

RESOLUTION NUMBER R-288455

ADOPTED ON MARCH 18, 1997

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING THE MSCP PLAN AND THE CITY OF SAN DIEGO SUBAREA PLAN FOR THE MULTIPLE SPECIES CONSERVATION PROGRAM.

WHEREAS, the San Diego-area Multiple Species Conservation Program ("MSCP") describes a cooperative federal, state, and local program of conservation for a number of "Covered Species" of plants and animals. The MSCP is a product of lengthy study and negotiation by and among the UNITED STATES FISH AND WILDLIFE SERVICE ("USFWS"), an Agency of the United States Department of the Interior; the CALIFORNIA DEPARTMENT OF FISH AND GAME ("CDFG"), a Subdivision of the California Resources Agency; The City of San Diego (the "City"); and other interested persons and entities, and representing coordination of private development and conservation interests with federal, state, and local governments; and

WHEREAS, a goal of the MSCP is to conserve biodiversity in the southwestern area of San Diego County ("MSCP Area") and to achieve certainty in the land development process for both private sector and public sector land development projects; and

WHEREAS, pursuant to the Federal Endangered Species Act ("ESA") and the California Endangered Species Act ("CESA"), the United States and the State of California, respectively, have identified certain plant and animal species which are or may be found in the MSCP Area and which, pursuant to the ESA or CESA or other laws or programs, have been listed as threatened

or endangered, have been proposed for listing as threatened or endangered, are candidates for listing as threatened or endangered, or which are otherwise of concern; and

WHEREAS, future growth and land development within the MSCP Area, including both public and private projects, may result in a reduction of Covered Species habitat and/or the taking of Covered Species incidental to the carrying out of otherwise lawful activities; and

WHEREAS, the City is sponsoring the development of the MSCP Plan to meet the requirements of the ESA, the CESA, the Natural Communities Conservation Planning Act of 1991 ("NCCP Act"), the National Environmental Policy Act ("NEPA"), and the California Environmental Quality Act ("CEQA") related to the upgrading of the Metropolitan Sewerage System and the potential obstacles to public and private development in the greater San Diego area posed by the current system of project-by-project review under the ESA and CESA. Consistent with the NCCP Act, the MSCP is a broad-based planning effort intended to provide for effective protection and conservation of the region's wildlife and plant heritage while continuing to allow appropriate development and growth. Such planning is an effective tool in protecting the region's biodiversity while reducing conflicts between protection of wildlife and plants and the reasonable use of natural resources for economic development; and

WHEREAS, the MSCP Plan has been developed through a cooperative effort involving the USFWS, CDFG, local government agencies, property owners, development interests, environmental groups, other community and local interest groups, and the public within the MSCP Area; and

WHEREAS, the MSCP is a comprehensive, long-term habitat conservation plan for the Covered Species which addresses the needs of multiple species and the preservation of natural vegetation communities. The MSCP addresses the potential impacts of urban growth, natural

habitat loss and species endangerment, and creates a plan to mitigate for the potential loss of Covered Species and their habitat due to the direct and indirect impacts of future development of both private and public lands within the MSCP Area; and

WHEREAS, the MSCP establishes the conditions under which the City, for the benefit of itself and of public and private landowners and other land development project proponents within its Subarea Plan boundaries, will receive from the USFWS and the CDFG certain long-term Take Authorizations (and an acknowledgment that the MSCP satisfies the conditions established in the Section 4(d) Special Rule for the California Gnatcatcher) which will allow the taking of certain Covered Species incidental to land development and other lawful land use activities which are authorized by the City; and

WHEREAS, the Take Authorizations will authorize the Incidental Take of all Covered Species Subject to Incidental Take, including those Covered Species which are not presently listed as threatened, endangered, or candidate species under the ESA or CESA. Conserving such unlisted Covered Species (the "taking" of which is not unlawful) the same as listed Covered Species (the taking of which is unlawful in the absence of a Take Authorization) equally in the MSCP may prevent such species from ever being in danger of becoming extinct and will provide certainty regarding how the subsequent listing of such species under the ESA and CESA will affect permitting and mitigation requirements for future land development within the MSCP Area; and

WHEREAS, preservation of natural vegetation communities and wildlife will significantly enhance the quality of life in the San Diego region and set aside lands for the future use and enjoyment of the citizens within the MSCP Area; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the MSCP Plan Volume I (dated August 1996), on file in the Office of the City Clerk as Document No. RR- 288455-1, the City of San Diego Subarea Plan contained within MSCP Subarea Plans Volume II (dated August 1996), on file in the Office of the City Clerk as Document No. RR- 288455-2, and the MSCP Plan Volumes I and II Revisions (dated December 1996), on file in the Office of the City Clerk as Document No. RR- 288455-3 are hereby approved for transmittal to the CDFG and USFWS for consideration and approval, with the following modifications:

1. Amend the Multiple Habitat Planning Area ("MHPA") boundary line adjacent to the San Diego Wild Animal Park to exclude approximately 55 acres from the preserve immediately adjacent to existing disturbed areas in order to accommodate anticipated expansion of the park, as recommended by the City Manager in Attachment 2 of the City Manager's Memorandum to the Honorable Mayor and City Council, dated March 12, 1997 (the "Manager's Memorandum"), on file in the Office of the City Clerk as Document No. RR- 288455-4
2. Modify Section 1.2.5 of the City of San Diego Subarea Plan to clarify the distinction between language intended to provide guidelines and language which creates a specific exclusion for anticipated water utility projects.
3. Modify Section 6.2.4 of the MSCP Plan titled "Mineral Extraction," as it appears in the MSCP Plan Volumes I and II Revisions (dated December 1996), to delete the reference to no reduction in the value and function "short term," and add a sentence stating that: "Short term impacts will be avoided where feasible, minimized to the extent practicable, and mitigated in a manner that maintains the value and function of the preserve." Modify Section 1.4.2 of the City

of San Diego Subarea Plan, titled "Mining, Extraction, and Processing Facilities," as recommended by the City Manager in Attachment 1 of the Manager's Memorandum.

4. Direct the City Manager to incorporate language into the City of San Diego Subarea Plan reflecting that it is City policy to accept lands being offered for dedication to the preserve as a part of a development approval or when these lands are part of a mitigation obligation pursuant to the City of San Diego Subarea Plan, and that the City will accept and be responsible for the management and maintenance of these lands pursuant to the Implementing Agreement, on file in the Office of the City Clerk as Document No. OO-18394 [O-97-90], unless certain circumstances prohibit the acceptance of such lands, such as the presence of hazardous materials, title problems, unpaid taxes, or unacceptable encumbrances, including liens. After such impediments are removed, dedication will be accepted.

5. Direct the City Manager to meet with representatives from the USFWS and CDFG (the "Wildlife Agencies") to clarify various ambiguous program requirements for the purpose of determining which City of San Diego Subarea Plan preserve guidelines are required for the City to maintain take authorizations.

6. Keep the Egger Ghio site within the MHPA and add the following note for number A14 on page 9 of the City of San Diego Subarea Plan: "Preserve boundaries within the proposed special study areas of the Otay-Nestor Community Plan may be modified to reflect changes to land use designations. Any such modifications shall include a wildlife corridor approximately 1,000 feet in width, preserving connectivity between the Otay River and the San Diego Bay."

7. Add Note Number B16 to Page 16 of the City of San Diego Subarea Plan: "Management of the Least Tern Nesting Area shall be pursuant to the adopted Mission Bay Master Plan and associated Natural Resources Management Plan (1990)."

8. The map in the City of San Diego Subarea Plan reflecting the MHPA boundary line in the vicinity of Neighborhood 8A within the Carmel Valley Community Plan shall be noted as unresolved until such time that the City Council takes final action with respect to consideration and approval of a land use plan for Neighborhood 8A.

9. Amend Section 1.6.4 of the City of San Diego Subarea Plan to modify the list of Narrow Endemic Species as provided for in the MSCP Plan Volumes I and II Revisions (dated December 1996) and add two additional species to the list (“aphanisma” and “coastal dunes milk vetch”) as recommended by the City Manager in Manager’s Report No. 97-25.

10. Amend page 56 of the City of San Diego Subarea Plan as recommended by the City Manager in Attachment 2 of the Manager’s Memorandum concerning off-highway vehicle use.

BE IT FURTHER RESOLVED, that additional agricultural lands now being grazed and not included in Figure 2.1 of the MSCP Plan should be identified and analyzed and an amendment sought to bring such areas into the plan to provide for continued agricultural use in a manner that conserves species including the same conditions as those lands currently identified in Figure 2-1 of the MSCP Plan, if appropriate.

BE IT FURTHER RESOLVED, that the City Manager’s interim funding proposal as set forth in Manager’s Report No. 97-25 is approved in concept as modified by the March 18, 1997 Memorandum from Mayor Golding to the Honorable City Council Members, on file in the Office of the City Clerk as Document No. RR- 288455-5. This funding plan shall be brought before the City Council or a Council Committee for review prior to signing the Implementing Agreement with a recommendation from a committee of financial experts to be formed as soon as possible.

BE IT FURTHER RESOLVED, that The City of San Diego will work with property owners and the Wildlife Agencies to assist in reaching a coverage status of “sufficiently conserved” for non-native grassland habitat, provided that appropriate conservation levels are met.

BE IT FURTHER RESOLVED, that the reference to commercial and industrial fees in the example financing plan contained in the MSCP Plan was used only as an example of one of several potential long-term financing methods and there has been no Council direction to pursue this financing option, nor does this action imply that commercial or industrial fees would be imposed as a long-term financing mechanism, and this Council does not support the imposition of commercial or industrial fees as a long-term financing mechanism to fund implementation of the MSCP Plan.

BE IT FURTHER RESOLVED, that any decision regarding the future alignment of State Route 56 is not being made as part of the MSCP Plan hearing process.

BE IT FURTHER RESOLVED, that the City Manager is directed to:

1. Embark upon additional training for City Staff about what MSCP is, the positive benefits of MSCP, and the ramifications of existing staff procedures to ensure that the goals and objectives of the plan are carried out at all levels.
2. Employ a real estate expert, someone who is in the market today, to be in charge of the land negotiations that will be necessary to successfully complete acquisitions from willing sellers.
3. Make necessary and appropriate revisions to the draft MSCP implementing regulations which will be back before Council for approval in the upcoming Zoning Code Update


to be consistent with MSCP Plan document revisions approved by the Council on March 18, 1997.

4. Draft an MSCP Plan Preface outlining the benefits of the program.

5. Review Community Planners Committee's proposed changes to the draft Environmentally Sensitive Lands Regulations and return to Council with a recommendation of the impact of those changes at the hearing for the Zoning Code Update.

BE IT FURTHER RESOLVED, that the City will work with the Army Corps of Engineers and the EPA to streamline the 404 wetlands permitting process. The City's Intergovernmental Relations Department is directed to work with the state and federal governments to obtain federal appropriations for the Army Corp of Engineers' efforts to fund a regional wetlands permit.

APPROVED: CASEY GWINN, City Attorney

By 
Richard A. Duvernay
Deputy City Attorney

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