

ORDINANCE NO. 3003

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING  
CHAPTER 17 OF THE CHULA VISTA MUNICIPAL CODE TO  
REPEAL SECTION 17.30 RELATING TO INTERIM COASTAL  
SAGE SCRUB HABITAT LOSS PERMIT PROCESS, AND IN  
ITS PLACE ADD THE OTAY RANCH GRAZING FOR  
IMPLEMENTATION OF THE MSCP SUBAREA PLAN

WHEREAS, as lead agencies for the Multiple Species Conservation Program (MSCP) Subregional Plan, the U.S. Fish and Wildlife Service and the City of San Diego prepared and certified a Final Environmental Impact Report/Environmental Impact Statement (Final EIR/EIS) for the Issuance of Take Authorizations for Threatened and Endangered Species due to urban growth within the Multiple Species Conservation Program (MSCP) planning area in January, 1997 and adopted the Final MSCP Subregional Plan in August, 1998; and

WHEREAS, as a responsible agency, the City of Chula Vista (City) participated in the preparation of the Final EIR/EIS through consultation and comment; and

WHEREAS, the MSCP Subregional Plan contemplated that local jurisdictions including the City of Chula Vista would participate in the MSCP Subregional Plan and seek federal and state take authorization by adopting a subarea plan consistent with the conservation strategies contained in the MSCP Subregional Plan; and

WHEREAS, the City prepared and submitted a Draft MSCP Subarea Plan to the U.S. Fish and Wildlife Service and the City of San Diego in August, 1996, for inclusion in the Draft MSCP Subregional Plan and for consideration by the lead agencies in their environmental review of the Draft MSCP Subregional Plan; and

WHEREAS, after the adoption of the MSCP Subregional Plan, the City, and the U.S. Fish and Wildlife Service and the California Department of Fish and Game (hereinafter referred to as the Wildlife Agencies) further negotiated a number of aspects of the 1996 Draft Subarea Plan, including but not limited to, the refinement of the conditions of coverage for covered projects, the type and extent of protection for narrow endemic species, the amount and type of public facilities and infrastructure to be allowed in the Preserve, and an acceptable configuration for the university site adjacent to the Preserve; and

WHEREAS, following a review by the Wildlife Agencies and public comment period, the City issued a draft MSCP Subarea Plan dated September 11, 2000, and a Draft Implementing Agreement dated September 20, 2000, to the Wildlife Agencies and the general public; and

WHEREAS, on September 22, 2000, the City submitted to the U.S. Fish and Wildlife Service an application for a Section 10(a)(1)(B) permit for incidental take pursuant to the U.S. Endangered Species Act of 1973, as amended, and submitted to the California Department of Fish and Game an application for a take authorization permit pursuant to Section 2835 of the California Endangered Species Act, with both applications including the Draft MSCP Subarea Plan dated September 11, 2000, and a Draft Implementing Agreement dated September 20, 2000; and

WHEREAS, the Planning Commission and the City Council set the time and place for a joint hearing on said project and notice of said hearing, together with its purpose, was given by its publication in a newspaper of general circulation in the City at least 10 days prior to the hearing; and

WHEREAS, the hearing was held at the time and place as advertised on October 17, 2000, in the Council Chambers, 276 Fourth Avenue, before the Planning Commission and City Council; and

WHEREAS, approval of the MSCP Subregional Plan and adoption of the Chula Vista MSCP Subarea Plan dated September 11, 2000 were discretionary actions covered by the Final EIR/EIS, and therefore, as a responsible agency, the City had a more limited role than does a lead agency under the California Environmental Quality Act (CEQA); and

WHEREAS, the City prepared an Addendum dated September 11, 2000, pursuant to CEQA Guidelines section 15164 to fulfill the City's obligations as a responsible agency; and

WHEREAS, the City issued Findings of Fact for each of the significant environmental effects of implementing the Chula Vista MSCP Subarea Plan, dated September 11, 2000, in conformance with the CEQA and the CEQA Guidelines, which enabled the City to make full use of the Final EIR/EIS and the Addendum (CEQA Guidelines, sections 15101, 15093 and 15096, subd. (h)); and

WHEREAS, the City considered the Final EIR/EIS prepared by the lead agency together with the Chula Vista MSCP Subarea Plan dated September 11, 2000 and the Draft Implementing Agreement dated September 20, 2000, and reached its own conclusion about whether and how to approve the MSCP Subregional Plan and the Chula Vista MSCP Subarea Plan dated September 11, 2000; and

WHEREAS, the City also prepared an MSCP Mitigation and Implementing Agreement Monitoring Program For Biological Resources dated October 12, 2000, in compliance with Public Resources Code section 21081.6, subd. (a)(1); and

WHEREAS, the City Council reviewed and considered the Final EIR/EIS prepared and certified by the U.S. Fish and Wildlife Service and the City of San Diego in January, 1997, the Addendum to the Final EIR/EIS (October 2000), the Findings of Fact and Statement of Overriding Considerations, and the MSCP Mitigation and Implementing Agreement Monitoring Program for Biological Resources (October 2000) and found that the documents were prepared in accordance with the requirements of CEQA, the CEQA Guidelines, and the Environmental Review Procedures of the City of Chula Vista, and also found that the Final EIR/EIS (January 1997) and Addendum to the Final EIR/EIS adequately addressed the environmental impacts of the MSCP Subregional Plan and the Draft Chula Vista MSCP Subarea Plan, dated September 11, 2000; and

WHEREAS, on October 17, 2000, the City Council approved the MSCP Subregional Plan dated August, 1998, as the framework plan for the Chula Vista MSCP Subarea Plan; conditionally adopted the MSCP Subarea Plan, dated September 11, 2000, and the Mitigation and Implementing Agreement Monitoring Program for Biological Resources dated October, 2000; and

WHEREAS, subsequent to the City Council conditional approval on October 17, 2000, the City decided to make further changes to the Draft MSCP Subarea Plan, dated September 11, 2000, based on additional information not previously available about the Quino checkerspot butterfly, a federally listed endangered species. The City believed it was prudent to add coverage for the Quino checkerspot butterfly into the draft MSCP Subarea Plan prior to the Subarea Plan and associated implementing documents being published in the Federal Register; and

WHEREAS, since October 2000, changes to the Draft MSCP Subarea Plan have been made as necessary to complete a final Draft MSCP Subarea Plan including: 1) measures to provide coverage for the Quino checkerspot butterfly, 2) the preparation of three implementing ordinances, 3) final revisions to the Implementing Agreement, 4) conservation of additional lands not previously anticipated to be preserved, including lands within the approved Rolling Hills Ranch subdivision, and 5) other revisions to address unresolved issues related to changed circumstances, wetlands, and funding for long-term management; and

WHEREAS, the City has prepared a Supplemental Environmental Impact Report and Environmental Assessment (No. 03-01) to address all of the changes to the revised final Draft MSCP Subarea Plan; and

WHEREAS, on October 8, 2002, the City submitted a revised application to the Wildlife Agencies for a Section 10(a)(1)(B) permit for incidental take pursuant to the U.S. Endangered Species Act of 1973, as amended, and submitted to the California Department of Fish and Game an application for a take authorization permit pursuant to Section 2835 of the California Endangered Species Act, with all of the required application materials including the Draft Supplemental EIR and EA, Draft MSCP Subarea Plan, and the revised Draft Implementing Agreement, and Draft Implementing Ordinances (referred to herein collectively as implementing documents); and

WHEREAS, on October 10, 2002 a Federal Register notice was published commencing a 60-day public comment period on the Incidental Take Applications, Public Review Draft MSCP Subarea Plan, dated October 2002, implementing agreement and implementing ordinances and associated environmental documents. A public notice was also published on October 11, 2002 announcing the availability of the Draft SEIR and EA to meet the requirements of the California Environmental Quality Act; and

WHEREAS, public review of the Draft MSCP Subarea Plan and implementing documents closed on December 9, 2002. The City received 12 letters of comment from the public and has prepared responses to the comments and made changes to the Public Review Draft MSCP Subarea Plan, dated October 2002 and implementing documents, and has prepared a final City of Chula Vista MSCP Subarea Plan, dated February 2003, and Draft Implementing Agreement, dated February 2003; and

WHEREAS, the Planning Commission set the time and place for a public hearing on said project and notice of said hearing, together with its purpose, was given by its publication in a newspaper of general circulation in the City at least 10 days prior to the hearing; and

WHEREAS, the hearing was held at the time and place as advertised on April 23, 2003 in the Council Chambers, 276 Fourth Avenue, before the Planning Commission; and

WHEREAS, the Planning Commission recommended to the City Council the approval of the MSCP Subarea Plan and associated implementing documents; and

WHEREAS, the City Council set the time and place for a public hearing on said project and notice of said hearing, together with its purpose, was given by its publication in a newspaper of general circulation in the City at least 10 days prior to the hearing; and

WHEREAS, the hearing was held at the time and place as advertised on May 13, 2003 in the Council Chambers, 276 Fourth Avenue, before the City Council; and

WHEREAS, the conditional adoption of the Chula Vista MSCP Subarea Plan, dated February 2003 and associated implementing ordinances will not constitute a binding set of obligations on any public or private entity within the City of Chula Vista unless and until: 1) the U.S. Fish and Wildlife Service issues a biological opinion which affirms and is consistent with the Chula Vista MSCP Subarea Plan, dated February 2003 and the Draft Implementing Agreement, dated February 2003, 2) take permits and its conditions are issued by both Wildlife Agencies that are consistent with the Chula Vista MSCP Subarea Plan and Draft Implementing Agreement dated February 2003, and 3) the City and Wildlife Agencies approves and executes the Implementing Agreement substantially in the form of the Implementing Agreement dated February 2003; and

WHEREAS, the City Council considered the Supplemental EIR and EA at its hearing of May 13, 2003 and adopted the Chula Vista MSCP Subarea Plan (dated February 2003) with said conditions; and

WHEREAS, implementation of the MSCP Subarea Plan adoption of three MSCP Implementing Ordinances, including the Otay Ranch Grazing Ordinance. This ordinance will only take effect after issuance of the take permits and the necessary timelines for ordinances pursuant to the City Charter have passed.

NOW, THEREFORE, the City Council of the City of Chula Vista does ordain as follows:

Section I. That Chapter 17 of the Chula Vista Municipal Code is hereby amended by repealing Section 17.30 Interim Coastal Sage Scrub Habitat Loss Permit Process and in its place adding Section 17.30 to read as follows:

Sec. 17.30 OTAY RANCH GRAZING

Sections:

- 17.30.010 Purpose and Intent
- 17.30.020 General Authorization
- 17.30.030 Definitions
- 17.30.040 General Application of Chapter
- 17.30.050 General Regulations
- 17.30.060 Violations

17.30.010 Purpose and Intent

The purpose of these regulations is to implement the Otay Ranch General Development Plan and Resource Management Plan within the City of Chula Vista. Specifically, these regulations implement the preserve management goals and recommendations for the Otay River Valley Management Area of the Range Management Plan (Appendix F7 of the Otay Ranch Phase 2 Resource Management Plan).

17.30.020 General Authorization

As a participating jurisdiction in the MSCP Subregional Planning effort, the City of Chula Vista is promulgating these regulations to implement the Chula Vista MSCP Subarea Plan as a condition of receiving an incidental take permit to be issued to the City pursuant to Section 10(a)(1)(B) of the Federal Endangered Species Act and take authorization to be issued to the City pursuant to Section 2835 of the California Fish and Game Code.

17.30.030 Definitions

100% Conservation Area - Lands within the City of Chula Vista for which hard-line Preserve boundaries have been established and where the conserved portion will be managed for its biological resources. These areas are shown on Figure 1-2 of the Chula Vista MSCP Subarea Plan, as adopted on May 13, 2003, and as may be amended from time to time.

Otay Ranch Preserve - The land mapped as "resource preserve" in the Otay Ranch General Development Plan and the 11,375-acre habitat conservation area established by the Otay Ranch Phase 1 Resource Management Plan.

Pasture - Defined areas used for grazing, demarcated by fences and gates that allow for control of grazing patterns.

Preserve - Areas within the City of Chula Vista incorporated limits which have been dedicated and accepted by the City for permanent MSCP conservation and which will be managed for their biological resources.

17.30.040 General Application of Chapter

It is unlawful to conduct grazing activities in the City of Chula Vista on land designated by the Otay Ranch General Development Plan as Otay Ranch Preserve, except as provided for by this chapter.

17.30.050 General Regulations

The following General Regulations shall apply to all land designated by the Otay Ranch General Development Plan as Otay Ranch Preserve and as 100% Conservation Area in the Chula Vista MSCP Subarea Plan, as adopted on May 13, 2003, and as may be amended from time to time:

- A. Existing grazing uses shall be permitted to continue in compliance with all applicable regulations, only where the uses have occurred continuously within previous years; and
- B. No increase in irrigation shall be allowed, except for temporary irrigation that may be installed as part of the restoration plans; and
- C. Grazing by sheep and goats shall not be allowed; and
- D. Any existing or future fencing and gating installed for range management purposes shall be maintained and kept in good repair; and
- E. Grazing of cattle in pastures 6 (Horse), 10a, 10b, 10c (River Valley West), 11a, 11b, 11c (River Valley East), 12a, 12b, and 12c (O'Neal), as set forth in Exhibit 4 of the Otay Ranch Range Management Plan, shall be prohibited from January 1 through August 31, annually; and
- F. Grazing of cattle in pastures 12 (O'Neal) and 15 (Salt Creek), as set forth in Exhibit 4 of the Otay Ranch Range Management Plan, shall be prohibited during the breeding season of the California gnatcatcher from February 15 through August 15, annually; and
- G. In areas designated for restoration, grazing shall be removed for a period of time prior to initiation of restoration activities to facilitate soil preparation and exotic plant control.

17.30.060 Violations

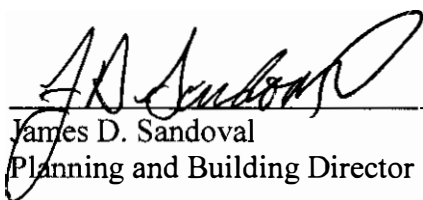
The provisions of this chapter shall be enforced pursuant to the provisions of Chapters 1.20 through 1.41 of the Chula Vista Municipal Code.

Section II. Adoption of this ordinance is conditioned upon and shall not occur unless and until the issuance of Take Authorizations from the USFWS and CDFG to the City of Chula Vista has occurred in a form acceptable to the City.

Section III. This ordinance shall take effect and be in force on the thirtieth day from and after the adoption of the ordinance, which shall occur as stated above.

Presented by

Approved as to form by

  
James D. Sandoval  
Planning and Building Director

  
Ann Moore  
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 10th day of May, 2005, by the following vote:

AYES: Councilmembers: Castaneda, McCann, Rindone and Padilla

NAYS: Councilmembers: None

ABSENT: Councilmembers: Davis

  
Stephen C. Padilla, Mayor

ATTEST:

  
Susan Bigelow, MMC, City Clerk

STATE OF CALIFORNIA     )  
COUNTY OF SAN DIEGO    )  
CITY OF CHULA VISTA     )

I, Susan Bigelow, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 3003 had its first reading at a regular meeting held on the 13th day of May, 2003 and its second reading and adoption at a regular meeting of said City Council held on the 10th day of May, 2005.

Executed this 10th day of May, 2005.

  
Susan Bigelow, MMC, City Clerk