

RESOLUTION NUMBER R- 305685
DATE OF FINAL PASSAGE MAR 26 2010

A RESOLUTION AUTHORIZING THE MAYOR TO ISSUE A LETTER RELINQUISHING COVERAGE OF THE SEVEN VERNAL POOL SPECIES TO THE U.S. FISH AND WILDLIFE SERVICE [USFWS].

WHEREAS, the Council for the City of San Diego approved the Subarea Plan for the Multiple Species Conservation Program [MSCP] and Implementing Agreement on March 18, 1997 (R-288455); and

WHEREAS, the MSCP describes a cooperative federal, state, and local program of conservation for a number of “[c]overed [s]pecies of plants and animals” [Covered Species] listed in the MSCP Implementing Agreement between the City of San Diego and the U.S. Fish and Wildlife Service [USFWS] and the California Department of Fish and Game; and

WHEREAS, Section 1.7 of the MSCP Implementing Agreement describes the MSCP as “a comprehensive, long-term habitat conservation plan for the Covered Species which addresses the needs of multiple species and the preservation of natural vegetation communities [and] [t]he MSCP addresses the potential impacts of urban growth, natural habitat loss and species endangerment, and creates a plan to mitigate for the potential loss of Covered Species and their habitat due to direct and indirect impacts of future development of both private and public lands within the MSCP Area;” and

WHEREAS, Section 1.9 of the MSCP Implementing Agreement provides for “Take Authorizations [that] will authorize the Incidental Take of all Covered Species Subject to Incidental Take, including those Covered Species which are presently listed as

threatened, endangered, or candidate species under the Endangered Species Act [ESA] or California Endangered Species Act [CESA];” and

WHEREAS, the U.S. Fish and Wildlife Service issued an incidental take permit [ITP] for the City of San Diego’s subarea plan under the MSCP on July 18, 1997; and

WHEREAS, under the ITP, the permittee and agents designated are authorized to take species on the list of “Covered Species Subject to Incidental Take,” to the extent that take of these species would otherwise be prohibited under Section 9 of the ESA, and its implementing regulations, or pursuant to a rule promulgated under Section 4(d) of the ESA; and

WHEREAS, the Covered Species includes the following seven vernal pool species: San Diego fairy shrimp; Riverside fairy shrimp; Otay mesa mint; California Orcutt grass; San Diego button celery; San Diego mesa mint; and spreading navarretia [seven vernal pool species]; and

WHEREAS, ITP Condition I states, “Incidental take of covered species due to mortality or habitat loss within U.S. Army Corps of Engineer’s jurisdictional wetlands is not authorized by this incidental take permit. Incidental take authorization for projects that affect such jurisdictional wetlands shall be authorized through future ESA Section 7 consultations between the Service and the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act,” and the list of species associated with or dependent upon wetlands includes vernal pool species; and

WHEREAS, on October 13, 2006, in the case of *Center for Biological Diversity et al. v. Bartel* [Case No. 98-CV-2234-B(JMA)], the United States District Court for the Southern District of California issued a Decision and Injunction [Decision] enjoining the

City of San Diego's ITP for those pending and future development projects that "take" any of the seven vernal pool species, finding that the MSCP provided inadequate coverage for, and unacceptable risks to, the seven vernal pool species, and stating that Condition I of the City of San Diego's ITP expressly excluded "take" authorization for the seven vernal pool species; and

WHEREAS, the Decision remanded the matter to the USFWS with instructions to reinitiate consultation looking towards revisions of the City of San Diego's ITP for the vernal pool species; and

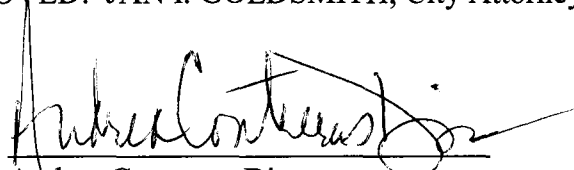
WHEREAS, the City desires to prepare a new Habitat Conservation Program [HCP] in order to address the Court's concerns about conservation of the seven vernal pool species in San Diego, and to provide sufficient coverage to the seven vernal pool species; and

WHEREAS, USFWS has advised the City that prior to preparing a new HCP and to comply with the MSCP Implementing Agreement, the City should issue a letter requesting the relinquishment of federal coverage of the seven vernal pool species to USFWS; and

WHEREAS, the matter was set for a public hearing, testimony having been heard, evidence having been submitted, and the Council of the City of San Diego having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego that the Mayor or his representative is authorized to issue a letter to relinquish federal coverage of the seven vernal pool species to the U.S. Fish and Wildlife Service.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Andrea Contreras Dixon
Deputy City Attorney

ACD:cw
02/26/10
Or.Dept:CPCI-Urban Form
R-2010-590
MMS #11634

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAR 16 2010.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 3-26-10
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

RECEIVED
CITY CLERK
MAR 16 2010