

ORDINANCE NO. 3004

ORDINANCE OF THE CITY OF CHULA VISTA
AMENDING CHAPTER 17 OF THE CHULA VISTA
MUNICIPAL CODE TO ADD SECTION 17.35 RELATING TO
HABITAT LOSS AND INCIDENTAL TAKE 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 for the Issuance of Take Authorizations for Threatened and Endangered Species due to urban growth within the Multiple Species Conservation Program (MSCP) planning area (Final EIR/EIS) 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 1, 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 in 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 requires adoption of three MSCP Implementing Ordinances, including the Habitat Loss and Incidental Take 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 adding Section 17.35 to read as follows:

Sec. 17.35 HABITAT LOSS AND INCIDENTAL TAKE

Sections:

- 17.35.010 Purpose and Intent
- 17.35.020 General Authorization
- 17.35.030 Definitions
- 17.35.040 General Application of Chapter
- 17.35.050 Exemptions
- 17.35.060 Application for HLIT Permit
- 17.35.070 Permit Process
- 17.35.080 Required Findings for Issuance of HLIT Permit
- 17.35.090 General MSCP Development Regulations
- 17.35.100 Specific MSCP Development Regulations
- 17.35.110 Mitigation
- 17.35.120 Biological and Open Space Easement

17.35.130 Deviation from Habitat Loss and Incidental Take Regulations

17.35.140 Emergencies

17.35.150 City Responsibility to Publish Guidelines

17.35.160 Violations and Remedies

17.35.170 Conflicts

17.35.180 Local Coastal Program

17.35.010 Purpose and Intent

The purpose of the Habitat Loss and Incidental Take (HLIT) regulations is to protect and conserve native habitat within the City of Chula Vista and the viability of the species supported by those habitats. These regulations are intended to implement the City of Chula Vista Multiple Species Conservation Program (MSCP) Subarea Plan by placing priority on the preservation of biological resources within the planned and protected Preserve. These regulations are intended to assure that development occurs in a manner that protects the overall quality of the habitat resources, encourages a sensitive form of development, and retains biodiversity and interconnected habitats. The habitat-based level of protection achieved through implementation of the MSCP, is intended to meet the conservation obligations of the Covered Species identified therein. These regulations are also intended to protect the public health, safety, and welfare while being consistent with sound resource conservation principles and the rights of private property owners.

17.35.020 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.

17.35.030 Definitions

The following words and phrases, when used in this Chapter, shall be construed as defined in this section:

75-100% Conservation Area - Lands for which hard-line Preserve boundaries have not yet been established, but where development or impact is limited to 25% or less of the mapped area and Preserve will total between 75% and 100% of the mapped area and where the conserved portion will be managed for its biological resources. These mapped 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.

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.

Agricultural Operations - Soil disturbance activity for the preparation or maintenance of a site for the cultivation of crops or other agricultural purposes where the activity has occurred continuously within previous years, in compliance with all applicable regulations, and involves no intensification of the use.

Appropriate Managing Facility - The entity that manages any portion of the Preserve, including but not limited to, the City, a third-party under the direct control of the City, or the Otay Ranch Preserve Owner/Manager.

Biological and Open Space Easement - A permanent legal encumbrance to protect biological resources and dedicate land to the Preserve. The biological and open space easement is also referred to as a conservation easement.

Biological Functional Equivalency - A modification to a Preserve boundary, which results in a Preserve configuration with a biological value, that is equal to or higher than the original Preserve configuration. The comparison of biological value is based on the "like or equivalent" exchange concept for biological factors identified in Section 5.4.2 of the MSCP Subregional Plan.

Biologist - A person meeting the qualifications as established by the Director of Planning and Building and approved by the same. At a minimum, the person shall have at least a four-year college degree in biology, zoology, botany, wildlife management, or other closely related field, with at least two years experience conducting field investigations in San Diego County.

Candidate Species - Those native species or subspecies of bird, mammal, fish, amphibian, reptile, or plant that the California Fish and Game Commission has formally noticed as being under review by CDFG for addition to either the list of endangered species or the list of threatened species, or a species for which the Fish and Game Commission has published a notice of proposed regulation to add the species to either list, pursuant to Section 2068 of the California Fish and Game Code.

CDFG - California Department of Fish and Game, a subdivision of the State of California charged with administering the California Endangered Species Act and the Natural Community Conservation Planning Act.

CEQA - The California Environmental Quality Act (Cal. Public Resources Code Section 2100 et seq.), including all regulations promulgated pursuant to that Act.

Chula Vista Covered Species - Those Covered Species which are adequately conserved by the Chula Vista MSCP Subarea Plan, together with other Subarea Plans within the MSCP Subregional Plan Area in effect during the duration of the City's Section 10(a)(I)(B) permit issued by the United States Fish and Wildlife Service (USFWS) and Take Authorization issued by CDFG, and including Species Adequately Conserved. Adequate conservation for certain Chula Vista Covered Species shall include the measures contained in the findings for those species in Table 3-5 of the MSCP Subregional Plan.

Clearing - The cutting of Natural Vegetation by any means, without disturbance to the soil and root system.

Clearing and Grubbing Permit - A permit issued pursuant to this chapter that allows clearing and grubbing that is not in association with other Land Development Work.

Covered Project - Those projects within the City of Chula Vista or annexed into the City in which hard-line Preserve boundaries have been established pursuant to the approved Chula Vista MSCP Subarea Plan and where conservation in those designated areas shall be consistent with the MSCP Subregional Plan and Chula Vista MSCP Subarea Plan and have or will be specified as binding conditions of approval in such projects' plans and approvals. Covered projects are identified on Table 5-I of the Chula Vista MSCP Subarea Plan, as adopted on May 13, 2003 and as may be amended from time to time.

Covered Species - Those species within the MSCP Subregional Plan, which will be adequately conserved by the MSCP when the MSCP is implemented through the Subarea Plans, and includes Species Adequately Conserved and Chula Vista Covered Species.

Development - The uses to which land shall be put, including construction of buildings and structures and all alterations of the land incidental thereto, excluding Agricultural Operations.

Development Areas - Mapped areas planned for development pursuant to the Chula Vista MSCP Subarea Plan and within which the take of Chula Vista Covered Species is authorized by the Section 10(a)(1)(B) Incidental Take Permit and Section 2835 Permit. These mapped 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.

Endangered Species - A species listed as "endangered" under the Federal Endangered Species Act or the California Endangered Species Act.

Future Facilities - Facilities that are necessary to support City services or planned development in the future and are not specifically listed in the Chula Vista MSCP Subarea Plan as a Planned Facility.

Grading - Any excavating or filling or combination thereof and shall include the land in its excavated or filled condition.

Grubbing - The removal of Natural Vegetation by any means, including removal of the root system.

Land Development Permit - A permit issued pursuant to the Chula Vista Municipal Code Chapter 15.04.

Listed Non-Covered Species - A species listed as threatened or endangered under the Federal E.S.A or California Endangered Species Act, but for which a Section 10(a)(1)(B) Incidental Take Permit or a Section 2835 Take Authorization has not been granted pursuant to the Chula Vista MSCP Subarea Plan.

MSCP Implementation Guidelines - Guidelines formulated by the City of Chula Vista to aid in the interpretation and facilitate implementation of the Chula Vista MSCP Subarea Plan and HLIT Ordinance. These Guidelines are complementary to the Chula Vista MSCP Subarea Plan and HLIT Ordinance and do not include new substantive information or requirements.

MSCP Subregional Plan - The Multiple Species Conservation Program Plan, dated August 1998, which addresses multiple species habitat needs and the preservation of native vegetation for a 900-square mile area in southwestern San Diego County, California.

MSCP Subregional Plan Area - Consists of approximately 900 square miles in Southwestern San Diego County, California, referred to in the MSCP Subregional Plan as the "MSCP Subregional Plan Study Area."

Narrow Endemic Species - Species that are highly restricted by their habitat affinities or other ecological factors. These species are listed in Table 5-4 of the Chula Vista MSCP Subarea Plan, as adopted on May 13, 2003, and as may be amended from time to time.

Natural Vegetation - Vegetation identified as Tier I, II or III on Table 5-3 of the Chula Vista MSCP Subarea Plan, as adopted on May 13, 2003, and as may be amended from time to time.

NCCP Act - The California Natural Community Conservation Planning Act of 1991, as amended (California Fish and Game Code Section 2800 et seq.), including all regulations promulgated pursuant to the Act. Amendments to the NCCP Act enacted effective January 1, 2003 (Chapter 4, sections 1 and 2 of California statutes 2002 (S.B. 107)) expressly provide that the Chula Vista Subarea Plan will be solely governed in accordance with the NCCP Act as it read on December 31, 2001, and not by the substantive provisions of S.B. 107.

Participating Local Jurisdiction - Any of the 12 local governments within the MSCP Study Area that may prepare a MSCP Subarea Plan and receive a Section 10(a)(1)(B) permit from the USFWS and Section 2835 Permit from the CDFG.

Planned Facilities - Facilities that have been specifically identified by the City of Chula Vista to serve development approved by the City and specified in Table 6-1 of the Chula Vista MSCP Subarea Plan, as adopted on May 13, 2003, and as may be amended from time to time.

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.

Project Area - An area considered for development and shall include the entire contiguous land under the same ownership or like property interest, or in the case of development proposed by a public agency, the area required for development as determined by the Director of Planning and Building.

Section 10(a)(1)(B) Permit - The permit issued by the USFWS to the City of Chula Vista under Section 10(a)(1)(B) of the Federal Endangered Species Act (16 U.S.C 1539 (a)(1)(B)) to allow the Incidental Take of Species Adequately Conserved and/or Chula Vista Covered Species, as identified in the Chula Vista MSCP Subarea Plan, as adopted on May 13, 2003 and as may be amended from time to time, to the extent Take of such species is otherwise prohibited under Section 9 of the Act. The Take of listed plant species is not prohibited under the ESA or authorized under the Section 10(a)(1)(B) permit. However, plant species adequately conserved by the Chula Vista Subarea Plan, or by the Chula Vista Subarea Plan in conjunction with other approved MSCP Subarea Plans, are listed in the 10(a)(1)(B) permit in recognition of the conservation measures and benefits provided for them under the approved Subarea Plans. Such plant species receive assurances pursuant to the USFWS "No Surprises" Rule.

Section 2835 Permit - A permit issued by the CDFG to the City of Chula Vista under Section 2835 of the California NCCP Act to authorize the 'Fake of Species Adequately Conserved and/or Chula Vista Covered Species, as identified in the Chula Vista MSCP Subarea Plan, as adopted on May 13, 2003, and as may be amended from time to time.

Sensitive Biological Resources - Lands that contain Natural Vegetation and/or Wetlands; and/or habitat occupied by Covered Species, other Listed Non-Covered Species, and/or Narrow Endemic Species.

Species Adequately Conserved - Those species for which the Chula Vista MSCP Subarea Plan provides substantial conservation and for which the City of Chula Vista shall receive Take Authorization regardless of the participation or continued participation of any other Participating Local Jurisdiction.

Take Authorization - Permit authority granted through a Section 10(a)(1)(B) permit pursuant to the ESA and/or the Section 2835 permit pursuant to the NCCP Act.

Temporary Impacts - Anticipated impacts that result during the course of construction but are not part of the permanent developed condition of a Project Area.

Threatened Species - A species listed as "threatened" under the ESA or CESA.

USFWS - United States Fish and Wildlife Service, an agency of the United States Department of Interior, charged with administering the Federal Endangered Species Act.

Wetlands - Wetlands are generally defined as those areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. For purposes of the Chula Vista MSCP Subarea Plan, Wetlands are those lands which contain naturally occurring wetland communities listed on Table 5-6 of the Chula Vista MSCP Subarea Plan and further described in Appendix B of the Chula Vista MSCP Subarea Plan. Wetlands also include areas lacking wetland communities due to non-permitted filling of previously existing Wetlands.

Wildlife Agencies - The USFWS and the CDFG.

17.35.040 General Application of Chapter

A. In conjunction with the earliest decision on any entitlement related to a Project Area after June 9, 2005 (the effective date of the ordinance), such as Sectional Planning Area (SPA) Plan approval, Design Review approval, conditional use permit, variance, parcel map approval, tentative map approval, Land Development Permit, or Clearing or Grubbing permit the applicant shall obtain a HLIT Permit in the following mapped areas identified in the Chula Vista MSCP Subarea Plan, unless exempt pursuant to Section 17.35.050 of this Chapter:

1. 100% Conservation Areas;

2. 75-100% Conservation Areas; and
3. Development Areas outside of Covered Projects

B. It is unlawful to begin development on lands in mapped 100% Conservation Areas, 75-100% Conservation Areas, and Development Areas outside of Covered Projects without submitting required documentation and obtaining a HLIT permit (including CEQA compliance), or obtaining an exemption as required pursuant to this Chapter. If unlawful development occurs on such lands and an enforcement action has been commenced by the City, no development permit application may be processed until the enforcement action has been concluded. Enforcement action may include penalties assessed for unpermitted clearing and grubbing and could include increased replacement mitigation ratios.

17.35.050 Exemptions

A. The following are exempt from the requirements of this Chapter:

1. Development of a Project Area that is one acre or less in size and located entirely in a mapped Development Area outside of Covered Projects.
2. Development of a Project Area which is located entirely within the mapped Development Area outside Covered Projects, and where it has been demonstrated to the satisfaction of the Director of Planning and Building, or his/her designee, that no Sensitive Biological Resources exist on the Project Area.
3. Development that is limited to interior modifications or repairs and any exterior repairs, alterations or maintenance that does not increase the footprint of an existing building or accessory structure, that will not encroach into identified Sensitive Biological Resources during or after construction.
4. Any project within the Development Area of a Covered Project.
5. Any project that has an effective incidental take permit from the Wildlife Agencies.
6. Continuance of Agricultural Operations.

17.35.060 Application for HLIT Permit

The following are submittal requirements for projects that are not exempt from this Chapter:

A. General Submittal Requirements

The following are general submittal requirements for all HLIT Permits:

1. Submit a completed application form to the City of Chula Vista Planning and Building Department - Planning Division:
2. Provide copies of a biological survey for the entire Project Area that is consistent with the MSCP Implementation Guidelines and prepared by a Biologist. If the biological surveys are conducted outside the acceptable time of year for identifying covered Narrow Endemic Species, but the Biologist identifies indicators that Narrow Endemic Species could be present in the Project Area, then surveys for Narrow Endemic Species must be conducted during the acceptable time of year in accordance with the MSCP Implementation Guidelines and must be conducted prior to consideration of issuance of an HLIT Permit by the City. The HLIT Permit application will be held in abeyance until the applicant submits subsequent surveys for Narrow Endemic Species conducted during the acceptable time of year.
3. For Project Areas located in 100% Conservation Areas, 75-100% Conservation Areas, Development Areas outside of Covered Projects with indicators or the presence of Narrow Endemic Species or Wetlands, or as otherwise deemed necessary by the biological survey as determined by the Director of Planning and Building, or his/her designee, the applicant shall prepare and submit an Opportunities and Constraints Analysis to evaluate the proposed development and its relationship to the Sensitive Biological Resources. The opportunities and constraints identified shall be used to determine the portions of the Project Area that are most suitable for development and those that should be conserved for biological purposes. The Opportunities and Constraints Analysis shall include:
 - a. Written evaluation of such factors as biological resources, Sensitive Biological Resources, historical resources, visual resources, public facilities needs, public safety issues, conserved Sensitive Biological Resources on adjacent lands, and adjacent land uses;
 - b. For Project Areas in 75-100% Conservation Areas, written description of how the proposed project has been limited to the least environmentally sensitive portions of the mapped 75-100% Conservation Area within the Project Area in accordance with the MSCP Implementation Guidelines;
 - c. For Project Areas containing the siting of proposed Planned or Future Facilities in 100% Conservation Areas and 75-100% Conservation Areas, a written analysis that demonstrates to the satisfaction of the decision maker that the facilities siting criteria in Section 17.35.100.A.4.c have been met.
 - d. Map of the Project Area at a suitable scale, which includes and clearly delineates, to the satisfaction of the Director of Planning and Building, the following information:
 - (1) Identification of Sensitive Biological Resources;

- (2) Limits of proposed development, including areas to be impacted on a temporary basis, if Sensitive Biological Resources are avoided;
- (3) Limits of the proposed development, including areas to be impacted on a temporary basis, if Sensitive Biological Resources are impacted; and
- (4) Limits of any mitigation area(s) proposed within the Project Area.

e. Written description of proposed mitigation, including:

- (1) How biological values of the mitigation area are equal to or greater than the impacted area;
- (2) Biological and Open Space Easement or other legal method proposed to ensure permanent conservation of the land for biological purposes;
- (3) Long-term methods to ensure protection and management of the habitats and Covered Species, which may include but not be limited to funding; and
- (4) Long-term biological viability of the proposed mitigation if it is not within or immediately adjacent to a 100% Conservation Area.

4. Any other requirements deemed necessary by the Director of Planning and Building for consideration of the proposed HLIT Permit application.

5. Payment of applicable fees and/or deposits in accordance with the City's Master Fee Schedule.

B. Additional Submittal Requirements for Project Areas that Contain any Covered Narrow Endemic Species

1. In addition to the submittal requirements listed in Section 17.35.060 (A), the following written information shall be provided by the applicant when the biological survey identifies any Narrow Endemic Species within the Project Area:
 - a. A graphic depiction of all covered Narrow Endemic Species located in the Project Area;
 - b. A written biological description of the status of the covered Narrow Endemic Species;
 - c. Quantification of both preservation of Narrow Endemic Species and impacts to Narrow Endemic Species associated with the project including direct and indirect effects on an area and individual plant basis;
 - d. Written report of the feasibility or infeasibility of total avoidance of Narrow Endemic Species' population(s);

- e. Written description of project design features that reduce indirect effects such as edge treatments, landscaping, elevation differences, minimization and/or compensation through restoration or enhancement;
 - f. Any other requirements deemed necessary by the Director of Planning and Building for consideration of the proposed HLIT Permit application.
2. When the applicant proposes to impact any Narrow Endemic Species population within the Project Area in excess of the 5% threshold in 100% Conservation Areas, as identified in Section 5.2.3.4 of the Chula Vista MSCP Subarea Plan, and the 20% threshold in 75-100% Conservation Areas and Development Areas outside of Covered Projects, as identified in Section 5.2.3.5 and 5.2.3.3, respectively, of the Chula Vista MSCP Subarea Plan, the applicant shall submit a written analysis that demonstrates the project would result in an overall Preserve design and configuration biologically superior to that which would occur under a project alternative within the 5% or 20% threshold. The applicant shall submit to the City a written analysis addressing the following factors that demonstrates to the satisfaction of the City the proposed project is the biologically superior alternative:
- a. Effects on conserved habitats;
 - b. Effects on Covered Species;
 - c. Effects on habitat linkages and function of Preserve areas;
 - d. Effects on Preserve configuration and management;
 - e. Effects on ecotones or other conditions affecting species diversity; and
 - f. Effects on Listed Non-Covered Species or other species of concern not covered by the Chula Vista MSCP Subarea Plan.

C. Additional Submittal Requirements for Project Areas that Contain Wetlands

1. In addition to the submittal requirements listed in Section 17.35.060 (A) and (B), as applicable, the following written information shall be provided by the applicant when the biological survey identifies Wetlands within the Project Area:
- a. A graphic depiction of all Wetlands located in the Project Area;
 - b. A written biological description of the status of the Wetlands;
 - c. Quantification of proposed impacts to Wetlands associated with the project;
 - d. Written analysis of the inability to avoid impacts to Wetlands;

- e. Written description of project design features that minimize impacts to Wetlands;
- f. Any other requirements deemed necessary by the Director of Planning and Building for consideration of the proposed HLIT Permit application.

17.35.070 Permit Process

The HLIT Permit shall be acted upon in one of the following manners:

- A. When an applicant applies for more than one permit, map, or other approval for a single development, the applications shall be consolidated for processing and shall be reviewed by a single decision maker. The decision maker shall act on the consolidated application at the highest level of authority for that development. The findings required for approval of each permit shall be considered individually, consistent with Section 17.35.080 of this Chapter.
- B. The HLIT Permit may be approved, approved with conditions, or denied by the Director of Planning and Building, or his/her designee without a public hearing in accordance with Section 19.14.030 of the Chula Vista Municipal Code, in the following circumstances:
 - 1. Any Planned Facility project listed in Table 6-I of the Chula Vista MSCP Subarea Plan that only impacts Natural Vegetation and does not impact habitat occupied by Covered Species, Listed Non-Covered Species, Narrow Endemic Species, or Wetlands.
 - 2. Any Future Facility project listed in Table 6-2 of the Chula Vista MSCP Subarea Plan associated with a Covered Project that only impacts Natural Vegetation and does not impact habitat occupied by Covered Species, Listed Non-Covered Species, Narrow Endemic Species or Wetlands.
- C. For all other HLIT Permit applications, the Director of Planning and Building, and or his/her designee, may approve, conditionally approve, or deny such permit at a public hearing noticed in accordance with Section 19.14.180 of the Chula Vista Municipal Code. The Director of Planning and Building decision may be appealed to the City Council in accordance with Sections 19.14.110 and 19.14.130 of the Chula Vista Municipal Code.

17.35.080 Required Findings for Issuance of an HLIT Permit

- A. In order to approve or conditionally approve a HLIT Permit, all of the following written findings shall be made by the decision-maker:
 - 1. The proposed development in the Project Area and associated mitigation is consistent with the Chula Vista MSCP Subarea Plan, as adopted on May 13, 2003, and as may be amended from time to time, the MSCP Implementation Guidelines, and the development standards set forth in Section 17.35.100 of this Chapter.

2. The Project Area is physically suitable for the design and siting of the proposed development and the development results in minimum disturbance to Sensitive Biological Resources, except impacts to Natural Vegetation in mapped Development Areas.
 3. The nature and extent of mitigation required as a condition of the permit is reasonably related to and calculated to alleviate negative impacts created in the Project Area.
- B. In order to approve or conditionally approve an HLIT Permit where the Project Area contains Narrow Endemic Species, all of the following additional written findings shall be made by the decision maker:
1. Narrow Endemic Species' populations within the Project Area have been avoided or total avoidance is infeasible.
 2. If impacts to Narrow Endemic Species have not been avoided, one of the following findings shall be made:
 - a. In cases where impacts to covered Narrow Endemic Species' populations within the Project Area have been limited to 5% in 100% Conservation Areas, and 20% in 75-100% Conservation Areas and Development Areas outside of Covered Projects, the proposed project design, including mitigation, will result in conservation of the species that is functionally equivalent to its status without the project, including species numbers and area, and must ensure adequate Preserve design to protect the species in the long-term; or
 - b. In cases where the 5% or 20% Narrow Endemic Species impact threshold has been exceeded, the proposed project design, including mitigation, results in a Preserve design for the Narrow Endemic Species population within the Project Area that is biologically superior to the Preserve design that would occur if the impact had been limited to 5% in 100% Conservation Areas or 20% in 75-100% Conservation Areas and Development Areas outside of Covered Projects.
- C. In order to approve or conditionally approve an HLIT Permit where the Project Area contains Wetlands, all of the following additional written findings shall be made by the decision maker:
1. Prior to issuance of a Land Development Permit or Clearing and Grubbing Permit, the project proponent will be required to obtain any applicable state and federal permits, with copies provided to the Director of Planning and Building, or his/her designee.
 2. Where impacts are proposed to Wetlands the following findings shall be made:
 - a. Impacts to Wetlands have been avoided and/or minimized to the maximum extent practicable, consistent with the City of Chula Vista MSCP Subarea Plan Section 5.2.4; and

- b. Unavoidable impacts to Wetlands have been mitigated pursuant to Section 17.35.110 of this Chapter.

17.35.090 General MSCP Development Regulations

The following development regulations apply to all development proposals in a Project Area that do not qualify for an exemption from this Chapter and are proposed in 100% Conservation Areas, 75-100% Conservation Areas, or Development Areas outside of Covered Projects:

- A. All development proposals regulated by this Chapter shall be consistent with the Chula Vista MSCP Subarea Plan and MSCP Implementation Guidelines.
 1. Overall development within the Project Area, including public facilities and circulation, shall be located to minimize impacts to Sensitive Biological Resources, in accordance with this Chapter, the Chula Vista MSCP Subarea Plan and the MSCP Implementation Guidelines.
 2. Pursuant to Chapter 15.04 of the Chula Vista Municipal Code, no Land Development or Clearing and Grubbing Permit which allows clearing, grubbing, or grading of Natural Vegetation shall be issued/hr any portion of a Project Area where impacts are proposed to Wetlands or Listed Non-covered Species until all applicable federal and state permits have been issued.
 3. Impacts to Wetlands shall be avoided to the maximum extent practicable. Where impacts to Wetlands are not avoided, impacts shall be minimized and mitigated pursuant to Section 17.35.110 of this Chapter.
 4. No temporary disturbance or storage of material or equipment is permitted in Sensitive Biological Resources, unless the disturbance or storage occurs within an area approved by the City for development or unless it can be demonstrated that the disturbance or storage will not cause permanent habitat loss and the land will be revegetated and restored in accordance with the MSCP Implementation Guidelines.
 5. Grading during wildlife breeding seasons shall be avoided or modified consistent with the requirements of the Chula Vista MSCP Subarea Plan and in accordance with the MSCP Implementation Guidelines.
 6. All fuel modification (brush management) zones required as a result of new development, and as required by the City of Chula Vista Fire Marshal, shall be located outside the Preserve.

17.35.100 Specific MSCP Land Use and Development Regulations

In addition to the General MSCP Development Regulations listed in Section 17.35.090 of this Chapter, the following specific land use and development regulations shall apply to all land uses and to development proposals in a Project Area that do not qualify for an exemption from this Chapter:

- A. Land uses and development are permitted within the 100% Conservation Areas consistent with the Chula Vista MSCP Subarea Plan and this Section. If any portion of the Project Area is located within a 100% Conservation Area, the following regulations shall apply to that portion of the Project Area located within the 100% Conservation Area:

1. Uses Permitted

The following uses are permitted in 100% Conservation Areas:

- a. Access for litter and trash removal, maintenance, repair, and refurbishment;
- b. Replacement of structures in existing locations;
- c. Passive recreation such as hiking and bird watching;
- d. Other recreation such as mountain biking, horse back riding, boating, sun bathing, fishing, and swimming as in accordance with an approved project, an approved area-specific management directive or as determined by the appropriate managing entity;
- e. Fencing that does not significantly, adversely effect the full functioning of the Preserve, including wildlife movement as approved by the appropriate managing entity;
- f. Scientific research related to habitat conservation, monitoring and habitat restoration and enhancement activities, subject to approval by the appropriate managing entity; and
- g. Access for law enforcement agencies, fire control agencies, the National Guard, the Immigration and Naturalization Service (INS), and Border Patrol;
- h. Existing uses operating legally at the time take authorization is granted to the City by the Wildlife Agencies until the land has been provided to the City or other entity by an Irrevocable Offer of Dedication or conveyed by easement or fee title to the Preserve, whichever comes first, including:
 - (1) Existing, permitted uses allowed by right in Chapter 19 of the Chula Vista Municipal Code (Zoning Ordinance);
 - (2) Uses deemed to be legal, non-conforming uses pursuant to Chapter 19 of the Chula Vista Municipal Code (Zoning Ordinance);
 - (3) Accessory and conditionally permitted uses pursuant to Chapter 19 of the Chula Vista Municipal Code (Zoning Ordinance);
 - (4) Existing agricultural and grazing uses outside of Otay Ranch;

- (5) Existing agricultural and grazing uses within Otay Ranch in accordance with Chapter 17 of the Chula Vista Municipal Code (Otay Ranch Grazing Ordinance); and
- (6) Existing mining, extraction and processing facilities consistent with the Chula Vista MSCP Subarea Plan.

2. Conditionally Compatible Uses

The following uses are conditionally permitted in 100% Conservation Areas, consistent with the Chula Vista Subarea Plan:

- a. New Mining Extraction and Processing Facilities; and
- b. Flood control; and
- c. Roads and infrastructure; and
- d. Other Planned Facilities not covered under c above; and
- e. Other Future Facilities not covered under c above; and
- f. Otay Valley Regional Park Plan Uses.

3. The following uses are not permitted:

- a. The following uses shall not be permitted without prior issuance of the appropriate permit from the City:
 1. Clearing and/or grubbing of Natural Vegetation, for purposes unrelated to biological enhancement, prior to issuance of a Clearing and Grubbing Permit;
 2. Clearing and/or grubbing of Natural Vegetation, for purposes unrelated to biological enhancement, grading, excavation, or placement of soil, rock, sand, gravel or other material prior to issuance of a Land Development Permit;
 3. Construction or placement of any building or structure prior to the issuance of a Building Permit;
- b. Recreational off-highway vehicle use; and
- c. Storage of materials such as chemicals and equipment; and
- d. Dispersal of biosolids.

4. Development Standards

- a. Development shall be limited to the maximum extent practicable to achieve project objectives and shall be located on the least environmentally sensitive portions of the Project Area in accordance with the MSCP Implementation Guidelines. Such development shall be designed to avoid impacts to covered species to the maximum extent practicable. Encroachment into more environmentally sensitive areas shall only be authorized to achieve project objectives.

- b. Development must avoid impacts to covered Narrow Endemic Species to the maximum extent practicable. A list of the covered Narrow Endemic Species is included in the Chula Vista MSCP Subarea Plan and MSCP Implementation Guidelines. Measures for protection of Narrow Endemic Species shall be required such as management, enhancement, restoration and/or transplantation in accordance with the MSCP Implementation Guidelines.
 - (1) Where impacts to a covered Narrow Endemic Species population are demonstrated to be unavoidable, impacts shall be limited to 5% of the total Narrow Endemic Species population within the Project Area, except as provided by Section 17.35.100.A.4.b(2) of this Chapter. Written findings of equivalency must be made by the City in accordance with Section 17.35.080.B of this Chapter. The City will forward its written findings of equivalency to the Wildlife Agencies. The Wildlife Agencies may submit to the City, within 30 days of a receipt of mailed notice of written findings from the City, a written finding of non-concurrence on the facts of the City's findings. If such written finding of non-concurrence is made within 30 days of receipt of mailed notice of findings from the City, the City must confer with the Wildlife Agencies to resolve Narrow Endemic Species issues with the proposed development. If the Wildlife Agencies do not respond within 30 days after receipt of mailed notice, the City shall deem the written findings accepted.
 - (2) If, after comprehensive consideration of avoidance and minimization measures, impacts exceed 5% of the covered Narrow Endemic Species population within the Project Area, a determination of biologically superior preservation, must be made in accordance with Section 17.35.080.B of this Chapter. The City will forward its written determination of biologically superior preservation to the Wildlife Agencies for review. The Wildlife Agencies may submit to the City, within 30 days of receipt of mailed notice of findings from the City, a written finding of non-concurrence on the facts of the City's findings. If such written finding of non-concurrence is made within 30 days of receipt of mailed notice of findings from the City, the City must confer with the Wildlife Agencies to resolve Narrow Endemic Species issues with the proposed development. If the Wildlife Agencies do not respond within 30 days after receipt of mailed notice, the City shall deem the written findings accepted.
- c. Development of Planned and Future Facilities shall be in accordance with the following siting criteria:
 - (1) Planned and Future Facilities shall be located through developed or developing areas where feasible and shall use existing roads, trails, and disturbed areas to the maximum extent practicable.
 - (2) Planned and Future Facilities shall avoid, to the maximum extent practicable, impacts to Sensitive Biological Resources and Covered Species. Where avoidance of Sensitive Biological Resources and Covered Species has been demonstrated by the applicant to be infeasible, impacts to Sensitive Biological Resources and Covered Species resulting from Planned and Future Facilities shall be minimized and located in the least environmentally sensitive portion of the Project Area in accordance with the MSCP Implementation Guidelines.

- (3) Planned and Future Facilities shall avoid, to the maximum extent practicable, impacts to Wetlands. If avoidance of Wetlands is not possible, any impacts to Wetlands shall require mitigation in accordance with Section 5.2.4 and Table 5-6 of the Chula Vista MSCP Subarea Plan, as adopted on May 13, 2003, and as may be amended from time to time.
 - (4) Where roads traverse the Preserve, they shall, to the maximum extent practicable, provide for wildlife movement in areas that are graphically depicted on and listed in the MSCP Subregional Plan Generalized Core Biological Resource Areas and Linkages map (see Figure 1- 4 of the Chula Vista MSCP Subarea Plan) as a core biological area or a regional linkage between core biological areas.
 - (5) At wildlife crossings, road bridges for vehicular traffic shall be preferred over box culverts and pipe culverts. Box culverts shall only be used when they can achieve the wildlife movement goals for the specific location. To the maximum extent practicable, wildlife crossings shall be designed as follows:
 - (a) The substrate shall be left in a natural condition and planted with native vegetation if appropriate;
 - (b) A line-of-sight from one end to the other shall be provided; and
 - (c) Low-level illumination shall be installed.
 - (6) To minimize habitat disruption, habitat fragmentation, impediments to wildlife movement, and impacts to breeding areas, roads and/or right-of-way widths shall be narrowed from existing City design and engineering standards to the maximum extent practicable.
- d. No single Future Facility project shall permanently impact more than two acres of covered habitat without concurrence from the Wildlife Agencies. Temporary Impacts associated with Future Facilities shall not be included in the limitations for permanent impacts to Natural Vegetation; however, all areas of Temporary Impacts shall be revegetated pursuant to the MSCP Implementation Guidelines. If the two-acre single project threshold is to be exceeded, the City shall notify in writing and provide applicable project information to the Wildlife Agencies. The Wildlife Agencies may submit to the City, within 30 days of a receipt of mailed notice and information from the City, a written response of non-concurrence. If such written finding of non-concurrence is made within 30 days of receipt of mailed notice from the City, the City shall confer with the Wildlife Agencies to resolve the Future Facility issue. If the Wildlife Agencies do not respond within 30 days after receipt of mailed notice, the City shall deem the written findings accepted.

- e. The cumulative permanent impacts to covered habitats from all Future Facilities for all projects shall not exceed a total of 50 acres without concurrence from the Wildlife Agencies. If the 50-acre threshold is to be exceeded, the City shall notify in writing and provide applicable project information to the Wildlife Agencies. The Wildlife Agencies may submit to the City, within 30 days of a receipt of mailed notice and information from the City, a written response of non-concurrence. If such written finding of non-concurrence is made within 30 days of receipt of mailed notice from the City, the City shall confer with the Wildlife Agencies to resolve the Future Facility issue. If the Wildlife Agencies do not respond within 30 days after receipt of mailed notice, the City shall deem the written findings accepted.
 - f. Mitigation shall be provided pursuant to Section 17.35.110 of this Chapter.
 - g. For construction areas adjacent to occupied Quino checkerspot butterfly habitat, dust control measures (e.g. watering) will be applied during grading activities.
- B. Land uses and development are permitted within 75-100% Conservation Areas consistent with the Chula Vista MSCP Subarea Plan and this Section. If any portion of the Project Area is located within a 75-100% Conservation Area, the following shall apply to that portion of the Project Area located within the 75-100% Conservation Area:
- 1. Land Uses Permitted
 - a. Permitted land uses include those uses permitted in the underlying zone.
 - 2. Development Standards
 - a. Development shall be permitted in 25% of the 75-100% Conservation Area within the Project Area. Projects shall be designed to avoid impacts to Covered Species to the maximum extent practicable and the 25% Development Area shall be located on the least environmentally sensitive portions of the 75-100% Conservation Area within the Project Area. The following list, in order of increasing sensitivity, shall be used to determine the least environmentally sensitive portions of the 75-100% Conservation Area within the Project Area. This list shall be used in combination with site-specific biological information submitted pursuant to Section 17.35.060 of this Chapter, and with other considerations such as but not limited to, potential edge-effects from existing and proposed development, Preserve configuration, habitat quality, wildlife movement, and topography.
 - (1) Areas devoid of vegetation, including previously graded areas and agricultural fields;
 - (2) Areas of non-native vegetation, disturbed habitats and eucalyptus woodlands;
 - (3) Areas of chamisc or mixed chaparral, and non-native grasslands;

- (4) Areas containing coastal scrub communities;
 - (5) All other upland habitat communities;
 - (6) Occupied habitat of listed species, Narrow Endemic Species, and all Wetlands; and
 - (7) All areas necessary to maintain the viability of wildlife corridors.
- b. Development shall avoid impacts to covered Narrow Endemic Species to the maximum extent practicable. A list of the covered Narrow Endemic Species is included in the Chula Vista MSCP Subarea Plan and MSCP Implementation Guidelines. Measures for protection of Narrow Endemic Species shall be required such as management, enhancement, restoration and/or transplantation in accordance with the MSCP Implementation Guidelines.
- (1) Where impacts to a covered Narrow Endemic Species population are demonstrated to be unavoidable, impacts shall be limited to 20% of the total Narrow Endemic Species population within the Project Area, except as provided by Section 17.35.100.B.2.b(2) of this Chapter. Written findings of equivalency will be made by the City in accordance with Section 17.35.080.B of this Chapter.
 - (2) If, after comprehensive consideration of avoidance and minimization measures, impacts exceed 20% of the covered Narrow Endemic Species population within the Project Area, a written determination of biologically superior preservation, must be made by the City in accordance with Section 17.35.080.B of this Chapter. The City will forward its written determination of biologically superior preservation to the Wildlife Agencies for review. The Wildlife Agencies may submit to the City, within 30 days of receipt of mailed notice of findings from the City, a written finding of non-concurrence on the facts of the City's findings. If such written finding of non-concurrence is made within 30 days of receipt of mailed notice of findings from the City, the City must confer with the Wildlife Agencies to resolve Narrow Endemic Species issues with the proposed development. If the Wildlife Agencies do not respond within 30 days after receipt of mailed notice, the City shall deem the written findings accepted.
- c. Mitigation shall be provided pursuant to Section 17.35.110 of this Chapter.
- C. Land uses and development are permitted within Development Areas outside of Covered Projects consistent with the Chula Vista MSCP Subarea Plan and this Section. If any portion of the Project Area is located within a Development Area, the following regulations shall apply to that portion of the Project Area located within the Development Area outside of Covered Projects:
1. Land Uses Permitted
 - a. Permitted land uses include those uses permitted in the underlying zone.
 2. Development Standards

- a. Encroachment into Natural Vegetation is not limited except as may be provided by Section 17.35.090 (A)(2) and/or (A)(3) of this Chapter.
- b. Development shall avoid impacts to covered Narrow Endemic Species to the maximum extent practicable. A list of the covered Narrow Endemic Species is included in the Chula Vista MSCP Subarea Plan and the MSCP Implementation Guidelines. Measures for protection of Narrow Endemic Species shall be required such as management, enhancement, restoration and/or transplantation in accordance with the MSCP Implementation Guidelines.
 - (1) Where impacts to a covered Narrow Endemic Species population are demonstrated to be unavoidable, impacts shall be limited to 20% of the total Narrow Endemic Species population within the Project Area, except as provided in Section 17.35.100.C.2.b(2) of this Chapter. Written findings of equivalency will be made by the City in accordance with Section 17.35.080.B of this Chapter.
 - (2) If, after comprehensive consideration of avoidance and minimization measures, impacts exceed 20% of the covered Narrow Endemic Species population within the Project Area, a written determination of biologically superior preservation, will be made by the City in accordance with Section 17.35.080.B of this Chapter. The City will forward its written determination of biologically superior preservation to the Wildlife Agencies for review. The Wildlife Agencies may submit to the City, within 30 days of receipt of mailed notice of findings from the City, a written finding of non-concurrence on the facts of the City's findings. If such written finding of non-concurrence is made within 30 days of receipt of mailed notice of findings from the City, the City must confer with the Wildlife Agencies to resolve Narrow Endemic Species issues with the proposed development. If the Wildlife Agencies do not respond within 30 days after receipt of mailed notice, the City shall deem the written findings accepted.
- c. Mitigation shall be provided pursuant to Section 17.35.110 of this Chapter.

17.35.110 Mitigation

Where mitigation for project impacts is required pursuant to this Section, the level and type of mitigation shall be consistent with the Chula Vista MSCP Subarea Plan, as adopted on May 13, 2003, and as may be amended from time to time and the MSCP Implementation Guidelines. The following mitigation standards shall be applied to impacts within 100% Conservation Areas, 75-100% Conservation Areas and Development Areas outside of Covered Projects:

A. The following mitigation standards shall be applied to 100% Conservation Areas:

1. Permanent impacts to Natural Vegetation resulting from construction of Planned Facilities associated with Covered Projects shall not require mitigation. These impacts have already been considered in the project-specific conditions of coverage and/or mitigation for each Covered Project.

2. Permanent impacts to Natural Vegetation resulting from construction of Future Facilities associated with Covered Projects where the impact to Sensitive Biological Resources is less than or equal to two acres and the 50-acre threshold identified in Section 17.35.100.A.4.d of this Chapter has not been exceeded shall not require mitigation.
3. Permanent impacts to Natural Vegetation resulting from construction of Future Facilities not associated with Covered Projects shall be mitigated pursuant to the mitigation standards contained in Table 5-3 of the Chula Vista MSCP Subarea Plan, as adopted on May 13, 2003 and as may be amended from time to time.
4. Mitigation for permanent impacts to Narrow Endemic Species populations shall be determined on a case-by-case basis by the Director of Planning and Building, or his/her designee, and may include such measures as management, enhancement, restoration and/or transplantation. Mitigation shall be in-kind and mitigation ratios for such measures shall be required at a 1:1 to 3:1 ratio depending on the sensitivity of the species and population size and in accordance with Section 5.2.3 of the Chula Vista MSCP Subarea Plan, as adopted on May 13, 2003 and as may be amended from time to time and the MSCP Implementation Guidelines.
5. Impacts to Wetlands shall be mitigated pursuant to Section 5.2.4 and Table 5-6 of the Chula Vista MSCP Subarea Plan, as adopted on May 13, 2003 and as may be amended from time to time.
6. Temporary impacts to Sensitive Biological Resources resulting from construction of Planned and Future Facilities shall be revegetated pursuant to the MSCP Implementation Guidelines.

B. The following mitigation standards shall be applied to 75-100% Conservation Areas:

1. Impacts to Natural Vegetation shall not require mitigation. As a condition of permit issuance, Natural Vegetation outside the Development Area as determined by the HLIT Permit, shall be left in a natural state and uses shall be consistent with Section 17.35.100.A.1-3.
2. Mitigation for impacts to Narrow Endemic Species populations shall be determined on a case-by-case basis by the Director of Planning and Building, or his/her designee, and may include such measures as management, enhancement, restoration and/or transplantation. Mitigation shall be in-kind and mitigation ratios for such measures shall be at a 1:1 to 3:1 ratio depending on the sensitivity of the species and population size and in accordance with Section 5.2.3 of the Chula Vista MSCP Subarea Plan, as adopted on May 13, 2003 and as may be amended from time to time and the MSCP Implementation Guidelines.
3. Impacts to Wetlands shall be mitigated pursuant to Section 5.2.4 and Table 5-6 of the Chula Vista MSCP Subarea Plan, as adopted on May 13, 2003 and as may be amended from time to time.

C. The following mitigation standards shall be applied to Development Areas outside of Covered Projects:

1. Permanent impacts to Natural Vegetation shall be mitigated pursuant to the mitigation standards contained in Table 5-3 of the Chula Vista MSCP Subarea Plan, as adopted on May 13, 2003 and as may be amended from time to time.
2. Mitigation for permanent impacts to Narrow Endemic Species populations shall be determined on a case-by-case basis by the Director of Planning and Building, or his/her designee, and may include such measures as management, enhancement, restoration and/or transplanted. Mitigation shall be in-kind and mitigation ratios for such measures shall be at a 1:1 to 3:1 ratio depending on the sensitivity of the species and population size and in accordance with Section 5.2.3 of the Chula Vista MSCP Subarea Plan, as adopted on May 13, 2003 and as may be amended from time to time and the MSCP Implementation Guidelines.
3. Impacts to Wetlands shall be mitigated pursuant to Section 5.2.4 and Table 5-6 of the Chula Vista MSCP Subarea Plan, as adopted on May 13, 2003 and as may be amended from time to time.

17.35.120 Biological and Open Space Easement

A. When required, the applicant shall draft and submit a Biological and Open Space Easement (Conservation Easement) that includes the following:

1. A legal description of the premises affected by the permit with a description of the mitigation area and the Sensitive Biological Resources 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 Sensitive Biological Resources covered by the permit;
3. To ensure that the burdens of the easement shall be binding upon, and the benefits of the easement shall ensure to, all successors an interest to the affected land;
4. To ensure enforceability of the biological and open space 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 biological and open space easement affects land containing Sensitive Biological Resources or other lands that have been accepted as mitigation, and

5. Uses consistent with those listed in Section 17.35.100.A. 1-2 of this Chapter.

B. A public hearing shall be held to consider a formal, written request directed to the City by any person requesting the release of a biological and open space easement recorded pursuant to this Chapter. The City only shall record a release of any biological and open space easement recorded pursuant to this Chapter when it is determined by the City that restriction of the property is no longer necessary to achieve the land use goals of the City. A determination by the City to release said easement may be made only with the written concurrence of the U.S. Fish and Wildlife Service and the California Department of Fish and Game.

17.35.130 Deviation from Habitat Loss and Incidental Take Regulations

- A. When a deviation is requested from this Chapter because the applicant contends that strict application of this Chapter would result in denial of all economically viable use, the HLIT Permit shall include a determination of economically viable use. Where a deviation is requested from this Chapter, it may be approved or conditionally approved only if the decision-maker makes all of the following supplemental findings in addition to the applicable findings in Section 1-7.35.080 of this Chapter:
1. Based on the economic information provided by the applicant, as well as any other relevant evidence, each use provided for in this Chapter would not provide any economically viable use of the applicant's property;
 2. The use proposed by the applicant is consistent with the applicable zoning;
 3. The use and project design, siting, and size are the minimum necessary to provide the applicant with an economically viable use of the Project Area; and
 4. The development proposal is the least environmentally damaging alternative and is consistent with all provisions of the Chula Vista MSCP Subarea Plan, as adopted on May 13, 2003 and as may be amended from time to time and this Chapter, with the exception of the provisions for which the deviation is requested.
- B. The process for a deviation shall be in accordance with Section 17.35.070 of this Chapter.

17.35.140 Emergencies

Whenever development activity within Sensitive Biological Resources, as identified in the City of Chula Vista MSCP Subarea Plan, 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 HLIT Permit is not required, provided the Sensitive Biological Resources are restored to their natural state in accordance with a revegetation plan approved by the Director of Planning and Building, or his/her designee. The revegetation plan shall be submitted to the City within 60 days of completion of the emergency work.
- B. If the emergency work results in permanent impacts to Sensitive Biological Resources, a subsequent HLIT Permit is required in accordance with all regulations of this Chapter. The application for the HLIT Permit shall be submitted within 60 days of completion of the emergency work.

17.35.150 City Responsibility to Publish Guidelines

The City Manager is authorized to promulgate and publish MSCP Implementation Guidelines and other support documents as necessary to implement this Chapter. These administrative guidelines shall serve as baseline standards for processing SPA Plans, Design Review applications, conditional use permits, variances, parcel maps, tentative maps, Land Development Permits or Clearing and Grubbing Permits pursuant to this Chapter. Any revisions to the MSCP Implementation Guidelines will require review and approval by the City Manager.

17.35.160 Violations and Remedies

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.

17.35.170 Conflicts

Except for exempt projects, if a conflict occurs between this Chapter and Chapter 15.04 of the Chula Vista Municipal Code, the stricter regulation shall apply.

17.35.180 Local Coastal Program

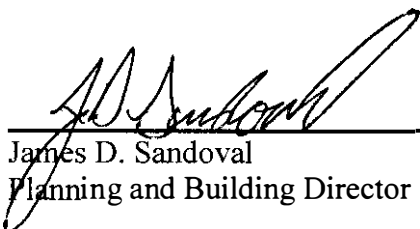
Prior to issuance of an HLIT Permit for any project located within the Chula Vista Local Coastal Plan (LCP) area, the applicant shall obtain a determination of project consistency with the Chula Vista LCP from the Director of Planning and Building. If the project cannot be deemed consistent with the LCP, an LCP amendment must be completed prior to issuance of the HLIT Permit.

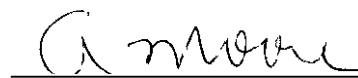
Section II. Adoption of this ordinance (Second Reading) is conditioned upon the issuance of Take Authorizations from the USFWS and CDFG to the City of Chula Vista has occurred in a form acceptable to the City.

Section III. This ordinance shall take effect and be in force on the thirtieth day from and after the adoption of the ordinance (Second Reading) 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. 3004 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