

CHAPTER 5

ALTERNATIVES CONSIDERED

Section 10(a)(2)(A)(iii) of ESA requires that an HCP analyze alternative actions that would (1) not result in incidental take of listed species or (2) reduce such incidental take below levels anticipated for the proposed project, and state the reasons why such alternatives are not being proposed for implementation. In addition to adoption of the Tribal HCP as proposed herein, the Tribe has considered three additional alternatives: Alternative 1 (No Project Alternative), Alternative 2 (Other Incidental Take Permit Alternatives, including Participation in the Coachella Valley MSHCP or a Programmatic Section 7 Alternative), Alternative 3 (Increased Conservation Alternative, including Increased MCCA Conservation, Increased On-Reservation VFPA Conservation, and Increased THCP Mitigation Fee scenarios). These are described below, along with the reasons why they are not proposed to be utilized. Because the USFWS is the lead agency for the associated EIS, the alternatives analyzed in that document are slightly different than those contained in this Tribal HCP, for which the Tribe is the lead agency.

5.1 ALTERNATIVE 1: NO PROJECT ALTERNATIVE

Under the No Project Alternative, no Tribal HCP would be developed, and no incidental take permit would be issued by the USFWS to the Tribe authorizing the Tribe to undertake or permit development and other activities within the Plan Area, pursuant to the provisions of the Tribal HCP. This alternative is similar to EIS Alternative 3. Neither the Tribe nor third parties receiving development permits from or on behalf of the Tribe would receive authorization to impact federally listed fish or wildlife species in connection with otherwise lawful activities in the Plan Area. Under this alternative, individual activity proponents (including the Tribe) would avoid take of listed species, or seek take authorization under Section 7 if the proposed action has a federal nexus or under Section 10 if the proposed action has no federal nexus. Avoidance, minimization, or mitigation measures could be required by the USFWS as the projects undergo individual review if projects are determined to potentially impact federally listed wildlife species. However, the USFWS would not have the ability to impose restrictions requiring the conservation of the 13 Covered Species that currently are not listed. In addition, the USFWS would not have the ability to limit impacts to listed plant species since impacts to such species are not prohibited by Section 9.

The type of comprehensive biological assessment (i.e., determination of which lands are important for long-term conservation and which can be impacted with mitigation without significant impairment of long-term conservation value) that has been conducted for this Tribal HCP would not be developed if project proponents sought take authorization under Section 7 or Section 10 permits on an individual basis. Additionally, a comprehensive Habitat Preserve system would not result from individual project mitigation negotiation with non-Tribal regulatory agencies on a case-by-case basis. Such mitigation programs often end up with fragmented, dysfunctional preserves having comparatively low, long-term

benefits to Covered Species. Such an incremental approach also may limit the ability of the USFWS in partnership with the Tribe to address indirect impacts to listed species from development on lands adjacent to occupied habitat. These impacts typically include but are not limited to: habitat fragmentation; disruption of natural processes that sustain occupied habitats of sensitive species; and impacts from pets, illegal dumping, and increased risk of fire. Further, the No Project Alternative would provide minimal protection for unlisted species or for natural communities that do not provide habitats for listed species, as take authorization (under either Section 7 or 10) is not specifically required for impacts to unlisted species. Finally, while some conservation of remaining active blow-sand areas would likely be required as mitigation for impacts from Covered Projects, such conservation would not likely occur in a comprehensive fashion that ensures appropriate reserve configuration, as would be provided under the proposed Tribal HCP.

At the same time, development in the Plan Area would not be well served by the No Project Alternative, as some projects and other activities that would otherwise result in take or adverse effects to listed species would be subject to redesign to avoid take or be subject to lengthened and/or complicated processing associated with gaining project authorization and take coverage. Over time, additional species would likely become listed, and mitigation requirements for existing listed species could change, further complicating the problems encountered by development and other activities that would likely result in take or adverse effects to listed species. The No Project Alternative was not utilized because the Tribe desires a comprehensive and proactive solution to listed species issues in the Plan Area in a way that simultaneously accomplishes Tribal governance objectives and the balancing of essential conservation and development.

5.2 ALTERNATIVE 2: OTHER INCIDENTAL TAKE PERMIT ALTERNATIVES

Other choices are available for the Tribe to seek incidental take authorization. Two options described below are participation in the Coachella Valley MSHCP and completion of a programmatic Section 7 consultation with the USFWS.

5.2.1 Participation in the Coachella Valley MSHCP

Under this alternative (which was considered but not carried forward for detailed evaluation in the EIS), the Tribe would participate in CVAG's approved MSHCP. This alternative would allow for comprehensive habitat planning both within and beyond the Reservation. Although the process may be different than under the proposed Tribal HCP, the Tribe does not anticipate that the levels of take would be appreciably different.

As described in section 1.6, the Tribe is the ultimate authority on land use matters and conservation measures within the Reservation. While Indian tribes have sovereignty over their federally recognized territory, they also have a direct government-to-government relationship with U.S. government pursuant to which decisions about Tribal lands and people may not be made without their consent. It is the Tribe's belief that only a Tribal HCP is broad enough to provide the foundation for both resources conservation and land use planning within the Reservation and specific enough to meet the requirements particular to Tribal governance of the Reservation. The Coachella Valley MSHCP could not serve these functions for the Tribe and its members, not only because it would not reflect certain values that are unique to the Tribe, but also because the implementing parties do not have jurisdiction over many aspects of the Reservation. For these reasons, the Tribe chose not to restrict its exercise of sovereignty or the comprehensiveness of its conservation and land use planning within the Reservation by directly participating in the Coachella Valley MSHCP. It should be reiterated, however, that the Tribe has committed to coordinating its conservation efforts with those of the MSHCP to the extent practicable.

5.2.2 Programmatic Section 7 Consultation Alternative

Under this alternative (which was considered but not carried forward for detailed evaluation in the EIS), the Tribe would request a programmatic Section 7 consultation between the USFWS and BIA. The programmatic consultation would establish the standards, guidelines, and governing criteria for future actions. It is anticipated that these elements would be based upon the draft Tribal HCP. Following completion and receipt of a programmatic biological opinion that analyzes the general project descriptions, effects, and overall impacts of multiple projects over an extended timeframe (usually 10 years), the BIA would complete subsequent site-specific tiered biological assessments for each individual action authorized, funded, or carried out by the BIA. This tiered biological assessment would address all listed species in the site-specific project area, and the BIA would receive incidental take authorization for federally listed fish or wildlife species associated with that project. In the absence of new information that would change the environmental baseline or effects determination, the Tribe would expect that projects that conform to the pre-agreed protection and conservation elements in the programmatic consultation would receive a "not likely to adversely affect" determination or, at a minimum, an expedited Biological Opinion (and Incidental Take Statement, if appropriate). There would, however, be a need to update the environmental baseline continually, and additional project-specific conservation requirements could be imposed.

This alternative would not meet one of the Tribe's main purposes in preparing the Tribal HCP because it would not establish a comprehensive program for protecting natural resources while balancing the need for Tribal economic development and self-sufficiency. Specifically, whereas unlisted species can be addressed through the Section 10(a) process allowing for a comprehensive approach to protection of natural resources, species that are not federally listed, proposed, or candidate species could not be addressed through the Section 7 programmatic consultation process.

This alternative would not meet another of the Tribe's main purposes in preparing the Tribal HCP because it would not streamline compliance with ESA as effectively as would an HCP. The Tribe would commit to imposing substantial restrictions on lands under its jurisdiction without any assurances that additional restrictions would not be imposed during individual project review, and USFWS involvement through subsequent consultations would be required for each individual project. The process of obtaining take coverage through future consultations under Section 7 of ESA would be complicated by the fact that a BIA nexus would be unavailable to address potential impacts on fee lands within the Reservation and Tribally owned lands outside of the Reservation.

5.3 ALTERNATIVE 3: INCREASED CONSERVATION ALTERNATIVE

Consistent with ESA's guidance on required alternatives analysis, this alternative would reduce incidental take levels below those that would occur with the proposed Tribal HCP. Three scenarios were analyzed that included increased conservation measures: (1) increased MCCA conservation; (2) increased on-Reservation VFPA conservation; and (3) increased THCP Mitigation Fees. In the MCCA, required conservation would be increased to above the 85 percent overall threshold and 90 percent riparian habitats threshold identified in the proposed Plan. Conservation would likely focus on further increasing preservation of Peninsular bighorn sheep habitat. In the VFPA, two potential scenarios exist to increase conservation over that required under the proposed Plan: (1) increase the conservation required within the Reservation on the valley floor; and/or (2) adopt a higher fee for mitigation of impacts associated with Covered Projects occurring on the valley floor.

5.3.1 Increased MCCA Conservation

This alternative is similar to EIS Alternative 4. As described in section 1.6.3 of this Plan, the USFWS is required to carry out its responsibilities under ESA in a manner that strives to ensure that Indian tribes do not bear a disproportionate burden for the conservation of listed species. By prohibiting more than 85 percent of all development in the MCCA, this alternative would result in a disproportionate burden on the Tribe while not substantially increasing the conservation of Covered Species. Thus, it would violate Principle 3(C) of Secretarial Order No. 3206.

For comparison, the Coachella Valley MSHCP sets forth numerous conservation areas in which a maximum of 10 percent development is allowed. Local agencies comprise 16 percent of the total Plan Area. It also delineates areas within each permittee's jurisdiction that allow for 100 percent development. A full 53 percent of the Coachella Valley MSHCP Plan Area is federal- or state- managed lands that already had significant conservation restrictions in place prior to their inclusion in the Coachella Valley MSHCP. In comparison, 11 percent of the acreage within the Tribal HCP Plan Area is held by federal agencies (BLM, USFS).

Further, Page 2-7 of the MSHCP clearly notes that Level 1 lands that do not permit any development are exclusively held within established wilderness areas. No permittees have Level 1 lands in their boundaries. Permittees do have Level 2 lands that impact a portion of their jurisdictions but those do allow some existing uses as part of open space that typically is funded via state and/or federal monies.

Most importantly, the Tribe believes the conservation measures embodied in this Plan adequately address the conservation needs of the Covered Species based on the best currently available scientific information, and additional conservation in the Plan Area is not required to ensure their long-term survival and recovery. The conservation as proposed meets or exceeds the requirements of the ESA. To require the Tribe to increase the minimum conservation percentage from 85 to 90 percent is a disproportionate burden; thus, this alternative was rejected.

5.3.2 Increased On-Reservation VFPA Conservation

This alternative was considered but not carried forward for detailed evaluation in the EIS. The long-term biological value of the vast majority of the valley floor of the Reservation is considered to be low because of encroachment by existing development and lack of appropriate sand sources. Conservation of areas that are already fragmented would increase the management costs necessary to maintain habitat viability and would not result in an appreciable increase in the long-term conservation of Covered Species. The only area of active or ephemeral sand field habitat in the VFPA that is considered to have long-term viability is in Section 6, in which the proposed Plan allows limited development subject to the imposition of avoidance, minimization, and mitigation measures through the Tribe's land use review process. Section 6 is also identified as a Target Acquisition Area under the proposed Plan.

Within the Section 6 Target Acquisition Area, conservation of active and ephemeral sand field habitats beyond the requirements imposed by the Plan would provide an incremental biological benefit to Covered Species that use these habitats. Specifically, the differences would be that 47 acres of ephemeral sand field southwest of the levee that would be available for development (including structural development) under the Plan would be conserved under this alternative; 57 acres of active and 257 acres of ephemeral sand field habitat that would be retained as Fluvial Sand Transport Process Areas instead would not be available for any activities; and up to 32 acres of active and ephemeral sand field that would be available for development under a Specific Plan (and would be targeted, but not required, for conservation) instead would be conserved. The increased conservation requirement in the Section 6 Target Acquisition Area would represent an approximately five percent increase in the amount of active and ephemeral sand fields proposed for regional conservation (Coachella Valley MSHCP and Tribal HCP). The biological objectives that could be obtained by this incremental increase in on-site conservation could alternatively be attained by conservation of active or ephemeral sand field habitats within off-Reservation Target Acquisition Areas.

Eliminating these areas from development would also eliminate their contribution to the mitigation fee, resulting in a net reduction of funding. This would, therefore, direct funding away from the preservation and long-term management of habitat with higher conservation value elsewhere on the valley floor. It also should be noted that these areas represent some of the most developable and economically productive portions of the Reservation. Precluding their development would thus result in a substantial financial detriment to the Tribe and its members and likely result in a taking of property necessitating just compensation. Thus, while increased conservation in the Section 6 Target Acquisition Area would represent a biological benefit to species that occur there, the incremental benefit would be outweighed by the adverse effects on the Tribe and its members.

5.3.3 Increased THCP Mitigation Fee

This alternative was considered but not carried forward for detailed evaluation in the EIS. Requiring a higher fee at the outset for mitigation of impacts from Covered Projects in the VFPA would result in a disproportionate burden to the Tribe and/or Tribal members. As noted in section 2.3.2, the mitigation fee for development on the valley floor has already been increased from \$600 per acre with adoption of the Interim HCP in 1997 to \$2,371 per acre currently (a 295 percent increase), based on analysis of the amount of acquired habitat needed to mitigate for habitat loss through the implementation of Covered Projects. Under the proposed alternative, the mitigation fee will be further increased to match the fee amount adopted by CVAG (\$5,730 per acre upon adoption in 2008, subject to annual escalation). This would maintain the fee at a level comparable to that required of off-Reservation development and would ensure that the Tribe does not bear a disproportionate burden. Further, under the Tribal HCP, the Tribe will have the ability to review the fee periodically to ensure it is adequate to meet the Tribe's conservation commitments. The currently proposed fee has been specifically calculated to be adequate to achieve the level of conservation required by the Tribal HCP, and the Tribe will periodically adjust the fee as necessary. A fee higher than that imposed by CVAG would place the Tribe at a competitive disadvantage relative to others in the region. The Tribe has demonstrated that the proposed fee would be sufficient to achieve the conservation objectives for the species being considered for coverage, thus satisfying its funding obligations.

Because the elements of this alternative are not necessary to satisfy the Tribe's conservation obligations and would result in a disproportionate burden on the Tribe, this alternative was rejected.