

ORDINANCE NUMBER O- 18456 (NEW SERIES)

ADOPTED ON JAN 12 1998

AN ORDINANCE AMENDING CHAPTER X, ARTICLE 1, DIVISION 4, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 101.0462 AND BY AMENDING AND RENUMBERING SUBSECTIONS A THROUGH R OF SECTION 101.0462 INTO SECTIONS 101.0462.0001 THROUGH 101.0462.0018, RESPECTIVELY; AND BY ADDING SECTIONS 101.0462.0019 THROUGH 101.0462.0029, ALL RELATING TO THE RESOURCES PROTECTION ORDINANCE FOR THE PROTECTION OF BIOLOGICAL RESOURCES AND IMPLEMENTATION OF THE MULTIPLE SPECIES CONSERVATION PLAN.

WHEREAS, on July 17, 1997, the Multiple Species Conservation Plan ("MSCP") became effective in the City of San Diego; and

WHEREAS, as part of the MSCP Implementing Agreement between the City, the United States Fish and Wildlife Service, and the California Department of Fish and Game, the City agreed to adopt regulations within six months to implement the biological protections of the MSCP; and

WHEREAS, on December 9, 1997, the Council of The City of San Diego adopted the Land Development Code, which included regulations protecting biologically sensitive lands; and

WHEREAS, the Land Development Code will not become effective before May 1, 1998; and

WHEREAS, the City wishes to make the regulations of the Land Development Code which relate to biologically sensitive lands effective as part of the existing Resource Protection Ordinance during the interim period before the Land Development Code becomes effective;

NOW, THEREFORE,

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

Section 1. That Chapter X, Article 1, Division 4, of the San Diego Municipal Code is amended by amending Section 101.0462 and by amending and renumbering subsections A through R of Section 101.0462 into Sections 101.0462.0001 through 101.0462.0018, respectively, and by adding Sections 101.0462.0019 through 101.0462.0029, to read as follows:

SEC. 101.0462 Resource Protection Ordinance

This section is indexed as follows:

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SEC. 101.0462.0027	Required Findings for Impacts to Sensitive Biological Resources
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SEC. 101.0462.0029	Covenants of Easements Pursuant to Environmentally Sensitive Lands Regulations

SEC. 101.0462.0001 Purpose, Intent and Title

Sections 101.0462 through 101.0462.0030 shall be known as the Resource Protection Ordinance (RPO).

The purpose and intent of the Resource Protection Ordinance is to protect, preserve and, where damaged, restore the environmentally sensitive lands of San Diego, which include wetlands, wetland buffers, floodplains, hillsides, sensitive biological resources, and significant prehistoric and historic resources, as defined in Section 101.0462.0006.

The purpose and intent of the sensitive biological resource regulations are more specifically described in this Division at Section 101.0462.0019.

SEC. 101.0462.0002 Resource Protection Permit Required

[No change.]

SEC. 101.0462.0003 Protection of Resources

[No change in text of the first paragraph.]

1. and 2. [No change.]
3. All hillside, wetland and wetland buffer areas which meet the definition contained herein.
4. All sensitive biological resources which meet the definition contained in Section 101.0462.0006 (Definitions).
5. All significant prehistoric and historic sites and resources which meet the definition contained in Section 101.0462.0006 (Definitions).

SEC. 101.0462.0004 General Provisions

1. [No change.]
2. The provisions of Municipal Code sections 101.0462.0006 and 101.0462.0007 shall be applicable within the Del Mar Mesa Specific Plan area as provided for in the Del Mar Specific Plan. Development within the Del Mar Mesa Specific Plan area shall be subject to the Supplemental Regulations for Resource Management contained in the specific plan. All other provisions of the Resource Protection Ordinance shall apply.
3. Any person or persons may propose to the Land Use and Housing Committee revisions to the resource protection boundaries. These revisions may include deletion of areas of poor environmental quality, or addition of areas of significant environmental value. The Land Use and Housing Committee may request a report from the Development Services Director on this matter and may direct that it be referred to the Planning Commission. The City Council shall consider the revisions, in accordance with "Process Five", following review by the Planning Commission and the appropriate community planning groups.
4. In the case of significant prehistoric and historic resources, sensitive biological resources or unmapped wetlands, a map shall be prepared and maintained by the Development Services Business Center and considered by the City Council for adoption, in accordance with "Process Five", and shall be used to identify properties that will not require a prehistoric, historic, or biological resources survey for purposes of obtaining a Resource Protection Permit.

However, if it is demonstrated to the Development Services Director that prehistoric, historic or biological resources or unmapped wetlands do in fact exist upon these properties, the appropriate survey shall be required by the Development Services Director.

5. The Development Services Director is hereby authorized to promulgate administrative guidelines to implement the provisions of the Resource Protection Ordinance. The guidelines or any revisions thereto shall be effective without a hearing thirty (30) calendar days after their publication in a newspaper of general circulation by the Development Services Director; pursuant to San Diego Municipal Code section 22.0102, unless a timely protest is filed with the Development Services Director. In this event, the Development Services Director shall consider the objections of those affected by the proposed change. As soon thereafter as practicable, the Development Services Director may then issue the guidelines with any revisions deemed necessary or appropriate, or decline to so issue them. This provision shall not be applicable to any emergency guideline issued by the Development Services Director to preclude an event that will be detrimental to the public health or safety, nor shall it apply to the initial promulgation of the guidelines authorized by R-277284 adopted January 29, 1991.

6. A Resource Protection Permit shall be required in conjunction with the processing of a long range plan, as defined in Section 101.0462.0006, if a subdivision or parcel map or another discretionary permit approval is concurrently processed. In this event, the Resource Protection Permit shall only be required for that portion of the area that is covered by the concurrent discretionary map or

permit. However, in any case a consistency determination shall be prepared when required by Council Policy 600-40.

7. For Sensitive Biological Resources, Sections 101.0462.0005, 101.0462.0007, 101.0462.0009, 101.0462.0010, 101.0462.0011, 101.0462.0012 and 101.0462.0017 of the Resource Protection Ordinance do not apply.

SEC. 101.0462.0005 Exclusions

[No change.]

SEC. 101.0462.0006 Definitions

The following definitions apply for the purposes of the Resource Protection Ordinance.

1. [No change.]

2. Sensitive Biological Resources. Sensitive Biological Resources means upland and/or Wetland areas that meet any one of the following criteria:

- a. Lands that have been included in the City of San Diego Multiple Habitat Planning Area;
- b. Wetlands;
- c. Lands outside the MHPA that contain Tier I Habitats, Tier II Habitats, Tier IIIA Habitats, or Tier IIIB Habitats;
- d. Lands supporting species or subspecies listed as rare, endangered, or threatened under Section 670.2 or 670.5, Title 14, California Code of Regulations, or the Federal Endangered Species Act, Title 50, Code of Federal

Regulations, Section 17.11 or 17.12, or candidate species under the California Code of Regulations; or

e. Lands containing habitats with Narrow Endemic Species as listed in the Biology Guidelines in the Land Development Manual.

f. Lands containing habitats of covered species as listed in the Biology Guidelines in the Land Development Manual.

3. Clearing. The cutting and removal of vegetation from the land without disturbance to the soil, surface or destruction of the root system.

4. Grubbing. The removal or destruction of vegetation by the removal of or disturbance to the root system and/or soil surface by any means including chemical.

5. Feasible. Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

6. Fill. Any material or substance which is deposited, placed, pushed, dumped, pulled or transported, or moved to a new location and the conditions resulting therefrom. Fill also includes pilings placed for the purpose of erecting structures thereon when located in a submerged area. Examples of fill materials include but are not limited to earth, excavated or dredged materials, sand, gravel, rock, riprap, and concrete.

7. Floodplain. The relatively flat areas of low lands adjoining, and including, the channel of a river, stream, water course, bay or other body of water

which is subject to inundation by the flood waters of the one hundred (100) year frequency flood.

8. Floodway. The river channel and the adjacent land areas, within the floodplain, needed to carry a one hundred (100) year frequency flood without increasing the water surface elevation more than one (1) foot at any point. The natural flood water profile is the water surface elevation of a nonconfined one hundred (100) year frequency flood in the natural undeveloped floodplain.

9. Floodplain Fringe. All that land in a floodplain not lying within a delineated floodway. Land within a floodplain fringe is subject to inundation by relatively low velocity flows and shallow water depths.

10. Hillsides. All lands mapped by the Hillside Review Overlay Zone (Section 101.0454) and all other lands having a slope with a natural gradient of twenty-five percent (25%) or greater, (twenty-five (25) feet of vertical distance for each one hundred (100) feet of horizontal distance) and a minimum elevation differential of fifty (50) feet.

11. Long Range Plan. A new community plan, or a general plan or community plan, plan amendment, precise plan, specific plan or other planning document, and amendments thereto, for long-term future planning.

12. Significant Prehistoric and Historic Sites and Resources. Locations of prehistoric or historic resources that possess unique cultural, scientific, religious or ethnic value of local, regional, state or federal importance. The above shall be limited to prehistoric or historic districts, sites, buildings, structures, or objects included in the State Landmark Register, or the City of San Diego Historical Sites

Board List, or included in or eligible for inclusion in the National Register of Historic Places; areas of past human occupation where important prehistoric or historic activities or events occurred (such as villages or permanent camps); and locations of past or current traditional religious or ceremonial observances as defined by Public Resources Code section 5097.9 et seq., and protected under Public Law 95-341, the American Indian Religious Freedom Act (such as burials, pictographs, petroglyphs, solstice observation sites, and sacred shrines).

13. Wetlands. Wetlands are defined as areas which are characterized by any of the following conditions:

a. All areas persistently or periodically containing naturally occurring Wetland vegetation communities characteristically dominated by hydrophytic vegetation, including but not limited to salt marsh, brackish marsh, freshwater marsh, riparian forest, oak riparian forest, riparian woodlands, riparian scrub, and vernal pools;

b. Areas that have hydric soils or Wetland hydrology and lack naturally occurring Wetland vegetation communities because human activities have removed the historic Wetland vegetation or catastrophic or recurring natural events or processes have acted to preclude the establishment of Wetland vegetation as in the case of salt pannes and mudflats;

c. Areas lacking Wetland vegetation communities, hydric soils and Wetland hydrology due to non-permitted filling of previously existing Wetlands;

d. Areas mapped as Wetlands on maps on file with The City of San Diego and used to implement the Sensitive Coastal Overlay Zone.

It is intended for this definition to differentiate for purposes of delineating Wetlands, between naturally occurring Wetlands and Wetlands intentionally created by human actions, from areas with Wetlands characteristics unintentionally resulting from human activities in historically non-wetland areas. With the exception of Wetlands created for the purpose of providing Wetland habitat or resulting from human actions to create open waters or from the alteration of natural stream courses, areas demonstrating Wetland characteristics, which are artificially created are not considered Wetlands by this definition. Taking into account regional precipitation cycles, all adopted scientific, regulator, and technological information available from the State and Federal resource agencies shall be used for guidance on the identification of hydrophytic vegetation, hydric soils and Wetland hydrology.

14. Wetland Buffers. Wetland Buffer means an area or feature(s) that protects the functions and values of the adjacent Wetland.

SEC. 101.0462.0007 Permitted Uses and Development Regulations

1. Floodways. [No change.]
2. Floodplain Fringe. [No change.]
3. Hillsides.

Permitted uses in the hillside areas shall be those uses permitted by the underlying zone subject to the following regulations and the regulations and

restrictions of the underlying zone, and the Hillside Review Overlay Zone (Section 101.0454), except that a separate Hillside Review Permit shall not be issued.

Where a development is proposed on hillsides, the following regulations apply:

a. Hillsides shall be preserved in their natural state, provided a minimal encroachment into such lands may be permitted to the extent set forth in "Encroachment Table for Hillsides.

All development or grading occurring in hillsides must comply with the regulations of the Hillside Review Overlay Zone and the Hillside Design and Development Guidelines (October, 1984).

ENCROACHMENT TABLE FOR HILLSIDES

Column 1	Column 2	Column 3	Column 4
Percent of Site Containing Slopes of 25% Grade and Over	Maximum Encroachment Allowance for Development (not including Public Streets, Utilities and Facilities) as Percent of Column 1	Maximum Exemptible Area (Additional Encroachment) for Public Streets, Utilities and Facilities as Percent of Column 1 Subject to Findings in Sec. 101.0462.0007(3)(b)	Maximum Potential of Total Encroachment as Percent of Column 1

[No change in percentages.]

(Note: Columns 2, 3 and 4 are expressed as a percentage of that portion which contains hillsides.)

b. The following exemptions from the encroachment allowance may be considered up to the maximum allowance in Column 3 of "Encroachment Table for Hillsides" if the Development Services Director finds that all such exemptions are sited, designed and constructed to: minimize if not preclude adverse impacts to the sensitive biological resources; comply with the regulations of the Hillside Review Overlay Zone where applicable, and Hillside Design and Development Guidelines (October, 1984); and not adversely impact state or federally- listed rare, threatened or endangered species or wetlands:

1) through 5) [No change.]

c. Areas with native vegetation which are cleared or thinned to protect existing or proposed structures in potential danger from fire may also be exempted provided that: the area cleared or thinned for such brush management is the minimum necessary to comply with existing City fire codes; native root stock is retained in sensitive biological resources, and, in all areas where the root stock is removed, replanting is done with native or naturalized non-native fire retardant vegetation; no reconfiguration of the natural landform is required; no permanent irrigation is provided and no non-native plants are introduced in sensitive biological resources; and, no sensitive species or vegetation would be significantly adversely impacted.

d. Except as otherwise provided for in existing conditional use permits, sand, gravel and rock extraction is exempt from the hillside encroachment allowance, provided that mitigation measures are required that maximize the use of native vegetation to revegetate and landscape cut or fill areas in order to

substantially restore the original habitat value and produce final graded slopes with contours and soils which reflect the original landform conditions. Use of the hillsides after reclamation shall thereafter be subject to all requirements of this section.

e. All encroachment allowances shall be subject to a determination by the Development Services Director that such encroachment is supported by the findings of fact required under Section 101.0462.0012.

f. All hillsides which remain undisturbed or which are restored or enhanced as a result of a development approval shall be conserved as a condition of permit approval through a deed restriction, open space easement or other suitable restriction acceptable to the City Attorney and the Development Services Director and, when applicable, the City Manager, that will preclude any future development or grading of such lands.

4. [No change.]

SEC. 101.0462.0008 Application Submittal Requirements

[No change in text of first paragraph.]

1. through 8. [No change.]

9. A biological resources survey, as provided for by the Biology Guidelines (Exhibit I to the City of San Diego Multiple Species Conservation Plan Implementing Agreement, adopted by Ordinance No. O-18394 on April 7, 1997, and effective July 17, 1997).

10. [No change.]

SEC. 101.0462.0009 Permit Exemptions

[No change.]

SEC. 101.0462.0010 Emergency Permit

[No change.]

SEC. 101.0462.0011 Administration of Permit

[No change.]

SEC. 101.0462.0012 Alternative Compliance

[No change in text of first paragraph.]

1. and 2. [No change.]

3. The Planning Commission may grant alternative compliance to ensure the provisions of extraordinary benefit to the general public on making findings of overriding social and economic considerations in addition to the following findings:

a. and b. [No change.]

c. [No change in text of first 2 paragraphs.]

For other than the approvals of coastal development permits, substantial conformity determinations and determinations of unnecessary hardship under this subsection, alternative compliance shall not be approved unless mitigation measures are adopted.

SEC. 101.0462.0013 Denied Permits

[No change.]

SEC. 101.0462.0014 Conditional Use Permits

[No change.]

SEC. 101.0462.0015 Violations

[No change.]

SEC. 101.0462.0016 Failure to Utilize Resource Protection Permit

[No change.]

SEC. 101.0462.0017 Applicability of Amendments to Existing Applications

[No change.]

SEC. 101.0462.0018 Applicability to Public Works Projects

[No change.]

SEC. 101.0462.0019 Purpose of Sensitive Biological Resources Regulations

The purpose of these regulations is to protect, preserve and, where damaged restore, the environmentally sensitive lands of San Diego and the viability of the species supported by those lands. These regulations are intended to assure that development occurs in a manner that protects the overall quality of the resources and the natural character of the area, encourages a sensitive form of development, retains biodiversity and interconnected habitats. These regulations are intended to protect the public health, safety, and welfare while employing regulations that are consistent with sound resource conservation principles and the rights of private property owners.

It is further intended for the Development Regulations for Sensitive Biological Resources and accompanying Biology Guidelines to serve as standards for the determination of impacts and mitigation under the California Environmental Quality Act. These standards will also serve to implement the Multiple Species Conservation Program by placing priority on the preservation of biological

resources within the Multiple Habitat Planning Area, as identified in the City of San Diego Subarea Plan. The habitat based level of protection which will result through implementation of the Multiple habitat Planning Area is intended to meet the mitigation obligations of the Covered Species addressed. In certain circumstances, this level of protection may satisfy mitigation obligations for other species not covered under the Multiple Species Conservation Program but determined to be sensitive pursuant to the CEQA review process. This determination will be addressed in the environmental documentation.

SEC. 101.0462.0020 When Sensitive Biological Resources Regulations Apply

This section applies to all proposed development when sensitive biological resources are present on the premises.

(a) Where any portion of the premises contains sensitive biological resources, this section shall apply to the entire premises, unless otherwise provided in this section:

(b) The “Sensitive Biological Resources Applicability Table” identifies the appropriate development regulations, the required decision process, and the permitted uses applicable to various types of development proposals that propose to encroach into sensitive biological resources or that do not qualify for an exemption pursuant to Section 101.0462.0020(c).

(1) A Resource Protection Permit is required for any development proposal that proposes to encroach into sensitive biological resources.

(2) Any development proposal on a site containing sensitive biological resources may be exempt from this section if no encroachment into the sensitive

biological resources is proposed and the development complies with Section 101.0462.0020(c)(1).

(3) Limited exceptions to the applicable development regulations for specific types of development are listed in Section 101.0462.0021.

Sensitive Biological Resources Applicability Table

Environmentally Sensitive Lands Potentially Impacted by Project			
Type of Development Proposal		Wetlands, listed non-covered species habitat⁽¹⁾	Other Sensitive Biological Resources other than Wetlands and listed noncovered species habitat
1. Single dwelling units on individual lots equal to or less than 15,000 square feet ⁽²⁾	R	101.0462.0026(a)	101.0462.0026
	P	RPO/ Process Three	RPO/ Process Three
2. Single dwelling units on lots or multiple lots totaling more than 15,000 square feet	R	101.0462.0026(a)	101.0462.0026
	P	RPO/ Process Three	RPO/ Process Three
3. Multiple dwelling unit and non-residential development and public works projects	R	101.0462.0026(a)	101.0462.0026
	P	RPO/ Process Three	RPO/ Process Three
4. Any subdivision of a premises	R	101.0462.0026(a)	101.0462.0026
	P	RPO/ Process Four	RPO/ Process Four
5. Project-specific land use plans	R	101.0462.0026(a), 101.0462.0023	101.0462.0026, 101.0462.0023
	P	RPO/ Process Four/Five	RPO/ Process Four/Five
6. Any development that proposes deviations from any portion of the Environmentally Sensitive Lands Regulations	R	101.0462.0026(a), 101.0462.0028	101.0462.0026, 101.0462.0028
	P	RPO/ Process Four	RPO/ Process Four

Legend to Sensitive Biological Resources Applicability Table

R	Development regulation sections (in addition to Section 101.0462.0025) applicable to the sensitive biological resources present.
P	Type of Permit/Decision process required. RPO (Resource Protection Permit)

Footnotes to Sensitive Biological Resources Applicability Table

(1) This includes listed species and their habitat not covered by the Take Authorizations issued to the City by the State and Federal governments under the Multiple Species Conservation Program.

(2) This includes the development of one or more lots as long as the total area of the lots does not exceed 15,000 feet and the lots were not joined in ownership to any contiguous lot or parcel on or before the adoption date of this section so that the total area of contiguous ownership exceeded 15,000 square feet.

(c) A Resource Protection Permit is not required for the following development activity:

(1) Development on a premises containing sensitive biological resources when the development will not encroach into the sensitive biological resources during or after construction, if the property owner signs an acknowledgment that further development on the property is not permitted unless the development is reviewed and approved pursuant to this section and if the development proposal provides for a 100-foot setback from sensitive biological resources;

(2) Development that is limited to interior modifications or repairs, or any exterior repairs, alterations or maintenance that does not increase the footprint of an existing building or accessory structure and will not encroach into the environmentally sensitive lands during or after construction.

(3) Development activity that is limited to permissible grading for the preparation of a site for cultivation of crops and where grading for agriculture purposes has occurred in compliance with all legal requirements within the previous 3 years.

(4) City public works projects for which plans, specifications, or funding have been approved by the City Council or the City Manager before July 1, 1991.

(5) Restoration projects where the sole purpose is enhancement or restoration of native habitats.

(6) Zone Two brush management activity if the brush management complies with the landscape regulations and the Biology Guidelines.

(7) Development in the Calle Cristobal Assessment District area and outside the Coastal Overlay Zone.

(8) Development in the Miramar Ranch North Community Plan area and the 70 acre high school project in Scripps Ranch.

(9) Development of the 178 acres of land known as Sorrento Hills that was the subject of the land exchange approved by the voters as Proposition D on November 4, 1986.

SEC. 101.0462.0021 Limited Exceptions from Sensitive Biological Resources Regulations

The following development activities require a Resource Protection Permit in accordance with "Sensitive Biological Resources Applicability Table," but the applicable development regulations are modified as indicated:

City linear utility projects are exempt from the development area regulations of Section 101.0462.0026(d).

SEC. 101.0462.0022 Determination of Location of Sensitive Biological Resources, Applicability of Regulations and Decision Process

(a) In connection with any permit application for development on a parcel, the applicant shall provide the information used to determine the existence and location of sensitive biological resources.

(b) Based on a project-specific analysis and the best scientific information available, the City Manager shall determine the existence and precise location of sensitive biological resources on the premises.

SEC. 101.0462.0023 Procedures and Regulations for Project-Specific Land Use Plans

(a) Project-specific land use plans, including specific plans, precise plans, privately initiated land use plan amendments, and future urbanizing area subarea plans, proposed for sites where environmentally sensitive lands are present, are subject to the regulations in this section to ensure adequate analysis of the constraints and opportunities of the planning area relative to environmentally sensitive lands. The analysis of environmentally sensitive lands for project-specific land use plans will be conducted in accordance with either Section 101.0462.0023(b) or (c) based on whether or not a Resource Protection Permit is processed concurrently with the project-specific land use plan.

(b) Where a Resource Protection Permit is requested concurrently with the processing of a project-specific land use plan, the proposed development is subject to the following regulations.

(1) The boundaries of the Resource Protection Permit will be the boundaries of the project-specific land use plan, including all individual interior lots within the plan area.

(2) A decision on a Resource Protection Permit processed concurrently with a project-specific land use plan will be made in accordance with Process Five.

(3) The environmentally sensitive lands regulations applicable to the Resource Protection Permit will be determined in accordance with "Sensitive Biological Resources Applicability Table." Sufficient information must be submitted for the entire plan area in order to evaluate potential impacts to environmentally sensitive lands. Any deviations proposed are subject to Section 101.0462.0028.

(4) The applicant shall prepare a development suitability analysis to evaluate the proposed development of the entire plan area and its relationship to the all regulations for environmentally sensitive lands as well as other factors such as historical resources, visual resources, public facilities needs, public safety issues, and adjacent land uses. The constraints and opportunities identified shall be used to determine the portions of the plan area that are most suitable for development and those that should be preserved as open space. Overall development within the plan area, including public facilities and circulation elements, shall be located to minimize impacts to environmentally sensitive lands, in accordance with this section and the associated guidelines in the Land Development Manual.

(5) The project-specific land use plan shall include a summary of the allowable development area and any required mitigation for each parcel. If the project-specific land use plan contains MHPA lands, mitigation for impacts to sensitive biological resources should be directed toward acquisition of MHPA lands within the city boundaries and preferably within the same plan area.

(6) Subsequent development proposals within the Resource Protection Permit area will be reviewed in accordance with the substantial conformance procedures. If the development is determined to be in conformance with the Resource Protection Permit and any required mitigation is provided, an amendment to the Resource Protection Permit will not be required. If the proposed development is not in conformance with the approved project-specific land use plan, an amendment to the Resource Protection Permit will be required for the development in addition to an amendment to the approved project-specific land use plan.

(c) Where a Resource Protection Permit is not requested concurrently with the processing of a project-specific land use plan, the proposed plan and subsequent Resource Protection Permits are subject to the following regulations.

(1) The applicant shall prepare a development suitability analysis that evaluates the proposed development of the entire plan area and its relationship to the environmentally sensitive lands regulations as well as other factors such as historical resources, visual resources, public facilities needs, public safety issues, and adjacent land uses. The constraints and opportunities identified shall be used to determine the portions of the plan area that are most suitable for

development and those that should be preserved as open space. Overall development within the plan area, including public facilities and circulation elements, shall be located to minimize impacts to environmentally sensitive lands, in accordance with this section and associated guidelines.

(2) The project-specific land use plan shall indicate how subsequent developments within the plan area will comply with the sensitive biological resources regulations and the associated guidelines in the Land Development Manual. Where any deviation from this section is proposed for the plan area or on an premises, a description of the deviation shall be provided along with a statement of how the deviation benefits the overall design of the entire plan area. Deviations may be approved only under the following conditions:

(A) When there are no feasible measures that can further minimize the potential adverse effects on environmentally sensitive lands and when the deviation is the minimum necessary to afford relief and accommodate the development; and

(B) When there are special circumstances or conditions applying to the plan area that are peculiar to the land and not of the applicant's making, whereby strict application of the provisions of the environmentally sensitive lands regulations would deprive a property owner of reasonable use of his or her land and would result in a less desirable project-specific land use plan.

(3) The project-specific land use plan shall acknowledge that any privately owned property that is designated entirely as open space could be proposed for development in accordance with the base zone. This possibility

shall be taken into consideration when analyzing the total potential development area within the plan area.

(4) The project-specific land use plan shall include an implementation strategy for acquisition of those parcels designated as open space. If the project-specific land use plan contains MHPA lands, mitigation for impacts to sensitive biological resources should be directed toward acquisition of MHPA lands within the City boundaries and preferably within the same plan area.

(5) After approval of the project-specific land use plan, a Resource Protection Permit shall be required for all proposed individual developments within the plan area and shall be reviewed in accordance with Process Four. Additional information pertaining to environmentally sensitive lands may be required in order to conduct a detailed analysis of the specific development proposal. Approval of the individual Resource Protection Permits will require conformance with the approved project-specific land use plan and any required mitigation shall be provided. Deviation findings will not be required if the proposed development is consistent with the approved project-specific land use plan. If a proposed development is not in conformance with the approved project-specific land use plan, approval of a Resource Protection Permit requires compliance with all regulations for environmentally sensitive lands.

(6) Conformance with the regulations for environmentally sensitive lands and associated guidelines is required for all environmentally sensitive lands impacts not addressed by the approved project-specific land use plan.

SEC. 101.0462.0024 Emergency Authorization to Impact Sensitive Biological Resources

Whenever development activity within sensitive biological resources is deemed necessary by order of the City Manager to protect the public health or safety, the City Manager may authorize, without a public hearing, the minimum amount of impact necessary to protect the public health or safety, subject to the following:

(a) If the emergency work involves only temporary impacts to sensitive biological resources, a Resource Protection Permit is not required provided the sensitive biological resources are restored to their natural state, in accordance with a restoration plan approved by the City Manager. The restoration plan shall be submitted to the City Manager within 60 days of completion of the emergency work.

(b) If the emergency work results in permanent impacts to environmentally sensitive lands, a subsequent Resource Protection Permit is required in accordance with all regulations of this section. The application for the Resource Protection Permit shall be submitted within 60 days of completion of the emergency work.

SEC. 101.0462.0025 General Development Regulations for Sensitive Biological Resources

Development that proposes encroachment into sensitive biological resources or that does not qualify for an exemption pursuant to Section 101.0462.0020(c) is subject to the following regulations.

(a) Sensitive biological resources that are outside of the allowable development area on a premises shall be left in a natural state and used only for those passive activities allowed as a condition of permit approval. The landowner may elect to offer to dedicate in fee the undeveloped remainder portion of the premises to the City to relieve the land owner of management and liability obligations associated with that portion of the premises. Otherwise, the passive activities allowed on the undeveloped remainder of the premises and any other conditions of the permit shall be incorporated into a covenant of easement that shall be recorded against title to the property, in accordance with procedures set forth in Section 101.0462.0029.

(b) The allowable development area for all proposed subdivisions is based on the existing lot or premises to be subdivided. If no development is proposed on any newly created lot, the future development area of the lot shall be indicated on the required grading plan and included in the maximum allowable development area calculation for the subdivision.

(c) No building lot shall be created that provides such a small development area that future reasonable development of the lot will require additional encroachment into sensitive biological resources beyond the maximum allowable development area of the original, unsubdivided premises. If additional development area is proposed for a lot that would exceed the maximum allowable development area of the original, unsubdivided premises, a deviation in accordance with Section 101.0462.0028 is required, regardless of the lot size and the existing development area of the individual lot.

(d) No temporary disturbance or storage of material or equipment is permitted in environmentally sensitive lands, unless the disturbance or storage occurs within an area approved for development by a Resource Protection Permit or unless it can be demonstrated that the disturbance or storage will not alter the landform or cause permanent habitat loss and the land will be revegetated and restored in accordance with the Biology Guidelines.

SEC. 101.0462.0026 Development Regulations for Sensitive Biological Resources

Development that proposes encroachment into sensitive biological resources or that does not qualify for an exemption pursuant to Section 101.0462.0020(c) is subject to the following regulations and the Biology Guidelines.

(a) State and federal law precludes adverse impacts to wetlands or listed non-covered species habitat. The applicant shall confer with the U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and Game before any public hearing for the development proposal. Grading or construction permits shall not be issued for any project that adversely impacts Wetlands or Listed non-covered species habitat until all necessary federal and state permits have been obtained.

(b) Outside and inside the *MHPA*, impacts to wetlands, including vernal pools in naturally occurring complexes, shall be avoided. A wetland buffer shall be maintained around all wetlands when necessary and as appropriate to protect the functions and values of the wetland. Mitigation for impacts associated with a

deviation shall achieve the goal of no-net-loss and retain in-kind functions and values.

(c) Inside the MHPA, development shall avoid impacts to narrow endemic species. Outside the MHPA, measures for protection of narrow endemic species shall be required such as management enhancement, restoration and/or transplanted. A list of narrow endemic species is included in the Biology Guidelines.

(d) Within or partially within the MHPA, development is permitted only if necessary to achieve the allowable development area in accordance with the following regulations, unless exempted from the development area regulations pursuant to Section 101.0462.0021.

(1) If the premises is located entirely within the boundary of the MHPA, a maximum of 25 percent of the site may be developed.

(2) If the premises is located partially within the boundary of the MHPA, any development proposed must occur on the portion of the premises not within the MHPA. If the portion of the premises not within the MHPA is greater than 25 percent of the premises area, the allowable development area may include all of the area outside of the MHPA, except as limited by Section 101.0462.0028(b).

(3) If the portion of the premises not within the MHPA boundary is less than 25 percent of the premises area, encroachment into the MHPA may be permitted to achieve a maximum development area of 25 percent of the premises.

(4) Up to 5 percent of additional development area is permitted to accommodate essential public facilities only, as identified in the applicable land use plan as long as the total development area does not exceed 30 percent of the premises. This additional development area shall require mitigation.

(5) The allowable development area shall be 1 acre from a premises with a total area of less than 4 acres provided the width of the MHPA is at least 1,000 feet where the premises is located. Mitigation will be required for any impacts from development in excess of 25 percent of the premises area.

(6) The portions of the premises within the MHPA that are not included in the allowable development area shall be maintained in their natural state and may only be used for passive uses consistent with the Multiple Species Conservation Program Plan.

(7) Any development within the MHPA shall occur in the least sensitive areas first, in accordance with the Biology Guidelines.

(8) Any exception to the allocable development area regulations in this section shall be subject to Section 101.0462.0028.

(e) Inside and adjacent to the MHPA, all development proposals shall be consistent with the City of San Diego MSCP Subarea Plan.

(f) Inside the MHPA, any change of an agricultural use to a non-agricultural use is subject to the development area regulations of Section 101.0462.0026(d). Existing agricultural operations that exceed the allowable development area may remain as agricultural use only and do not count as part of the allowable development area.

(g) Outside the MHPA, encroachment into sensitive biological resources is not limited, except as set forth in Section 101.0462.0026(b).

(h) All development occurring in sensitive biological resources both inside and outside the MHPA is subject to a site-specific impact analysis conducted by the City Manager, in accordance with the Biology Guidelines. The impact analysis shall evaluate impacts to sensitive biological resources and CEQA sensitive species. The analysis shall determine the corresponding mitigation, where appropriate, and the requirements for protection and management. Mitigation may include any of the following, as appropriate to the nature and extent of the impact.

(1) Acquisition or dedication of another site that can serve to mitigate the project impacts, with limited right of entry for habitat management, as necessary, if the site is not dedicated. This site must have long-term viability and the biological values must be equal to or greater than the impacted site.

(2) Preservation or dedication of on-site sensitive biological resources, creation of new habitat, or enhancement of existing degraded habitat, with limited right of entry for habitat management, as necessary, if the site is not dedicated. The site must have long-term viability and the biological values must be equal to or greater than the impacted site.

(3) In circumstances where the area of impact is small, monetary payment of compensation into a fund in lieu of other forms of mitigation. The City shall use the fund to acquire, maintain and administer habitat areas pursuant to City Council Resolution No. R-275129, adopted February 12, 1990. Where

appropriate, the City Manager is authorized to enter into agreements with public agencies or private non-profit conservancies or foundations to administer the funds and acquire or maintain habitat preservation areas.

(i) Grading during wildlife breeding seasons shall be consistent with the requirements of the City of San Diego MSCP Subarea Plan.

(j) Sensitive biological resources that are outside of the allowable development area on a premises, or are acquired as off-site mitigation as a condition of permit issuance, are to be left in a natural state and used only for those passive activities allowed as a condition of permit approval. If the land is not dedicated in fee to the City, identification of permissible passive activities and any other conditions of the permit shall be incorporated into a covenant of easement that shall be recorded against title to the property, in accordance with procedures set forth in Section 101.0462.0029. The U.S. Fish and Wildlife Service and the California Department of Fish and Game are to be named as third party beneficiaries to any covenant of easement recorded pursuant to this section.

SEC. 101.0462.0027 Required Findings for Impacts to Sensitive Biological Resources

A Resource Protection Permit for a development that impacts sensitive biological resources may be approved only if the decision maker makes all of the following findings:

(a) The proposed development will not adversely affect the applicable land use plan;

(b) The proposed development will not be detrimental to the public health, safety, and welfare;

(c) The proposed development will comply with the applicable regulations of the Municipal Code;

(d) The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to sensitive biological resources;

(e) The proposed development will be sited and designed to prevent adverse impacts on any adjacent sensitive biological resources;

(f) The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan; and

(g) The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.

SEC. 101.0462.0028 Deviations from Sensitive Biological Resources Regulations

If a proposed development does not comply with the development regulations of this section and a deviation is requested as indicated in "Sensitive Biological Resources Applicability Table," the Planning Commission may approve, conditionally approve, or deny the proposed Resource Protection Permit in accordance with Process Four, subject to the following:

(a) Deviations from the regulations of this section may be granted only if the decision maker makes the following findings:

(1) There are no feasible measures that can further minimize the potential adverse effects on sensitive biological resources; and

(2) The proposed deviation is the minimum necessary to afford relief from special circumstances or conditions of the land not of the applicant's making.

SEC. 101.0462.0029 Covenants of Easements Pursuant to Environmentally Sensitive Lands Regulations

As authorized by California Government Code section 65871, the owner of any premises affected by issuance of a permit under this section as described in Section 101.0462.0025(a), shall execute a covenant of easement unless the owner dedicates the remainder portion of the property in fee to the City. The covenant of easement shall be recorded against title to the affected premises and executed in favor of the City.

(a) The owner shall draft the covenant of easement as follows:

(1) To contain a legal description of the premises affected by the permit with a description of the development area and the environmentally sensitive lands that will be preserved;

(2) To impart notice to all persons to the extent afforded by the recording laws of the state regarding the restrictions affecting use of the environmentally sensitive lands covered by the permit;

(3) To ensure that the burdens of the covenant shall be binding upon, and the benefits of the covenant shall inure to, all successors in interest to the affected premises; and

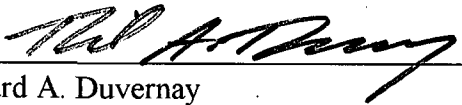
(4) To ensure enforceability of the covenant of easement by the City, or jointly and severally by the City, the U.S. Fish and Wildlife Service, and the California Department of Fish and Game in those instances when the covenant of easement affects premises containing sensitive biological resources or other lands that have been accepted as mitigation.

(b) A Process Four hearing shall be held to consider a formal, written request directed to the City by any person requesting the release of a covenant of easement recorded pursuant to this section. A release of any covenant of easement recorded pursuant to this section shall be recorded by the City only when it is determined by the decision maker that restriction of the property is no longer necessary to achieve the land use goals of the City. In any instance where the covenant of easement concerns sensitive biological resources, a determination by the decision maker to release the covenant may be made only with the written concurrence of the U.S. Fish and Wildlife Service and the California Department of Fish and Game.

Section 2. This ordinance shall take effect and be in force on the thirtieth day from and after its passage and stay in effect until Sections 101.0462 and 101.0462.0001 through 101.0462.0029 are repealed pursuant to Section 5 of Ordinance No. O- 18451 (No. O-98-27), adopted on DEC 09 1997. However, this ordinance will not apply within the Coastal Zone until the thirtieth day following the date the California Coastal Commission unconditionally certifies this ordinance as a local coastal program amendment. If this ordinance

is not certified by the California Coastal Commission, or is certified with suggested modifications, this ordinance shall be void within the Coastal Zone.

APPROVED: CASEY GWINN, City Attorney

By 
Richard A. Duvernay
Deputy City Attorney

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STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Redline

(O-98-47 REV./COR. COPY)

12/19/97

ORDINANCE NUMBER O-_____ (NEW SERIES)

ADOPTED ON _____

AN ORDINANCE AMENDING CHAPTER X, ARTICLE 1, DIVISION 4, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 101.0462 AND BY AMENDING AND RENUMBERING SUBSECTIONS A THROUGH R OF SECTION 101.0462 INTO SECTIONS 101.0462.0001 THROUGH 101.0462.0018, RESPECTIVELY; AND BY ADDING SECTIONS 101.0462.0019 THROUGH 101.0462.0029, ALL RELATING TO THE RESOURCES PROTECTION ORDINANCE FOR THE PROTECTION OF BIOLOGICAL RESOURCES AND IMPLEMENTATION OF THE MULTIPLE SPECIES CONSERVATION PLAN.

SEC. 101.0462 Resource Protection Ordinance

This section is indexed as follows:

A.SEC. 101.0462.0001	Purpose, Intent and Title
B.SEC. 101.0462.0002	Resource Protection Permit Required
C.SEC. 101.0462.0003	Protection of Resources
D.SEC. 101.0462.0004	General Provisions
E.SEC. 101.0462.0005	Exclusions
F.SEC. 101.0462.0006	Definitions
G.SEC. 101.0462.0007	Permitted Uses and Development Regulations
H.SEC. 101.0462.0008	Application Submittal Requirements
I.SEC. 101.0462.0009	Permit Exemptions

J.SEC. 101.0462.0010	Emergency Permit
K.SEC. 101.0462.0011	Administration of Permit
L.SEC. 101.0462.0012	Alternative Compliance
M.SEC. 101.0462.0013	Denied Permits
N.SEC. 101.0462.0014	Conditional Use Permits
O.SEC. 101.0462.0015	Violations
P.SEC. 101.0462.0016	Expiration of Permit
Q.SEC. 101.0462.0017	Applicability of Amendments to Existing Applications
R.SEC. 101.0462.0018	Applicability of Section to Public Works Construction Projects
SEC. 101.0462.0019	Purpose of Sensitive Biological Resources Regulations
SEC. 101.0462.0020	When Sensitive Biological Resources Regulations Apply
SEC. 101.0462.0021	Limited Exceptions from Sensitive Biological Resources Regulations
SEC. 101.0462.0022	Determination of Location of Sensitive Biological Resources, Applicability of Regulations and Decision Process
SEC. 101.0462.0023	Procedures and Regulations for Project-Specific Land Use Plans
SEC. 101.0462.0024	Emergency Authorization to Impact Sensitive Biological Resources
SEC. 101.0462.0025	General Development Regulations for Sensitive Biological Resources
SEC. 101.0462.0026	Development Regulations for Sensitive Biological Resources
SEC. 101.0462.0027	Required Findings for Impacts to Sensitive Biological Resources

SEC. 101.0462.0028

Deviations from Sensitive Biological Resources Regulations

SEC. 101.0462.0029

Covenants of Easements Pursuant to Environmentally Sensitive Lands Regulations

A. SEC. 101.0462.0001 Purpose, Intent and Title

This section Sections 101.0462 through 101.0462.0030 shall be known as the Resource Protection Ordinance (RPO).

The purpose and intent of this section the Resource Protection Ordinance is to protect, preserve and, where damaged, restore the environmentally sensitive lands of San Diego, which include wetlands, wetland buffers, floodplains, hillsides, biologically sensitive lands sensitive biological resources, and significant prehistoric and historic resources, as defined herein Section 101.0462.0006.

The purpose and intent of the sensitive biological resource regulations are more specifically described in this Division at Section 101.0462.0019.

B. SEC. 101.0462.0002 Resource Protection Permit Required

[No change.]

C. SEC. 101.0462.0003 Protection of Resources

[No change in text of the first paragraph.]

1. and 2. [No change.]

3. All wetland and wetland buffer areas indicated in Map Drawings C-713 and C-740 on file in the office of the City Clerk as Document Nos. OO-16939-2 and OO-6939-3.

4. All other unmapped hillsides, wetlands and wetland buffer areas which meet the definition contained herein.

54. All ~~biologically sensitive lands~~ sensitive biological resources which meet the definition contained herein in Section 101.0462.0006 (Definitions).

65. All significant prehistoric and historic sites and resources which meet the definition contained herein in Section 101.0462.0006 (Definitions).

~~D.SEC. 101.0462.0004~~ General Provisions

1. [No change.]

2. The provisions of Municipal Code sections 101.0462(~~F~~).0006 and 101.0462(~~G~~).0007 shall be applicable within the Del Mar Mesa Specific Plan area as provided for in the Del Mar Specific Plan. Development within the Del Mar Mesa Specific Plan area shall be subject to the Supplemental Regulations for Resource Management contained in the specific plan. All other provisions of ~~Municipal Code section 101.0462~~ the Resource Protection Ordinance shall apply.

3. Any person or persons may propose to the ~~Transportation, Planning and Environment Land Use and Housing~~ Committee revisions to the resource protection boundaries. These revisions may include deletion of areas of poor environmental quality, or addition of areas of significant environmental value. The ~~Transportation Planning and Environment Land Use and Housing~~ Committee may request a report from the Development Services Director on this matter and may direct that it be referred to the Planning Commission. The City Council shall consider the revisions, in accordance with "Process Five", following review by the Planning Commission and the appropriate community planning groups.

4. In the case of significant prehistoric and historic resources, ~~biologically sensitive lands sensitive biological resources~~ or unmapped wetlands, a map shall be prepared and maintained by the Development Services ~~Department Business Center~~ and considered by the City Council for adoption, in accordance with "Process Five", and shall be used to identify properties that will not

require a prehistoric, historic, or biological resources survey for purposes of obtaining a Resource Protection Permit.

However, if it is demonstrated to the Development Services Director that prehistoric, historic or biological resources or unmapped wetlands do in fact exist upon these properties, the appropriate survey shall be required by the Development Services Director.

5. The Development Services Director is hereby authorized to promulgate administrative guidelines to implement the provisions of the ~~this section~~ Resource Protection Ordinance. The guidelines or any revisions thereto shall be effective without a hearing thirty (30) calendar days after their publication in a newspaper of general circulation by the Development Services Director, pursuant to San Diego Municipal Code section 22.0102, unless a timely protest is filed with the Development Services Director. In this event, the Development Services Director shall consider the objections of those affected by the proposed change. As soon thereafter as practicable, the Development Services Director may then issue the guidelines with any revisions deemed necessary or appropriate, or decline to so issue them. This provision shall not be applicable to any emergency guideline issued by the Development Services Director to preclude an event that will be detrimental to the public health or safety, nor shall it apply to the initial promulgation of the guidelines authorized by R-277284 adopted January 29, 1991.

6. A Resource Protection Permit shall be required in conjunction with the processing of a long range plan, as defined in ~~paragraph F.11~~ Section 101.0462.0006, if a subdivision or parcel map or another discretionary permit approval is concurrently processed. In this event, the Resource Protection Permit shall only be required for that portion of the area that is covered by the concurrent discretionary map or permit. However, in any case a consistency determination shall be prepared when required by Council Policy 600-40.

7. For Sensitive Biological Resources, Sections 101.0462.0005, 101.0462.0007, 101.0462.0009, 101.0462.0010, 101.0462.0011, 101.0462.0012 and 101.0462.0017 of the Resource Protection Ordinance do not apply.

E.SEC. 101.0462.0005 Exclusions

[No change.]

F.SEC. 101.0462.0006 Definitions

The following definitions shall apply only for the purposes of this section the Resource Protection Ordinance.

1. [No change.]
2. ~~Biologically Sensitive Lands~~ Sensitive Biological Resources.

~~Land which supports sensitive vegetation, as defined herein, and/or the habitats of rare, endangered, or threatened species or subspecies of animals or plants as defined by the California Endangered Species Act, or the Federal Endangered Species Act, or as defined below.~~

~~Biologically sensitive land also includes the area of native vegetation which is critical to maintaining a balanced natural ecosystem or wildlife corridor. Biologically sensitive lands may also include areas that support sensitive species of plants or animals listed in the administrative guidelines to this section.~~

~~A species shall be presumed to be rare, endangered or threatened if it is listed in SEC. 670.2 or 670.5, Title 14, California Code of Regulations, or the Federal Endangered Species Act, Title 50, Code of Federal Regulations, SEC. 17.11 or 17.12. A species not included in any legislative listing may nevertheless be considered by the Development Services Director to be rare, endangered or threatened if the species meets the criteria for inclusion in state or federal lists.~~

~~Sensitive vegetation is defined as a vegetative community which typically includes, but is not limited to: habitats that are substantially depleted due to development; vegetative community types as identified by the California Department of Fish and Game listing of community associations in "Preliminary Descriptions of the Terrestrial Natural Communities of California," (DFG, Holland 986 Ed., as updated); or habitats that support sensitive species of plants or animals.~~

~~Sensitive species of plants or animals are those species considered unusual or limited in that the species: 1) are only found in the San Diego region; or 2) are a local representative of a species or association of species not otherwise found in the region; or 3) are severely depleted within their ranges or within the region. Sensitive species of plants and animals are identified in the California Native Plant Society R-E-D List or are listed in the California Department of Fish and Game list of species of special concern and other publications listed in the administrative guidelines promulgated pursuant to this section.~~

~~Sensitive Biological Resources means upland and/or Wetland areas that meet any one of the following criteria:~~

- ~~a. Lands that have been included in the City of San Diego Multiple Habitat Planning Area;~~
- ~~b. Wetlands;~~
- ~~c. Lands outside the MHPA that contain Tier I Habitats, Tier II Habitats, Tier IIIA Habitats, or Tier IIIB Habitats;~~
- ~~d. Lands supporting species or subspecies listed as rare, endangered, or threatened under Section 670.2 or 670.5, Title 14, California Code of Regulations, or the Federal~~

Endangered Species Act, Title 50, Code of Federal Regulations, Section 17.11 or 17.12, or candidate species under the California Code of Regulations, or

e. Lands containing habitats with Narrow Endemic Species as listed in the Biology Guidelines in the Land Development Manual

f. Lands containing habitats of covered species as listed in the Biology Guidelines in the Land Development Manual

3. "Clearing." The cutting and removal of vegetation from the land without disturbance to the soil, surface or destruction of the root system.

4. "Grubbing." The removal or destruction of vegetation by the removal of or disturbance to the root system and/or soil surface by any means including chemical.

5. Feasible. Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.

6. Fill. Any material or substance which is deposited, placed, pushed, dumped, pulled or transported, or moved to a new location and the conditions resulting therefrom. Fill also includes pilings placed for the purpose of erecting structures thereon when located in a submerged area. Examples of fill materials include but are not limited to earth, excavated or dredged materials, sand, gravel, rock, riprap, and concrete.

7. Floodplain. The relatively flat areas of low lands adjoining, and including, the channel of a river, stream, water course, bay or other body of water which is subject to inundation by the flood waters of the one hundred (100) year frequency flood.

8. Floodway. The river channel and the adjacent land areas, within the floodplain, needed to carry a one hundred (100) year frequency flood without increasing the water surface

elevation more than one (1) foot at any point. The natural flood water profile is the water surface elevation of a nonconfined one hundred (100) year frequency flood in the natural undeveloped floodplain.

9. Floodplain Fringe. All that land in a floodplain not lying within a delineated floodway. Land within a floodplain fringe is subject to inundation by relatively low velocity flows and shallow water depths.

10. Hillsides. All lands mapped by the Hillside Review Overlay Zone (Sec. Section 101.0454) and all other lands having a slope with a natural gradient of twenty-five percent (25%) or greater, (twenty-five (25) feet of vertical distance for each one hundred (100) feet of horizontal distance) and a minimum elevation differential of fifty (50) feet.

11. Long Range Plan. A new community plan, or a general plan or community plan, plan amendment, precise plan, specific plan or other planning document, and amendments thereto, for long-term future planning.

12. Significant Prehistoric and Historic Sites and Resources. Locations of prehistoric or historic resources that possess unique cultural, scientific, religious or ethnic value of local, regional, state or federal importance. The above shall be limited to prehistoric or historic districts, sites, buildings, structures, or objects included in the State Landmark Register, or the City of San Diego Historical Sites Board List, or included in or eligible for inclusion in the National Register of Historic Places; areas of past human occupation where important prehistoric or historic activities or events occurred (such as villages or permanent camps); and locations of past or current traditional religious or ceremonial observances as defined by Public Resources Code ~~SEC.~~ section 5097.9 et seq., and protected under Public Law 95-341, the American Indian Religious

Freedom Act (such as burials, pictographs, petroglyphs, solstice observation sites, and sacred shrines).

13. ~~Wetlands. Land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or where the land is covered by shallow water, and waters of the United States. Waters of the United States are accorded the same protection as wetlands. They include all waters subject to the ebb and flow of the tide, rivers, streams (including intermittent streams), mudflats, natural ponds and lakes, and man-made impoundments and drainages with biological value. To be considered a wetland within this definition, the area must have one or more of the following characteristics:~~

~~a. At least periodically, the land supports predominantly hydrophytes, as defined in the Unified Federal Method Manual (Federal Manual for Identifying and Delineating Jurisdictional Wetlands, January 19, 1989), on file in the City Clerk's Office as Document No. OO-17602.~~

~~b. The substrate meets the criteria for hydric soils, including aquatic soils, as described in the Unified Federal Method Manual.~~

~~c. The substrate is saturated with water or covered by shallow water at some time during the growing season of each year, or if the hydrologic conditions meet the criteria in the Unified Federal Method Manual.~~

~~Areas classifiable as wetlands include lagoons, marshes, estuaries, vernal pools, streams and rivers and associated riparian habitat areas.~~

~~Wetlands are defined as areas which are characterized by any of the following conditions:~~

~~a. All areas persistently or periodically containing naturally occurring Wetland vegetation communities characteristically dominated by hydrophytic vegetation, including but not~~

limited to salt marsh, brackish marsh, freshwater marsh, riparian forest, oak riparian forest, riparian woodlands, riparian scrub, and vernal pools;

b. Areas that have hydric soils or Wetland hydrology and lack naturally occurring Wetland vegetation communities because human activities have removed the historic Wetland vegetation or catastrophic or recurring natural events or processes have acted to preclude the establishment of Wetland vegetation as in the case of salt pannes and mudflats;

c. Areas lacking Wetland vegetation communities, hydric soils and Wetland hydrology due to non-permitted filling of previously existing Wetlands;

d. Areas mapped as Wetlands on maps on file with The City of San Diego and used to implement the Sensitive Coastal Overlay Zone.

It is intended for this definition to differentiate for purposes of delineating Wetlands, between naturally occurring Wetlands and Wetlands intentionally created by human actions, from areas with Wetlands characteristics unintentionally resulting from human activities in historically non-wetland areas. With the exception of Wetlands created for the purpose of providing Wetland habitat or resulting from human actions to create open waters or from the alteration of natural stream courses, areas demonstrating Wetland characteristics, which are artificially created are not considered Wetlands by this definition. Taking into account regional precipitation cycles, all adopted scientific, regulator, and technological information available from the State and Federal resource agencies shall be used for guidance on the identification of hydrophytic vegetation, hydric soils and Wetland hydrology.

14. ~~Wetland Buffers. Lands which provide a buffer area of an appropriate size to protect the environmental and functional habitat values of the wetland.~~ Wetland Buffer means an area or feature(s) that protects the functions and values of the adjacent Wetland.

~~1. Wetlands~~

~~Permitted uses allowed in the wetlands shall be limited to the following:~~

~~a. Aquaculture, wetlands-related scientific research and wetlands-related educational uses.~~

~~b. Wetland restoration projects where the primary purpose is restoration of the habitat.~~

~~c. Essential public service projects including water reclamation, where it has been demonstrated that there is no feasible less environmentally damaging location or alternative, and where mitigation measures have been provided to minimize adverse environmental effects.~~

~~2. Wetland Buffer Areas.~~

~~A 100 foot-wide wetland buffer as mapped on Map Drawings C-713 and C-740 shall be maintained unless the applicant demonstrates that a buffer of lesser width will protect the resources of the wetland, based on site-specific information. Such information shall include, but is not limited to, the type and size of the development and/or proposed mitigations (such as planting of vegetation or construction of fencing) which also achieve the purposes of the buffer.~~

~~Wetland buffers for unmapped wetlands shall satisfy the wetland buffer requirements contained in paragraph F.14. The buffer shall be measured landward from wetland. Maps and supplemental information submitted as part the application shall be used to determine the boundaries of the wetland and buffer. The California Department of Fish and Game and the United States Fish and Wildlife shall be consulted in such determinations.~~

~~All buildings or other improvements proposed to be placed or erected, and all grading activities proposed to undertaken adjacent to a wetland shall be located so as not contribute to~~

~~increased sediment loading of the wetland, disturbance to its habitat values, or otherwise impair the functional capacity of the wetland.~~

~~Permitted uses in the wetland buffer areas, shall be limited to the following, provided that such uses are compatible with protecting wetlands, and do not harm the natural ecosystem:~~

- ~~a. All uses permitted in wetlands.~~
- ~~b. Passive recreational uses, access paths, and public viewpoints, provided that all necessary mitigation measures are incorporated to protect the adjacent wetlands.~~
- ~~c. Improvements necessary to protect adjacent wetlands.~~

31. Floodways. [No change.]

42. Floodplain Fringe. [No change.]

53. ~~Hillsides and Biologically Sensitive Lands.~~

~~Permitted uses in the hillside areas or biologically sensitive lands, or both, shall be those uses permitted by the underlying zone subject to the following regulations and the regulations and restrictions of the underlying zone, and the Hillside Review Overlay Zone (Section 101.0454) when applicable to the hillside portion of a parcel, except that a separate Hillside Review Permit shall not be issued.~~

~~Where a development is proposed on hillsides or biologically sensitive lands, or both, the following regulations shall apply:~~

- ~~a. Hillsides and biologically sensitive lands shall be preserved in their natural state, provided a minimal encroachment into such lands may be permitted to the extent set forth in the following encroachment table "Encroachment Table for Hillsides." This encroachment must not adversely impact state or federally-listed rare, threatened or endangered species or wetlands.~~

All development or grading occurring in hillsides must comply with the regulations of the Hillside Review Overlay Zone ordinance and the Hillside Design and Development Guidelines (October, 1984). ~~Development or grading occurring in biologically sensitive lands over and above the encroachment allowance in column 2 of the following table shall not be permitted unless all feasible mitigation to protect and preserve such lands is required as a condition of approval. Mitigation may include any of the following methods, as appropriate to the nature of the impact:~~

~~(1) In certain limited circumstances, replacement may be accomplished by creating new habitat or by enhancing existing degraded habitat.~~

~~(2) In other circumstances replacement may be accomplished on another site where the biological values of the mitigation site are threatened, provided the mitigation site supports the same biological values. The biological values of the replacement mitigation site must be protected and preserved in a manner acceptable to the Development Services Director.~~

~~(3) In limited circumstances, where the affected habitat area is small and is isolated from other habitat areas, monetary compensation may be paid into a fund in lieu of other forms of mitigation. The fund shall be used to acquire, maintain and administer habitat areas pursuant to City Council Resolution No. R-275129, adopted February 12, 1990. Where appropriate, the City Development Services Director, with the concurrence of the City Director, is authorized to enter into agreements with public or private non-profit conservancies, agencies, or foundations to administer the funds and maintain and acquire habitat preservation areas.~~

~~ENCROACHMENT TABLE FOR HILLSIDES AND~~

~~BIOLOGICALLY SENSITIVE LANDS~~

Column 1	Column 2	Column 3	Column 4
Percent of Site Containing Slopes of 25% Grade and Over and/or Biologically Sensitive Lands	Maximum Encroachment Allowance for Development (not including Public Streets, Utilities and Facilities) as Percent of Column 1	Maximum Exemptible Area (Additional Encroachment) for Public Streets, Utilities and Facilities as Percent of Column 1 Subject to Findings in Paragraph G-5.c Sec 101.0462.0007(3)(b)	Maximum Potential of Total Encroachment as Percent of Column 1

[No change in percentages.]

(Note: ~~Columns 2, 3 and 4 are expressed as a percentage of that portion which contains the hillsides or biologically sensitive lands~~)

~~b. The maximum total encroachment allowance (Column 4) for parcels containing both hillsides and biologically sensitive lands shall be allocated proportionally according to the percent of the total area represented by each:~~

~~The Development Services Director may permit increased encroachment into that portion of a parcel containing hillsides provided that: the total encroachment for each parcel is within the maximum allowable set forth in the above table; there is a corresponding equal reduction of encroachment into the biologically sensitive lands portion; and, the hillsides do not occur in prime viewshed areas. Prime viewshed areas shall mean those areas which are visible from the center median and within one mile of Interstates 5, 8, 15, and 805, Freeways 905, 163, 52, 94 and all primary arterial roadways identified in the City of San Diego's Progress Guide and General~~

~~Plan, and those areas visible from the midpoint of the streambed and within one mile of the following major canyon and floodplain systems: Tecolote Canyon, Penasquitos Canyon, Lopez Canyon, Carroll Canyon, Rose Canyon, Murphy Canyon, 34th Street Canyon, Maple Canyon, City Heights Southern Perimeter Canyon System, Chollas Creek Canyon System, Gonzales Canyon, Shaw Valley, Carmel Mountain Canyon, Crest Canyon, San Clemente Canyon, San Dieguito River Valley, Otay River Valley, Tijuana River Valley, and Mission Valley.~~

eb. The following exemptions from the encroachment allowance may be considered up to the maximum allowance in Column 3 of "Encroachment Table for Hillside~~s~~ and Sensitive Lands" if the Development Services Director finds that all such exemptions are sited, designed and constructed to: minimize if not preclude adverse impacts to the ~~biologically sensitive lands~~ sensitive biological resources; comply with the regulations of the Hillside Review Overlay Zone where applicable, and Hillside Design and Development Guidelines (October, 1984); and not adversely impact state or federally- listed rare, threatened or endangered species or wetlands:

1) through 5) [No change.]

dc. Areas with native vegetation which are cleared or thinned to protect existing or proposed structures in potential danger from fire may also be exempted provided that: the area cleared or thinned for such brush management is the minimum necessary to comply with existing City fire codes; native root stock is retained in ~~biologically sensitive land~~sensitive biological resources, and, in all areas where the root stock is removed, replanting is done with native or naturalized non-native fire retardant vegetation; no reconfiguration of the natural landform is required; no permanent irrigation is provided and no non-native plants are introduced in ~~biologically sensitive land~~sensitive biological resources, and, no sensitive species or vegetation would be significantly adversely impacted.

ed. Except as otherwise provided for in existing conditional use permits, sand, gravel and rock extraction is exempt from the hillside encroachment allowance ~~but not from the biologically sensitive lands encroachment allowance~~, provided that mitigation measures are required that maximize the use of native vegetation to revegetate and landscape cut or fill areas in order to substantially restore the original habitat value and produce final graded slopes with contours and soils which reflect the original landform conditions. Use of the hillsides after reclamation shall thereafter be subject to all requirements of this section.

fe. All encroachment allowances shall be subject to a determination by the Development Services Director that such encroachment is supported by the findings of fact required under ~~Paragraph L. of this section~~ ~~Section 101.0462.0012.~~

gf. All hillsides ~~and biologically sensitive lands~~ which remain undisturbed or which are restored or enhanced as a result of a development approval shall be conserved as a condition of permit approval through a deed restriction, open space easement or other suitable restriction acceptable to the City Attorney and the Development Services Director and, when applicable, the City Manager, that will preclude any future development or grading of such lands.

64. [No change.]

H.SEC. 101.0462.0008 Application Submittal Requirements

[No change in text of first paragraph.]

1. through 8. [No change.]

9. A biological resources survey, as provided for by the ~~administrative Biology~~ ~~Guidelines to this section~~ (Exhibit I to the City of San Diego Multiple Species Conservation Plan Implementing Agreement, adopted by Ordinance No. O-18394 on April 7, 1997, and effective July 17, 1997).

10. [No change.]

I.SEC. 101.0462.0009 Permit Exemptions

[No change.]

J.SEC. 101.0462.0010 Emergency Permit

[No change.]

K.SEC. 101.0462.0011 Administration of Permit

[No change.]

L.SEC. 101.0462.0012 Alternative Compliance

[No change in text of first paragraph.]

1. and 2. [No change.]

3. The Planning Commission may grant alternative compliance to ensure the provisions of extraordinary benefit to the general public on making findings of overriding social and economic considerations in addition to the following findings:

a. and b. [No change.]

c. [No change in text of first 2 paragraphs.]

For other than the approvals of coastal development permits, substantial conformity determinations and determinations of unnecessary hardship under this subsection, alternative compliance shall not be approved unless mitigation measures are adopted. ~~These measures may include, but are not limited to: purchase or exchange by the applicant of like-kind real property of similar or greater quality and quantity from the City's open space retention list or any areas shown as open space in a community plan and donation of that property by fee or easement, as may be determined by the City, for use by the City as open space, or, purchase or exchange of~~ other like-kind real property of similar or greater quality and quantity identified in

~~a sensitive resources management plan prepared by the Development Services Department and donation of that property by fee or easement, as may be determined by the City, for use by the City as open space. "Like-kind real property" shall mean real property containing substantially the same resources as those on the impacted property. Provision of properties in a greater ratio than one to one (1:1) may be required based upon the quality of the resource impacted by the development. The Development Services Director may promulgate guidelines for mitigation, and, with the concurrence of the City Director, enter into agreements with public or private non-profit agencies and foundations to acquire property and to maintain and administer any funds or property interests donated in furtherance of or pursuant to this section.~~

~~M~~.SEC. 101.0462.0013

Denied Permits

[No change.]

~~N~~.SEC. 101.0462.0014

Conditional Use Permits

[No change.]

~~O~~.SEC. 101.0462.0015

Violations

[No change.]

~~P~~.SEC. 101.0462.0016

Failure to Utilize Resource Protection Permit

[No change.]

~~Q~~.SEC. 101.0462.0017

Applicability of Amendments to Existing Applications

[No change.]

~~R~~.SEC. 101.0462.0018

Applicability to Public Works Projects

[No change.]

SEC. 101.0462.0019

~~Purpose of Sensitive Biological Resources Regulations~~

The purpose of these regulations is to protect, preserve and, where damaged restore, the environmentally sensitive lands of San Diego and the viability of the species supported by those lands. These regulations are intended to assure that development occurs in a manner that protects the overall quality of the resources and the natural character of the area, encourages a sensitive form of development, retains biodiversity and interconnected habitats. These regulations are intended to protect the public health, safety, and welfare while employing regulations that are consistent with sound resource conservation principles and the rights of private property owners.

It is further intended for the Development Regulations for Sensitive Biological Resources and accompanying Biology Guidelines to serve as standards for the determination of impacts and mitigation under the California Environmental Quality Act. These standards will also serve to implement the Multiple Species Conservation Program by placing priority on the preservation of biological resources within the Multiple Habitat Planning Area, as identified in the City of San Diego Subarea Plan. The habitat based level of protection which will result through implementation of the Multiple habitat Planning Area is intended to meet the mitigation obligations of the Covered Species addressed. In certain circumstances, this level of protection may satisfy mitigation obligations for other species not covered under the Multiple Species Conservation Program but determined to be sensitive pursuant to the CEQA review process. This determination will be addressed in the environmental documentation.

SEC. 101.0462.0020 When Sensitive Biological Resources Regulations Apply

This section applies to all proposed development when sensitive biological resources are present on the premises.

(a) Where any portion of the premises contains sensitive biological resources, this section shall apply to the entire premises, unless otherwise provided in this section.

(b) The "Sensitive Biological Resources Applicability Table" identifies the appropriate development regulations, the required decision process, and the permitted uses applicable to various types of development proposals that propose to encroach into sensitive biological resources or that do not qualify for an exemption pursuant to Section 101.0462.0020(c).

(1) A Resource Protection Permit is required for any development proposal that proposes to encroach into sensitive biological resources.

(2) Any development proposal on a site containing sensitive biological resources may be exempt from this section if no encroachment into the sensitive biological resources is proposed and the development complies with Section 101.0462.0020(c)(1).

(3) Limited exceptions to the applicable development regulations for specific types of development are listed in Section 101.0462.0021.

Sensitive Biological Resources Applicability Table

Environmentally Sensitive Lands Potentially Impacted by Project			
Type of Development Proposal		Wetlands, listed non-covered species habitat (1)	Other Sensitive Biological Resources other than Wetlands and listed noncovered species habitat
1. Single dwelling units on individual lots equal to or less than 15,000 square feet (2)	R	101.0462.0026(a)	101.0462.0026
	P	RPO/ Process Three	RPO/ Process Three
2. Single dwelling units on lots or multiple lots totaling more than 15,000 square feet	R	101.0462.0026(a)	101.0462.0026
	P	RPO/ Process Three	RPO/ Process Three
3. Multiple dwelling unit and non-residential development and public works projects	R	101.0462.0026(a)	101.0462.0026
	P	RPO/ Process Three	RPO/ Process Three
4. Any subdivision of a premises	R	101.0462.0026(a)	101.0462.0026
	P	RPO/ Process Four	RPO/ Process Four
5. Project-specific land use plans	R	101.0462.0026(a) 101.0462.0023	101.0462.0026 101.0462.0023
	P	RPO/ Process Four/Five	RPO/ Process Four/Five

6. Any development that proposes deviations from any portion of the Environmentally Sensitive Lands Regulations	R	101.0462.0026(a), 101.0462.0028	101.0462.0026, 101.0462.0028
	P	RPO/ Process Four	RPO/ Process Four

Legend to Sensitive Biological Resources Applicability Table

R	Development regulation sections (in addition to Section 101.0462.0025) applicable to the sensitive biological resources present.
P	Type of Permit/Decision process required: RPO (Resource Protection Permit)

Footnotes to Sensitive Biological Resources Applicability Table

(1) This includes listed species and their habitat not covered by the Take Authorizations issued to the City by the State and Federal governments under the Multiple Species Conservation Program.

(2) This includes the development of one or more lots as long as the total area of the lots does not exceed 15,000 feet and the lots were not joined in ownership to any contiguous lot or parcel on or before the adoption date of this section so that the total area of contiguous ownership exceeded 15,000 square feet.

(c) A Resource Protection Permit is not required for the following development activity:

(1) Development on a premises containing sensitive biological resources when the development will not encroach into the sensitive biological resources during or after construction, if the property owner signs an acknowledgment that further development on the property is not permitted unless the development is reviewed and approved pursuant to this section and if the development proposal provides for a 100-foot setback from sensitive biological resources;

(2) Development that is limited to interior modifications or repairs, or any exterior repairs, alterations or maintenance that does not increase the footprint of an existing building or accessory structure and will not encroach into the environmentally sensitive lands during or after construction.

(3) Development activity that is limited to permissible grading for the preparation of a site for cultivation of crops and where grading for agriculture purposes has occurred in compliance with all legal requirements within the previous 3 years

(4) City public works projects for which plans, specifications, or funding have been approved by the City Council or the City Manager before July 1, 1991

(5) Restoration projects where the sole purpose is enhancement or restoration of native habitats

(6) Zone Two brush management activity if the brush management complies with the landscape regulations and the Biology Guidelines

(7) Development in the Calle Cristobal Assessment District area and outside the Coastal Overlay Zone

(8) Development in the Miramar Ranch North Community Plan area and the 70 acre high school project in Scripps Ranch

(9) Development of the 178 acres of land known as Sorrento Hills that was the subject of the land exchange approved by the voters as Proposition D on November 4, 1986

SEC. 101.0462.0021 Limited Exceptions from Sensitive Biological Resources Regulations

The following development activities require a Resource Protection Permit in accordance with "Sensitive Biological Resources Applicability Table," but the applicable development regulations are modified as indicated:

City linear utility projects are exempt from the development area regulations of Section 101.0462.0026(d)

SEC. 101.0462.0022 Determination of Location of Sensitive Biological Resources, Applicability of Regulations and Decision Process

(a) In connection with any permit application for development on a parcel, the applicant shall provide the information used to determine the existence and location of sensitive biological resources.

(b) Based on a project-specific analysis and the best scientific information available, the City Manager shall determine the existence and precise location of sensitive biological resources on the premises.

SEC. 101.0462.0023 Procedures and Regulations for Project-Specific Land Use Plans

(a) Project-specific land use plans, including specific plans, precise plans, privately initiated land use plan amendments, and future urbanizing area subarea plans, proposed for sites where environmentally sensitive lands are present, are subject to the regulations in this section to ensure adequate analysis of the constraints and opportunities of the planning area relative to environmentally sensitive lands. The analysis of environmentally sensitive lands for project-specific land use plans will be conducted in accordance with either Section 101.0462.0023(b) or (c) based on whether or not a Resource Protection Permit is processed concurrently with the project-specific land use plan.

(b) Where a Resource Protection Permit is requested concurrently with the processing of a project-specific land use plan, the proposed development is subject to the following regulations.

(1) The boundaries of the Resource Protection Permit will be the boundaries of the project-specific land use plan, including all individual interior lots within the plan area.

(2) A decision on a Resource Protection Permit processed concurrently with a project-specific land use plan will be made in accordance with Process Five.

(3) The environmentally sensitive lands regulations applicable to the Resource Protection Permit will be determined in accordance with "Sensitive Biological Resources Applicability Table." Sufficient information must be submitted for the entire plan area in order to evaluate potential impacts to environmentally sensitive lands. Any deviations proposed are subject to Section 101.0462.0028.

(4) The applicant shall prepare a development suitability analysis to evaluate the proposed development of the entire plan area and its relationship to the all regulations for environmentally sensitive lands as well as other factors such as historical resources, visual resources, public facilities needs, public safety issues, and adjacent land uses. The constraints and opportunities identified shall be used to determine the portions of the plan area that are most suitable for development and those that should be preserved as open space. Overall development within the plan area, including public facilities and circulation elements, shall be located to minimize impacts to environmentally sensitive lands, in accordance with this section and the associated guidelines in the Land Development Manual.

(5) The project-specific land use plan shall include a summary of the allowable development area and any required mitigation for each parcel. If the project-specific land use plan contains MHPA lands, mitigation for impacts to sensitive biological resources should be directed toward acquisition of MHPA lands within the city boundaries and preferably within the same plan area.

(6) Subsequent development proposals within the Resource Protection Permit area will be reviewed in accordance with the substantial conformance procedures. If the development is determined to be in conformance with the Resource Protection Permit and any required mitigation is provided, an amendment to the Resource Protection Permit will not be

required. If the proposed development is not in conformance with the approved project-specific land use plan, an amendment to the Resource Protection Permit will be required for the development in addition to an amendment to the approved project-specific land use plan.

(c) Where a Resource Protection Permit is not requested concurrently with the processing of a project-specific land use plan, the proposed plan and subsequent Resource Protection Permits are subject to the following regulations:

(1) The applicant shall prepare a development suitability analysis that evaluates the proposed development of the entire plan area and its relationship to the environmentally sensitive lands regulations as well as other factors such as historical resources, visual resources, public facilities needs, public safety issues, and adjacent land uses. The constraints and opportunities identified shall be used to determine the portions of the plan area that are most suitable for development and those that should be preserved as open space. Overall development within the plan area, including public facilities and circulation elements, shall be located to minimize impacts to environmentally sensitive lands, in accordance with this section and associated guidelines.

(2) The project-specific land use plan shall indicate how subsequent developments within the plan area will comply with the sensitive biological resources regulations and the associated guidelines in the Land Development Manual. Where any deviation from this section is proposed for the plan area or on an premises, a description of the deviation shall be provided along with a statement of how the deviation benefits the overall design of the entire plan area. Deviations may be approved only under the following conditions:

(A) When there are no feasible measures that can further minimize the potential adverse effects on environmentally sensitive lands and when the deviation is the minimum necessary to afford relief and accommodate the development, and

(B) When there are special circumstances or conditions applying to the plan area that are peculiar to the land and not of the applicant's making, whereby strict application of the provisions of the environmentally sensitive lands regulations would deprive a property owner of reasonable use of his or her land and would result in a less desirable project-specific land use plan.

(3) The project-specific land use plan shall acknowledge that any privately owned property that is designated entirely as open space could be proposed for development in accordance with the base zone. This possibility shall be taken into consideration when analyzing the total potential development area within the plan area.

(4) The project-specific land use plan shall include an implementation strategy for acquisition of those parcels designated as open space. If the project-specific land use plan contains MHPA lands, mitigation for impacts to sensitive biological resources should be directed toward acquisition of MHPA lands within the City boundaries and preferably within the same plan area.

(5) After approval of the project-specific land use plan, a Resource Protection Permit shall be required for all proposed individual developments within the plan area and shall be reviewed in accordance with Process Four. Additional information pertaining to environmentally sensitive lands may be required in order to conduct a detailed analysis of the specific development proposal. Approval of the individual Resource Protection Permits will require conformance with the approved project-specific land use plan and any required

mitigation shall be provided. Deviation findings will not be required if the proposed development is consistent with the approved project-specific land use plan. If a proposed development is not in conformance with the approved project-specific land use plan, approval of a Resource Protection Permit requires compliance with all regulations for environmentally sensitive lands.

(6) Conformance with the regulations for environmentally sensitive lands and associated guidelines is required for all environmentally sensitive lands impacts not addressed by the approved project-specific land use plan.

SEC. 101.0462.0024 Emergency Authorization to Impact Sensitive Biological Resources

Whenever development activity within sensitive biological resources is deemed necessary by order of the City Manager to protect the public health or safety, the City Manager may authorize, without a public hearing, the minimum amount of impact necessary to protect the public health or safety, subject to the following:

(a) If the emergency work involves only temporary impacts to sensitive biological resources, a Resource Protection Permit is not required provided the sensitive biological resources are restored to their natural state, in accordance with a restoration plan approved by the City Manager. The restoration plan shall be submitted to the City Manager within 60 days of completion of the emergency work.

(b) If the emergency work results in permanent impacts to environmentally sensitive lands, a subsequent Resource Protection Permit is required in accordance with all regulations of this section. The application for the Resource Protection Permit shall be submitted within 60 days of completion of the emergency work.

Development that proposes encroachment into sensitive biological resources or that does not qualify for an exemption pursuant to Section 101.0462.0020(c) is subject to the following regulations:

(a) Sensitive biological resources that are outside of the allowable development area on a premises shall be left in a natural state and used only for those passive activities allowed as a condition of permit approval. The landowner may elect to offer to dedicate in fee the undeveloped remainder portion of the premises to the City to relieve the land owner of management and liability obligations associated with that portion of the premises. Otherwise, the passive activities allowed on the undeveloped remainder of the premises and any other conditions of the permit shall be incorporated into a covenant of easement that shall be recorded against title to the property, in accordance with procedures set forth in Section 101.0462.0029.

(b) The allowable development area for all proposed subdivisions is based on the existing lot or premises to be subdivided. If no development is proposed on any newly created lot, the future development area of the lot shall be indicated on the required grading plan and included in the maximum allowable development area calculation for the subdivision.

(c) No building lot shall be created that provides such a small development area that future reasonable development of the lot will require additional encroachment into sensitive biological resources beyond the maximum allowable development area of the original, unsubdivided premises. If additional development area is proposed for a lot that would exceed the maximum allowable development area of the original, unsubdivided premises, a deviation in

accordance with Section 101.0462.0028 is required, regardless of the lot size and the existing development area of the individual lot.

(d) No temporary disturbance or storage of material or equipment is permitted in environmentally sensitive lands, unless the disturbance or storage occurs within an area approved for development by a Resource Protection Permit or unless it can be demonstrated that the disturbance or storage will not alter the landform or cause permanent habitat loss and the land will be revegetated and restored in accordance with the Biology Guidelines.

SEC. 101.0462.0026 Development Regulations for Sensitive Biological Resources

Development that proposes encroachment into sensitive biological resources or that does not qualify for an exemption pursuant to Section 101.0462.0020(c) is subject to the following regulations and the Biology Guidelines.

(a) State and federal law precludes adverse impacts to wetlands or listed non-covered species habitat. The applicant shall confer with the U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and Game before any public hearing for the development proposal. Grading or construction permits shall not be issued for any project that adversely impacts Wetlands or Listed non-covered species habitat until all necessary federal and state permits have been obtained.

(b) Outside and inside the *MHPA*, impacts to wetlands, including vernal pools in naturally occurring complexes, shall be avoided. A wetland buffer shall be maintained around all wetlands when necessary and as appropriate to protect the functions and values of the wetland. Mitigation for impacts associated with a deviation shall achieve the goal of no-net-loss and retain in-kind functions and values.

(c) Inside the MHPA, development shall avoid impacts to narrow endemic species.

Outside the MHPA, measures for protection of narrow endemic species shall be required such as management enhancement, restoration and/or transplantation. A list of narrow endemic species is included in the Biology Guidelines.

(d) Within or partially within the MHPA, development is permitted only if necessary to achieve the allowable development area in accordance with the following regulations, unless exempted from the development area regulations pursuant to Section 101.0462.0021.

(1) If the premises is located entirely within the boundary of the MHPA, a maximum of 25 percent of the site may be developed.

(2) If the premises is located partially within the boundary of the MHPA, any development proposed must occur on the portion of the premises not within the MHPA. If the portion of the premises not within the MHPA is greater than 25 percent of the premises area, the allowable development area may include all of the area outside of the MHPA, except as limited by Section 101.0462.0028(b).

(3) If the portion of the premises not within the MHPA boundary is less than 25 percent of the premises area, encroachment into the MHPA may be permitted to achieve a maximum development area of 25 percent of the premises.

(4) Up to 5 percent of additional development area is permitted to accommodate essential public facilities only, as identified in the applicable land use plan as long as the total development area does not exceed 30 percent of the premises. This additional development area shall require mitigation.

(5) The allowable development area shall be 1 acre from a premises with a total area of less than 4 acres provided the width of the MHPA is at least 1,000 feet where the premises is

located. Mitigation will be required for any impacts from development in excess of 25 percent of the premises area.

(6) The portions of the premises within the MHPA that are not included in the allowable development area shall be maintained in their natural state and may only be used for passive uses consistent with the Multiple Species Conservation Program Plan.

(7) Any development within the MHPA shall occur in the least sensitive areas first, in accordance with the Biology Guidelines.

(8) Any exception to the allocable development area regulations in this section shall be subject to Section 101.0462.0028.

(e) Inside and adjacent to the MHPA, all development proposals shall be consistent with the City of San Diego MSCP Subarea Plan.

(f) Inside the MHPA, any change of an agricultural use to a non-agricultural use is subject to the development area regulations of Section 101.0462.0026(d). Existing agricultural operations that exceed the allowable development area may remain as agricultural use only and do not count as part of the allowable development area.

(g) Outside the MHPA, encroachment into sensitive biological resources is not limited, except as set forth in Section 101.0462.0026(b).

(h) All development occurring in sensitive biological resources both inside and outside the MHPA is subject to a site-specific impact analysis conducted by the City Manager, in accordance with the Biology Guidelines. The impact analysis shall evaluate impacts to sensitive biological resources and CEQA sensitive species. The analysis shall determine the corresponding mitigation, where appropriate, and the requirements for protection and

management. Mitigation may include any of the following, as appropriate to the nature and extent of the impact:

(1) Acquisition or dedication of another site that can serve to mitigate the project impacts, with limited right of entry for habitat management, as necessary, if the site is not dedicated. This site must have long-term viability and the biological values must be equal to or greater than the impacted site.

(2) Preservation or dedication of on-site sensitive biological resources, creation of new habitat, or enhancement of existing degraded habitat, with limited right of entry for habitat management, as necessary, if the site is not dedicated. The site must have long-term viability and the biological values must be equal to or greater than the impacted site.

(3) In circumstances where the area of impact is small, monetary payment of compensation into a fund in lieu of other forms of mitigation. The City shall use the fund to acquire, maintain and administer habitat areas pursuant to City Council Resolution No. R-275129, adopted February 12, 1990. Where appropriate, the City Manager is authorized to enter into agreements with public agencies or private non-profit conservancies or foundations to administer the funds and acquire or maintain habitat preservation areas.

(i) Grading during wildlife breeding seasons shall be consistent with the requirements of the City of San Diego MSCP Subarea Plan.

(j) Sensitive biological resources that are outside of the allowable development area on a premises, or are acquired as off-site mitigation as a condition of permit issuance, are to be left in a natural state and used only for those passive activities allowed as a condition of permit approval. If the land is not dedicated in fee to the City, identification of permissible passive activities and any other conditions of the permit shall be incorporated into a covenant of

easement that shall be recorded against title to the property, in accordance with procedures set forth in Section 101.0462.0029. The U.S. Fish and Wildlife Service and the California Department of Fish and Game are to be named as third party beneficiaries to any covenant of easement recorded pursuant to this section.

SEC. 101.0462.0027 Required Findings for Impacts to Sensitive Biological Resources

A Resource Protection Permit for a development that impacts sensitive biological resources may be approved only if the decision maker makes all of the following findings:

- (a) The proposed development will not adversely affect the applicable land use plan;
- (b) The proposed development will not be detrimental to the public health, safety, and welfare;
- (c) The proposed development will comply with the applicable regulations of the Municipal Code;
- (d) The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to sensitive biological resources;
- (e) The proposed development will be sited and designed to prevent adverse impacts on any adjacent sensitive biological resources;
- (f) The proposed development will be consistent with the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan, and
- (g) The nature and extent of mitigation required as a condition of the permit is reasonably related to, and calculated to alleviate, negative impacts created by the proposed development.

SEC. 101.0462.0028 Deviations from Sensitive Biological Resources Regulations

If a proposed development does not comply with the development regulations of this section and a deviation is requested as indicated in "Sensitive Biological Resources

Applicability Table," the Planning Commission may approve, conditionally approve, or deny the proposed Resource Protection Permit in accordance with Process Four, subject to the following:

(a) Deviations from the regulations of this section may be granted only if the decision maker makes the following findings:

(1) There are no feasible measures that can further minimize the potential adverse effects on sensitive biological resources, and

(2) The proposed deviation is the minimum necessary to afford relief from special circumstances or conditions of the land not of the applicant's making.

SEC. 101.0462.0029 Covenants of Easements Pursuant to Environmentally Sensitive Lands Regulations

As authorized by California Government Code section 65871, the owner of any premises affected by issuance of a permit under this section as described in Section 101.0462.0025(a), shall execute a covenant of easement unless the owner dedicates the remainder portion of the property in fee to the City. The covenant of easement shall be recorded against title to the affected premises and executed in favor of the City.

(a) The owner shall draft the covenant of easement as follows:

(1) To contain a legal description of the premises affected by the permit with a description of the development area and the environmentally sensitive lands that will be preserved;

(2) To impart notice to all persons to the extent afforded by the recording laws of the state regarding the restrictions affecting use of the environmentally sensitive lands covered by the permit;

(3) To ensure that the burdens of the covenant shall be binding upon, and the benefits of the covenant shall inure to, all successors in interest to the affected premises, and

(4) To ensure enforceability of the covenant of easement by the City, or jointly and severally by the City, the U.S. Fish and Wildlife Service, and the California Department of Fish and Game in those instances when the covenant of easement affects premises containing sensitive biological resources or other lands that have been accepted as mitigation.

(b) A Process Four hearing shall be held to consider a formal, written request directed to the City by any person requesting the release of a covenant of easement recorded pursuant to this section. A release of any covenant of easement recorded pursuant to this section shall be recorded by the City only when it is determined by the decision maker that restriction of the property is no longer necessary to achieve the land use goals of the City. In any instance where the covenant of easement concerns sensitive biological resources, a determination by the decision maker to release the covenant may be made only with the written concurrence of the U.S. Fish and Wildlife Service and the California Department of Fish and Game.

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