managers of the cities of Brisbane, Daly City and South San Francisco, acting in their official capacities (hereinafter "Trustees"). The Trustees declare that they hold the property identified in paragraph 3 hereinbelow in trust and that they will abide by the terms and provisions of this trust agreement in administering said trust.

1. Purpose of Trust. This trust is created and shall be operated exclusively to carry out the purposes and provisions of the Habitat Conservation Plan (HCP) recorded in the official records of San Mateo County as document number _____, and the Agreement With Respect to the San Bruno Mountain Area Habitat Conservation Plan (Agreement), recorded in the official records of San Mateo County as document number _____. The HCP and the Agreement are hereby incorporated as a part of this trust agreement. None of the moneys paid into the trust shall be used for private benefit.

2. Name of Trust. The name of the trust shall be the San Bruno Mountain Habitat Conservation Trust, and so far as practicable, the Trustees shall conduct the activities of the trust in that name.

3. Subject Matter of Trust. Funding for this trust will be paid as set forth in the Agreement.

4. Duty to Enforce Assessments. The Trustees have the duty to collect the assessments due and payable under the Agreement. The Trustees shall have all powers and authority necessary to collect the assessments, including the power and authority to foreclose liens.

5. Beneficiaries. This trust is intended to benefit the San Bruno Mountain Ecological Community, as it is defined in the Agreement recorded in the official records of San Mateo County as document number _____, and is thereby intended to serve a public purpose.

6. Plan Operator. The Trustees must contract with a Plan Operator, as described the Agreement. The Plan Operator shall initially be the County of San Mateo. In case of the resignation of the County of San Mateo as Plan Operator, the Trustees shall within 60 days from the date of such resignation contract with a new Plan Operator.

7. Trust Fund. The Trustees may receive funds from the sources identified in the Agreement or from any other source in cash or in other property acceptable to them. All funds so received together with the income therefrom, herein referred to as the trust fund, shall be held, managed, administered and paid out by the Trustees pursuant to the terms of this agreement. The Trustees may accept funds which restrict their uses and purposes, provided such restrictions are within the uses and purposes set forth in paragraph 1; but, unless otherwise specifically required, the Trustees may mingle such restricted funds with other assets of the trust fund.

8. Use of Trust Fund. The Trustees shall apply the trust fund, at such time or times, in such manner, and in such amounts as they may determine, or as may be required by restricted donations, to the uses and purposes set forth in paragraph 1. The trust fund and the income thereof shall be devoted exclusively to the purposes described above and shall in no part and under any circumstances be given or contributed to or inure to the benefit of any private person. No part of the trust fund shall be used to carry on propoganda or otherwise attempt to influence legislation, or to participate in any political campaign. Notwithstanding any other provision hereof, this trust shall not conduct or carry on any activities not permitted to be conducted or carried on by an organization exempt under the Internal Revenue Code and its regulations as they now exist or as they may hereafter be amended, or by an organization, contributions to which are deductible under the Internal Revenue Code and regulations thereto as they now exist or as they may hereafter be amended.

9. Action of Trustees. The Trustees shall act by a vote of a majority of their number at any given time. Any instrument required to be executed by this trust shall be valid if executed in the name of this trust by such a majority of the Trustees. All actions of the Trustees shall be taken either by resolution at a meeting or by written record within a meeting. The Trustees shall appoint from among themselves a secretary, who shall cause a record to be kept of all actions of the Trustees. A copy of any resolution or action taken by the Trustees, certified by any one of the Trustees, may be relied upon by any person dealing with this trust.

10. Trustees' Powers. In the administration of this trust and of the trust fund, the Trustees shall have all powers and authority necessary or available to carry out the purposes of this trust and, without limiting the generality of the foregoing, shall have the following powers and authority:

a. To receive the income, profits, rents, and proceeds of the trust fund, and to collect and receipt for the same.

b. To purchase, subscribe for, retain, invest and reinvest in securities or other property wherever situated. The words "securities or other property" as used in this agreement shall be deemed to include real or personal property, corporate shares, common or preferred, or any other interest in any corporation, association, investment trust, or investment company, bonds, notes, debentures, or other evidences of indebtedness or ownership, secured or unsecured, even though the same may not be legal investments for a Trustee under the laws applicable hereto; but securities and other property shall not be deemed to include shares of indebtedness of the Trustor unless the same is donated to this trust.

c. To sell for cash or on credit, convert, redeem, exchange for other securities or other property, or otherwise dispose of any securities or other property at any time held by them.

d. To alter, repair, improve, erect buildings upon, demolish, manage, partition, mortgage, lease, exchange, grant options to lease or to buy, and sell or dispose of, at public or private sale, and upon such conditions and such terms as to cash and credit as they may deem advisable, real property.

e. To pay all administration expenses of this trust and any taxes imposed upon it, and to settle, compromise, or submit to arbitration, any claims, mortgages, debts, or damages, due or owing to or from this trust, to commence or defend suits or legal proceedings, and to represent this trust in all suits or legal proceedings.

f. To exercise any conversion privilege or subscription right available in connection with any securities or other property at any time held by them; to consent to the reorganization, consolidation, merger, or readjustment of the finances of any corporation, company, or association or to the sale, mortgage, pledge, or lease of the property of any corporation, company, or association any of the securities of which may at any time be held by them and to do any act with reference thereto, including the exercise of options, the making of agreements or subscriptions, and the payment of expenses, assessments, or subscriptions which may be deemed necessary or advisable in connection therewith, and to hold and retain any securities or other property which they may so acquire.

g. To vote personally, or by general or limited proxy, any shares of stock which may be held by them at any time, and similarly to exercise personally, or by general or by limited power of attorney, any right appurtenant to any securities or other property held by them at any time.

h. To borrow money in such amounts and upon such terms and conditions as shall be deemed advisable or proper to carry out the purpose of this trust and to pledge any securities or other property for the repayment of any such loan.

i. To hold part or all of the trust fund uninvested.

j. To employ suitable accountants, agents, counsel, and custodians and to pay their reasonable expenses and compensation.

k. To register any securities held by them hereunder in their own name, or, to the extent permitted by law, in the name of a nominee with or without the addition of words indicating that such securities are held in a fiduciary capacity and to hold any securities unregistered or in bearer form.

l. To make, execute, and deliver all instruments necessary or proper for the accomplishment of the purpose of this trust or of any of the foregoing powers, including deeds, bills of sale, transfers, leases, mortgages, security agreements, assignments, conveyances, contracts, purchase agreements, waivers, releases and settlements.

11. Successor Trustee. In case of the death or resignation of any Trustee, a successor shall be appointed by the respective City or County legislative body within 60 of vacancy days and until such time as the successor Trustee is appointed, the remaining Trustees shall have full power to act hereunder. All Trustees, including successor Trustees, shall have the same powers, rights, obligations, discretion and immunities.

12. Bond and Compensation. No Trustee shall be required to furnish any bond or surety. Each Trustee shall serve without compensation for his services hereunder, but all expenses of this trust or of any Trustee acting hereunder shall be paid by the Trustees from the trust fund.

13. Accounting by Trustee. The fiscal year of the trust shall be from July 1 to June 30 of each successive year. Trustees shall publish on October 1 of each year, a statement of the receipts and disbursements, and the purposes for which disbursements have been made for the preceding fiscal year. An annual audit shall be made of the accounts of the trust by certified public accountants.

14. Liability of Trustees. No Trustee shall be answerable for loss in investments made in good faith. No Trustee shall be liable for the acts or omissions of any other Trustee, or of any accountant, agent, counsel or custodian selected with reasonable care.

15. Custody of Funds. The County of San Mateo shall have exclusive custody of the securities, cash and other property of the trust fund.

16. Situs. This agreement is executed and delivered in the State of California, the situs shall be in that state, and it shall be governed by, and construed and administered in accordance with the laws of that state.

17. Acceptance of Trust. The Trustees do hereby accept this trust, and undertake to hold, manage and administer the trust fund in accordance with the terms of this agreement.

18. Term of Trust. This trust shall remain in force during the term of this Agreement and shall function only in periods during which assessments for habitat conservation are not being collected by an Assessment District, as provided in the Agreement. When the trust is not functioning, it shall turn over all money in its possession to the Assessment District.

Dated: NOV 15 1982

COUNTY OF SAN MATEO,
County Manager

David H. Nichols

Trustee

CITY OF BRISBANE,
City Manager

Richard D. Quinn

Trustee

CITY OF DALY CITY,
City Manager

David R. Ravel

Trustee

CITY OF SOUTH SAN FRANCISCO,
City Manager

Walter B. Inghel

Trustee

EXHIBIT "G"

DECLARATION OF COVENANTS AND
RESTRICTIONS ON REAL PROPERTY ON
SAN BRUNO MOUNTAIN

This Declaration of Restrictions imposes two separate sets of covenants and restrictions on certain real property. One set (Set One) is for the mutual benefit of all land within a certain tract of land. The other set (Set Two) is for the mutual benefit of all land within the San Bruno Mountain Area, as defined in the Agreement With Respect to the San Bruno Mountain Area Habitat Conservation Plan, adopted by the San Mateo County Board of Supervisors on October 19, 1982, by Resolution No. 43905, and adopted as amended on November 9, 1982, by Resolution No. 43988 (hereinafter "Agreement"). This Declaration shall be recorded by Landowners as provided in the Agreement.

I. Set One

WHEREAS, _____
is the owner ("Owner") of the lands in the County of San Mateo, State of California, described in Exhibit "A" hereto, which exhibit is hereby incorporated herein by reference (which lands include both Conserved Habitat which is to be dedicated to the County and Development Areas, which are to be developed, as set forth in the Agreement) (hereinafter "Benefited Lands") which are within the San Bruno Mountain Area, and which constitute the dominant tenement (Exhibit "A" does not include Conserved Habitat if the Landowner is not required to dedicate Conserved Habitat pursuant to the Agreement);

WHEREAS, the San Bruno Mountain Area Habitat Conservation Trust (the "Trust") is obligated to assist in the implementation of the San Bruno Mountain Area Habitat Conservation Plan adopted by the San Mateo County Board of Supervisors on September 14, 1982, as Resolution No. 43770, as provided in the Agreement, and has agreed to collect, accept, hold and pay the sums due hereunder to the County, as the Plan Operator under said Agreement, for the conservation of habitat within the Conserved Habitat of the San Bruno Mountain Area for the benefit of the Benefited Lands;

WHEREAS, it is the desire and intention of the Owner to convey the Benefited Lands described in Exhibit A and to impose on them mutual, beneficial restrictions under a general plan or scheme of improvement for the benefit of all the lands in the tract (including the Conserved Habitat described in Exhibit "A") and the future owners of those lands, which constitute the servient tenement;

NOW, THEREFORE, the Owner hereby declares that all of the Benefited Lands described in Exhibit A are held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied and improved subject to the limitations, restrictions and covenants set forth in Section III below, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and conveyance of the Benefited Lands and are established and agreed upon for the benefit of the land and for the purpose of enhancing and protecting the value, desirability and attractiveness of the lands and every part thereof. All of the limitations, restrictions and covenants shall run with the land and shall be binding on all parties having or acquiring any right, title or interest in the described lands or any part thereof.

II. Set Two

WHEREAS, _____ is the owner ("Owner") of the land in the County of San Mateo, State of California, described in Exhibit "A" attached hereto and incorporated herein by reference (hereinafter "Benefited Lands"), which land is within the San Bruno Mountain Area as shown on the map attached as Exhibit "B" hereto and incorporated herein by reference;

WHEREAS, portions of the San Bruno Mountain Area are presently owned or will be acquired by the County of San Mateo or the State of California for open space and habitat conservation purposes for the benefit of the Benefited Lands, the other lands within the San Bruno Mountain Area, and the public;

WHEREAS, the San Bruno Mountain Area Habitat Conservation Trust (the "Trust") is obligated to assist in the implementation of the San Bruno Mountain Area Habitat Conservation Plan, as provided in the "Agreement With Respect to the San Bruno Mountain Area Habitat Conservation Plan", dated _____ among _____ (hereinafter the "Agreement"), and has agreed to collect, accept, hold and pay the sums due hereunder to the County, as the Plan Operator under said Agreement, for the conservation of habitat within the San Bruno Mountain Area for the benefit of the Benefited Lands, the other lands within the San Bruno Mountain Area, and the public;

WHEREAS, the parties to the Agreement, including the Owner herein and other owners of land within the San Bruno Mountain Area, have agreed that each Landowner with respect to each Developable Administrative Parcel, or portion thereof, shall record a covenant with respect to such Developable Administrative Parcel as provided in this Declaration of Covenants on real property on San Bruno Mountain;

WHEREAS, it is the desire and intention of the Owner to impose upon the Benefited Lands mutual, beneficial burdens and restrictions pursuant to a general plan or scheme of improvement as provided in the Agreement for the benefit of the Benefited Lands and the other lands within the San Bruno Mountain Area, including, but not limited to, lands owned by the parties to the Agreement and lands which are or were owned by Owner and which are or have been conveyed to the County or the State pursuant to the Agreement;

NOW, THEREFORE, for good consideration had and received, the Owner hereby declares and agrees that all of the Benefited Lands are burdened, held and shall be burdened and held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved subject to the covenants set forth in Section III below, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement, protection, enhancement and conveyance of the Benefited Lands, the other lands in the San Bruno Mountain Area and the public and are established and agreed upon for the benefit of the Benefited Lands and the other lands in the San Bruno Mountain Area, including but not limited to lands owned by the parties to the Agreement and lands which are or were owned by Owner and which are or have been conveyed to the County or State pursuant to the Agreement, and for the purpose of enhancing and protecting the value, desirability and attractiveness of all the lands within the San Bruno Mountain Area and every part thereof. All of the covenants constitute mutual, equitable servitudes and shall run with the land and shall burden the Benefited Lands and every part thereof and shall benefit the Benefited Lands and the other lands within the San Bruno Mountain Area and the public and shall be binding on all those having or acquiring any right, title or interest in the Benefited Lands or any part thereof.

III. Covenants and Restrictions

1. Covenant for Payment of Assessments. The following assessments shall be paid to the Trust with respect to the Benefited Lands:

a. The owner of each subdivided Dwelling Unit within the Benefited Lands shall pay with respect to such Dwelling Unit to the Trust an annual assessment of Twenty Dollars (\$20.00), as adjusted pursuant to paragraph 2, in advance on or before November 10 of each year. For the purposes of this covenant, the term Dwelling Unit shall mean any house, condominium unit or other residential unit, whether occupied by one or more related or unrelated persons or groups of persons, and shall include in addition to the respective residence all appurtenant open space, landscaping and other lands and all parking, recreational and service facilities, structures and buildings of every kind and nature.

b. The private owner of each unit or subdivided lot within the Benefited Lands other than a unit or subdivided lot constituting a Dwelling Unit shall pay to the Trust, in advance, on or before November 10 of each year, an annual assessment determined as follows:

i. In the event that the primary use of the lot or unit is a building, then the annual assessment to be paid shall be the aggregate sum of Ten Dollars (\$10.00) multiplied by the total floor area of the buildings on the lot or unit divided by 1,000, as adjusted pursuant to paragraph 2. No further assessment shall be made with respect to open space, landscaping and other lands and parking, recreational and service facilities and structures appurtenant to such buildings.

ii. In the event that the primary use of the lot or unit is not a building (e.g., a radio antenna), then the annual assessment shall be an equitable sum reasonably determined by the Trust to be equivalent to the assessment required with respect to building uses as provided above and taking into account the impact of such uses on the Species of Concern and the Conserved Habitat, as adjusted pursuant to paragraph 2.

iii. Concurrently with or prior to the recordation of these covenants with respect to the Benefited Lands, the Trust shall reasonably determine the character of uses under this paragraph (b) and the amount of the assessment payable and shall deliver written notice to the respective landowner of its determination and shall record a copy of said notice in the official records of San Mateo County.

c. In the event of: (i) any change of use; or (ii) expansion of any non-Dwelling Unit use under paragraph (b), the owner of the respective lot or unit shall promptly notify the Trust in writing of such change or expansion and the assessments with respect to such lot or unit shall be amended to comply with paragraphs (a) and (b) above effective upon such change or expansion.

d. As used herein, the term "floor area" shall mean the sum of the gross horizontal areas of the several floors of a building measured from the exterior face of exterior walls, or from the centerline of a wall separating two buildings, but no including interior parking spaces, loading spaces for motor vehicles, or any space where the floor-to-ceiling height is less than six feet.

2. Adjustments in Annual Charge and Assessment. The amount of the annual assessment shall be adjusted annually by the Trust as follows:

a. The amounts stated in paragraphs 1 and 2 above are based on the value of the United States dollar on January 1, 1983.

b. The charge or assessment shall be adjusted annually by the Trust an amount reasonably and proportionately equivalent to the annual percentage change in the Employment Cost Index - West, or its successor, published by the U.S. Bureau of Labor Statistics, or its successor. If either the Index or the Bureau is discontinued without a successor being established, the Trust shall reasonably designate a substitute index which shall be reasonably used in like manner to determine the change in the value of the dollar from time to time.

c. The Trust shall notify the Owner of each Dwelling Unit or non-Dwelling Unit subject to the assessment of the amount of the assessment for the next succeeding year at least 30 days prior to the date the assessment is due.

3. Payments. Such charges or assessments shall be paid to the San Bruno Mountain Area Habitat Conservation Trust at:

San Bruno Mountain Area Habitat Conservation Trust
c/o San Mateo County Director of Environmental Management
County Government Center
Redwood City, CA 94063

or such other place within San Mateo County as may be set forth in written notice sent by the Trust to each respective owner pursuant to paragraph 4 below.

4. Notices. All notices to owners of Dwelling Units or non-Dwelling Units hereunder shall be in writing and shall be effective upon delivery to the unit or to the occupant thereof or 48 hours after deposit in the United States mail, postage paid, return receipt requested, addressed to "Owner" at the address of the unit, or to the address of the record owner of the land shown on the latest tax assessment role.

5. Commencement of Assessment. The assessment with respect to any unit shall commence on the transfer of title from Owner to the purchaser of such unit, with the assessment for the part year following the transfer of title being prorated and payable upon the transfer of title.

6. Delinquent Assessments. Any assessment not paid within 30 days of the date due shall bear interest until paid, at the maximum rate permitted by law and shall constitute a lien upon the unit or lot in favor and to the benefit of the Trust. In addition to amounts due with respect to any assessment and interest, the Trust shall be entitled to receive, and the unit Owner shall pay to the Trust, all costs, expenses and fees, including but not limited to attorneys' fees, collection fees and court costs incurred by the Trust in the collection of any delinquent assessment and interest.

7. Reference in Conveyances. Every conveyance of an interest in or with respect to the Benefited Lands should contain the following provision:

This conveyance is subject to the Declaration of Covenants and Restrictions on Real Property on San Bruno Mountain dated _____ and recorded on _____ in the Official Records of San Mateo County.

8. Termination. Any or all of the provisions of this Declaration may be terminated, annulled or voided only with (1) the written, recorded consent of all of the following: the County of San Mateo, the San Bruno Mountain Area Habitat Conservation Trust, the California Department of Fish and Game, the United States Fish and Wildlife Service, and the owners of at least 75% of Benefited Lands, and (2) written, recorded findings made by the U.S. Fish and Wildlife Service, based on a biological study, that such termination, annulment or avoidance does not conflict with the primary purpose of the Agreement.

9. Alternative Provisions. The provisions for annual charges and assessments provided for herein shall not become due or payable for any period during which annual charges or assessments pursuant to the "Agreement" are made and levied by the funding source (other than by the Trust under this Declaration) upon each of the Units or lots which would otherwise be obligated for the annual assessments and charges provided for herein.

10. Exoneration of Owner. Upon the transfer of title of a unit or lot by any owner, such owner shall no longer have any obligation or duty hereunder with respect to such unit or lot or the assessment payable hereunder with respect thereto, for any period during which it is not the owner of such lot or unit.

11. Severability. It is the intention of the Owner and all of the parties hereto that in the event that any of the covenants described herein should be determined to be unlawful, invalid or unenforceable against any of the parties hereto or their successors or assigns, such covenants shall continue in force and effect to the extent that they are valid or enforceable against any of the parties hereto or their successors or assigns pursuant to any provision of law or equity with respect to any of the lands within the San Bruno Mountain Area.

12. Restrictions. The Conserved Habitat presently owned by the Owner described in Exhibit A shall be held, used and conveyed in accordance with the terms and provisions of the Agreement. If Exhibit "A" does not include Conserved Habitat, as provided above, this paragraph 12 shall not apply.

13. Definitions. The terms "Conserved Habitat", "Development Areas", "Developable Administrative Parcels", "San Bruno Mountain Area Habitat Conservation Trust" and "Landowner" shall have the same definition as is set forth in the Agreement.

Executed this _____ day of _____, 19__.

OWNER

By: _____

COUNTY OF SAN MATEO

By: _____

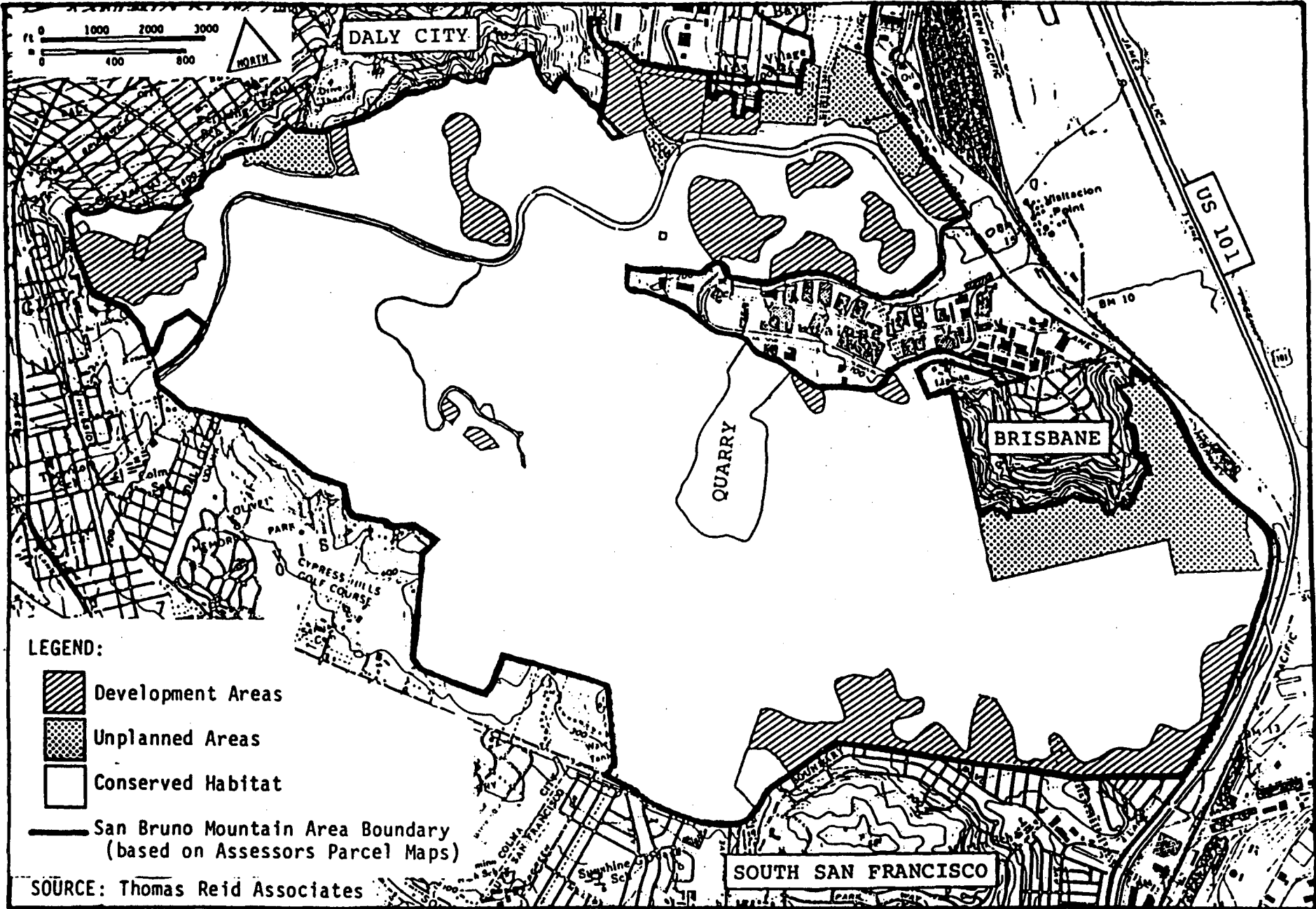
STATE OF CALIFORNIA

By: _____

EXHIBIT "A" TO EXHIBIT "G"

**Description of Land Subject to Covenants
and Restrictions**

[Insert legal description of tract before recording Declaration]



MAP OF SAN BRUNO MOUNTAIN AREA SHOWING DEVELOPMENT AREAS AND CONSERVED HABITAT

EXHIBIT "B" TO EXHIBIT "G"

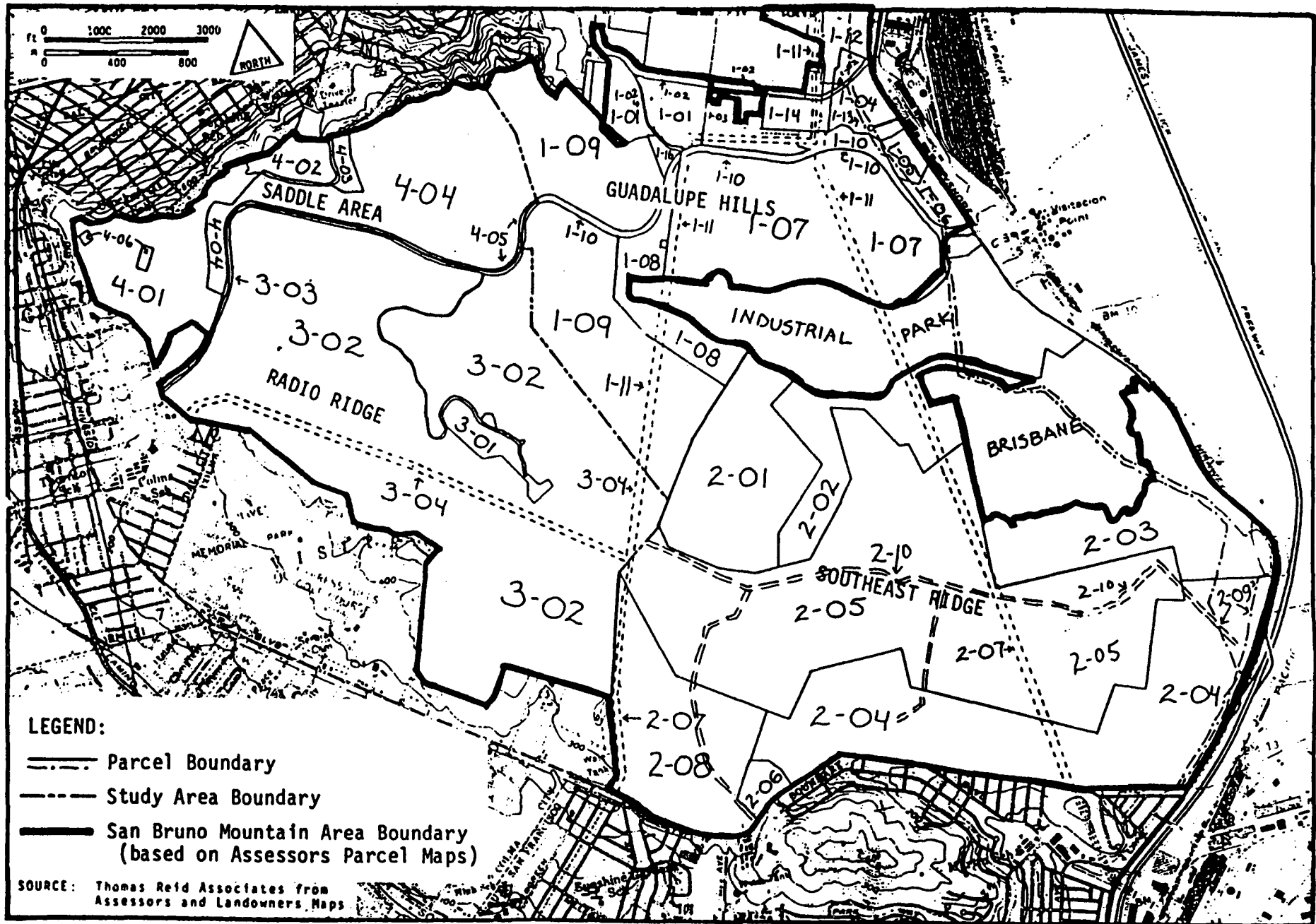


EXHIBIT "H"
SAN BRUNO MOUNTAIN AREA

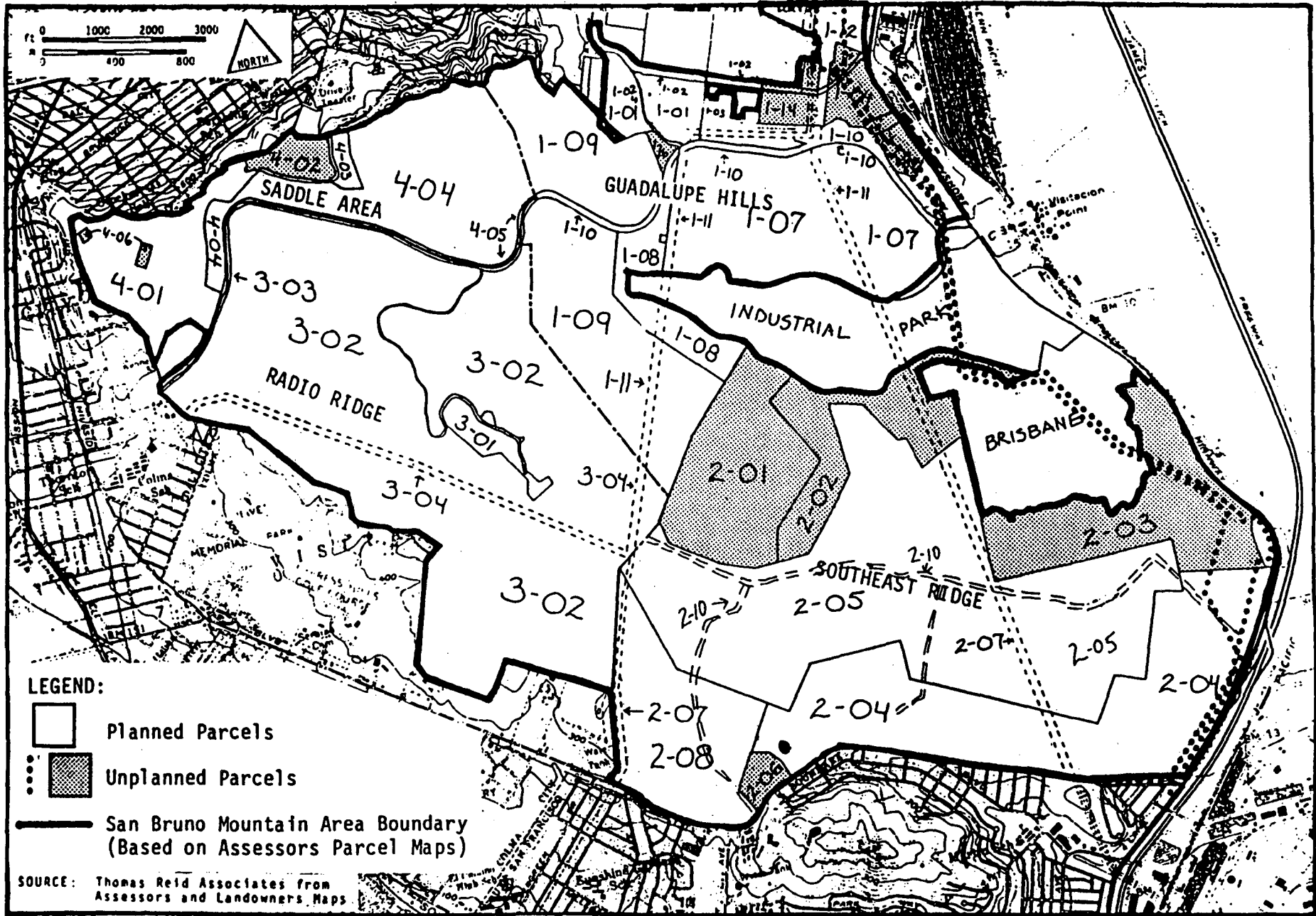


EXHIBIT "I"
DEVELOPABLE ADMINISTRATIVE PARCELS

EXHIBIT "I"

List Showing San Bruno Mountain Developable Administrative Parcels

1. Guadalupe Hills
 01. Rio Verde Estates
 02. Carter-Martin Road Extension
 03. Rio Verde Heights
 04. Parcel X
 05. Parcel Y
 06. Parcel Z
 07. Northeast Ridge Project
 08. Guadalupe Valley West

 10. Guadalupe Canyon Parkway
 11. Transmission Lines
 12. PG&E Fee
 13. San Francisco Water Department
 14. Parcel W
 15. Water Tank In Guadalupe Valley West
 16. Parcel V

2. Southeast Ridge
 01. Quarry
 02. Owl & Buckeye Canyon
 03. Brisbane Acres
 04. South Slope Project

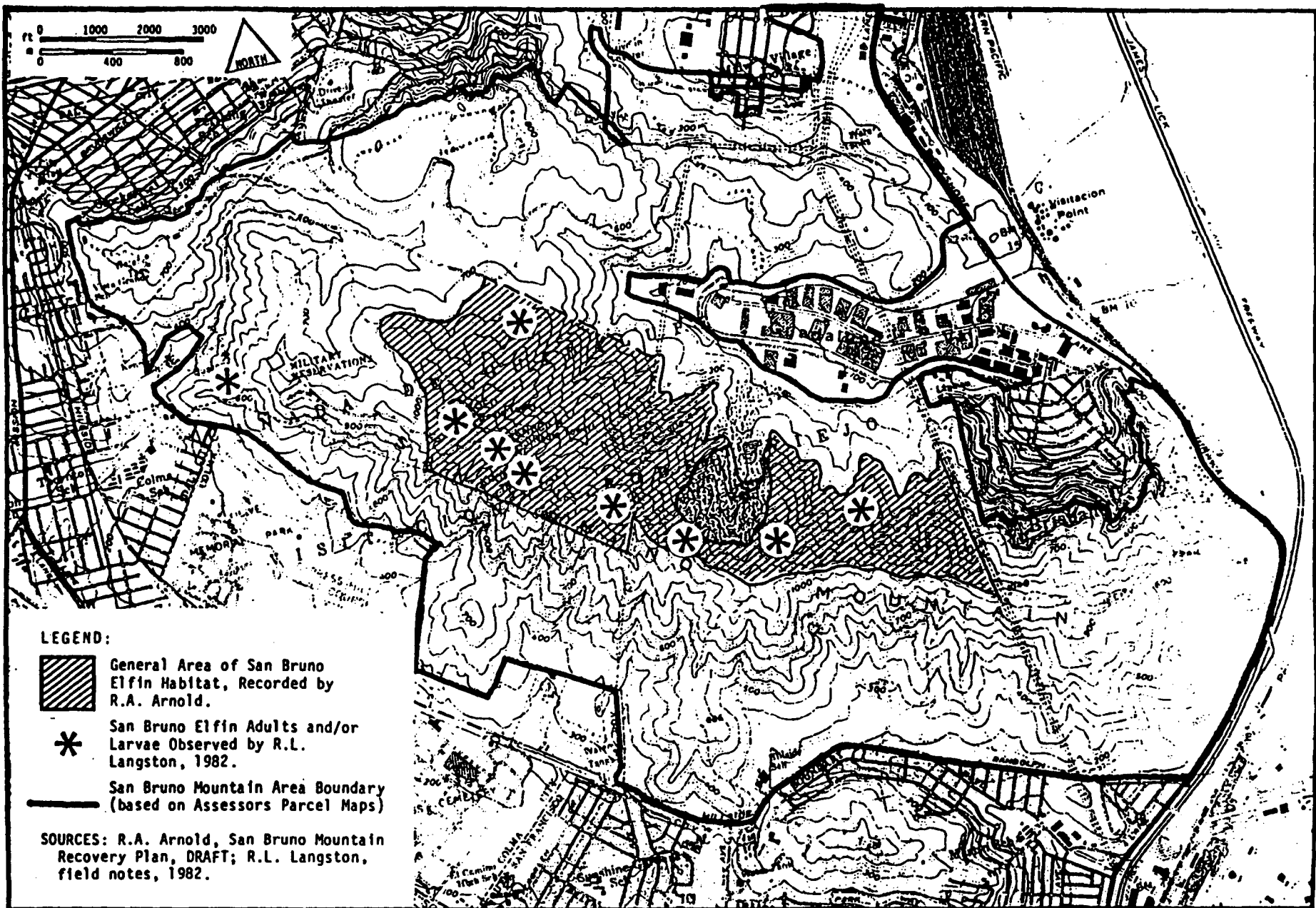
 06. Hillside School
 07. Transmission Lines
 08. Juncus Ravine
 09. San Francisco Water Department
 10. California Department of Forestry

3. Radio Ridge
 01. Antenna Sites

 03. Guadalupe Canyon Parkway
 04. Transmission Lines

4. Saddle
 01. Reservoir Hill Project
 02. Brisbane School Site
 03. "47 Units"

 05. Guadalupe Canyon Parkway
 06. Water Tanks on Reservoir Hill



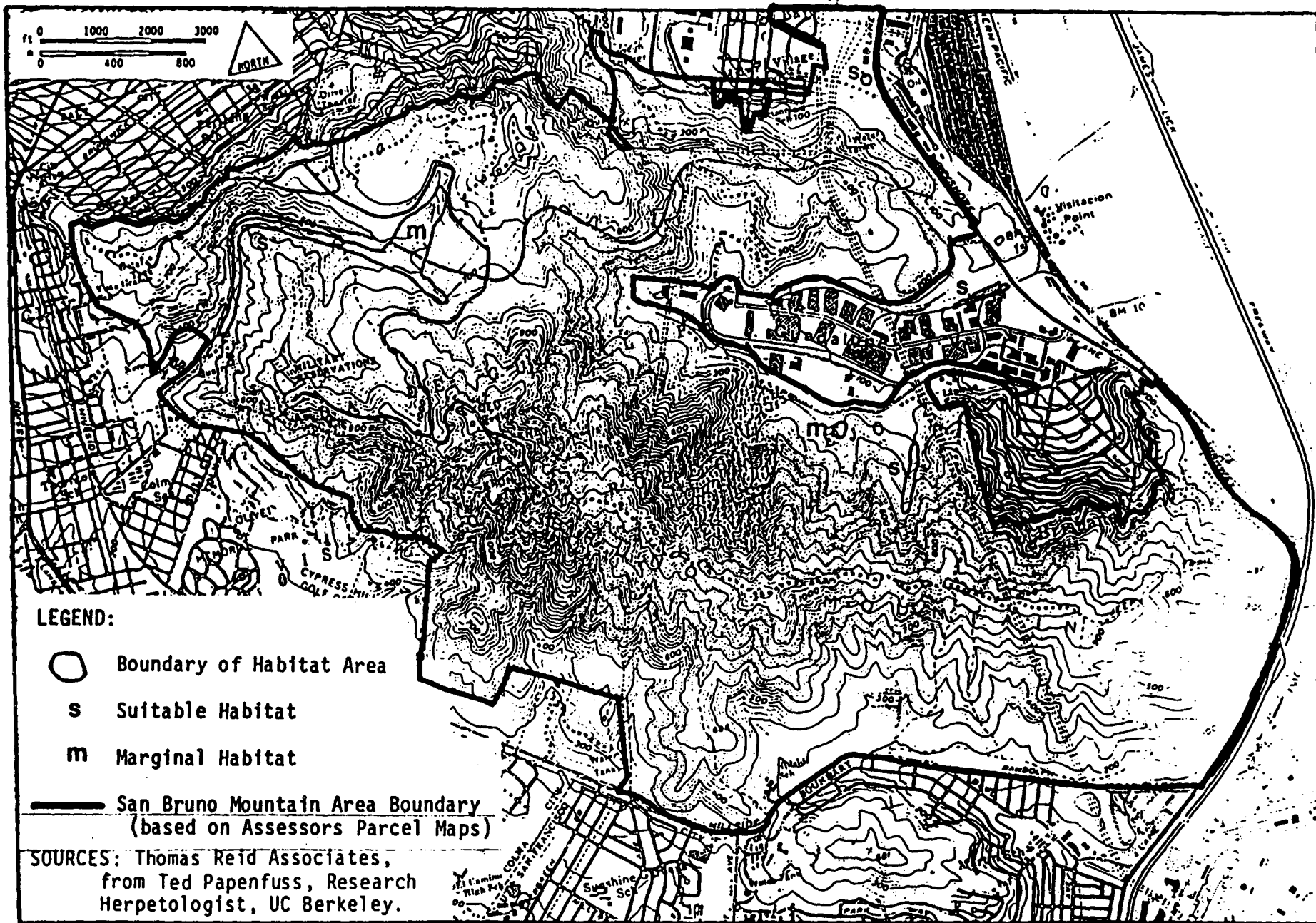


EXHIBIT "K"
POTENTIAL HABITAT OF THE SAN FRANCISCO GARTER SNAKE

EXHIBIT "L"

Unplanned Parcels

Administrative Parcel Number

| | |
|-------------------------------------|------|
| Parcel X | 1-04 |
| Parcel Y | 1-05 |
| San Francisco Water Department | 1-13 |
| Parcel W | 1-14 |
| Water Tank in Guadalupe Valley West | 1-15 |
| Parcel V | 1-16 |
| Quarry | 2-01 |
| Owl and Buckeye Canyon | 2-02 |
| Brisbane Acres | 2-03 |
| Hillside School | 2-06 |
| San Francisco Water Department | 2-09 |
| Brisbane School Site | 4-02 |
| Water Tanks on Reservoir Hill | 4-06 |

Planned Parcels

| | |
|-----------------------------------|------|
| Rio Verde Estates | 1-01 |
| Carter-Martin Road Extension | 1-02 |
| Rio Verde Heights | 1-03 |
| Parcel Z | 1-06 |
| Northeast Ridge Project | 1-07 |
| Guadalupe Valley West | 1-08 |
| State and County Park | 1-09 |
| Guadalupe Canyon Parkway | 1-10 |
| Transmission Lines | 1-11 |
| PG&E Fee | 1-12 |
| South Slope Project | 2-04 |
| County Park | 2-05 |
| Transmission Lines | 2-07 |
| Juncus Ravine | 2-08 |
| California Department of Forestry | 2-10 |
| Antenna Sites | 3-01 |
| County Park | 3-02 |
| Guadalupe Canyon Parkway | 3-03 |
| Transmission Lines | 3-04 |
| Reservoir Hill Project | 4-01 |
| "47 Units" | 4-03 |
| State Park | 4-04 |
| Guadalupe Canyon Parkway | 4-05 |

EXHIBIT "M"

(Sample Development Agreement Paragraph)

This agreement is subject to the provisions of, and hereby incorporates by reference, the Agreement with respect to the San Bruno Mountain Habitat Area Conservation Plan (recorded in the Official Records of San Mateo County as document number _____) and the Section 10(a) permit issued by the United States Fish and Wildlife Service as permit number _____ on _____, 1982. The parties to this agreement hereby agree to comply with and be bound by the provisions of the Agreement and Section 10(a) permit herein described.

EXHIBIT "N"

GRANT OF EASEMENT

This Grant of Easement is made this _____ day of _____, 1982, between the County of San Mateo, (hereinafter "Grantor"), and the United States Fish and Wildlife Service and the California Department of Fish and Game and the California Department of Parks (hereinafter "Grantees").

In consideration of the substantial public benefit to be derived from the achievement of the objectives of the San Bruno Mountain Area Habitat Conservation Plan -- including (i) the indefinite perpetuation of the Mission Blue butterfly; (ii) enhancement of the survival of the other species of concern; and (iii) conservation of a diversity of wildlife habitats within the San Bruno Mountain area -- the County of San Mateo, hereby grants to the United States Fish and Wildlife Service, a part of the Department of the Interior and to the California Department of Fish and Game and the California Department of Parks, an easement in gross and in perpetuity for access to all conserved habitat located within the San Bruno Mountain area and, at the time of this grant, owned or subsequently acquired by the County of San Mateo; such access to be used exclusively for inspection of the property in accordance with the San Bruno Mountain Area Habitat Conservation Plan and the Agreement with Respect to the San Bruno Mountain Area Habitat Conservation Plan (hereinafter "Agreement") and for enforcement and monitoring of compliance with the Habitat Conservation Plan and Agreement.

This Grant of Easement subjects the property to the following terms, conditions and restrictions:

1. Use of Property. The use of the property by Grantees shall be limited to inspection of the property in accordance with the San Bruno Mountain Area Habitat Conservation Plan (HCP) and Agreement and to monitoring and enforcing compliance with the HCP and Agreement. Grantor retains the right to use the property in any way not inconsistent with the HCP and Agreement. The terms of this grant are not intended to extend the authority of the United States Fish and Wildlife Service beyond that defined in the HCP and Agreement, nor are they intended to enlarge or expand the obligations imposed on the County of San Mateo by the HCP and Agreement.

2. Benefit and Burden. This easement shall run with and burden the property, and all obligations, terms, conditions and restrictions running with the land in perpetuity and shall be an effective limitation on the use of the property from the date of recordation of this document and shall bind the Grantor and all successors and assigns. This easement shall benefit the United States Fish and Wildlife Service and the California Department of Fish and Game and the California Department of Parks.

3. Construction of Validity. If any provision of this grant is held to be invalid or for any reason becomes unenforceable, no other provisions shall be thereby affected or impaired.

4. Enforcement. Either Grantor or Grantees may bring an action in law or equity to enforce this grant.

5. Liability and Indemnification. This conveyance is made and accepted upon the express condition that the Grantor, its agencies, departments, officers, agents and employees are to be free from all liability and claim for damage by reason of any injury to any person or persons, including Grantees, its officers, agents and employees or property of any kind whatsoever and to whomsoever belonging, including Grantees, from any cause or causes whatsoever, while in, or upon or in any way connected with the property, Grantees hereby covenanting and agreeing to indemnify and hold harmless the Grantor, its agencies, departments, officers, agents and employees from all liability, loss, cost and obligations on account of or arising out of such injuries or losses however occurring.

6. Successors and Assigns. The terms, covenants, conditions, exceptions, obligations and reservations contained in this grant shall be binding upon the successors and assigns of the Grantor, whether voluntarily or involuntarily. It is understood and agreed that Grantees have no right to assign or otherwise transfer the rights granted by way of this easement, and any attempt to make such assignment or transfer will be deemed a breach of this grant.

7. Location. The conserved habitat which is the servient tenement is described as follows: _____

8. Habitat Conservation Plan. The San Bruno Mountain Area Habitat Conservation Plan is recorded in the Official Records of San Mateo County as document number _____.

EXHIBIT "O"
GRANT OF EASEMENT

This Grant of Easement is made this _____ day of _____, 1982, between the California Department of Parks, (hereinafter "Grantor"), and the United States Fish and Wildlife Service and the County of San Mateo (hereinafter "Grantees").

In consideration of the substantial public benefit to be derived from the achievement of the objectives of the San Bruno Mountain Area Habitat Conservation Plan -- including (i) the indefinite perpetuation of the Mission Blue butterfly; (ii) enhancement of the survival of the other species of concern; and (iii) conservation of a diversity of wildlife habitats within the San Bruno Mountain area -- the California Department of Parks, hereby grants to the United States Fish and Wildlife Service, a part of the Department of the Interior and to the County of San Mateo and the California Department of Fish and Game, an easement in gross and in perpetuity for access to all conserved habitat located within the San Bruno Mountain area and, at the time of this grant, owned or subsequently acquired by the California Department of Parks; such access to be used exclusively for inspection of the property in accordance with the San Bruno Mountain Area Habitat Conservation Plan and the Agreement with Respect to the San Bruno Mountain Area Habitat Conservation Plan (hereinafter "Agreement") and for enforcement and monitoring of compliance with the Habitat Conservation Plan and Agreement.

This Grant of Easement subjects the property to the following terms, conditions and restrictions:

1. Use of Property. The use of the property by Grantees shall be limited to inspection of the property in accordance with the San Bruno Mountain Area Habitat Conservation Plan (HCP) and Agreement and to monitoring and enforcing compliance with the HCP and Agreement. Grantor retains the right to use the property in any way not inconsistent with the HCP and Agreement. The terms of this grant are not intended to extend the authority of the United States Fish and Wildlife Service beyond that defined in the HCP and Agreement, nor are they intended to enlarge or expand the obligations imposed on the California Department of Parks by the HCP and Agreement.

2. Benefit and Burden. This easement shall run with and burden the property, and all obligations, terms, conditions and restrictions running with the land in perpetuity and shall be an effective limitation on the use of the property from the date of recordation of this document and shall bind the Grantor and all successors and assigns. This easement shall benefit the United States Fish and Wildlife Service, the California Department of Fish and Game and the County of San Mateo.

3. Construction of Validity. If any provision of this grant is held to be invalid or for any reason becomes unenforceable, no other provisions shall be thereby affected or impaired.

4. Enforcement. Either Grantor or Grantees may bring an action in law or equity to enforce this grant.

5. Liability and Indemnification. This conveyance is made and accepted upon the express condition that the Grantor, its agencies, departments, officers, agents and employees are to be free from all liability and claim for damage by reason of any injury to any person or persons, including Grantees, its officers, agents and employees or property of any kind whatsoever and to whomsoever belonging, including Grantees, from any cause or causes whatsoever, while in, or upon or in any way connected with the property, Grantees hereby covenanting and agreeing to indemnify and hold harmless the Grantor, its agencies, departments, officers, agents and employees from all liability, loss, cost and obligations on account of or arising out of such injuries or losses however occurring.

6. Successors and Assigns. The terms, covenants, conditions, exceptions, obligations and reservations contained in this grant shall be binding upon the successors and assigns of the Grantor, whether voluntarily or involuntarily. It is understood and agreed that Grantees have no right to assign or otherwise transfer the rights granted by way of this easement, and any attempt to make such assignment or transfer will be deemed a breach of this grant.

7. Location. The conserved habitat which is the servient tenement is described as follows: _____

8. Habitat Conservation Plan. The San Bruno Mountain Area Habitat Conservation Plan is recorded in the Official Records of San Mateo County as document number _____.

Executed on this _____ day of _____, 19____, at
_____, California.

GRANTOR:

COUNTY OF SAN MATEO

By: *Edward B. ...*

GRANTEES:

U.S. FISH AND WILDLIFE SERVICE

By: _____

CALIFORNIA DEPARTMENT OF
FISH AND GAME

By: *EC ...*

CALIFORNIA DEPARTMENT OF PARKS

By: *Rita ...*

EXHIBIT "P"

UNITED STATES FISH AND WILDLIFE SERVICE FORM AGREEMENT
REGARDING PERMIT COMPLIANCE

Acceptance of this grading permit serves as evidence that you understand and agree to abide by the U.S. Fish and Wildlife Service 10(a) permit _____ and the Agreement as it concerns the Management Unit named above.

A report of activities conducted under authority of this permit must be submitted to the Plan Operator, Director of Environmental Management, County of San Mateo, County Government Center, Redwood City, CA 94063, by December 15th of the year during which this grading permit is in effect so that the Plan Operator can submit an Annual Report to the USF&WS by January 31st of the following year.

You must have a copy of this permit and the attached USF&WS permit in your possession while conducting the authorized activities.

cc: Chief, Federal Wildlife Permit Office
Attn: PRT 2-
Regional Director, Region 1
Attn: SE Coordinator
Plan Operator, County of San Mateo
California Department of Fish and Game

Executed on this _____ day of _____, 19____, at
_____, California.

GRANTOR:

CALIFORNIA DEPARTMENT OF PARKS

By: *Pete Szymanski*

GRANTEES:

U.S. FISH AND WILDLIFE SERVICE

By: _____

COUNTY OF SAN MATEO

By: *Edward J. Baccaro*

EXHIBIT "P"

UNITED STATES FISH AND WILDLIFE SERVICE FORM AGREEMENT
REGARDING PERMIT COMPLIANCE

Acceptance of this grading permit serves as evidence that you understand and agree to abide by the U.S. Fish and Wildlife Service 10(a) permit _____ and the Agreement as it concerns the Management Unit named above.

A report of activities conducted under authority of this permit must be submitted to the Plan Operator, Director of Environmental Management, County of San Mateo, County Government Center, Redwood City, CA 94063, by December 15th of the year during which this grading permit is in effect so that the Plan Operator can submit an Annual Report to the USF&WS by January 31st of the following year.

You must have a copy of this permit and the attached USF&WS permit in your possession while conducting the authorized activities.

cc: Chief, Federal Wildlife Permit Office
Attn: PRT 2-
Regional Director, Region 1
Attn: SE Coordinator
Plan Operator, County of San Mateo
California Department of Fish and Game

Executed on this _____ day of _____, 19__ , at

_____, California.

GRANTOR:

CALIFORNIA DEPARTMENT OF PARKS

By: *Paul Dyer*

GRANTEES:

U.S. FISH AND WILDLIFE SERVICE

By: _____

COUNTY OF SAN MATEO

By: *Edward J. Baccaro*