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(O-94-102) COR. COPY

ORDINANCE NUMBER O- 18090 (NEW SERIES)

ADOPTED ON JUL 26 1994

AN ORDINANCE AMENDING CHAPTER XI, ARTICLE 1, DIVISION 11 OF THE MUNICIPAL CODE OF THE CITY OF SAN DIEGO, CALIFORNIA, BY ADDING SECTIONS 111.1130, 111.1131, 111.1132, 111.1133, 111.1134, 111.1135 AND 111.1136 ESTABLISHING A PROCEDURE FOR ISSUANCE OF COASTAL SAGE SCRUB INTERIM HABITAT LOSS PERMITS.

WHEREAS, in March, 1993 the Federal government listed the coastal California gnatcatcher as a threatened species under the Endangered Species Act of 1973 (16 U.S.C. § 1531 et seq., hereinafter the "Act"). The Act makes it a violation of federal law to carry out any activity which will result in a take of the species. "Take" of the gnatcatcher, broadly defined in the Act to include harm to or harassment of the species, is prohibited; and,

WHEREAS, the U.S. Fish and Wildlife Service has promulgated a special rule under Section 4(d) of the Act, which will allow incidental take of the species if such take results from activities which are conducted pursuant to the State of California's Natural Community Conservation Planning Act of 1991 ("NCCP") and in accordance with an approved NCCP plan prepared consistent with the State's NCCP Conservation and Process Guidelines published by the California Department of Fish and Game, if within an area under the jurisdiction of a local government agency which is enrolled and actively engaged in the

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preparation of an NCCP plan. This special rule became effective on December 10, 1993; and,

WHEREAS, the NCCP Conservation Guidelines and Process Guidelines call for the regulation of all coastal sage scrub within the region, and establish a planning process for the protection of this habitat. The Guidelines further provide a process for issuance of Interim Habitat Loss Permits which local government agencies may adopt. Because The City of San Diego has formally enrolled in the NCCP process for the protection of the coastal sage scrub within the area under its jurisdiction, under the special rule promulgated under Section 4(d), incidental take of the gnatcatcher would not be a violation of the Act if authorized by an Interim Habitat Loss Permit issued by The City of San Diego pursuant to the NCCP Conservation Guidelines and Process Guidelines; and,

WHEREAS, without such an Interim Habitat Loss Permit process under Section 4(d), no development of habitat occupied by the gnatcatcher may occur unless authorized under Sections 7 or 10(a) of the Act. Sections 7 and 10(a) of the Act set forth a permitting process which can take several years to complete. Failure to adopt an Interim Habitat Loss Permit process, thus requiring that proposed land development applications proceed under Section 7 and 10(a) processes, would halt all progress of development of occupied habitat in the region for a substantial time; and,

WHEREAS, Sections 7 and 10(a) of the Act only regulate occupied coastal sage scrub habitat. The NCCP process

contemplates protection of all coastal sage scrub habitat, which will result in protection of many species in addition to the coastal California gnatcatcher; and,

WHEREAS, regulation of impacts to coastal sage scrub within The City of San Diego is necessary immediately because the Section 4(d) rule allows only 5% of all coastal sage scrub remaining in the region to be disturbed. The preservation of the public peace, health and safety require that projects which impact coastal sage scrub be reviewed in terms of impacts to this regional resource, not individually, and that no more than 5% of all coastal sage scrub in the region be taken pursuant to the Section 4(d) rule; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego as follows:

Section 1. That the Council hereby establishes a "NCCP" Program Interim Habitat Loss Permit Process as described in this ordinance and in Council Resolution No. C 284353.

Section 2. That until such time as a final habitat preservation plan is adopted by the City and the resource agencies for the local implementation of the NCCP program, an Interim Habitat Loss Permit shall be required.

Section 3. That Chapter XI, Article 1, Division 11, of the San Diego Municipal Code be and the same is hereby amended by adding Sections 111.1130, 111.1131, 111.1132, 111.1133 111.1134, 111.1135 and 111.1136 to read as follows:

**Section 111.1130. DEFINITIONS.**

For purposes of this division, the following words and phrases shall have the following meanings:

"Biological Report" means a field survey which evaluates the quality of the habitat and assesses the presence or absence of the coastal California gnatcatcher, and which is performed in accordance with guidelines established by the U.S. Fish and Wildlife Service.

"City Manager" means the City Manager of The City of San Diego or his designee.

"Interim Habitat Loss Permit" means a permit issued by the City Manager authorizing the disturbance or removal of coastal sage scrub whether or not occupied by the coastal California gnatcatcher.

"Mitigation Plan" means a plan proposed by the applicant for an Interim Habitat Loss Permit which is consistent with the Natural Community Conservation Planning Act of 1991 ("NCCP") Conservation Guidelines and Process Guidelines.

"Permit to Grade" means a grading permit issued pursuant to San Diego Municipal Code section 62.0202, a public improvement permit, issued pursuant to San Diego Municipal Code section 62.0402, or a resource protection ordinance permit, issued

pursuant to San Diego Municipal Code section 101.0462 where no subsequent grading permit is required.

"NCCP Conservation Guidelines and Process Guidelines" means those documents entitled "Southern California Coastal Sage Scrub Natural Community Conservation Planning Process Guidelines," and the "Southern California Coastal Sage Scrub Natural Community Conservation Planning Conservation Guidelines," both dated November 1993, which are on file with the Clerk of The City of San Diego as Document No. 00-18090. The NCCP Conservation Guidelines and Process Guidelines are referred to as the "State's NCCP Conservation and Process Guidelines" by the special rule promulgated by the U.S. Fish and Wildlife Service for the coastal California Gnatcatcher under Section 4(d) of the Endangered Species Act of 1973, published at Section 17.41(b) of Part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations.

**Section 111.1131. PERMIT REQUIRED.**

Prior to approval or issuance of a Permit to Grade the City Manager shall determine whether any portion of the property subject to such permit contains the coastal sage scrub habitat type. If the property for which a Permit to Grade is sought by an applicant is determined to contain the coastal sage scrub habitat type, the Permit to Grade shall not be issued unless an

Interim Habitat Loss Permit has been issued prior to or concurrently with the Permit to Grade.

**Section 111.1132 VOLUNTARY APPLICANTS.**

Any governmental agency, public utility, or person who voluntarily determines to apply for an Interim Habitat Loss Permit may submit an application for such a permit.

**Section 111.1133 PROCEDURES AND STANDARDS.**

The City Manager shall follow the procedures and comply with the standards set forth in the NCCP Conservation Guidelines and Process Guidelines, in processing and determining whether to issue the Interim Habitat Loss Permit. A Biological Report and mitigation plan shall be submitted as part of the application for an Interim Habitat Loss Permit. The applicant shall also include such information as necessary for the City Manager to make such findings as required by the NCCP Conservation Guidelines and Process Guidelines.

**Section 111.1134. ALLOCATION OF HABITAT LOSS PRIOR TO ISSUANCE OF GRADING PERMIT.**

At such time as a tentative map, or other discretionary permit application is approved, applicant shall also receive approval of an application for an Interim Habitat Loss Permit, if applicant has requested an Interim Habitat Loss Permit and the application conforms to the requirements of Sections 111.1130 through 111.1136 and the NCCP Conservation Guidelines

and Process Guidelines. The Interim Habitat Loss Permit, however, shall not be issued, even if approved, until such time as the applicant seeks and is issued a Permit to Grade. Applications for Interim Habitat Loss Permits may be approved even if the approved habitat loss causes the five percent (5%) cumulative total acreage of approved habitat loss for The City of San Diego to be exceeded. A Permit to Grade shall not be issued, however, if its issuance causes the five percent (5%) cumulative total acreage of habitat loss for The City of San Diego to be exceeded.

**Section 111.1135. EXEMPTIONS.**

Notwithstanding Section 111.1131, no Interim Habitat Loss Permit shall be required for:

(a) Any project for which it is determined by The City of San Diego that application of Sections 111.1130 through 111.1136 would result in the applicant's property being taken without just compensation, in violation of the United States or State Constitution.

(b) Any project for which the City Manager makes findings that:

1. A Permit to Grade was issued between March 25, 1993 and the effective date of this ordinance, AUG 25 1994, and is listed below or, if not listed below, satisfies the criteria in this subsection.



Schedule "A"

Permit NO.	NAME
1. 88-1144	Otay Corporate Center North - VTM
2. 89-0273	Heights of Del Cerro
3. 89-0302	Otay Corporate Center South VTM
4. 91-0602	Carrol Mesa Business Park
5. 92-0647	Palm Plaza - Walmart
6. 87-0750	Aquaculture Facility at San Pasqual
7. 91-0516	North City Water Reclamation Plant;

and,

2. Issuance of the Permit to Grade will not hinder the development of NCCP preserves in the future; and,

3. The property is not occupied by, and the project would not result in, the taking of the coastal California gnatcatcher, which conclusion is documented by a biologist certified to conduct surveys by the U.S. Fish and Wildlife Service.

Clearing of coastal sage scrub, pursuant to granting of an exemption as outlined above, shall nevertheless be tallied by The City of San Diego, and shall be applied to the City's 5% cap.

**Sec. 111.1136 Mitigation Plan Funding**

If necessary under the NCCP Conservation Guidelines, the Mitigation Plan shall identify a funding source and shall provide a form of security acceptable to the City

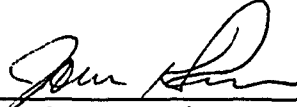
Corrected 5/2/94

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SAN DIEGO, CALIF.

Manager to ensure that the Mitigation Plan will be accomplished.

Section 4. This ordinance shall take effect 30 days from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By   
\_\_\_\_\_  
John K. Riess  
Deputy City Attorney

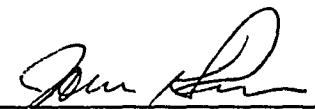
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Form=O+t

Passed and adopted by the Council of The City of San Diego on.....**JUL 26 1994**  
by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Harry Mathis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ron Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Christine Kehoe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
George Stevens	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Barbara Warden	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Valerie Stallings	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Juan Vargas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Susan Golding	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

.....**SUSAN GOLDING**.....  
Mayor of The City of San Diego, California.

(Seal)

.....**CHARLES G. ABDELNOUR**.....  
City Clerk of The City of San Diego, California.

By.....*Mary Cepeda*..... Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on **APR 27 1994**, and on **JUL 26 1994**

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

(Seal)

.....**CHARLES G. ABDELNOUR**.....  
City Clerk of The City of San Diego, California.

By.....*Mary Cepeda*..... Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number **0-18090** Adopted **JUL 26 1994**

CERTIFICATE OF PUBLICATION

OFFICE OF THE CITY CLERK  
CITY ADMINISTRATION BLDG.  
202 C STREET, 2ND FLOOR  
SAN DIEGO, CA. 92101

IN THE MATTER OF

NO.

AN ORDINANCE AMENDING CHAPTER

**ORDINANCE NUMBER 0-18090 (NEW SERIES)**  
AN ORDINANCE AMENDING CHAPTER XI, ARTICLE 1, DIVISION 11 OF THE MUNICIPAL CODE OF THE CITY OF SAN DIEGO, CALIFORNIA; BY ADDING SECTIONS 111.1130, 111.1131, 111.1132, 111.1133, 111.1134, 111.1135 AND 111.1136 ESTABLISHING A PROCEDURE FOR ISSUANCE OF COASTAL SAGE SCRUB INTERIM HABITAT LOSS PERMITS.  
A complete copy of the Ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.  
INTRODUCED ON APR 27 1994. Passed and adopted by the Council of the City of San Diego on JUL 26 1994.  
AUTHENTICATED BY:  
SUSAN GOLDING  
Mayor of The City of San Diego, CA  
CHARLES G. ABDELNOUR  
City Clerk of The City of San Diego, CA  
(SEAL) By MARY CEPEDA, Deputy  
Pub. Aug. 8 288-441

I, Corey Donahue, am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the San Diego Daily Transcript, a newspaper of general circulation, printed and published daily, except Saturdays and Sundays, in the City of San Diego, County of San Diego and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, under the date of January 23, 1909, Decree No. 14894; and the

ORDINANCE NUMBER 0-18090

is a true and correct copy of which the annexed is a printed copy and was published in said newspaper on the following date(s), to wit:

AUG. 8

I certify under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California this 8th day of AUG., 1994.

*Corey Donahue*  
\_\_\_\_\_  
(Signature)

2" x 2 = \$53.76