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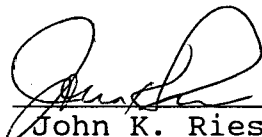
RESOLUTION NUMBER R- 284355
ADOPTED ON JUL 26 1994

BE IT RESOLVED, by the Council of The City of San Diego, that the Council hereby approves the Natural Communities Conservation Planning (NCCP) Program Interim Habitat Loss Permit Procedures and Standards, a copy of which is attached hereto.

BE IT FURTHER RESOLVED, that the procedures and standards in the NCCP Guidelines shall be incorporated into the City's existing land use discretionary approval process.

BE IT FURTHER RESOLVED, that the City Manager is authorized to make minor administrative changes to these procedures and standards as may be necessary to further the goals of the NCCP.

APPROVED: JOHN W. WITT, City Attorney

By 

John K. Riess
Deputy City Attorney

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City of San Diego

NATURAL COMMUNITIES CONSERVATION PLAN (NCCP)
INTERIM HABITAT LOSS PERMIT PROCESS

July 26, 1994

BACKGROUND

On March 25, 1993, the federal government listed the California gnatcatcher as a threatened species under the Endangered Species Act. Any take (harm or harassment) of the gnatcatcher is regulated by the U.S. Fish and Wildlife Service (USFWS). The State of California initiated the Natural Communities Conservation Planning (NCCP) program in recognition of the need for conservation of the coastal sage scrub (CSS) habitat community to avoid the need for future Federal and State listings of CSS dependent species.

The City's Multiple Species Conservation Program (MSCP) has been accepted by the State as the equivalent to an NCCP. The NCCP/MSCP will produce a habitat preservation plan that must be approved by both the USFWS and the California Department of Fish and Game (CDFG) in order to replace this interim process.

In recognition of the NCCP, on December 10, 1993 the federal government published a special Endangered Species Act (ESA) Section "4(d) rule" to provide limited, incidental take (that is, the take is incidental to, and not the purpose of, an otherwise lawful activity) of gnatcatchers, and up to a five percent cumulative loss of coastal sage scrub habitat during the preserve planning process. The Interim Habitat Loss provisions in the 4(d) rule are outlined in the State's NCCP Process Guidelines. The Interim Habitat Loss Permit Process will allow the City to review and approve projects with incidental take, subject to findings, during the interim period. The five percent cumulative loss limit is applicable only to CSS habitat.

It should be noted that if there is a federally-listed species, applicants may elect at the outset, or at any time during the process, to pursue approval through the ESA Sections 7 (if there is a federal nexus) or 10(a), instead of using the 4(d) process. However, any loss of CSS would still be counted against the City's allowable five percent take. Additionally, any governmental agency, public utility, or person may voluntarily submit an application for a Interim Habitat Loss Permit.

If the applicant has coastal sage scrub habitat that is not occupied by gnatcatchers or other listed species, the applicant must, by the terms of the NCCP Guidelines and the ESA 4(d) Rule, use the 4(d) process in order to impact coastal sage scrub.

R-284355

extent possible and provided to the decisionmaker.

After Discretionary Approval

- a. If the project has completed public review and received discretionary entitlements or approvals from the City, the Interim Habitat Loss request will be evaluated for consistency with the NCCP Findings and Conservation Guidelines at the time the project is submitted for grading permit or public improvement/construction plan check. If the biological information is not adequate to address the NCCP findings and/or the mitigation plan is not adequate, a separate biological information package, containing the information outlined above must be submitted.

If no project design/permit revisions are required but it appears that minor changes may be required to the mitigation plan or environmental analysis to support making the NCCP Findings, the existing adopted mitigation plan or related documents will be revised, as necessary, and the additional analysis to support the NCCP Findings will be provided to the resource agencies.

- b. If it appears that major revisions to the project design are necessary to support the NCCP Findings, the project must: 1) be redesigned or provide additional/enhanced mitigation to be consistent with the findings; or 2) pursue approval from the USFWS through the ESA Section 10(a) or Section 7 process, if the project involves listed species.

B. PUBLIC REVIEW

Prior to Discretionary Approval

The project plans, draft NCCP Findings and associated environmental document will be distributed for review to the USFWS (by certified mail), CDFG (by certified mail), affected jurisdictions and the public prior to the City's decision on the project. The public review should occur concurrently with the CEQA public review to the extent possible.

After Discretionary Approval

- a. No additional public review is required for projects that have discretionary approval and only require minor modifications to draft NCCP findings (see Section D).
- b. Projects which require major changes for consistency with the NCCP

R- 284355

other discretionary permits.

If the project is found NOT to be consistent with the required NCCP Findings, the decision maker may do the following:

- a. For projects with CSS habitat that is not occupied by the gnatcatcher or other listed species:
 - 1) Deny the project, unless application of the process would deny all reasonable use of the property.
- b. For projects with occupied habitat:
 - 1) Deny the project; or
 - 2) Approve the project with a condition that prior to the issuance of a grading permit (or approval of public improvement/construction plan) the applicant will be required to provide to the City evidence of authorization from the U.S. Fish and Wildlife Service that the interim take is permitted. This may be in the form of an ESA Section 10(a) permit or through a Section 7 consultation, or other USFWS authorization.

If the project is found to be consistent with the NCCP Findings, the decision-maker must adopt the mitigation plan as part of the project approval. It should be noted that the project is not authorized to proceed until the review as described under Section D (following) is completed.

After Discretionary Approval

If only minor changes are necessary to complete the NCCP requirements a separate public hearing for the findings will not be required. If discretionary approvals have been obtained but major revisions to the project design/permit are necessary to make the NCCP findings, the project will be required to 1) go through the discretionary process for approval of the redesigned project; or 2) seek approval of the original project through the Federal ESA Section 10(a) or Section 7 Process, if applicable.

R- 284355

will be deemed approved by the resource agencies and the City can proceed with issuance of the Interim Habitat Loss Permit. If the agencies do not find that the project is consistent, the agencies must provide comments within an additional 15 days, for a total review period of 60 days.

- b. As noted under Section B above, projects that completed CEQA public review and have previous discretionary approval but require major revisions to the environmental mitigation plan and/or associated permits to meet the NCCP requirements will be required to go through the discretionary review/hearing process again or seek Federal permits, if applicable.

E. INTERIM HABITAT LOSS PERMIT/GRADING PERMIT

In conjunction with the established City review of grading permits (or public improvement plans/construction plans for City public projects), a project will be reviewed (plan checked) for substantial conformance with its approved permit, plans and/or tentative map. The plan check will include a calculation to ensure that the five percent cumulative loss has not been exceeded. The Interim Habitat Loss Permit is valid for one year from the date of issuance. No automatic extensions on grading permits will be issued without a recheck of the cumulative five percent loss.

Once the Interim Habitat Loss Permit and grading permit are issued, City staff will report the CSS loss to SANDAG as the regional "record keeper". SANDAG will provide CSS loss reports to USFWS on a monthly basis, broken down by jurisdiction.

F. PROJECT PRIORITIZATION

The following is the prioritization of projects:

1. City public projects which have been determined by the City Manager or the City Council to provide a substantial public benefit. A reservation of 275 acres of the allowable (5%) coastal sage scrub loss will be set aside for these projects.
2. Private projects that have requested priority for the 5% loss, have been determined by the City Manager or the City Council to provide substantial economic benefit to the City, and have demonstrated the ability to grade and construct within six months of the discretionary approval. (An additional three month extension may be granted by the City Manager for non-expedite projects). The Interim Habitat Loss allocation will expire at

R-284355

DEFINITIONS

USFWS - United States Fish and Wildlife Service

CDFG - California Department of Fish and Game

Section 4(d) Special Rule - A section of the federal Endangered Species Act that allows special rules to apply to a species listed as "threatened", including conditions allowing incidental take.

Section 7 - A section of the federal Endangered Species Act that governs issuance of a permit to allow incidental take of a listed "endangered" species when a federal nexus (federal dollars or involvement) is involved.

Section 10(a) - A section of the federal Endangered Species Act that governs issuance of a permit to allow incidental take of a listed "endangered" species.

NCCP - Natural Community Conservation Plan prepared pursuant to the State of California's Natural Communities Conservation Planning Act.

MSCP - Multiple Species Conservation Program being conducted by the Clean Water Program for the Metropolitan Sewerage System.

Coastal Sage Scrub Habitat - A vegetation community composed of relatively low-growing summer deciduous and succulent plants. Characteristic plants of this community include coastal sagebrush, various species of sage, California buckwheat, lemonadeberry, prickly pear and cholla cactus. Coastal sage scrub is the more general name for vegetation communities also known as maritime succulent scrub, Diegan (or Riversidian) sage scrub, southern coastal bluff scrub, inland sage scrub, alluvial fan scrub, and mixtures of vegetation communities containing coastal sage elements and providing gnatcatcher habitat.

California gnatcatcher (*Polioptila californica*) - A small insectivorous songbird which inhabits almost exclusively the coastal sage scrub plant community although it is also found in other plant communities. Its historic range is southern California and northwestern Baja California, Mexico. The continued existence of the species is threatened by habitat loss and fragmentation occurring in conjunction with urban and agricultural development.

Interim Habitat Loss - The amount of coastal sage scrub/gnatcatcher habitat, not to exceed five percent, that may be lost until a final NCCP/MSCP habitat preserve plan is approved.

Subregional Lead/Coordinating Agency - Agency responsible for the collection of monthly coastal sage scrub "loss" totals from each local jurisdiction to provide a monthly report to the USFWS and CDFG. In San Diego County, this will be SANDAG.

R-284355

Service (USFWS) prior to issuance of grading permits.

II. General Mitigation Guidelines for Interim Habitat Loss

The following guidelines are based on the NCCP Process and Conservation Guidelines, the City's Resource Protection Ordinance Administrative Guidelines, and a letter from the California Department of Fish and Game, dated December 30, 1993, which provides clarification of the NCCP Interim Process.

A. Mitigation is required for impacts occurring to coastal sage scrub habitat and other gnatcatcher habitat. Coastal sage scrub is a vegetation community composed of relatively low-growing summer deciduous and succulent plants. Characteristic plants of this community include coastal sagebrush, various species of sage, California buckwheat, lemonadeberry, prickly pear and cholla cactus. Coastal sage scrub is the more general name for vegetation communities also known as maritime succulent scrub, Diegan (or Riversidean) sage scrub, southern coastal bluff scrub, inland sage scrub, alluvial fan scrub, and mixtures of vegetation communities containing coastal sage elements and providing gnatcatcher habitat.

B. Impacts should be directed to lower value habitats; impacts to intermediate value habitat may require special mitigation; and impacts to higher value CSS habitat should be deferred to the maximum extent possible during the interim period while long-term planning is underway.

C. Impacts to CSS and other gnatcatcher habitat may be allowed if findings are made that the losses are to small populations (as defined by the NCCP Conservation Guidelines Section 5.a.3 and 5.c.6) that are not critical to the continued viability of the (sensitive) species to be lost.

D. Mitigation for impacts to target and listed species must result in no net loss to the long-term viability of the species, or to the value and function of habitat important for long-term maintenance of the species within the NCCP Plan area. No net loss of habitat value means no net reduction in the ability of the NCCP subregion to maintain viable populations of target species over the long-term. Mitigation should be directed toward areas, and be in adequate amounts, to serve these objectives.

E. The overall purpose of the NCCP cited on Page 1 of the NCCP Process Guidelines states,

"The purpose of the Natural Community Conservation Planning program is to provide for regional protection and perpetuation of natural wildlife diversity while allowing compatible land use and appropriate development and growth."

R-284355

by SANDAG. The mitigation may involve habitat acquisition, restoration and management of degraded habitat, or payment of fees into an established mitigation bank or habitat acquisition fund as described below. If mitigation is by payment of fee, the mitigation lands must be obtained within one year of project approval. Mitigation must be consistent with the general mitigation guidelines outlined above under Section II.

1. Habitat Acquisition Fund

In some cases, developments with small mitigation needs could mitigate impacts by the payment of fees into a fund used to acquire sites for the preservation of environmentally sensitive lands. It should be emphasized that this fund is generally intended to be used for mitigation of impacts to small, isolated sites with lower long-term conservation value. For purposes of this fund, small sites are generally considered less than 5 acres, but could in some cases be considered up to 10 acres. Acquisition areas should be prioritized within the City of San Diego and should also reflect, to the extent possible, the geographical characteristics of the impacted site (e.g. same climate zone - coastal vs. inland).

Mitigation monies will be deposited in the City of San Diego's Habitat Acquisition Fund. For all funds deposited as mitigation for impacts to biological resources the following must also be provided:

- a. The amount of the contribution designated for administrative costs (10 percent of the total);
- b. The amount of the contribution designated for the development of long-term management (10 percent of the total);

Administration of the fund will initially be the responsibility of the City of San Diego Development Services Department, with cooperation from other City Departments including Park and Recreation (for acquisition and maintenance); Auditor (for accounting); and Real Estate Assets (for appraisals). Staff costs will not be charged to the fund except when required to cover appraisal and maintenance expenses.

A two million dollar "cap" will be placed on the amount of money that may accumulated in the Habitat Acquisition Fund. The purpose of this cap is to insure that funds are spent in a timely manner. After the cap has been reached, no other funds may be accepted as mitigation for project-related impacts to biological resources until the majority of the money is spent on acquisition, except in specific circumstances as identified by the City Council or the City Manager.

R-284355