

## **2.7 Institutional Setting**

There are a number of federal, state, and local governmental agencies and regulations that affect the activities and future of the San Dieguito Watershed. In addition, there are several planning groups and non governmental organizations whose activities impact the present and future character of the watershed. This section will examine the regulatory and planning environment that affects the resources within the San Dieguito Watershed.

### **2.7.1 Land Use Planning**

The origins of land use planning can be traced back to acts by the U.S. Department of Commerce. The infrastructure for planning and zoning was created by two enabling acts of U.S. Department of Commerce in 1926 and 1928 (Meck 2002). For many states, the Standard State Zoning Enabling Act (SZA 1926) and Standard City Planning Act (SCPA 1928), more commonly known the Standard Acts, still supply the institutional structure, although some procedural and substantive components may have changed.

State law is the foundation for local planning in California. The California Government Code (Sections 65000 et seq.) contains many of the laws pertaining to the regulation of land uses by local governments including: the general plan requirement, specific plans, subdivisions, and zoning. The State is not normally involved in local planning, local governments have adopted their own land use regulations and policies modeled after the state laws. The state does not require that adjoining local agencies adopt the same regulation and policies; it does however require public hearings for policies and regulations creation and adoption. Government agencies in San Diego do communicate with other, and have created SANDAG. SANDAG is an agency whose policy makers are mayors, county supervisors, and city council members from each of the county's' 19 local governments that write and adopt land use policy and regulations.

The plans set forth by SANDAG ultimately incorporate the general plans of the various jurisdictions into one plan. However, there are several other local plans and planning groups that have a direct impact on the current and proposed land uses in the San Dieguito watershed, including:

**San Pasqual Valley Plan:** Approved by the San Diego City Council and City Planning Commission in 1995, the San Pasqual Valley Plan sets forth goals, policies, and specific recommendations regarding preservation of resources and environmentally sensitive use and development within the valley (City of San Diego 1995). The San Pasqual/Hodges Reservoir Community Planning Group is authorized by the City of San Diego to be the lead planning group for the San Pasqual area. It is composed primarily of residents and business owners within the San Pasqual Valley.

**San Pasqual Vision Plan:** San Diego City Councilman Brian Maienschein has proposed a plan entitled "The San Pasqual Vision Plan", which proposes to preserve 11,000 acres of city-owned

land in the San Pasqual Valley by prohibiting commercial development (San Diego Union Tribune, 2004). There are ten specific goals and tasks to be achieved under the plan, including:

- Prohibition of any further commercialization of the valley to prevent the loss of open space and to establish the intention that the valley may not be developed
- Tailoring of zoning to ensure that the valley’s existing rural state is preserved
- Protection of the quality and capacity of the San Pasqual/Hodges Reservoir groundwater basin
- Protection, enhancement, and restoration of sensitive habitats
- Promotion of passive recreation and interpretive uses within the valley
- Preservation and promotion of agricultural uses
- Building consensus between collaborative partnerships among adjacent jurisdictions and other entities on how best to preserve qualities and resources within the valley
- Establishment of an interpretive center in the valley
- Informing other planning groups within the area of the pertinent issues within the valley
- Ensuring the long term protection of the valley’s unique agricultural, biological, and water resources.

**Habitat and Open Space Plans:** There are several planning programs in the region that relate to habitat and open space conservation planning, including the MSCP, the MHCP, the MSCPHMP, and the County of San Diego MHCP and Open Space Program. These plans are discussed in further detail in Section 2.7.3.

**Other Jurisdictional Plans:** A complete discussion of other jurisdictional plans affecting the watershed can be found in Section 2.3.3.

## **2.7.2 Water Resources**

### **2.7.2.1 Federal Authority and Regulations**

**Clean Water Act (CWA):** Growing public interest and concern for controlling water pollution led to enactment of the Federal Water Pollution Control Act Amendments of 1972, commonly known as the Clean Water Act (CWA). The CWA is the main law that governs pollution control in the nation’s surface waters. The main objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation’s waters. Additionally, the CWA established two main goals, including (1) zero discharge of pollutants by 1985, and (2) where possible, ensure that water quality is “fishable” and “swimmable” by mid-1983. Although these goals have yet to be met, progress towards these goals continues.

Today, the CWA is broken into two major parts. The first is related to Title II and Title IV, which authorize the federal government to provide financial assistance for the construction of municipal sewage treatment plants. The second portion relates to the regulatory requirements applying to industrial and municipal dischargers. Of the many elements contained in the CWA, the most relevant to watershed planning are as follows:

Section 303(d) – Impaired Waters List and Total Maximum Daily Loads: Section 303(d) of the CWA requires states to identify waters that do not meet water quality standards after technology based limits are put into place. The waters are identified as Water Quality Limited Segments (WQLSs) and are ranked by priority for States to then develop Total Maximum Daily Loads (TMDLs). These TMDLs must include all sources of pollutants that caused the WQLSs to be listed including point source and non-point source pollution. The TMDL is the amount of a pollutant that can be discharged into a water body and still maintain water quality standards. In California, the responsibility for Section 303(d) implementation falls on the SWRCB, which requires implementation when the TMDL has been incorporated into the Basin Plan. TMDLs are typically developed by the RWQCB as Basin Plan amendments. The San Dieguito Watershed is located in SWRCB Region 9 and has seven WQLSs.

Section 319 – Non-point Source Management Program: Section 319 of the CWA was added with the amendments of 1987 to address non-point sources of pollution to the U.S. waterways. Section 319(a) required states to develop an assessment report of the non-point source pollution problems and non-point source causes within the state. Section 319(b) required States to adopt management programs to control non-point source pollution. Section 319(h) offered funding by way of grants to states to assist in the implementation and development of the management programs (U.S. EPA 2003). In California, the SWRCB created a Non-point Source Management Plan in 1988 which outlined a general approach to non-point source pollutants through education and outreach, financial and technical assistance, and regulatory authority. This plan has been updated and is continuously revised on a five-year cycle to reflect the most pertinent problems.

Section 401 – State Water Quality Certification Program: Section 401 of the CWA requires that National Pollutant Discharge Elimination System (NPDES) permits be certified by the state before issuance. It ensures that the permit holder will be in compliance with state effluent limits and “any other appropriate requirement of State law.” It also requires the state to list in the certification the conditions that must be included in the permit to implement the certification.

Section 402(p) – National Pollutant Discharge Elimination System: Section 402(p) of the CWA requires all facilities which discharge pollutants from any point source into waters of the United States to obtain a NPDES permit. This includes stormwater runoff and treated wastewater from municipalities, industries, and commercial facilities. Individual permits are specifically tailored to an individual facility, such as publicly owned treatment works. General permits are issued within specific geographical areas for particular categories of facilities, such as stormwater point sources (U.S. EPA Water Permitting 101). California has been authorized by the U.S. EPA to administer the NPDES permit program. The SWRCB regulates industrial facilities and construction sites through a general stormwater permit. The SDRWQCB regulates cities and counties.

Section 404 – Permits for Dredged or Fill Material Section 404 of the CWA regulates the discharge of dredged or fill material into waters of the U.S., including wetlands. It was designed to avoid or minimize potential impacts to wetlands and provide compensation for any remaining or unavoidable impacts by restoring or creating wetlands. The U.S. EPA and the U.S. Army Corps of Engineers (USACE) jointly administer the program, with the Corps administering the

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day-to-day programs, including permitting. Individual permits are required for activities that will cause a significant impact. General permits are issued on a regional or state basis for particular categories of activities as a means to expedite the permitting process.

CWA objectives are achieved through the concept that all discharges to the nation's surface waters are considered unlawful, unless they are authorized by a permit. The primary enforcement method by which the CWA enforces limitations on pollutant discharges is through the NPDES, which requires any dischargers of pollutants into the nation's waters to apply for and obtain a permit. The NPDES permit requires that each discharger meet technology based effluent limits. While some sections of the CWA are administered at the federal level, many of the day to day activities relating to implementation and enforcement are delegated to the states.

### U.S. Army Corps of Engineers

The USACE has been involved in regulating activities by others in navigable waterways through the granting of permits since passage of the Rivers & Harbors Act of 1899. Passage of the CWA in 1972 greatly broadened this role by giving the USACE authority over dredging and filling in the "waters of the United States," including many wetlands. A major aspect of the Regulatory program is determining which areas qualify for protection as wetlands. In reaching these decisions, the USACE uses its 1987 Wetland Delineation Manual. In making decisions on whether to grant, deny or set conditions on permits, District commanders are required to consider "all factors in the public interest," including economic development and environmental protection.

**Coastal Zone Management Act of 1972 (CZMA):** Through the initial federal and state water quality control regulations, progress was made to reduce the pollutant load from traditional point sources, such as sewage treatment plants and industrial facilities. The CWA amendments in 1987 addressed the growing need to develop and implement programs to control non-point source pollution, such as urban storm water discharges and sewer overflow. To address these concerns and other issues, the Coastal Zone Act Reauthorization Amendments of 1990 (CZARA) were enacted as an amendment to the original CZMA of 1972. The original statute developed a program for states and territories to voluntarily develop programs to protect and manage coastal resources. While water quality protection is integral to managing coastal resources, it was not originally cited in the statute. The CZARA specifically charges State coastal programs, as well as State non-point source programs, with addressing non-point source pollution affecting coastal water quality (U.S. EPA 1993).

**National Environmental Policy Act of 1969 (NEPA):** NEPA was created as a way for Federal agencies to take into account the effects of proposed legislation and other major actions on the human environment. NEPA created the Council on Environmental Quality (CEQ) to coordinate environmental efforts and interagency planning. In addition, all federal agencies are required to prepare environmental impact statements (EISs) assessing the impact of and alternatives to the major federal actions and allow the public to provide input on what issues should be addressed and comment on the findings ([www.epa.gov/compliance/basics/nepa.html](http://www.epa.gov/compliance/basics/nepa.html)).

**Rivers and Harbors Act of 1899:** The Rivers and Harbors Act of 1899 (Section 10) requires that a permit be obtained from the USACE for structures and/or work in or on the affected

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navigable waters of the United States, which could constitute an obstruction or alteration of the navigable waters. (33 U.S. Code [U.S.C.] 403). The USACE is the administering agency for compliance with Section 10 of the Rivers and Harbors Act. The USACE processes Section 10 permits simultaneously with Section 404 permits because they have similar requirements.

### 2.7.2.2 State and Local Authority and Regulations

Porter-Cologne Act: In California, the municipal permit program is overseen by the SWQCB and RWQCB in accordance with the November 1990 Federal Regulations (40 CFR Part 122) and the Porter-Cologne Act. These regulations require all MS4s that serve populations over 100,000 to obtain coverage under an NPDES discharge permit. In the San Diego area, the SDRWQCB oversees the NPDES permit program.

The Porter-Cologne Act of 1969 gave the ultimate authority over State water rights and water quality policy to the SWRCB, and established nine RWQCBs to manage regional water quality issues on a day-to-day basis. The Porter-Cologne Act contained a requirement for the establishment of water quality control plans for each region, also known as Basin Plans. Basin Plans establish (1) the beneficial uses of water designated for each water body to be protected; (2) water quality standards, known as water quality objectives for both surface water and groundwater; and (3) actions necessary to maintain these standards in state waters (CERES 2002). The San Dieguito Watershed lies within the jurisdiction of the SDRWQCB, or Region 9. The SDRWQCB approved and updated their basin plan on September 8, 1994. The following list includes the 23 designated beneficial uses of water:

**Porter-Cologne Act**  
*“The people of the state have a primary interest in the conservation, control, and utilization of the water resources of the state, and that the quality of all the waters of the state shall be protected for use and enjoyment by the people of the state. The Legislature further finds and declares that activities and factors which may affect the quality of the waters of the state shall be regulated to attain the highest water quality which is reasonable, considering all demands being made and to be made on those waters.”*

- Municipal and Domestic Supply (MUN) – Uses of water for community, military, or individual water supply systems including, but not limited to, drinking water.
- Agricultural supply (AGR) – Uses of water for farming, horticulture or ranching including, but not limited to, irrigation, stock watering, or support of vegetation for range grazing.
- Industrial Process Supply (PROC) – Uses of water for industrial activities that depend primarily on water quality.
- Industrial Service Supply (IND) – Uses of water for industrial activities that do not depend primarily on water quality, including, but not limited to, mining, cooling water supply, hydraulic conveyance, gravel washing, fire protection, or oil well repressurization.

- Groundwater Recharge (GWR) – Uses of water for natural or artificial recharge of groundwater for purposes of future extraction, maintenance of water quality, or halting salt water intrusion into fresh water aquifers.
- Fresh Water Replenishment (FRSH) – Uses of water for natural or artificial maintenance of surface water quantity or quality (e.g., salinity).
- Navigation (NAV) – Uses of water for shipping, travel, or other transportation by private, military, or commercial vessels.
- Hydropower Generation (POW) – Uses of water for hydropower generation.
- Water Contact Recreation (REC 1) – Uses of water for recreational activities involving body contact with water, where ingestion of water is reasonably possible. These uses include, but not limited to, swimming, wading, water-skiing, skin and scuba diving, surfing, white water activities, fishing, or use of natural hot springs.
- Non Contact Water Recreation (REC 2) – Uses of water for recreational activities involving proximity to water, but not normally involving body contact with water, where ingestion of water is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tide pool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.
- Ocean Commercial and Sport Fishing (COMM) – Uses of water for commercial or recreational collection of fish and shellfish, or other organisms including, but not limited to, uses involving organisms intended for human consumption or bait purposes.
- Aquaculture (AQUA) – Uses of water for aquaculture or mariculture operations including, but not limited to, propagation, cultivation, maintenance, or harvesting of aquatic plants and animals for human consumption or bait purposes.
- Warm Fresh Water Habitat (WARM) – Uses of water that support warm water ecosystems including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish, or wildlife, including invertebrates.
- Cold Fresh Water Habitat (COLD) – Uses of water that support cold water ecosystems including, but not limited to, preservation or enhancement of aquatic habitats, vegetation, fish, or wildlife, including invertebrates.
- Saline Water Habitat (SAL) – Uses of water that support inland saline water ecosystems including, but not limited to, preservation or enhancement of aquatic saline habitats, vegetation, fish, or wildlife, including invertebrates.

- Estuarine Habitat (EST) – Uses of water that support estuarine ecosystems including, but not limited to, preservation or enhancement of estuarine habitats, vegetation, fish, shellfish, or wildlife (e.g., estuarine mammals, waterfowl, shorebirds).
- Marine Habitat (MAR) – Uses of water that support marine ecosystems including, but not limited to, preservation or enhancement of marine habitats, vegetation such as kelp, fish, shellfish, or wildlife (e.g., marine mammals, shorebirds).
- Wildlife Habitat (WILD) – Uses of water that support terrestrial ecosystems including, but not limited to, preservation or enhancement of terrestrial habitats, vegetation, wildlife (e.g., mammals, birds, reptiles, amphibians, invertebrates), or wildlife water and food sources.
- Preservation of Biological Habitats of Special Significance (BIOL) – Uses of water that support designated areas or habitats, such as established refuges, parks, sanctuaries, ecological reserves, or Areas of Special Biological significance (ASBS), where the preservation or enhancement of natural resources requires special protection.
- Rare, Threatened, or Endangered Species (RARE) – Uses of water that support habitats necessary, at least in part, for the survival and successful maintenance of plant or animal species established under state or federal law as rare, threatened or endangered.
- Migration of Aquatic Organisms (MIGR) – Uses of water that support habitats necessary for migration or other temporary activities by aquatic organisms, such as anadromous fish.
- Spawning, Reproduction, and/or Early Development (SPWN) – Uses of water that support high quality aquatic habitats suitable for reproduction and early development of fish.
- Shellfish Harvesting (SHELL) – Uses of water that support habitats suitable for the collection of filter-feeding shellfish (e.g., clams, oysters, abalone, and mussels) for human consumption, commercial or sport purposes.
- Flood Peak Attenuation/Flood Water Storage (FLD) – Beneficial uses of riparian wetlands in flood plain areas and other wetlands that receive natural surface drainage and buffer its passage to receiving waters.
- Water Quality Enhancement (WQE) – Beneficial uses of waters that support natural enhancement or improvement of water quality in or downstream of a water body including, but not limited to, erosion control, filtration and purification of naturally occurring water pollutants, streambank stabilization, maintenance of channel integrity, and siltation control.

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- Limited Warm Freshwater Habitat (LWRM) – Waters support warm water ecosystems which are severely limited in diversity and abundance as the result of concrete-lined watercourses and low, shallow dry weather flows which result in extreme temperature, pH, and/or dissolved oxygen conditions. Naturally reproducing finfish populations are not expected to occur in LWRM waters.

**California Coastal Act (CCA):** With the authority from the original CZMA, California established the CCA of 1976. CCA established the CCC to provide long term protection to California’s coastline. The policies set by the CCA are used to make decisions on permit applications, reviews for federal consistency and local coastal programs (LCPs). LCPs are the basic planning tools used to manage local coastal resources. They include a land use plan and an implementation plan. In the San Dieguito Watershed, the coast is covered under the County of San Diego’s Land Use Plan (LUP). In addition, the City of Del Mar has a certified LUP and implementation plan. Solana Beach does not have an LCP in place.

**California Environmental Quality Act (CEQA):** CEQA was enacted in 1970 and modeled after NEPA, although California’s environmental laws are rigorous and in most cases extend beyond the federal statutes. CEQA requires state and local agencies to consider the potential environmental effects of projects, typically characterized by an environmental impact report (EIR). CEQA’s objectives are accomplished by disclosing environmental impacts, identifying and preventing environmental damage, disclosing agency decision making, enhancing public participation and fostering intergovernmental coordination. This is a complex law with a great deal of subtlety and local variation.

**Department of Health Services (DHS):** The Division of Drinking Water and Environmental Management promotes and maintains a physical, chemical, and biological environment that contributes positively to health, prevents illness, and assures protection of the public.

The duties of the Environmental Management Branch include regulation of coastal waters for shellfish production and harvesting, and for recreational health. The Drinking Water Program (DWP) regulates public water systems; oversees water recycling projects; permits water treatment devices; certifies drinking water treatment and distribution operators; supports and promotes water system security; provides support for small water systems; oversees the Drinking Water Treatment and Research Fund for MTBE and other oxygenates; provides subsidized funding for water system improvements under the State Revolving Fund (SRF) and Proposition 50 (DHS 2005).

**Watershed Urban Runoff Management Plan (WURMP):** As part of the NPDES Municipal Storm Water Permit for San Diego Copermittees, a WURMP has been created by the City of San Diego in collaboration with the cities of Del Mar, Escondido, Poway, Solana Beach and the County of San Diego. The San Dieguito Watershed URMP identifies and prioritizes water quality related issues within the watershed that can be potentially attributed to discharges from the municipal storm drain systems and may be addressed through a cross-jurisdictional approach (City of San Diego 2003). Each year, the assessment, priority setting, monitoring, and implementation change with the addition of new information. Program and monitoring reports are required to be submitted to the Regional Board annually detailing activities within all

jurisdictions, water quality improvements or degradation, along with an assessment of the program and any proposed changes. The San Dieguito WURMP can be found at [http://www.projectcleanwater.org/html/wurmp\\_san\\_dieguito.html](http://www.projectcleanwater.org/html/wurmp_san_dieguito.html).

### **2.7.3 Biological Resources**

Management actions with the potential to disturb existing habitat (e.g., projects involving enhancement or restoration) would be required to comply with the following laws and regulations.

#### **2.7.3.1 Federal Authority and Regulations**

**U.S. Fish and Wildlife Service:** The U.S. Fish & Wildlife Service issues permits under various wildlife laws and treaties at different offices at the national, regional, and/or wildlife port levels. In particular, regional offices administer native endangered and threatened species permits under the ESA. Permits are issued to qualified applicants for the following types of activities: enhancement of survival associated with Safe Harbor Agreements and Candidate Conservation Agreements with Assurances, incidental take associated with Habitat Conservation Plans, recovery, and interstate commerce.

**Fish and Wildlife Coordination Act of 1958:** The Fish and Wildlife Coordination Act requires that whenever a body of water is proposed to be controlled or modified, the lead agency must consult the state and federal agencies responsible for fish and wildlife management (CDFG, National Marine Fisheries Service [NMFS], and U.S. Fish and Wildlife Service [USFWS]). This act allows for recommendations addressing adverse impacts associated with the proposed project, and for mitigating or compensating for impacts of fish and wildlife.

**Endangered Species Act of 1973:** The ESA protects threatened and endangered species by prohibiting actions that would jeopardize the continued existence of such species or adversely affect the critical habitat of these species. The act requires agencies proposing an action that may affect listed species to consult the USFWS and NMFS, which will evaluate the potential impacts of all aspects of the project on any threatened or endangered species, and provide alternatives or measures to minimize effects caused by the proposed project.

**Migratory Bird Treaty Act:** The Migratory Bird Treaty Act protects certain migratory birds including all seabirds by limiting hunting, capturing, selling, purchasing, transporting, importing, exporting, killing, or possession of the birds, or their nests or eggs.

**Magnuson-Stevens Fishery Management and Conservation Act, as Amended (16 U.S.C. 1801 et Seq):** The 1996 amendments to the Magnuson-Stevens Fishery Management and Conservation Act set forth a number of new mandates for the NMFS, regional fishery management councils, and other federal agencies to identify and protect important marine and anadromous fish habitat. The Councils, with assistance from NMFS, are required to delineate “essential fish habitat” (EFH) for all managed species. The Act defines EFH as “... those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.” Federal action agencies which fund, permit, or carry out activities that may adversely impact EFH are

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required to consult with NMFS regarding the potential effects of their actions on EFH, and respond in writing to the fishery service's recommendations. For the Pacific region, EFH has been identified for a total of 89 species covered by three fishery management plans (FMPs) under the auspices of the Pacific Fishery Management Council. The waters of the Port of Los Angeles are EFH.

**2.7.3.2 State Authority and Regulations**

**California Department of Fish and Game (CDFG):** The mission of the CDFG is to manage California's diverse fish, wildlife, and plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public. CDFG maintains native fish, wildlife, plant species and natural communities for their intrinsic and ecological value and their benefits to people. This includes habitat protection and maintenance in a sufficient amount and quality to ensure the survival of all species and natural communities. The department is also responsible for the diversified use of fish and wildlife including recreational, commercial, scientific and educational uses.

The CDFG may play various roles under the California Environmental Quality Act (CEQA) process, and administer the California Endangered Species Act.

**California Endangered Species Act of 1984:** This act provides for the recognition and protection of rare, threatened, and endangered species of plants and animals.

**Natural Community Conservation Planning Act (NCCP Act):** NCCP was added to CESA in 1991. The primary purpose of the NCCP Act is to preserve species and their habitats, while allowing reasonable and appropriate development to occur on affected lands. It provides provisions for voluntary cooperation among DFG, landowners, and other interested parties to develop natural community conservation plans which provide for conservation of ecological integrity, function, and biodiversity along with adaptive management and planning agreements.

**California Fish and Game Code:** Nest or Eggs - Section 3503 protects California's birds by making it unlawful to take, possess, or needlessly destroy the nest or eggs or any bird.

Birds of Prey or Eggs – Section 3503.5 protects California's birds of prey and their eggs by making it unlawful to take, possess, or destroy any birds of prey or to take, possess, or destroy the nest or eggs of any such bird.

Migratory Birds – Section 3513 protects California's migratory birds by making it unlawful to take or possess any migratory non-game bird as designated in the Migratory Bird Treaty Act or any part of such migratory non-game bird.

Fully Protected Species – Sections 3511, 4700, 5050, and 5515 prohibits take of animals that are classified as Fully Protected in California.

Significant Natural Areas – Section 1930 et seq. designates certain areas such as refuges, natural sloughs, riparian areas and vernal pools as significant wildlife habitat.

Native Plant Protection Act of 1977 – Section 1900 et seq. designates state rare, threatened, and endangered plants.

Streambed Alteration Agreement – Section 1601 et seq. regulates activities that may divert, obstruct, or change the natural flow or the bed, channel, or bank of any river, stream, or lake designated by the Department in which there is at any time an existing fish or wildlife resource or from which these resources derive benefit. For any work within or on the banks of a lake or stream a Streambed Alteration Agreement must be obtained from the CDFG.

California Land Conservation Act (CLCA) – The CLCA of 1965, also known as the Williamson Act, preserves agricultural and open space lands through private tax incentives and voluntary use contracts. When a private landowner voluntarily restricts the use of their land to agricultural or open space use, that parcel is taxed at a rate consistent with its actual use as opposed to its potential market value (CDOC 2004).

### **2.7.3.3 Local**

**Multiple Species Conservation Program (MSCP):** The San Diego subregion MSCP involves habitat conservation planning and protection within San Diego County. The combination of the MSCP subregional plan and subarea plans serve as a multiple species Habitat Conservation Plan and Natural Communities Conservation Planning pursuant to federal and state endangered species laws. This subregional plan covers 85 species of plants and animals and 23 vegetation types. Subarea plans guide implementation of the MSCP within local jurisdictions. Several subarea plans cover portions of the San Dieguito Watershed, as follows:

- City of San Diego Subarea Plan (Approved) – The Hodges Reservoir/San Pasqual Valley core area includes Hodges Reservoir, Hodges East, and San Pasqual Valley lands. The Northern Area includes areas around San Dieguito Lagoon, Gonzales Canyon, Black Mountain Ranch, and La Zanja Canyon.
- County of San Diego Subarea Plan (Approved) – The South County Subarea includes open space preserves around Hodges Reservoir, including Rancho Cielo, Madura, Santa Fe Valley, 4-S Ranch, and western end of Lusardi Creek.
- County of San Diego North County Subarea Plan (In progress)- Includes County lands east of Poway and south of Sutherland Reservoir, and lands along the northern boundary of the watershed in the lower watershed.
- City of Poway Subarea Plan (Approved) – Includes lands south of the San Dieguito River and the eastern end of Hodges Reservoir.
- City of Del Mar Subarea Plan (In Progress) – Focuses on six areas, primary consideration is San Dieguito Lagoon.

Implementation of the MSCP requires coordination among local jurisdictions, resource agencies, and the private sector. The MSCP Plan establishes the framework, while each jurisdiction implements the MSCP through their own subarea plan and implementing agreements. Local jurisdictions may amend land use plans, development regulations, codes and guidelines, as needed, to assure that development projects are consistent with the subarea plan and that

conservation targets are reached (<http://www.sandiego.gov/mscp/plansum.shtml>). Some flexibility in plan implementation is provided in that adjustments to the MHPA and/or preserve boundaries can be made, without the need to amend the MSCP Plan or subarea plan, if the same or higher biological value of the preserve is achieved and the wildlife agencies concur. Jurisdictions ensure that habitat management occurs on contributed public lands and on habitat lands acquired with regional funds or dedicated through the development process (ibid).

An implementing agreement is a binding contract signed by the local jurisdiction (or other take authorization holder) and the wildlife agencies that identify the roles and responsibilities of the parties to implement the MSCP and subarea plan. Assurances are provided by the wildlife agencies in the implementing agreements relative to take authorizations for covered species, how a change in circumstances will be addressed for covered species, the effects on development and sharing of costs for uncovered species should they become listed, and the ability of take authorizations to be severable from those granted to other entities implementing the MSCP (<http://www.sandiego.gov/mscp/plansum.shtml>). Thus, the jurisdictions and other entities receiving federal and state take authorizations for covered species receive assurances that increase predictability for the development process. In addition, applicants of projects approved to be consistent with the MSCP become “third party beneficiaries” to the locally received take authorizations, receiving assurances that mitigation obligations will not be subsequently altered for covered species and receiving the benefits of a streamlined process for federal and state permitting and environmental review (ibid).

**San Diego Multiple Habitat Conservation Program (MHCP):** The subregional plan for the northwestern portion of the County (cities of Carlsbad, Encinitas, Escondido, Oceanside, San Marcos, Solana Beach and Vista) was approved by the San Diego Association of Governments Board of Directors on March 28, 2003 (SANDAG 2003). The subregional plan encompasses 111,908 acres (29,962 acres of natural habitat), and provides conservation for 77 species in a 20,593 acre reserve. Each of the member cities has prepared a subarea plan to guide implementation of the MHCP.

A portion of the San Dieguito Watershed northeast of Hodges Reservoir and north of the Hodges East segment is included in the City of Escondido Subarea Plan (Ogden 2001).

**MSCP Habitat Management Plans:** The MSCP program requires that habitat management and monitoring plans be prepared for all conserved lands that include area-specific actions. The City and County have developed habitat management plans and/or framework plans for the following portions of the San Dieguito Watershed.

- The Hodges Reservoir/San Pasqual Valley Open Space Habitat Management Plan covers the City of San Diego MSCP lands around Hodges Reservoir and upstream for approximately 15 miles along the San Pasqual Valley corridor (CBI 2003). The plan does not include Boden Canyon or City-owned lands adjacent to the San Diego Wild Animal Park. This plan has several biological objectives associated with the following goals:

(1) Adaptively manage the open space to maintain populations of MSCP covered species and other sensitive resources. Four objectives associated with this goal include protection and maintenance of populations of covered plants and other sensitive plant species and their habitats, coastal sage scrub habitats for covered animals and other sensitive animal species, aquatic and floodplain habitat for arroyo toad and other sensitive aquatic species, and riparian habitat for covered birds and other riparian bird species. Another two objectives include protection and enhancement of nesting and foraging habitat for covered raptors and other raptor species and habitat linkages to other portions of the MSCP preserve system and other regional preserve areas.

(2) Monitor the status of MSCP covered species and other sensitive resources in the open space, and record the effectiveness of management actions.

(3) Monitor habitats and ecological processes to aid in identifying threats to ecosystem integrity or health and to guide adaptive management of the open space.

(4) Enhance and restore degraded habitats.

(5) Implement research projects to address management issues.

(6) Develop and coordinate a centralized data management system.

- The County (2001) developed the Framework Management Plan to guide management of County MSCP lands. The Department of Parks and Recreation is responsible for managing the MSCP lands the County acquires (<http://sdpublic.sdcounty.ca.gov/mscp> portal, accessed April 2005). The County conducts basic stewardship and management activities that include but are not limited to, trash removal, passive recreation, patrol, signage, fire management, exotic plant species removal and cultural resource protection. The County also is responsible for monitoring their MSCP lands.

**County of San Diego Multiple Habitat Conservation and Open Space Program (MHCOSP):** The County of San Diego has initiated baseline information gathering to support planning for this subregion which covers approximately 1.49 million acres in the eastern section of the county. This area corresponds to the East County Subarea for the County's MSCP program and includes all lands east of Boden Canyon north of the Santa Ysabel Creek and all lands east of the North County Subarea (i.e., east of Sutherland Reservoir south of Santa Ysabel Creek).

**San Pasqual Valley Plan:** Approved by the San Diego City Council and City Planning Commission in 1995, the San Pasqual Valley Plan sets forth goals, policies, and specific recommendations regarding preservation of resources and environmentally sensitive use and development within the valley (City of San Diego 1995). Plan policies pertinent to biological resources include:

- The undisturbed oak woodland, chaparral and coastal sage scrub habitats shall be preserved as open space.
- Native riparian vegetation along the watercourse of the San Dieguito River and its tributary creeks shall be preserved, or restored where disturbed.

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- A wildlife connection shall be preserved along the San Dieguito River. Connections to upland habitat areas shall be preserved (or restored where interrupted) following the river's tributary creeks.
- Areas designated for open space preservation on publicly-owned land shall be protected from environmentally destructive activity. However, construction and maintenance activities for flood control projects and for municipal and agricultural water production purposes shall be permitted within open space.
- Periodic sand removal in the riparian open space corridor beyond the maintenance of the 40-foot pilot channel can be considered only if determined to be beneficial to the riparian corridor as part of the implementation of an approved restoration plan.
- Sensitive habitat area that is degraded by human activity or compromised by the presence of exotic or invasive plant species shall be restored, as feasible, for mitigation credit.
- The open space designated by the plan shall be included in the MSCP preserve.
- Habitat protection or restoration proposals for mitigation should be based on the specific proposals of the plan.

**San Dieguito River Park Concept Plan:** The San Dieguito River Valley Regional Open Space Park JPA, also known as the San Dieguito River Park, is the agency responsible for creating a natural open space park in the San Dieguito River Valley. The JPA is a multi-jurisdictional governmental agency whose purpose is to create a natural open space park in the San Dieguito River Valley. The JPA was formed in 1989 by the County of San Diego and the Cities of Del Mar, Escondido, Poway, San Diego and Solana Beach as a separate agency with the authority to acquire, plan, design, improve, operate and maintain the San Dieguito River Park (SDRP 2003).

It is the intent of the JPA to create a park that will one day extend from Del Mar to Volcan Mountain, and include a Coast-to-Crest Trail across this region. The JPA is responsible for land acquisition, planning, design, operation and management of the proposed river park. The JPA developed a Concept Plan for the San Dieguito River Park to provide a framework for the following goals (JPA 2002):

- “To preserve and restore land within the FPA of the San Dieguito River Park as a regional open space greenway and park system that protects the natural waterways and the natural and cultural resources and sensitive lands and provides compatible recreational opportunities, including water related uses, that do not damage sensitive lands;
- To provide a continuous and coordinated system of preserved lands with a connecting corridor of walking, equestrian, and bicycle trails, encompassing the San Dieguito River Valley from the ocean to the river's source.
- To use public land only for the benefit of the public, and for uses consistent with the goals of the Park.”

The FPA for the Park includes a 55-mile corridor that begins at the mouth of the river in Del Mar and ends just east of Volcan Mountain along portions of the high desert in the San Felipe Valley.

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Thus, the proposed greenway and open space park system will eventually link the Anza Borrego State Park to the Pacific Ocean.

The FPA supports a wide variety of biological resources, including a number of sensitive habitat types and several threatened or endangered species. Numerous habitat types occur within the planning area including beach, scrub, chaparral, riparian, southern oak woodlands and forests, marsh and emergent wetland, coniferous forests, grasslands, and non-native communities. A total of 23 sensitive plant species and 55 sensitive animal species are known to occur in the planning area (JPA 2002).

**City of San Diego Land Development Code, Biology Guidelines (September 2004):** The City of San Diego Biology Guidelines define sensitive species and environmentally sensitive lands (ESL), as well as mitigation requirements within and outside the MSCP MHPA. The guidelines specify requirements for a Biological Survey Report, which must be completed for all development projects subject to ESL regulations and/or where the CEQA review has determined the potential for significant impact to other biological resources considered sensitive under CEQA.

**County of San Diego Resource Protection Ordinance (RPO):** The intent of the RPO (compilation of 7968, 7739, 7685, 7631) is to increase the preservation and protection of the county's unique topography, natural beauty, diversity, and natural resources and a high quality of life for current and future residents of the County of San Diego. This ordinance requires a Resource Protection Study be completed and actions taken to protect and/or minimize impacts to identified environmentally sensitive lands.

**County of San Diego Biological Mitigation Ordinance:** The objective of this ordinance is to protect the county's biological resources and prevent their degradation and loss by guiding development outside of biological resource core areas, and by establishing mitigation standards which will be applied to discretionary projects to enable the county to achieve the conservation goals set forth in the Subarea Plan for the Multiple Species Conservation Plan.

In addition, there are other jurisdictions in the watershed which have ordinances to protect sensitive resources (e.g., Escondido).

### **2.7.4 Cultural Resources**

Activities that could potentially disturb cultural resources would be required to comply with the following laws and regulations.

#### **2.7.4.1 Federal Authority and Regulations**

**Antiquities Act of 1906:** This Act provided for the protection of historic and prehistoric remains and monuments on federal lands. It established a permit system for conducting scientific archaeological investigations, which could only be conducted by recognized institutions that would report results and maintain all collections for the public.

The Historic Sites Act of 1935: The Historic Act declared it was a national policy “to preserve for public use historic sites, buildings, and objects of national significance.” This act extended protection to sites on both federal and non-federal lands by giving the Secretary of the Interior the authority to survey, document, evaluate, acquire, and preserve archaeological and historical sites throughout the country.

The Archaeological Recovery Act (Archaeological Salvage Act or the Moss-Bennett Act) of 1960: This Act gave the Department of the Interior the major responsibility for preserving archaeological data that might be lost through federal dam construction. The Archaeological and Historic Preservation Act of 1974 amended and expanded the scope of the 1960 Act by requiring preservation of archaeological data affected as a result of any federal land modification.

The National Historic Preservation Act of 1966 (NHPA): The NHPA mandated “the protection, rehabilitation, restoration and reconstruction of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, or culture.” The act led to the creation of the National Register of Historic Places, a file of cultural resources of national, regional, state, and local significance. The act also established the Advisory Council on Historic Preservation (the Council), an independent federal agency responsible for administering the protective provisions of the act.

The Archaeological Resources Protection Act of 1979 was enacted to provide a framework for protecting and regulating the use of archaeological resources on public and Native American lands protected by the Antiquities Act of 1906. The act requires that a permit be received from the federal land manager for the excavation and removal of archaeological resources on public land.

#### **2.7.4.2 State and Local Authority and Regulations**

There are a number of ways in which the State and local communities encourage or require the preservation of California’s historical resources. The following discussion is summarized from the California Environmental Resources Evaluation System (CERES), available at ([http://ceres.ca.gov/topic/env\\_law/ceqa/more/tas/page2.html](http://ceres.ca.gov/topic/env_law/ceqa/more/tas/page2.html)).

The California Environmental Quality Act: Section 21084.1 of CEQA states that “A project that may cause a substantial adverse change in the significance of a historical resource is a project that may have a significant effect on the environment. For purposes of this section, a historical resource is a resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources. Historical resources included in a local register of historical resources or deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1, are presumed to be historically or culturally significant for purposes of this section, unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant. The fact that a resource is not listed in, or determined to be eligible for listing in, the California Register of Historical Resources, not included in a local register of historical resources, or not deemed significant pursuant to criteria set forth in subdivision (g) of Section 5024.1 shall not preclude a lead agency from determining whether the resource may be an

historical resource for purposes of this section”. Significance criteria for eligibility for placement on the California Register are as follows:

Criterion 1. Association with events or patterns of events that have made a significant contribution to patterns of local or regional history, or to state or national cultural heritage.

Criterion 2. Association with important persons in California or United States history.

Criterion 3. Exhibits the distinctive characteristics of a type, period, region, or method of construction, represents the work of a master, or possess high artistic values.

Criterion 4. Yields, or has the potential to yield, significant information on the prehistory or history of the state or nation.

The State Historic Resources Commission and the Office of Historic Preservation (SHPO): SHPO operates within the Department of Parks and Recreation and administers California’s historic preservation programs. The appointed Commission’s pertinent duties include: evaluating applications and recommending properties for listing on the National Register of Historic Places; maintaining a statewide inventory of historical resources, including historical landmarks and points of interest; establishing criteria for recording and preserving historical resources; developing and adopting criteria for rehabilitating historic structures; developing and annually updating a statewide historic resources plan; overseeing administration of the California Register of Historic Places, including recommending standards for the evaluation of historic resources for inclusion in the register; and developing criteria and procedures for selecting enhancement and preservation projects for funding under the National Historic Preservation Fund, the California Heritage Fund, and other funding programs (Section 5020.4).

The California Register of Historical Resources: The Register is an authoritative guide to identifying the State’s historical resources. It establishes a list of those properties which are to be protected from substantial adverse change. A historical resource may be listed in the California Register if it meets any of the following criteria: (1) it is associated with events that have made a significant contribution to the broad patterns of California’s history and cultural heritage; (2) it is associated with the lives of persons important in California’s past; (3) it embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic value; or (4) it has yielded or is likely to yield information important in prehistory or history. The Register includes properties which are listed or have been formally determined to be eligible for listing in the National Register, State Historical Landmarks, and eligible Points of Historical Interest.

There are several other State and federal programs which directly promote historic preservation.

State Historical Building Code: In order to encourage rehabilitation, rather than demolition or removal of historic values, the State Historical Building Code can be applied to qualifying structures. This allows repairs, renovations, and other construction in variance to the Uniform Building Code (UBC).

**Mills Act:** The Mills Act offers property tax relief in exchange for an agreement from the property owner to maintain the historic resource for a period of 10 years.

**The Marks Historical Rehabilitation Act:** This authorizes cities, counties and redevelopment agencies to issue tax-exempt revenue bonds to finance the rehabilitation of significant historic buildings. In addition, Federal investment tax credits are also available for qualified rehabilitation of historic structures.

**Local Government:** Cities and counties can use a number of tools to identify and protect historical resources. A variety of local actions directly protect historical resources by limiting the kinds of changes that can be made to them. Historic preservation ordinances for identified landmarks, historic districts, and other qualifying resources which require consideration of a use permit or other discretionary permit prior to changes in the resource are the most effective means of protection. Architectural design controls, for example, generally require that proposed alterations receive the review and approval of an architectural review commission or board. In order to encourage owners to preserve significant properties, some localities assist owners in obtaining low-interest rehabilitation loans, help finance improvements through redevelopment or other activities (particularly in historic business districts), and may engage in outright purchase to protect the integrity of historic resources.

The City of San Diego has established six significance criteria (A-F) for historic resources under the City of San Diego Historical Resources Register for the evaluation of historic resources.

**Criterion A.** Exemplifies or reflects special elements of the City's, a community's, or a neighborhood's, historical, archaeological, cultural, social, economic, political aesthetic, engineering, landscaping or architectural development;

**Criterion B.** Is identified with persons or events significant in local state or national history;

**Criterion C.** Embodies distinctive characteristics of a style, type, period or method of construction or is a valuable example of the use of indigenous materials or craftsmanship;

**Criterion D.** Is representative of the notable work of a master builder, designer, architect, engineer, landscape architect, interior designer, artist or craftsman;

**Criterion E.** Is listed or has been determined eligible by National Park Service for listing on the National Register of Historic Places or is listed or has been determined eligible by the State Historical Preservation Office for listing on the State Register of Historical Resources; or

**Criterion F.** Is a finite group or resources related to one another in a clearly distinguishable way or is a geographically definable area or neighborhood containing improvements which have a special character, historical interest or aesthetic value or which represent one or more architectural periods or styles in the history and development of the City.

### **2.7.5 Active Groups Within the Watershed**

In addition to the regulatory requirements and planning groups that influence the face of the watershed, there are several other active groups that are working to promote conservation and watershed protection.

**The San Dieguito River Valley Conservancy (SDRVC):** The SDRVC is a two-decade old non-profit citizen organization who works as a catalyst for the establishment of a permanent open space corridor in the San Dieguito River Valley, which will maintain the natural and rural character of the valley, preserve and enhance natural and historical resources, locate and establish recreational activities appropriately, and provide a river-long system of trails to connect recreational and educational opportunities.

The organization is working to implement the vision of the San Dieguito River Park and Coast-to-Crest trail from the Ocean at Del Mar to Volcan Mountain. The main focus of the group is to acquire lands that will complete the River Park and to ensure that River Park Lands are carefully managed. The organization is run by a citizen board and has more than 1,000 members, including citizens, land owners, governments and other non-governmental groups (SDRVC 2005). The SDRVC works with the JPA on a regular basis to coordinate various efforts relating to the park. For example, some grants are available only to governmental agencies, such as the JPA; others favor, or are exclusively for, non-profits, like the SDRVC (SDRP 2003). More information regarding the SDRVC and their activities can be found at <http://www.sdrvc.org/>.

**Friends of the San Dieguito River Valley (Friends):** This organization is a citizens group that actively advocates the preservation of the land within the San Dieguito River Valley system. In particular, the Friends are especially active in the preservation of the San Dieguito Lagoon ecosystem, and regularly lobby to remind elected officials of their goals for preservation. They also regularly monitor proposed projects in the watershed (Friends, 2005). More information regarding the Friends can be found at <http://www.fsdv.org/index.html>.

**The San Dieguito Lagoon Preservation Committee:** This organization is charged with overseeing the preservation and enhancement of the San Dieguito Lagoon. The Committee participates on both local and regional levels. Locally, the Committee is provided with monthly sampling reports to monitor the health of the Lagoon, they also investigate additional public access opportunities and develop educational programs. Regionally, the Committee participates in the on-going programs of the San Dieguito River Valley JPA, including the lagoon restoration plan, and monitors development that may have an adverse effect on the Lagoon. As urban development further encroaches into the County's open spaces, the Lagoon Committee works hard to keep the San Dieguito Lagoon the regional treasure it is and endeavors to enhance the Lagoon's function, health, and accessibility (City of Del Mar 2003).

**The Nature Conservancy:** The Conservancy's San Diego Mountains Project, which covers 410,000 acres, is working with public and private partners to preserve natural habitats and open spaces. Their basic mantra is to protect key private lands, link them to public lands, and establish surrounding buffer zones where traditional rural land uses are maintained, primarily cattle

ranching (TNC 2002). Within the San Dieguito Watershed, the Nature Conservancy has several projects. They purchased over 5,000 acres of land in 1999 and 2000 in the Upper watershed near Santa Ysabel Ranch to preserve as open space. The Conservancy is presently working on the Ramona Grasslands and Santa Maria Creek Protection and Restoration Project, located along Santa Maria Creek. Currently, 750 acres are being restored and protected from further degradation and development. Their ultimate goal is to quadruple the acreage involved in this project.