



County of San Diego

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PLEASE NOTE THAT A FORMAL APPLICATION FOR A HABITAT LOSS PERMIT HAS NOT BEEN FILED AT THIS TIME. THE FOLLOWING IS A DRAFT FORM OF DECISION FOR A HABITAT LOSS PERMIT SHOWING THE FORMAT AND POSSIBLE CONDITIONS FOR A FUTURE HABITAT LOSS PERMIT. BECAUSE A FORMAL APPLICATION HAS NOT BEEN FILED, CERTAIN DATES, FINDINGS AND OTHER INFORMATION IS ABSENT FROM THE DRAFT FORM OF DECISION, THIS INFORMATION WILL BE INCLUDED IN THE FINAL FORM OF DECISION.

DATE (to be determined)

Donald Dabbs
P.O. Box 966
Bonsall, CA 92003

DRAFT Habitat Loss Permit

APPLICATION NUMBER: HLP XX-XXX

ASSOCIATED PERMITS: PDS2003-3100-5346; PDS2003-3910-03-02-067

NAME OF APPLICANT: Donald Dabbs

DESCRIPTION/LOCATION OF LOSS:

The project is a major subdivision to divide a 38.4-acre property into nine (9) lots. The project site is located east of Aqueduct Road and north of Via Urner Road in the Bonsall Community Plan Area, as indicated on the attached USGS map. Access to the site would be provided by Highway 395. On-site waste water systems are proposed and water will be provided by the Rainbow Municipal Water District. Earthwork will consist of 15,800 cubic yards of cut and 17,400 cubic yards of fill for pads and driveways. Offsite roads will require an additional 6,500 cubic yards of cut and 6,300 cubic yards of fill.

Biological resources on and adjacent to the project site were evaluated in a biology report and resources map prepared by Pacific Southwest Biological Services, Inc. (2010). The project site is a fully developed nursery and contains intensive agriculture and a small area of Diegan

coastal sage scrub in the northeastern corner of the site. Between the eastern boundary of the site and Old Highway 395, the adjacent parcel (127-071-09) previously supported Diegan coastal sage scrub which was cleared without a permit for the installation of agriculture. The proposed project includes a private road over the southern portion of this property in order to access the project site.

No sensitive plants or sensitive wildlife species were identified onsite or within the offsite impact areas. The proposed project will impact the entire project site in addition to a portion of the adjacent site for access to the project as detailed in Table 1 below.

The Diegan coastal sage scrub habitat is considered to be of Intermediate Quality as determined by the criteria established under the Natural Community Conservation Planning (NCCP) Logic Flow Chart. Mitigation ratios and off-site mitigation acreages are listed in Table 1. Therefore, all impacts associated with the development of the Dabbs property have been mitigated to a level below significance. The proposed project is in conformance with all standards and guidelines outlined in the NCCP Process Guidelines.

Table 1. Habitat, Impacts, and Mitigation

Habitat Type	Onsite Acreage	Offsite Acreage	Impacted Acreage	Mitigation Ratio	Required Mitigation
Diegan Coastal Sage Scrub	0.52 acre	0.62 acre	1.16 acres	3:1	3.5 acres
Intensive Agriculture	37.88 acres	---	37.88 acres	N/A	N/A
TOTAL	38.40 acres	0.62 acre	39.04 acres	--	3.5 acres

DECISION:

The Director of Planning & Development Services has approved your application for a HABITAT LOSS PERMIT. This Habitat Loss Permit approval does not become final until both the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW) concur with the Director’s approval, by the either of the following:

1. Concurrence implied by allowing a 30-day period, initiated by their receipt of this decision, to lapse without presenting written notification to the County that the decision is inconsistent with the Southern California Coastal Sage Scrub (CSS) Natural Community Conservation Planning (NCCP) Process Guidelines (CDFW, November 1993) or any approved subregional mitigation guidelines; or
2. Granting concurrence through written notification to the County prior to the conclusion of the 30-day period, initiated by their receipt of this decision, that the project is consistent with the Southern California CSS NCCP Process Guidelines or any approved subregional mitigation guidelines.

Pending the issuance of an associated Grading Permit, Clearing Permit or Improvement Plan from the County of San Diego, this Habitat Loss Permit allows for the loss of the above-described coastal sage scrub habitat (see attached Habitat Loss Exhibit) and incidental take of the California gnatcatcher for a period of one calendar year commencing the day concurrence is given by both the USFWS and CDFW. If the loss of habitat, as authorized by this Habitat

Loss Permit, has not occurred within this one-year period, this Habitat Loss Permit and the authorization for the loss of coastal sage scrub habitat expires.

Also, pending the issuance of an associated Grading Permit, Clearing Permit or Improvement Plan from the County of San Diego, this Habitat Loss Permit acknowledges the loss of the above-described coastal sage scrub habitat that was previously cleared, graded or removed without a valid permit (see attached Habitat Loss Exhibit). However, no take authorization for incidental take of sensitive species, including the California gnatcatcher, shall be conveyed by the County of San Diego for previous clearing, grading, or removal of coastal sage scrub habitat that was accomplished without a valid permit or authorization.

This Habitat Loss Permit cannot be relied upon for the clearing, grading or removal of any vegetation until a valid Grading Permit, Clearing Permit or Improvement Plan has been issued from the County of San Diego authorizing such vegetation removal. Furthermore, use and reliance upon this Habitat Loss Permit cannot occur until all of the requirements as specified within the “Conditions of Approval” section of this permit have been satisfied.

CONDITIONS OF APPROVAL:

The following conditions are being placed on TM 5346. For the final Habitat Loss Permit, the list of conditions will be modified to require satisfaction of all conditions prior to use and reliance on the HLP.

APPROVAL OF MAP: The conditions shall be complied with before a Final Map is approved by the Board of Supervisors and filed with the County Recorder of San Diego County (and, where specifically, indicated, shall also be complied with prior to approval of any plans, and issuance of any grading or other permits as specified):

1. **LBZ EASEMENT: [PDS, PCC, LDR] [DGS, RP][MA, GP, IP] [PDS, FEEX 2] INTENT:** In order to protect sensitive biological resources, a Limited Building Zone Easement shall be granted to limit the need to clear or modify vegetation for fire protection purposes within an adjacent biological resource area. **DESCRIPTION OF REQUIREMENT:** Grant to the County of San Diego a Limited Building Zone Easement as shown on the approved Tentative Map. The purpose of this easement is to limit the need to clear or modify vegetation for fire protection purposes within the adjacent biological open space easement and prohibit the construction or placement of any structure designed or intended for occupancy by humans or animals. The only exceptions to this prohibition are:
 - a. Decking, fences, and similar facilities.
 - b. Sheds, gazebos, and detached garages, less than 250 square feet in total floor area, that are designed, constructed and placed so that they do not require clearing or fuel modification within the biological open space easement, beyond the clearing/fuel modification required for the primary structures on the property.

DOCUMENTATION: The applicant shall show the easement on the Final Map with the appropriate granting language on the title sheet concurrent with Final Map Review - OR - The applicant shall prepare the draft plats and legal descriptions of the easements,

then submit them for preparation and recordation with the [DGS, RP], and pay all applicable fees associated with preparation of the documents. **TIMING:** Prior to the approval of the map or on the map and prior to the approval of any plan and issuance of any permit, the easements shall be recorded. **MONITORING:** For recordation on the map, the [PDS, LDR] shall route the Final Map to [PDS, PCC] for approval prior to map recordation OR for recordation by separate document, the [DGS, RP] shall prepare and approve the easement documents and send them to [PDS, PCC] and [DPR GPM] for preapproval. The [PDS, PCC] shall preapprove the language and estimated location of the easements prior to recordation. Upon Recordation of the easements [DGS, RP] shall forward a copy of the recorded documents to [PDS, PCC] for satisfaction of the condition - OR - if recorded on the map, the [PDS LDR] shall satisfy the condition after map recordation.

2. OFF-SITE MITIGATION: [PDS, PCC] [MA, GP, IP] [PDS, FEE X2] [DPR, GPM]

INTENT: In order to mitigate for the impacts to Diegan coastal sage scrub, which is a sensitive biological resource, off-site mitigation shall be acquired. **DESCRIPTION OF REQUIREMENT:** The applicant shall purchase habitat credit, or provide for the conservation of habitat of 3.5 acres of Diegan coastal sage scrub, located in North San Diego County as indicated below.

a. **Option 1:** If purchasing Mitigation Credit the mitigation bank shall be approved by the California Department of Fish & Wildlife. The following evidence of purchase shall include the following information to be provided by the mitigation bank:

1. A copy of the purchase contract referencing the project name and numbers for which the habitat credits were purchased.
2. If not stated explicitly in the purchase contract, a separate letter must be provided identifying the entity responsible for the long-term management and monitoring of the preserved land.
3. To ensure the land will be protected in perpetuity, evidence must be provided that a dedicated conservation easement or similar land constraint has been placed over the mitigation land.
4. An accounting of the status of the mitigation bank. This shall include the total amount of credits available at the bank, the amount required by this project and the amount remaining after utilization by this project.

b. **Option 2:** If habitat credit cannot be purchased in a mitigation bank, then the applicant shall provide for the conservation of habitat of the same amount and type of land located in North San Diego County as indicated below:

1. The type of habitat and the location of the proposed mitigation, should be pre-approved by [PDS, PCC] before purchase or entering into any agreement for purchase.
2. A Resource Management Plan (RMP) shall be prepared and approved pursuant to the County of San Diego Biological Report Format and Content Requirements to the satisfaction of the Director of PDS. If the

offsite mitigation is proposed to be owned and/or managed by DPR, the RMP shall also be approved by the Director of DPR.

3. An open space easement over the land shall be dedicated to the County of San Diego or like agency to the satisfaction of the Director of PDS. The land shall be protected in perpetuity.
4. The final RMP cannot be approved until the following has been completed to the satisfaction of the Director of PDS: The land shall be purchased, the easements shall be dedicated, a Resource Manager shall be selected, and the RMP funding mechanism shall be in place.
5. In lieu of providing a private habitat manager, the applicant may contract with a federal, state or local government agency with the primary mission of resource management to take fee title and manage the mitigation land. Evidence of satisfaction must include a copy of the contract with the agency, and a written statement from the agency that (1) the land contains the specified acreage and the specified habitat, or like functioning habitat, and (2) the land will be managed by the agency for conservation of natural resources in perpetuity.

DOCUMENTATION: The applicant shall purchase the off-site mitigation credits and provide the evidence to the [PDS, PCC] for review and approval. If the offsite mitigation is proposed to be owned or managed by DPR, the applicant must provide evidence to the [PDS PCC] that [DPR, GPM] agrees to this proposal. It is recommended that the applicant submit the mitigation proposal to the [PDS, PCC], for a pre-approval. If an RMP is going to be submitted in-lieu of purchasing credits, then the RMP shall be prepared and an application for the RMP shall be submitted to the [PDS, ZONING].

TIMING: Prior to the approval of the map and prior to the approval of any plan and issuance of any permit, the mitigation shall be completed. **MONITORING:** The [PDS, PCC] shall review the mitigation purchase for compliance with this condition. Upon request from the applicant [PDS, PCC] can preapprove the location and type of mitigation only. The credits shall be purchased before the requirement can be completed. If the applicant chooses option #2, then the [PDS, ZONING] shall accept an application for an RMP, and [PDS, PPD] shall review the RMP submittal for compliance with this condition and the RMP Guidelines.

ENVIRONMENTAL FINDINGS:

A. CEQA Findings

TO BE PROVIDED

B. FINDINGS MADE IN SUPPORT OF THE ISSUANCE OF THE HABITAT LOSS PERMIT:

The following findings are made based upon all of the documents contained in the record for this project, and pursuant to Section 86.104 of County of San Diego Ordinance No. 8365 (N.S.) and Section 4.2.g of the CSS NCCP Process Guidelines (CDFW, November 1993):

Finding 1.a: The habitat loss does not exceed the five percent guideline.

The proposed project will impact 1.16 acres of coastal sage scrub and no pairs of California gnatcatcher (*Polioptia californica*). Approved coastal sage scrub losses as of the date of June 30, 2014 and including this approval, for the entire unincorporated County, outside the boundaries of the Multiple Species Conservation Program (MSCP), are presented in the following table:

Unincorporated Area Coastal Sage Scrub Cumulative Losses	
Total loss allowed under five percent guideline:	2953.30 acres
Cumulative loss of Coastal sage scrub to date:	1187.52 acres
Net loss due to this project:	1.16 acres
Total cumulative loss:	1188.68 acres
Remaining loss under five percent guideline:	1764.62 acres

Finding 1.b: The habitat loss will not preclude connectivity between areas of high habitat values.

The County habitat evaluation model ranks the site as predominantly agriculture and low value habitat. The majority of the site is not located in a pre-approved mitigation area of the draft North County MSCP. A small area in the eastern portion of the property and the offsite private road are located in a pre-approved mitigation area of the draft North County MSCP in association with the I-15 archipelago.

The majority of the project site and surrounding areas are developed with agricultural and residential uses which would preclude the connectivity of the site to high value habitat. The closest high value habitat to the site is located to the east of Old Highway 395 between Old Highway 395 and Interstate 15.

The proposed project will not preclude the connectivity with high value habitat area as it does not contain sizable patches of habitat which provide connectivity with other habitat.

Finding 1.c: The habitat loss will not preclude or prevent the preparation of the subregional NCCP.

While the majority of the site is outside the draft Pre Approved Mitigation Area (PAMA) of the draft North County MSCP as small portion of the site as well as the adjacent parcel through which access will be taken is designated as Pre Approved Mitigation Area (PAMA) land in the draft North County MSCP. While the project site contains areas of draft PAMA, implementation of the Dabbs project will not adversely affect the ongoing MSCP planning process as the coastal sage scrub is not suitable for long-term preservation due to its patchy dispersal and surrounding existing development and road infrastructure. Since the acreage of the coastal sage scrub habitat is small and patchy and not contiguous with other large areas of habitat, the habitat loss will not preclude or prevent the preparation of the subregional NCCP.

Finding 1.d: The habitat loss has been minimized and mitigated to the maximum extent practicable in accordance with Section 4.3 of the NCCP Process Guidelines.

A total of 1.16 acres of Diegan coastal sage scrub habitat will be impacted by the project. The habitat is considered of "intermediate" value, pursuant to the NCCP Logic Flow Chart. The project will impact two small areas of habitat which have no connectivity to the north, south, east or west with other blocks of habitat. In addition, the entire project site as well as surrounding lands currently contain agricultural and residential uses. The loss of Diegan coastal sage scrub will be mitigated to the maximum extent practicable in accordance with Section 4.3 the NCCP Process Guidelines. The following mitigation measures have been incorporated into the project:

- Dedication of a Limited Building Zone easement in order to prevent construction of buildings that would require fire-clearing into additional CSS habitat.
- Implementation of grading and clearing restrictions during the breeding season of California gnatcatchers.

With the mitigation measures incorporated into the Dabbs project, it has been found that the area proposed for habitat loss has been minimized and mitigated to the maximum extent practicable.

Finding 2 The habitat loss will not appreciably reduce the likelihood of survival and recovery of listed species in the wild.

No sensitive plants or sensitive wildlife species were identified onsite or within the offsite impact areas. Therefore, the project would not appreciably reduce species populations given the dedication of a limited building zone easement and the implementation of breeding season avoidance for the California gnatcatcher.

To mitigate for the loss of coastal sage scrub habitat due to the project, offsite purchase of coastal sage habitat will be required at a 3:1 ratio equivalent to no less than 3.5 acres. The offsite purchase of habitat will preserve habitat with long-term viability that has connectivity to high value districts and potential to support listed species. Through this mitigation measure, the proposed residential development of the project site will not appreciably reduce the likelihood of the survival and recovery of listed species.

Finding 3: The habitat loss is incidental to otherwise lawful activities.

The project will require grading and/or improvements plans for road improvements and building pad preparation. The issuance of a Habitat Loss Permit by the County of San Diego, with the concurrence of the Department of Fish and Wildlife and U.S. Fish and Wildlife Service and approval by the County of San Diego of a Grading Permit, Clearing Permit, or Improvement Plan is required prior to the clearing of any coastal sage scrub supported on the project site and is required to permit the loss of coastal sage scrub habitat that was previously cleared, graded or removed without a valid permit and to allow for conformance with Sections 86.102 and 86.104 of the San Diego County Code. No state or federal permits other than those mentioned above are identified as being required at this time. Construction and/or land use modification will not commence until all appropriate permits have been issued. The project has been found to be in

conformance with Section 86.104 of the San Diego County Code. As such, the anticipated loss will be incidental to “otherwise lawful activities”.

NCCP FLOWCHART

1. Is natural vegetation present? **Yes.**
2. Is Coastal sage scrub present? **Yes.**
3. Is Coastal sage scrub the most dense in the subregion? **No.**
4. Is the land close to high value district. **Yes.**
5. Is the land located in a corridor between higher value districts. **Yes.**
6. Does the land support high density of target species? **No.**

Based on the NCCP Logic Flow Chart, the quality of habitat supported on the Dabbs project is defined as being “Intermediate Value.”

MITIGATION MONITORING AND REPORTING PROGRAM:

The following shall be the Mitigation Monitoring or Reporting Program for this Habitat Loss Permit:

Public Resources Code Section 21081.6 requires the County to adopt a mitigation reporting or monitoring program for any project that is approved on the basis of a mitigated Negative Declaration or an Environmental Impact Report for which findings are required under Section 21081(a)(1). The program must be adopted for the changes to a project which the County has adopted, or made a condition of project approval, in order to mitigate or avoid significant effects on the environment. The program must be designed to ensure compliance during project implementation.

The mitigation monitoring program is comprised of all the environmental mitigation measures adopted for the project. The full requirements of the program (such as what is being monitored, method and frequency, who is responsible, and required time frames) are found within the individual project conditions. These conditions are referenced below by category under the mechanism which will be used to ensure compliance during project implementation.

- Subsequent Project Permits

Compliance with the following conditions is assured because specified subsequent permits or approvals required for this project will not be approved until the conditions have been satisfied:

1, 2

NOTICE: The issuance of this permit by the County of San Diego does not authorize the applicant for said permit to violate any federal, state, or county laws, ordinances, regulations, or policies, including but not limited to, the federal Endangered Species Act and any amendments thereto.

NOTICE: The subject property contains habitat which may be used for nesting by migratory birds. Any grading, brushing or clearing conducted during the migratory bird breeding season, February 1 – August 31, has a potential to impact nesting or breeding birds in violation of the Migratory Bird Treaty Act. The applicant may submit evidence that nesting or breeding migratory birds will not be affected by the grading, brushing or clearing to these agencies: California Department of Fish and Wildlife, 3883 Ruffin Rd., San Diego, CA 92123, (858) 467-4201, <http://www.dfg.ca.gov/>; and United States Fish and Wildlife Service, 6010 Hidden Valley Rd, Carlsbad, CA 92011-4219, (760) 431-9440, <http://www.fws.gov/>.

JUDICIAL REVIEW TIME LIMITATIONS: The time within which judicial review of this decision must be sought is governed by Code of Civil Procedure Section 1094.6, which has been made applicable in the County of San Diego by San Diego County Code Section 11.120. Any petition or other paper seeking judicial review must be filed in the appropriate court not later than the 90th day following the date on which this decision becomes final; however, if within 10 days after the decision becomes final a request for the record of the proceedings is filed and the required deposit in an amount sufficient to cover the estimated cost of preparation of such record is timely deposited, the time within which such petition may be filed in court is extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the party, or the party's attorney of record. A written request for the preparation of the record of the proceedings shall be filed with the Director, Planning & Development Services, 5510 Overland Avenue, Suite 110, San Diego, California 92123.

The foregoing decision was approved by the Director of Planning & Development Services on TO BE DETERMINED. A copy of this decision, and the documentation supporting the decision, is on file in the Planning & Development Services office at 5510 Overland Avenue, Suite 110, San Diego, California.

PLANNING & DEVELOPMENT SERVICES
MARK WARDLAW, DIRECTOR

BY:

SAMI REAL, Chief
Project Planning Division

Attachments

Biological Survey Letter Report, Pacific Southwest Biological Services Inc., June 22, 2010

cc: To be provided at issuance of Habitat Loss Permit

email cc:

Ashley Gungle, Project Manager, Project Planning, Planning & Development Services
Mindy Fogg, Planning Manager, Project Planning, Planning & Development Services