

ORDINANCE NO. 9632 (N.S.)

AN ORDINANCE ADDING CHAPTER 5 TO DIVISION 6 OF TITLE 8 OF THE SAN DIEGO COUNTY CODE TO CODIFY THE BIOLOGICAL MITIGATION ORDINANCE AND ADD AN EXEMPTION RELATED TO FIRE CLEARING
REF: POD 03-07

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. The Board of Supervisors finds and determines that the following amendment to clarify that clearing of vegetation for fire protection purposes, when required in writing by a fire prevention or suppression agency, is exempt from the provisions of the Biological Mitigation Ordinance is reasonable and necessary for the public health, safety, convenience, and welfare and is consistent with the County of San Diego Subarea Plan for the Multiple Species Conservation Plan.

Section 2. Chapter 5 is hereby added to Division 6 of Title 8 of the San Diego County Code to read as follows:

CHAPTER 5. BIOLOGICAL MITIGATION ORDINANCE

SEC. 86.501. FINDINGS, PURPOSE AND INTENT.

The Board of Supervisors finds that the ecosystems of the County and the vegetation communities and sensitive species they support are fragile, irreplaceable resources that are vital to the general welfare of all residents; these vegetation communities contain habitat value which contributes to the region's environmental resources; special protections for these vegetation communities must be established to prevent future endangerment of the plant and animal species that are dependent upon them. This Chapter will protect the County's biological resources and prevent their degradation and loss by guiding development outside of biological resource core areas, and by establishing mitigation standards which will be applied to discretionary projects. Adoption and implementation of this Chapter will enable the County of San Diego to achieve the conservation goals set forth in the Subarea Plan for the Multiple Species Conservation Plan ("MSCP"), adopted by the Board of Supervisors on October 22, 1997, and will preserve the ability of affected property owners to make reasonable use of their land subject to the requirements of the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 and following, and other applicable laws, and the avoidance and mitigation requirements contained herein.

This Chapter sets forth the criteria for avoiding impacts to Biological Resource Core Areas and to plant and animal populations within those areas, and the mitigation requirements for all projects requiring a discretionary permit. It is the policy of this Chapter to promote the preservation of biological resources by directing preservation toward land which can be combined into contiguous areas of habitat or linkages. It is further the policy of this Chapter to give greater value to the preservation of large contiguous Biological Resource Core Area or to linkages when formulating avoidance and mitigation requirements.

The Chapter consists of two parts. The first part explains how mitigation for impacts is determined. The habitat and vegetation community must first be identified at the impact site and at the area proposed for mitigation. This section directs mitigation to areas that will lead to ultimate assembly of a regional preserve system consisting of core habitat areas and the linkage that connect them.

The second part of the Chapter sets out specific mitigation requirements for impacts to certain species. These species specific mitigation requirements are necessary because San Diego County has a high number of sensitive plants and animal species occurring within and without the preserved areas. Protecting these sensitive species is required in order to gain coverage of the species under the MSCP plan. Depending on the sensitivity of the individual species, their avoidance or mitigation is also necessary in order to comply with the California Environmental Quality Act. The two parts work together and are to be applied at the same time.

Nothing in this Chapter shall be construed to reduce any requirements to protect environmentally sensitive lands contained in any other County plan, ordinance, policy or regulation or the California Environmental Quality Act (CEQA), Public Resources Code section 21000 and following and the State CEQA Guidelines, 14 Ca. Code Regs. Section 15000, and following.

SEC. 86.502. APPLICATION OF REGULATIONS.

Except as provided in Section 86.503 below, this Chapter shall apply to all land within San Diego County shown on the MSCP Boundary Map (Attachment A of Document No. 0769999 on file with the Clerk of the Board). Upon application for a discretionary approval subject to CEQA, the applicant shall be required to comply with the procedures set forth in this Chapter. No project requiring a discretionary permit shall be approved unless a finding is made that the project is consistent with the MSCP Plan, the County Subarea Plan and the provisions of this Chapter.

SEC. 86.503. EXEMPTIONS.

- (a) This Chapter shall not apply to the following:
- (1) Any project which is exempt from CEQA.
 - (2) The adoption or amendment of the General Plan.
 - (3) The adoption or amendment of any Ordinance, including but not limited to the Zoning Ordinance.
 - (4) Any Take Authorization Area approved by the Board of Supervisors and the Wildlife Agencies as part of the County Subarea Plan, as shown on Attachment B

of Document No. 0769999 on file with the Clerk of the Board or any approved Habitat Loss Permit issued pursuant to 16 U.S.C. Sec. 1533 (d).

- (5) Any project for which and to the extent that a Vesting Tentative Map approved prior to October 22, 1997 or a Public Benefit Agreement approved prior to October 22, 1997, confers vested rights under County Ordinance or State law to proceed with development notwithstanding the enactment of this Chapter. Projects subject to this exemption must comply with all provisions of State and Federal law.
- (6) Any project for which the Board of Supervisors has determined that application of this Ordinance would result in the applicant being deprived of all reasonable economic use of the property in violation of Federal or State Constitutional prohibitions against the taking of property without just compensation.
- (7) Brushing and Clearing on existing parcels 10 acres and under in size containing a dwelling unit as of October 22, 1997.
- (8) A public facility or public project, determined to be essential by the County, including but not limited to a County Park or County recreational facility, provided that the County decision making body considering an application for such a project makes the following findings:
 - a) The facility or project is consistent with the County General Plan, the MSCP Plan and Subarea Plan, as approved by the Board of Supervisors;
 - b) All feasible mitigation measures have been incorporated into the facility or project, and there are no feasible, less environmentally damaging locations, alignments or non-structural alternatives that would meet project objectives;
 - c) Where the facility or project encroaches into a wetland or floodplain, mitigation measures are required that result in a net gain in wetland and/or riparian habitat;
 - d) Where the facility or project encroaches into steep slopes, native vegetation will be used to revegetate and landscape cut and fill areas;
 - e) No mature riparian woodland is destroyed or reduced in size due to otherwise allowed encroachments; and
 - f) All Critical Populations of Sensitive Plant Species Within the MSCP Subarea, (Attachment C of Document No. 0769999 on file with the Clerk of the Board); Rare, Narrow Endemic Animal Species Within the MSCP Subarea, (Attachment D of Document No. 0769999 on file with the Clerk

of the Board); Narrow, Endemic Plant Species Within the MSCP subarea, (Attachment E of Document No. 0769999 on file with the Clerk of the Board); and San Diego County Sensitive Plant Species, as defined herein will be avoided as required by, and consistent with, the terms of the Subarea Plan.

- (9) Any sand, gravel or mineral extraction project provided that the authority considering an application for such project makes the following findings and the following mitigation measures are required as conditions of any use permit approved for such project:
- a) The facility or project is consistent with the County General Plan, the MSCP Plan, and the Subarea Plan as approved by the Board of Supervisors;
 - b) All feasible mitigation measures have been incorporated that meet the standards for mitigation required by CEQA and the State Surface Mining and Reclamation Act of 1975;
 - c) Any wetland buffer area shall be restored to protect environmental values of adjacent wetlands;
 - d) In a floodplain, reclamation shall result in a net gain in functional wetlands and riparian habitat in or adjacent to the area of extraction;
 - e) Native vegetation shall be used on steep slope lands to revegetate and landscape cut areas and fill areas in order to substantially restore the original habitat value, and slopes shall be graded to produce contours and soils which reflect a landform that is consistent with the approved Reclamation Plan;
 - f) Mature riparian woodland may not be destroyed or reduced in size due to sand, gravel and mineral extraction; and
 - g) All Critical Populations of Sensitive Plant Species Within the MSCP Subarea, (Attachment C of Document No. 0769999 on file with the Clerk of the Board); Rare, Narrow Endemic Animal Species Within the MSCP Subarea, (Attachment D of Document No. 0769999 on file with the Clerk of the Board); Narrow Endemic Plant Species Within the MSCP subarea, (Attachment E of Document No. 0769999 on file with the Clerk of the Board); and San Diego County Sensitive Plant Species, as defined herein will be avoided as required by, and consistent with, the terms of the Subarea Plan.

Use of the extraction area after reclamation shall be subject to all requirements of this Chapter.

- (10) Agriculturally related clearing within the MSCP Subarea, provided that such grading and clearing meets all the following requirements:
- a) The land is not located within the Preapproved Mitigation Area shown on the Wildlife Agencies' Preapproved Mitigation Map, Attachment F of Document No. 0769999 on file with the Clerk of the Board.
 - b) The applicant has farmed the land during three of the last five years and intends to retain the land in agriculture for the next five years or the applicant intends to establish an agricultural operation on the particular parcel of land within one year and to retain the land in agriculture for at least ten years.
 - c) The land is not located within a floodplain.

An applicant for an agricultural clearing project meeting these requirements shall provide evidence in writing of the facts that support a - c above. In addition, the number of acres and location of the land for which the exemption is sought shall be provided. As part of the application the applicant shall sign an agreement to maintain the land in agriculture for the applicable holding period set forth in 10.b.

- (11) Parcels ten acres and under in size zoned for single family residential uses shall be allowed to conduct clearing without complying with the provisions of this Chapter in the following circumstances. To qualify for this exemption, a finding must be made that the clearing will not interfere with the assembly of the Multiple Species Conservation Plan Preserve according to the terms of the MSCP Plan and the Subarea Plan. The total number of acres cleared per parcel may not exceed the amounts set forth below.
- a) Parcels located within the Pre-Approved Mitigation Area shown on Attachment F of Document No. 0769999 on file with the Clerk of the Board, that are ten acres and under in size and zoned for single family residential uses may clear a total of two acres without complying with the terms of this Chapter. Clearing required pursuant to applicable fire safety regulations shall not be counted in computing the number of acres cleared.
 - b) Parcels located outside the Pre-Approved Mitigation Area that are ten acres and under in size and zoned for single family residential uses may clear a total of five acres without complying with the terms of this

Chapter. Clearing required pursuant to applicable fire safety regulations shall not be counted in computing the number of acres cleared.

c) Projects which qualify for this exemption shall provide the following information to the Department of Planning and Land Use:

- 1) The location of the parcel to be cleared.
- 2) The zoning of the parcel to be cleared.
- 3) The size of the parcel to be cleared.
- 4) The number and location of the number of acres to be cleared.

(12) Fuel management for fire protection, fire prevention, control or suppression purposes when authorized or required in writing by the fire authority having jurisdiction consistent with the Memorandum of Understanding between the Fish and Wildlife Service of the United States Department of the Interior, the California Department of Fish and Game, the California Department of Forestry, the San Diego County Fire Chiefs' Association and the Fire District's Association of San Diego County.

(b) **Certificates of Participation.** Projects which have received their discretionary approvals from the County prior to November 22, 1997 may, at the option of the project proponent apply for Certificates of Participation using the process set forth below:

The County shall review such applications to determine if the project conforms to the standards of the County Subarea Plan and this Chapter. If the review results in a determination that the project conforms to those standards, the County will issue draft Findings of Conformance for a 45-day review period by the Wildlife Agencies. Unless written objections related to the Findings of Conformance are received from the Wildlife Agencies by the end of the 45-day review period, the County will issue the Certificate of Participation. If the County finds that the proposed project does not meet the standards set forth in the Subarea Plan and this Chapter, the project proponent will be informed of the deficiencies and proper procedures for achieving and assuring conformance to the requirements.

SEC. 86.504. ADMINISTRATIVE PROCESS AND EVALUATIONS.

(a) **Application:** Projects required to submit an Environmental Initial Study, pursuant to the San Diego County CEQA Guidelines, Article 5, Section 5.2, shall submit to the Department of Planning and Land use a vegetation map prepared by a biological consultant chosen from the County's list of biological consultants, or proof, to the satisfaction of the Director, that no vegetation exists on the site. When review of the

vegetation map indicates that the site is likely to support Sensitive Species, County staff may require preparation of a species survey report prepared by a biological consultant chosen from the County's list of biological consultants. County staff will inform the applicant of the need to prepare such a species survey report within 30 days from the date of submission of the vegetation map. The report shall indicate the presence or absence of any Sensitive Species, and its location and numbers. The studies required pursuant to this Section shall be performed using the latest protocols approved by the Wildlife Agencies at the time of submission of the application.

SEC. 86.505. PROJECT DESIGN CRITERIA.

- (a) **Project Design Criteria.** Impacts to Critical Populations of Sensitive Plant Species Within the MSCP subarea (Attachment C), Significant Populations of Rare, Narrow Endemic Animal Species Within the MSCP Subarea (Attachment D of Document No. 0769999 on file with the Clerk of the Board), Narrow Endemic Plant Species Within the MSCP Subarea (Attachment E of Document No. 0769999 on file with the Clerk of the Board), or San Diego County Sensitive Plants, as defined herein, and impacts to land determined to be a Biological Resource Core Area shall be avoided to the maximum extent practicable by using the following design criteria:
- (1) Project development shall be sited in areas which minimize impact to habitat;
 - (2) Clustering to the maximum extent permitted by County regulations shall be considered where necessary as a means of achieving avoidance;
 - (3) Notwithstanding the requirements of the Slope Encroachment Regulations contained within the Resource Protection Ordinance, effective October 10, 1991, projects shall be allowed to utilize design which may encroach into steep slopes to avoid impacts to habitat;
 - (4) The County shall consider reduction in road standards to the maximum extent consistent with public safety considerations;
 - (5) Projects shall be required to comply with applicable design criteria in the County MSCP Subarea Plan, attached hereto as Attachment G of Document No. 0769999 (Preserve Design Criteria) on file with the Clerk of the Board) and Attachment H of Document No. 0769999 (Design Criteria for Linkages and Corridors) on file with the Clerk of the Board).

SEC. 86.506. HABITAT BASED MITIGATION.

- (a) **Mitigation Requirements.** The following section specifies the process for determining mitigation requirements for sensitive habitats:

(1) Determination Whether Land Qualifies as Biological Resource Core Area.

The impact site and the mitigation site shall be evaluated to determine if either or both sites qualify as a Biological Resource Core Area.

a) The impact site is a Biological Resource Core Area if it meets one or more of the following criteria:

- i) The land is shown as preapproved mitigation area on the wildlife agencies' preapproved mitigation map, (Attachment F of Document No. 0769999 on file with the Clerk of the Board);
- ii) The land is located within an area of habitat which contains biological resources that support or contribute to the long-term survival of Sensitive Species, which determination is based upon a biological analysis approved by the Director, and is adjacent or contiguous to preserved habitat that is within the preapproved mitigation area on the wildlife agencies' preapproved mitigation map (Attachment F of Document No. 0769999 on file with the Clerk of the Board);
- iii) The land is part of a regional linkage/corridor. A regional linkage/corridor is either:
 - A. Land which contains topography which serves to allow for the movement of all sizes of wildlife and is used by wildlife, including large animals on a regional scale; and contains adequate vegetation cover providing visual continuity so as to encourages the use of the corridor by wildlife; or
 - B. It has been identified as the primary linkage/corridor between the northern and southern regional populations of the California gnatcatcher in the population viability analysis for the California gnatcatcher, MSCP Resource Document Volume II, Appendix A-7 (Attachment I on file with the Clerk of the Board as Document No. 0769999).
- iv) The land is shown on the Habitat Evaluation Map (Attachment J of Document No. 0769999 on file with the Clerk of the Board) as Very High or High and links significant blocks of habitat, except that land which is isolated or links small, isolated patches of habitat and land that has been affected by existing development to create adverse edge effects shall not qualify as Biological Resource Core Area;

- v) The land consists of or is within a block of habitat greater than 500 acres in area of diverse and undisturbed habitat that contributes to the conservation of Sensitive Species;
- vi) The land contains a high number of Sensitive Species and is adjacent or contiguous to surrounding undisturbed habitats, or contains soil derived from the following geologic formations which are known to support Sensitive Species:
 - A. gabbroic rock;
 - B. metavolcanic rock;
 - C. clay;
 - D. coastal sandstone.

b) The mitigation Site is a Biological Resource Core area if it meets one or more of the criteria listed below. A vegetation map of the proposed mitigation site may be required to determine whether the criteria are met.

- i) The land is part of a conservation bank recognized by the Wildlife Agencies as contributing to a HCP/NCCP Plan and located within the MSCP Subarea Boundary Map Area; or
- ii) The land meets any or all of the criteria identified in Section 86.506 above.

(2) Determination of Tier on Impact Site. Based on the information in the vegetation map prepared pursuant to Section 85.504, the tier level of the impact site shall be identified in accordance with the List of San Diego County Vegetation Communities and Tier Levels Within the MSCP (Attachment K of Document No. 0769999 on file with the Clerk of the Board).

(3) Determination of Tier on Mitigation site. The tier level of the mitigation site shall be identified in accordance with the List of San Diego County Vegetation Communities and Tier Levels Within the MSCP (Attachment K on file with the Clerk of the Board as Document No. 0769999. Mitigation for impacts to vegetation communities within the MSCP Subarea shown on the MSCP Boundary Map (Attachment A of Document No. 0769999 on file with the Clerk of the Board) shall occur in vegetation communities within the MSCP Subarea. Mitigation shall be within a habitat tier equal to or greater than the impact site with two exceptions:

- a) Mitigation may be out of tier if mitigation credits are acquired from a mitigation bank located within the MSCP Subarea, and use of the credits

is consistent with Board of Supervisors Policy I-117 (Attachment L of Document No. 0769999 on file with the Clerk of the Board).

b) Mitigation must be in-kind for the following types of habitat:

Southern Maritime Chaparral, Maritime Succulent Scrub, and vegetation communities specified under the category “Wetlands” in Tier I, the List of San Diego County Vegetation Communities and Tier Levels Within the MSCP (Attachment K of Document No. 0769999 on file with the Clerk of the Board).

(4) Determination of the Mitigation Ratio. Using the Table of Mitigation Ratios (Attachment M of Document No. 0769999 on file with the Clerk of the Board), determine the mitigation ratio by locating the tier of the vegetation community to be impacted, based on whether the impact site and mitigation site are Biological Resource Core Areas.

SEC. 86.507. SPECIES-BASED MITIGATION.

- (a) **The following section specifies the process for determining mitigation requirements for sensitive plant populations and for sensitive animal populations.**
- (1) **Sensitive Plant Populations.**
- a) **Critical Populations of Sensitive Plant Species.** During project design, first priority shall be given to avoidance of impacts populations of sensitive plant species listed on the Critical Populations of Sensitive Plant Species Within the MSCP subarea (Attachment C of Document No. 0769999 on file with the Clerk of the Board). Where complete avoidance is infeasible, County staff will work with the project proponent to design the project to minimize impacts to the Critical Population to the maximum extent practicable.
- b) **Avoidance of Sensitive Plants.** Impacts to Narrow Endemic Plant Species Within the MSCP Subarea (Attachment E of Document No. 0769999 on file with the Clerk of the Board), or Sensitive Plant Species, as defined, that meet the criteria in Group A or B shall be avoided to the maximum extent practicable. Where complete avoidance is infeasible, encroachment may be authorized depending on the sensitivity of the individual species and the size of the population except that encroachment shall not exceed 20% of the population on-site. Where impacts are allowed, in-kind preservation shall be required at a 1:1 to 3:1 ratio depending on the sensitivity of the species and population size, as determined in a biological analysis approved by the Director.
- c) **Mitigation for Sensitive Plant Species in Groups C and D.** Sensitive Plant Species, as defined, in Groups C and D shall be protected by using the design requirements and habitat-based mitigation requirements set forth in Section 86.505 and Section 86.506. Notwithstanding the foregoing, when said design requirements and habitat-based mitigation would have the effect of substantially reducing the viability of the affected population or the species, mitigation shall be in-kind, and the mitigation required will be set at a ratio based on the sensitivity of the species and population size, as determined in a biological analysis approved by the Director.

(2) **Sensitive Animal Populations.**

- a) **Rare, Narrow, Endemic Animal Species.** Impacts to Rare, Narrow Endemic Animal Species Within the MSCP subarea (Attachment D of Document No. 0769999 on file with the Clerk of the Board) shall be avoided to the maximum extent practicable. Avoidance requirements shall meet any species specific requirements set forth in Table 3-5 of the MSCP Plan including any applicable limitations on clearing of occupied habitat. Where complete avoidance is infeasible, projects shall be designed to avoid any significant reduction in species viability.
- b) **Impacts to Burrowing Owl Habitat.** Impacts to Burrowing Owl Habitat shall be avoided to the maximum extent practicable. Where impacts are unavoidable, the following mitigation measures shall be required: (1) any impacted individuals must be relocated out of the impact area using passive or active methodologies approved by the Wildlife Agencies; (2) mitigation for impacts to occupied habitat, must be through the conservation of occupied burrowing owl habitat or lands appropriate for restoration, management and enhancement of burrowing owl nesting and foraging requirements at a ratio of no less than 1:1 for the territory of the burrowing owl.
- c) **Impacts to Arroyo Toad Habitat.** Impacts to upland habitats within 1 km of riparian habitat which supports or is likely to support Arroyo toad shall be minimized to the maximum extent practicable.
- d) **Management Conditions for Vireo belli pusillus, Least Bell's vireo.** Conditions shall be developed for projects located adjacent to Least Bell's Vireo habitat to monitor and control the population of brown-headed cowbirds.
- e) **Other Sensitive Animal Species.** For other Sensitive animal species as defined in Section 86.508, impacts will be mitigated through habitat based mitigation requirements as set forth in Section 86.506. In any case in which mitigation would have the effect of substantially reducing the viability of the affected population or the species, mitigation shall be in kind and the mitigation required will be set at a ratio based on the sensitivity of the species and the population size, as determined in a biological analysis approved by the Director.

- (3) **Vernal Pools.** Impacts to vernal pools and their watersheds in naturally occurring complexes and wetlands shall be avoided to the maximum extent practicable.

- (4) **Grading Limitations for Specific Species.** The following limitations shall apply to grading activities in areas where the identified species occur:
- a) *Campylorhynchus brunneicapillus cousei*, Coastal cactus wren - No clearing of occupied habitat shall occur between February 15 through August 15.
 - b) *Polioptila californica californica*, California gnatcatcher - No clearing of occupied habitat shall occur between March 1 through August 15.
 - c) *Vireo belli pusillus*, Least Bell's vireo - No clearing of occupied habitat shall occur between March 15 and September 15.
 - d) *Empidonax traillii extimus*, Southwestern willow flycatcher - No clearing of occupied habitat shall occur between May 1 and September 1.
- (5) **Other Species Specific Condition Requirements.** As set forth in the terms of the MSCP Plan and/or Subarea Plan, project applicants shall be required to comply with other applicable species specific conditions set forth in Table 3-5 of the MSCP Plan as a condition of project approval.

SEC. 86.508. DEFINITIONS.

For the purposes of this Chapter, the following words and phrases shall have the following meanings. These definitions are to be broadly interpreted and construed to provide maximum protection to the environmentally sensitive lands and resources protected by this Chapter.

- (a) "Biological Resource Core Area" shall mean land that qualifies as an integral component of a viable regional ecosystem according to the criteria and procedure set out in Section 86.506.
- (b) "Clearing" refers to the removal of natural vegetation by any means, including brushing and grubbing.
- (c) "Clerk of the Board" shall mean the Clerk of the Board of Supervisors.
- (d) "Corridor" is a specific route that is used for movement and migration of species. A corridor may be different from a "Linkage" because it represents a smaller or more narrow avenue for movement.
- (e) "Critical Populations of Sensitive Plant Species" shall mean those populations of plant species listed on Attachment C of Document No. 0769999 on file with the Clerk of the Board.

- (f) "Director" shall mean the Director of Planning and Land Use.
- (g) "Edge Effects" shall mean indirect impacts to a preserve area caused by the existence of development adjacent to the preserve area.
- (h) "Essential Public Facility or Project" shall mean any structure or improvement necessary for the provision of services for the health, safety and welfare of the public, which must be located in the particular location to serve its purpose and for which no less environmentally damaging location, alignment, or non-structural alternative exists.
- (i) "Floodplain" shall mean an area of land that would be inundated by a flood with a probability of occurring once in 100 years. These areas are identified in the report "County of San Diego Floodplain Maps" approved by the Board of Supervisors.
- (j) "HCP/NCCP Plan" shall mean a Habitat Conservation Plan ("HCP") approved pursuant to 16 U.S.C. Section 1539(a)(2)(A) and the plan developed in accordance with the Natural Communities Conservation Act, Cal. Fish and Game Code Section 2800 and following, also referred to as an NCCP.
- (k) "In-kind Mitigation" shall mean mitigation with the same species or vegetation community classification as the site being impacted.
- (l) "Linkage" shall mean an area of land which supports or contributes to the long-term movement of wildlife and genetic material.
- (m) "Mature Riparian woodland" shall mean a grouping of sycamores, cottonwoods, willows and/or oak trees having substantial biological value where at least ten of the trees have a diameter of six inches or greater.
- (n) "Narrow Endemic Plant Species" shall mean those plant species listed on Attachment E of Document No. 0769999 on file with the Clerk of the Board.
- (o) "Native Vegetation" shall mean Vegetation composed of plants which naturally occur in the San Diego region and were not introduced directly or indirectly by humans. Native vegetation may be found in, but is not limited to, marshes, native grasslands, coastal/inland sage scrub, chaparral, woodlands, forests and other vegetation communities.
- (p) "Natural Vegetation" shall mean those vegetation communities included in Tiers I, II and III on the List of San Diego County Vegetation Communities and Tier Levels (Attachment K of Document No. 0769999 on file with the Clerk of the Board). Non-Native grassland shall be included under this definition because it is a naturalized

community which provides habitat for a number of native and some sensitive species of plants and animals.

- (q) "Rare, Narrow Endemic Animal Species" shall mean those species or subspecies that are listed on Attachment D of Document No. 0769999 on file with the Clerk of the Board.
- (r) "Sensitive Plant Species" shall mean those plants which meet the following criteria:
 - Group A = Plants that are rare, threatened or endangered in California and elsewhere; or
 - Group B = Plants that are rare, threatened or endangered in California but more common elsewhere; or
 - Group C = Plants which may be quite rare, but need more information to determine their true rarity status; or
 - Group D = Plants of limited distribution and are uncommon, but not presently rare or endangered.
- (s) "Sensitive Species" shall mean:
 - (1) Those species that are included on generally accepted and documented lists of plants and animals of Endangered, threatened, candidate or of special concern by the Federal Government, or State of California;
 - (2) Those species listed on Attachment C, Critical Populations of Sensitive Plant Species within the MSCP Subarea, Attachment D, Rare, Narrow Endemic Animal Species, Attachment E, Narrow Endemic Plant Species, Attachment K, San Diego County Vegetation Communities and Tier levels within the MSCP, and Sensitive Plant Species as defined by this Chapter.
 - (3) Those species that meet the definition of "Rare or Endangered Species" under Section 15380 of the State CEQA Guidelines.
- (t) "Significant Population" shall mean a group or groups of sensitive species, wherever located, the loss of which would substantially reduce the likelihood of the survival and recovery of the species.
- (u) "Subarea Plan" shall mean an HCP/NCCP plan prepared by the County and reviewed and approved by the Wildlife Agencies and the Board of Supervisors, to implement the Multiple Species Conservation Program within the County's jurisdictional boundaries.
- (v) "Take Authorization Area" shall mean the areas designated on the map attached hereto and marked Attachment B of Document No. 0769999 on file with the Clerk of the Board.

- (w) "Urban Area" shall mean an area consisting of one or more dwelling units per acre.
- (x) "Watershed" shall mean all surface area that drains toward a vernal pool.
- (y) "Wildlife Agencies" shall mean the United States Fish and Wildlife Service and the California Department of Fish and Game.
- (z) "Disturbed Land" shall mean land that does not have habitat value for native species as a result of activities permitted by law. Habitat that is the result of natural processes and succession may not be considered disturbed land.

SEC. 86.509 GENERAL PROVISIONS.

- (a) **Severability.** If any article, section, sub-section, sentence, clause, phrase, part or portion of this Chapter is for any reason held to be invalid or unconstitutional by a final judgment of any Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Chapter. It is hereby declared that this Ordinance and each article, sections, subsection, sentence, clause, phrase, part or portion thereof would have been adopted or passed regardless of the fact that any one or more articles, sections, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.
- (b) **Exception To The Requirements of This Ordinance.** In certain cases, during CEQA review and/or design of a project, site specific physical conditions, including but not limited to geology, slope, or location of infrastructure, may be identified which make it infeasible for the project to meet all the goals and criteria or other requirements in the Subarea Plan, but the project could be constructed without compromising the conservation of species and habitats pursuant to the Subarea Plan. The exception shall be the minimum necessary to afford relief and accommodate development. In such instances, the County may grant an exception to this Chapter in conjunction with granting an exception to the Subarea Plan. An exception to the Subarea Plan requires the concurrence of the Wildlife Agencies.

Section 3. Effective date. This Ordinance shall take effect and be in force thirty (30) days after the date of its passage, and before the expiration of fifteen (15) days after its passage, a summary shall be published once with the names of the members voting for and against the same in the Daily Commerce, a newspaper of general circulation published in the County of San Diego.

PASSED, APPROVED AND ADOPTED this 24th day of March, 2004.