



## **6.0 MSHCP Implementation Structure**

### **6.2 AGRICULTURE**

#### **A. Definition of Agricultural Operations**

“Agricultural Operations” means the production of all plants (horticulture), fish farms, animals and related production activities, including the planting, cultivation and tillage of the soil, dairying, and apiculture; and the production, plowing, seeding, cultivation, growing, harvesting, pasturing and fallowing for the purpose of crop rotation of any agricultural commodity, including viticulture, apiculture, horticulture, and the breeding, feeding and raising of livestock, horses, fur-bearing animals, fish, or poultry, the operation, management, conservation, improvement or maintenance of a farm or ranch and its buildings, tools and equipment; the construction, operation and maintenance of ditches, canals, reservoirs, wells and/or waterways used for farming or ranching purposes and all uses conducted as a normal part of such Agricultural Operations; provided such actions are in compliance with all applicable laws and regulations. Execution of the Implementing Agreement shall not constitute such compliance.

The use of pesticides is regulated by the state and federal Environmental Protection Agencies. Take associated with pesticide use is addressed in FESA Section 7 consultations between USFWS and United States Environmental Protection Agency. The MSHCP shall not be interpreted as imposing greater regulatory requirements than those existing prior to issuance of the Permits. The MSHCP shall not impose new or additional restrictions on Agricultural Operations adjacent to the MSHCP Conservation Area, except as set forth in *Section 6.1.4* of this document. The definition of Agricultural Operations and therefore, Take Authorization, shall not extend to any activities on federal property.

#### **B. Take Authorization for Existing Agricultural Operations**

The Take Authorizations shall apply to those lands within MSHCP boundaries actively being used for ongoing Agricultural Operations for at least one of the last five years preceding the Effective Date of the Implementing Agreement ("Existing Agricultural Operations"). A time period of less than one year or growing season may be appropriate for certain crop types, at the RCA's sole discretion, if supported by adequate factual evidence. Existing Agricultural Operations shall be exempt from payment of the Local Development Mitigation Fee or other mitigation measures, except as specifically set forth in Section E below. The Take Authorization shall become effective as to Existing Agricultural Operations upon their inclusion into the County database as set forth below

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and issuance and receipt by the RCA of a Certificate of Inclusion or other appropriate written mechanism, which will occur solely for the purpose of documenting acknowledgment of Take Authorization and ensuring compliance with the Permits, the MSHCP and the Implementing Agreement. The County Agricultural Commissioner shall administer Certificates of Inclusion for Agricultural Operations under the direction of the RCA. Existing Agricultural Operations may change agricultural crop type and continue to receive Take Authorization, provided all requirements of this Section have been met. Change in Agricultural crop type will not count towards the 10,000 New Agricultural Lands Cap and does not trigger application of the MSHCP Criteria. Conversion from grazing or pasture land uses to a tilled crop shall not fall within the definition of Existing Agricultural Operations. Excluding the conversion of grazing or pasture land uses to a tilled crop from the definition of Existing Agricultural Operations shall not be interpreted as having any precedential effect.

### **C. Verification of Existing Agricultural Operations**

In order to verify the location of the Existing Agricultural Operations, the County shall establish a database identifying Existing Agricultural Operations on or before the Effective Date of the MSHCP ("Existing Agricultural Operations Database"). The Existing Agricultural Operations Database shall include parcel numbers, acreage, ownership/operation names and mailing addresses. The County shall submit the information contained in the Existing Agricultural Operations Database to the RCA and Wildlife Agencies on an annual basis and shall include a map or other representation identifying parcels containing Existing Agricultural Operations. A Certificate of Inclusion or other written mechanism shall be completed to obtain Take Authorization, which will occur solely for the purpose of documenting acknowledgment of Take Authorization and ensuring compliance with the Permits, the MSHCP Plan, and the Implementing Agreement.

### **D. Addition of Existing Agricultural Operations Database**

Upon written request by a property owner, operator or other appropriate party, property not included in the Existing Agricultural Operations Database shall be added based upon a determination by the RCA that such land falls within the definition of Existing Agricultural Operations. The written request must be 1) submitted to the RCA within sixty (60) months of the Effective Date of this Agreement; and 2) supported by adequate factual evidence which may include, but is not limited to, the following information or other information acceptable to the RCA: a) agricultural permits obtained from, and/or registrations filed with the County, State of California or other appropriate



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public agency; b) an approved Agricultural Grading/Clearing Exception Form as defined in County Ordinance No. 457; c) business, tax and property records; d) Agricultural Preserve and Williamson Act contract information; or e) aerial photographs and other relevant business records and information. Parcels of forty (40) acres or less may be added to the Existing Agricultural Operations Database and, thus, receive Take Authorization within forty-eight (48) months of the Effective Date of this Agreement provided good cause can be shown why a written request was not submitted within the sixty (60) month period set forth in this section. The burden is solely upon the property owner, operator or other appropriate party to provide adequate information to the RCA in a timely manner to allow inclusion into the Database. Once the RCA has determined that property should be added to the database, the information submitted to the RCA pursuant to this Section in support thereof shall be considered conclusive proof of Existing Agricultural Operations. The County and the RCA shall strictly maintain the confidentiality of documents and other information submitted in connection with verifying Existing Agricultural Operations to the maximum extent permitted under the California Public Records Act, or any other relevant statute or regulation. The RCA shall consider such requests to add land to the Existing Agricultural Operations Database and make a determination within thirty (30) days of receipt of the written request.

The following activities will not be subject to the terms and conditions of the MSHCP:

- A) Well drilling permits for Agricultural Operations and private consumptive uses.
- B) Any permits related to livestock keeping for Agricultural Operations.
- C) Any permits related to legal pesticide and fertilizer use.
- D) Any permits related to farm outbuildings for Agricultural Operations;
- E) Farm outbuildings are defined as structures limited to two walls, such as tractor sheds and fruit and vegetable stands.

### **E. Expansion of Existing Agricultural Operations (Permit Required)**

Expansion of Existing Agricultural Operations of similar use requiring a County or City discretionary permit or other discretionary authorization as defined in the County's agricultural zones set forth in Riverside County Ordinance No. 348 or relevant City land use regulation shall receive Take Authorization under the Permits, provided the requirements set forth in this Section are met. If the expansion requires a County or City discretionary permit or other discretionary authorization and occurs within the Criteria Area, then the Criteria shall be applied and appropriate mitigation imposed. Such projects shall not be subject to the Criteria and mitigation requirements if construction and operation disturbance and impacts are confined solely to the existing building



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footprint, *i.e.*, limited to those areas that have been recently and consistently disturbed and have little or no Habitat value. If the expansion requires a County or City permit or other discretionary authorization and occurs outside the Criteria Area, then the Criteria shall not be applied. However, the policies for the protection of Narrow Endemic Plant Species and Riparian/Riverine Areas and Vernal Pools, requirements as set forth in *Sections 6.1.2 and 6.1.3* of this document shall be applied and additional surveys required, as set forth in *Section 6.3.2* of this document, if appropriate. Such projects shall not be subject to these requirements if construction and operation disturbance and impacts are confined solely to the existing building footprint. Expansion of Existing Agricultural Operations shall be subject to the HANS process or other applicable Implementation Mechanism.

### **F. New Agricultural Lands**

As set forth in *Section 6.2(D)*, all Agricultural Operations on parcels included on the Agricultural Operations Database that do not require a County or City discretionary permit or other discretionary authorization shall receive Take Authorization as Existing Agricultural Operations without the need to comply with the Criteria or MSHCP mitigation requirements. The Take Authorization shall be applied to a limited number of new lands to be used for Agricultural Operations (including Expansion of Existing Agricultural Operations not requiring a discretionary permit or other discretionary authorization), or subsequently determined to be converted to Agricultural use, after the Effective Date of the Implementing Agreement consistent with the goals of the MSHCP ("New Agricultural Lands"). The Take Authorization may be applied to up to 10,000 acres of New Agricultural Lands within the Criteria Area during the term of the MSHCP ("New Agricultural Lands Cap"). The Take Authorization shall apply to New Agricultural Lands that fall within the New Agricultural Lands Cap, as allowed to increase pursuant to the Amendment Process set forth in *Section 6.10* of this document, upon: (1) submission and approval of an Agricultural Grading/Clearing Exception Form as set forth in Riverside County Ordinance No. 457; and (2) either (a) execution of a Williamson Act contract covering the New Agricultural Lands; or (b) County or City approval of any other mechanism providing equal or better assurance that the proposed New Agricultural Lands will be used for Agricultural Operations. In all instances, issuance of a Certificate of Inclusion or other written instrument must occur prior to Take Authorization. The County shall process all Agricultural Grading/Clearing Exception Forms pursuant to the requirements of Riverside County Ordinance No. 457.

In the event that Development is subsequently proposed for property that has been designated as New Agricultural Lands, such Development shall not be considered by the County or appropriate City for at least a five-year period following the inclusion of such property on the Existing Agricultural Operations Database. In limited cases of documented severe economic hardship,



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beyond the control of the property owner or operator as determined by the appropriate Permittee, the five-year period may be waived upon completion of a Minor Amendment to the MSHCP. This five-year requirement shall not be applicable to projects: 1) currently within an agricultural zone established by Ordinance No. 348, 2) whose building footprint will be wholly within property previously tilled as part of the Existing Agricultural Operations, 3) New Agricultural Activities including agricultural leases on properties for which a Development project has been approved, and 4) Agricultural leases on property that is not identified for Conservation in the context of the MSHCP Criteria.

Potential lessees could use information developed as part of the MSHCP to assist in determining whether property to be leased for agricultural uses would conflict with the MSHCP. It was determined that conflict would not exist if:

- 1) The property is on the agricultural database;
- 2) The property is outside the Criteria Area; or
- 3) The property is not identified as desirable for Conservation by the MSHCP Criteria.

The County Agricultural Commissioner working as appropriate with Local Permittees can assist Lessees in making these evaluations by using the initial project review process incorporated in HANS. Take Authorization may be applied to unlimited new lands for Agricultural Operations outside the Criteria Area.

New Agricultural Lands shall be exempted from the payment of any impact mitigation fee or other mitigation measures imposed by the MSHCP, except as set forth in Section 11.3.5 of the IA. The cap on New Agricultural Lands acreage is intended to accommodate expansion of Agricultural Operations while providing a mechanism for accounting for Take within the Criteria Area. It is not to be interpreted as restricting the expansion of agricultural land uses in the Plan Area. The New Agricultural Lands Cap will only apply until Reserve Assembly is complete, which is estimated to be approximately 25 years from Permit issuance.

### **G. Increase in New Agricultural Lands Cap**

The RCA shall monitor the acreage amount of New Agricultural Lands and the County shall add the parcel numbers, acreage and ownership information for the New Agricultural Lands to the Existing Agricultural Operations Database. An annual report containing this information shall be submitted to the Wildlife Agencies. By 2004, a map reflecting the location of New Agricultural Lands and their relationship to the Criteria Area shall be created and submitted to the Wildlife Agencies. This



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map shall be digitized and compatible with existing GIS systems. This map will be updated in 2005 and 2010. After 2010, the Parties shall agree when the preparation of future updated maps is appropriate. When the RCA determines that approximately 70 percent (70%) of the New Agricultural Lands Cap within the Criteria Area has been converted to New Agricultural Lands, the RCA shall seek approval of a Amendment from the Wildlife Agencies to increase the New Agricultural Lands Cap. The Wildlife Agencies shall use reasonable efforts to expeditiously consider and, if appropriate, approve said request. A Minor Amendment may be appropriate to increase the New Agricultural Lands Cap if it meets the requirements for a Minor Amendment pursuant to *Section 6.10.2* of this document and *Section 20.4* of the Implementing Agreement and if it can be demonstrated to the satisfaction of the Wildlife Agencies that such an increase does not: (1) preclude Reserve Assembly, (2) significantly increase the cost of MSHCP Conservation Area Management or Assembly, and (3) preclude achieving Covered Species Conservation and goals.

When the RCA determines that approximately 70% of the New Agricultural Lands Cap within the Criteria Area has been converted to New Agricultural Lands then the County Agricultural Commissioner shall provide written notice mailed to each owner of parcels five acres or larger zoned for agricultural use of record with the County Assessor's Office and to each of the landowners on the Master Index and on the Index of the Agricultural Land Conversions, and shall publish a full-page advertisement and a legal notice in the Press Enterprise and the Californian once per week for four consecutive weeks, that: (1) includes information that Take Authorizations for conversions of non-agricultural lands to agricultural lands are in jeopardy of being exceeded, (2) explains the potential legal consequences of taking a listed species without the necessary Take Authorization, and (3) describes the procedure that the RCA shall follow for applying for an amendment to the MSHCP to cover agricultural land conversions in excess of the New Agricultural Lands Cap and opportunities for affected landowners to participate in the process. Every 5 years, the RCA in conjunction with the County Agricultural Commissioner shall review the status of the New Agricultural Lands Cap acreage amount and the need to begin processing a Plan amendment to increase the Cap.