

RESOLUTION NO. 2003-197

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA CERTIFYING THE SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT AND ENVIRONMENTAL ASSESSMENT (NO. 03-01) PREPARED FOR THE CITY OF CHULA VISTA MULTIPLE SPECIES CONSERVATION PROGRAM (MSCP) SUBAREA PLAN; ADOPTING THE MSCP SUBAREA PLAN, SUBJECT TO THE CONDITIONS CONTAINED HEREIN; FINDING THAT THE IMPLEMENTING AGREEMENT, DATED FEBRUARY 2003, IS CONSISTENT WITH THE CHULA VISTA MSCP SUBAREA PLAN; AUTHORIZING THE MAYOR TO EXECUTE THE IMPLEMENTING AGREEMENT IN SUBSTANTIAL FORM OF THE IMPLEMENTING AGREEMENT DATED FEBRUARY 2003, WITH MINOR CHANGES APPROVED BY THE CITY ATTORNEY AND CITY MANAGER WITH THE EFFECTIVENESS OF SAID AGREEMENT CONDITIONED AS STATED HEREIN; AMENDING THE CITY OF CHULA VISTA GENERAL PLAN TO INCORPORATE THE MSCP SUBAREA PLAN AS PART 2, CHAPTER 7A; APPROVING THE REVISED MSCP MITIGATION AND IMPLEMENTING AGREEMENT MONITORING PROGRAM, DATED FEBRUARY 2003

WHEREAS, the Multiple Species Conservation Program (MSCP) Subregional Plan was developed as a comprehensive, long-term habitat conservation plan which addressed multiple species and the preservation of natural habitat within a 900 square mile study area in south San Diego County; and

WHEREAS, MSCP Subregional Plan contemplated that local jurisdictions, including the City of Chula Vista ("City"), 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, as lead agencies for the Multiple Species Conservation Program 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 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, 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, including but not limited to 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; and 5) other revisions to address unresolved issues including, but not limited to, changed circumstances, wetlands, and funding for long term management; and

WHEREAS, the City determined that as part of the implementation of the MSCP Subarea Plan, the City of Chula Vista General Plan would be amended to incorporate the MSCP Subarea Plan as a separate element of the General Plan; 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, revised Draft MSCP Subarea Plan, and the revised Draft Implementing Agreement, Draft Implementing Ordinances (hereinafter referred to 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 documents 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, Draft Implementing Agreement, dated February 2003; and final draft implementing ordinances; 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 9, 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 documents 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, dated February 2003, and Draft Implementing Agreement, dated February 2003, and 3) the City and Wildlife Agencies approves and executes an Implementing Agreement substantially in the form of the Implementing Agreement, dated February 2003; and

WHEREAS, implementation of the MSCP Subarea Plan will also require an amendment to the City of Chula Vista General Plan to incorporate the MSCP Subarea Plan as an element of the General Plan (Part 2, Chapter 7A) and adoption of three MSCP Implementing Ordinances, including the Habitat Loss and Incidental Take Ordinance, the Otay Ranch Grazing Ordinance and revisions to the Excavation, Grading and Fills Ordinance. These ordinances 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, BE IT RESOLVED that the City Council of the City of Chula Vista does hereby find, recommend, determine, resolve and order as follows:

A. The proceedings and all evidence introduced before the Planning Commission and City Council at the public hearing on this project are hereby incorporated into the record of proceedings. These proceedings, evidence and documents, along with any documents submitted to the decision makers, shall comprise the entire record of the proceedings for any California Environmental Quality Act claims.

B. The City Council has reviewed and analyzed and considered the Supplemental EIR and EA, the environmental impacts therein identified, and the Mitigation Monitoring Ad Reporting Program, a copy of which are on file in the office of the City Clerk.

C. The City Council does hereby find that the Final Supplemental Environmental Impact Report and Environmental Assessment and the Revised MSCP Mitigation and Implementing Agreement Monitoring Program for Biological Resources are prepared in accordance with the requirements of CEQA, the CEQA Guidelines, and the Environmental Review Procedures of the City of Chula Vista. In addition, the City Council finds the Final Supplemental EIR and EA reflects the independent judgment of the City of Chula Vista City Council.

D. The City Council does hereby consider that the Final Supplemental Environmental Impact Report and Environmental Assessment (No. 03-01) adequately addressed the environmental impacts of the Chula Vista MSCP Subarea Plan, as revised; and

E. The City Council does hereby approve the Revised MSCP Mitigation and Implementing Agreement Monitoring Program, dated February 2003; and

F. The City Council reviewed and finds that the Chula Vista Subarea Plan (dated February 2003) addresses the economic feasibility of preserve assembly for the proposed plan in light of current and forecasted economic and fiscal factors. Issues that was considered in this analysis included, but not limited to the completion of key infrastructure.

G. The City Council does hereby adopt the Chula Vista MSCP Subarea Plan (dated February 2003) and does hereby find that the Chula Vista MSCP Subarea Plan is consistent with the MSCP Subregional Plan and will provide for the conservation, protection, restoration and enhancement of biological resources for protected species while at the same time allowing the City to carry out its development plans, and conditions the adoption of the Chula Vista MSCP Subarea Plan on all of the following:

1. The issuance of a biological opinion that is consistent with the City of Chula Vista MSCP Subarea Plan (February 2003) and the Draft Implementing Agreement dated February, 2003; and
2. The issuance of a Section 10(a)(1)(B) permit pursuant to the U.S. Endangered Species Act of 1973, as amended and a take authorization permit pursuant to Section 2835 of the State of California Endangered Species Act with conditions that are consistent with the Chula Vista MSCP Subarea Plan (February 2003) and the Draft Implementing Agreement dated February 2003; and
3. The execution by the Wildlife Agencies and the City of an Implementing Agreement substantially in the form as determined by the City Attorney of the Draft Implementing Agreement dated February 2003.

H. The City Council does hereby approved the Implementing Agreement, dated February 2003, and find said agreement is consistent with the Chula Vista MSCP Subarea Plan, dated February 2003 and does hereby affirm the submittal and execution of the Draft Implementing Agreement dated February 2003, to the Wildlife Agencies. The City Council does hereby authorize the Mayor to execute the Implementing Agreement, in substantially the form of the Implementing Agreement, dated February 2003, with minor changes approved by the City Attorney.

I. The City Council does hereby amend the City of Chula Vista General Plan to incorporate Chula Vista MSCP Subarea Plan, dated February 2003 as a new element of the General Plan, Part 2, Chapter 7A, based upon the following findings:

Findings of Consistency with the General Plan.

The City Council hereby finds that the MSCP Subarea Plan Element contains policies and guidelines that will be consistent with the general plan as amended by this Resolution based on the following:

Land Use

The MSCP Subarea Plan Element, prepared pursuant the Government Code Section 2800 et. al., is a habitat conservation plan and would not change land use designations established in the General Plan but instead would act to compliment the existing general plan polices with regard to open space conservation. In addition the Subarea Plan reflects the land uses, open space, circulation, active recreational uses, and public facilities uses anticipated by the General Plan. The MSCP Subarea Plan Element consists of policies and guidelines that will provide direction for the protection of sensitive open space areas and are generally consistent with the adopted Land Use Diagram of the general plan Land Use Element (Fig. 1-2). Objective 21 of the Land Use Element calls for the preservation of "natural open space areas and corridors, particularly the major canyons and valleys," and this reinforces the Chula Vista Greenbelt concept of an open space system that encircles the city identified in Section 7.3. The Land Use Element identifies three general categories of land in the city, including urban development, transportation corridors, and open space. This element states that "the open space areas are established to protect and preserve sensitive natural land forms, vegetation, wildlife habitat, canyons, drainage courses, and mountains."

Public Facilities

The MSCP Subarea Plan Element contains policies and guidelines that are consistent with policies of the Public Facilities Element of the general plan, including Section 5.3(6) that states that "the city shall discourage disruption of the natural landforms and encourage the maximum use of natural drainage in new development."

Growth Management

The MSCP Subarea Plan Element contains policies and guidelines that implement the Growth Management Element of the general plan, including Section 2.3 which recognizes that "Chula Vista is particularly blessed with significant vistas and open spaces with a variety of natural resources, and the City has taken a multiple-track approach to their conservation and management: preservation of critical landforms, such

as Mother Miguel Mountain, requirements for open space dedication as part of large-scale development in the Eastern Territories, incorporating natural resource preservation in Bayfront redevelopment plans, and integration of open space elements in a City-wide Greenbelt and Trail System around the City from the Otay Lakes to the Bay.”

Conservation and Open Space

The MSCP Subarea Plan Element contains policies and guidelines that are consistent with the policies contained in the Conservation and Open Space Element of the general plan. Policy 6.1 of the Conservation and Open Space Element (Undeveloped Natural Areas) calls for the retention of natural open space and “...other areas actively managed for enhancement of wildlife and plant habitat...” Policy 6.7 (Plant and Animal Resources) is further implemented by the policies and guidelines of the MSCP Element stating that “designated wildlife and plant habitat areas are to be retained in their natural state or are to be subject to a program of preservation and/or enhancement for educational or recreational purposes.”

Parks and Recreation

The MSCP Subarea Plan Element contains policies and guidelines that are consistent with the policies contained in the Parks and Recreation Element of the general plan. Policy 6.1 (Chula Vista Greenbelt) of the Parks and Recreation Element) addresses the formation of a regional system of open space surrounding the City. The MSCP Element contains policies that reinforce this open space concept. Policy 6.2 (Regional Parks) recognizes the formation of regional parks within the Chula Vista Greenbelt and provides guidelines that are consistent with those policies and guidelines of the MSCP Element.

Safety Element

The MSCP Subarea Plan Element contains policies and guidelines that address the issue of fire prevention and protection within open space preserve areas. These policies and guidelines are not in conflict with the Safety Element and address fire protection adjacent to open space preserves where the Safety Element is silent on this type of protection.


Eastern Territories Area Plan


The MSCP Subarea Plan Element contains policies and guidelines that are consistent with open space preservation policies of the Eastern Territories Area Plan of the general plan, including the Chula Vista Greenbelt concept.

J. The amendment to the City of Chula Vista Plan shall become effective upon all the conditions of paragraph G of this resolution occurring.

Presented by

Approved as to form by


Robert Leiter
Planning and Building Director


Ann Moore
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 13th day of May, 2003, by the following vote:

AYES:	Councilmembers:	Rindone, Salas, McCann and Padilla
NAYS:	Councilmembers:	None
ABSENT:	Councilmembers:	Davis


Stephen Padilla, Mayor

ATTEST:


Susan Bigelow, 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 Resolution No. 2003-197 was duly passed, approved, and adopted by the City Council at a regular meeting of the Chula Vista City Council held on the 13th day of May, 2003.

Executed this 13th day of May, 2003.


Susan Bigelow, City Clerk