

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.

TO BE DETERMINED

Carl and Sylvia Pizzuto
773 Hillsboro Way
San Marcos, CA 92069

**DECISION OF THE DIRECTOR
Habitat Loss Permit**

APPLICATION NUMBER: HLP xx-xxx, ER 04-08-030

ASSOCIATED PERMIT(S): TPM 20846

NAME OF APPLICANT: Carl and Sylvia Pizzuto

DESCRIPTION/LOCATION OF LOSS:

The proposed Habitat Loss Permit will allow removal of habitat as shown on the attached Habitat Loss Exhibit for a minor subdivision of approximately 41.14 acres into three residential lots, ranging in size from 8.25 to 20.21 gross acres. The project also includes a private road on-site, driveways, and off-site road improvements. The proposed project is located in the Merriam Mountains area, north of the City of Escondido, County of San Diego, California, and north of Deer Springs Road as indicated on the attached USGS map.

The site is currently undeveloped with two existing mobile homes located on the northeast corner of the property. Biological resources on the project site were evaluated in a biology report and resources map prepared by Pacific Southwest Biological Services (2007). On-site habitat includes Diegan coastal sage scrub, granitic southern mixed chaparral, disturbed and developed land. One sensitive plant species and three sensitive wildlife species were detected during field surveys: three individuals of summer holly (*Comarostaphylos diversifolia* ssp. *diversifolia*), red-shouldered hawk (*Buteo lineatus*), Cooper's hawk (*Accipiter cooperii*), and San Diego black-tailed jackrabbit (*Lepus californicus bennettii*). No protocol California gnatcatcher surveys

were conducted because the majority of the site is composed of granitic southern mixed chaparral, with three relatively small patches of Diegan coastal sage scrub. There will be direct impacts to the summer holly and potential impacts to sensitive wildlife species due to this project, but the site does not contain regionally important populations.

The proposed project will impact 33.36 acres, as listed in Table 1 and will mitigate 2.08 acres of Diegan coastal sage scrub and 14.90 acres of granitic southern mixed chaparral in an off-site mitigation bank. 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. Off-site habitat purchases will occur within the Northern Foothills Ecoregion or the closest available location, to the satisfaction of the Director of Planning and Land Use. In addition, 0.16 acre of Diegan coastal sage scrub and 7.43 acre of granitic southern mixed chaparral will be set aside in an on-site biological open space easement located in the southeastern portion of the property, but is considered impact neutral because the configuration of the project site and surrounding agricultural and residential uses precludes this site from functioning as a viable wildlife linkage or corridor. Therefore, all impacts associated with the development of the Pizzuto property will be mitigated off-site 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	Existing (acres)	Impacts (acres)	Mitigation Ratio	Impact Neutral	Off-Site Mitigation (acres)
Diegan coastal sage scrub	1.20 (1.06+0.14)	1.04 (0.90+0.14)	2:1	0.16	2.08
Granitic southern mixed chaparral	37.23	29.80	0.5:1	7.43	14.90
Disturbed habitat	1.09	0.96	n/a	n/a	n/a
Urban/developed	1.76	1.56	n/a	n/a	n/a
Total	41.28	33.36		7.59	16.98

DECISION:

The Director of Planning and Land Use 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 Game (CDFG) 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 (CDFG, 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 CDFG. 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.

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 TPM 20846. 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.

- A. THE FOLLOWING CONDITIONS SHALL BE COMPLIED WITH BEFORE A PARCEL MAP IS APPROVED BY THE DEPARTMENT OF PUBLIC WORKS AND FILED WITH THE COUNTY RECORDER OF SAN DIEGO COUNTY:

BIOLOGICAL REQUIREMENTS [DPLU]

1. Prior to issuance of any permit and prior to recordation of the parcel map the applicant shall grant by separate document to the County of San Diego an open space easement as shown on the Open Space Exhibit dated **April 25, 2008** on file with the Department of Planning and Land Use as Environmental Review Number 04-08-030. This easement is for the protection of biological resources and prohibits all of the following on any portion of the land subject to said easement: grading; excavation; placement of soil, sand, rock, gravel, or other material; clearing of vegetation; construction, erection, or placement of any building or structure; vehicular activities; trash dumping; or use for any purpose other than as open space. Granting of this open space authorizes the County and its agents to periodically access the land to perform management and

monitoring activities for the purposes of species and habitat conservation.
[DPLU, FEE]

The sole exception(s) to this prohibition is:

- a. Selective clearing of vegetation by hand to the extent required by written order of the fire authorities for the express purpose of reducing an identified fire hazard. While clearing for fire management is not anticipated with the creation of this easement, such clearing may be deemed necessary in the future for the safety of lives and property. All fire clearing shall be pursuant to the Uniform Fire Code and the Memorandum of Understanding dated February 26, 1997, between the wildlife agencies and the fire districts and any subsequent amendments thereto.
 - b. Activities conducted pursuant to a revegetation or habitat management plan approved by the Director of Planning and Land Use or the Director of Public Works.
 - c. Vegetation removal or application of chemicals for vector control purposes where expressly required by written order of the Department of Environmental Health of the County of San Diego.
2. Prior to issuance of any permit and prior to recordation of the parcel map the applicant shall grant by separate document to the County of San Diego a Limited Building Zone Easement as shown on the Open Space Exhibit dated **April 25, 2008** on file with the Department of Planning and Land Use as Environmental Review Number 04-08-030. 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 prohibits the construction or placement of any structure designed or intended for occupancy by humans or animals. The only exceptions to this prohibition are: [DPLU, FEE]
- a. Structures designed or intended for occupancy by humans or animals located no less than 100 feet from the nearest biological open space easement boundary, provided that the structures meet the minimum Fire-Resistive Construction Requirements as defined by the Fire Protection Authority (FPA) having jurisdiction over the property and that FPA has approved in writing a reduction in the vegetation clearing/fuel modification requirements so that they will not be required within any portion of the biological open space easement.
 - b. Decking, fences, and similar facilities.
 - c. 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.

3. Prior to issuance of any permit and prior to recordation of the parcel map, the applicant shall provide for the approval of the Director of Planning and Land Use evidence that 2.08 acres of Diegan coastal sage scrub habitat credit has been secured in a mitigation bank approved by the California Department of Fish & Game, located in the Northern Foothills Ecoregion. Evidence of purchase shall include the following information to be provided by the mitigation bank: **[DPLU, FEE X 2]**
- a. A copy of the purchase contract referencing the project name and numbers for which the habitat credits were purchased.
 - b. 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.
 - c. 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.
 - d. 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.

-OR-

Provide for the conservation and habitat management of a minimum of 2.08 acres of Diegan coastal sage scrub habitat located in the Northern Foothills Ecoregion. A Resource Management Plan (RMP) for the Diegan coastal sage scrub habitat must be submitted and approved by the Director of the Department of Planning and Land Use. The plan shall be prepared and approved pursuant to the County of San Diego Biological Report Format and Requirement Guidelines. An open space easement over the acquired habitat must be dedicated to the County of San Diego prior to or immediately following the approval of the RMP. Alternatively, proof that a federal, state or local government agency with the primary mission of resource management has taken fee title to the land will be accepted in lieu of an easement.

4. Prior to issuance of any permit and prior to recordation of the parcel map, the applicant shall provide for the approval of the Director of Planning and Land Use evidence that 14.90 acres of southern mixed chaparral habitat credit has been secured in a mitigation bank approved by the California Department of Fish & Game, located in the Northern Foothills Ecoregion. Evidence of purchase shall include the following information to be provided by the mitigation bank: **[DPLU, FEE X 2]**
- a. A copy of the purchase contract referencing the project name and numbers for which the habitat credits were purchased.

- b. 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.
- c. 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.
- d. 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.

-OR-

Provide for the conservation and habitat management of a minimum of 14.90 acres of southern mixed chaparral habitat located in the Northern Foothills Ecoregion. A Resource Management Plan (RMP) for the southern mixed chaparral habitat must be submitted and approved by the Director of the Department of Planning and Land Use. The plan shall be prepared and approved pursuant to the County of San Diego Biological Report Format and Requirement Guidelines. An open space easement over the acquired habitat must be dedicated to the County of San Diego prior to or immediately following the approval of the RMP. Alternatively, proof that a federal, state or local government agency with the primary mission of resource management has taken fee title to the land will be accepted in lieu of an easement.

5. Prior to the issuance of any building, grading, or construction permit, or approval of any grading, improvement, or building plans, and prior to recordation of the parcel map, provide evidence to the satisfaction of the Director of Planning and Land Use, that the open space signage has been installed.

The applicant shall submit a statement from a California Registered Engineer, or licensed surveyor that all open space signs along the open space boundary of lot 3 as shown on the Open Space Fencing Exhibit dated **April 25, 2008** on file with the Department of Planning and Land Use as Environmental Review Number 04-08-030 have been installed. **[DPLU, FEE]**

- a. The signs must be corrosion resistant, a minimum of 6" x 9" in size, on posts not less than three (3) feet in height from the ground surface, and must state the following:

"Sensitive Environmental Resources"
Disturbance Beyond this Point is Restricted
by Easement
Information:

Contact County of San Diego, Department of Planning and Land Use

Ref: 04-08-030"

- B. THE FOLLOWING IMPROVEMENTS MAY BE COMPLETED PRIOR TO RECORDING OF A PARCEL MAP OR THEY MUST BE LISTED ON THE PARCEL MAP AND THE SUBDIVIDER SHALL EXECUTE A "COVENANT OF IMPROVEMENT REQUIREMENTS" WHICH SHALL LIST THE CONDITIONS THAT REMAIN TO BE COMPLETED. THE COVENANT SHALL BE RECORDED BY THE DEPARTMENT OF PUBLIC WORKS PRIOR TO RECORDING THE PARCEL MAP. THE COVENANT SHALL BE NOTED ON THE PARCEL MAP.

(IMPROVEMENT PLANS AND COST ESTIMATES ARE NOT DEFERRABLE) THE COVENANT OF IMPROVEMENT REQUIREMENTS SHALL NOTE THE ESTIMATE OF COST TO INSTALL AND/OR CONSTRUCT ANY DEFERRED IMPROVEMENTS. THE ESTIMATE OF COST SHALL BE BASED UPON IMPROVEMENT PLANS. THE PLANS SHALL INCLUDE A SIGNED STATEMENT BY THE PRIVATE ENGINEER-OF-WORK STATING THAT THE PLANS ARE SUFFICIENT FOR THE PURPOSE OF PROVIDING THE REQUIRED ESTIMATE OF THE COST FOR THE PRIVATE EASEMENT ROADS AND PRIVATE FACILITIES. THE ESTIMATE SHALL HAVE THE ENGINEER'S SIGNATURE AND STAMP ON THE FRONT PAGE ALONG WITH A STATEMENT THAT IT IS THE ENGINEER'S ESTIMATE OF THE APPROXIMATE COST AS OF THE DATE THE ESTIMATE WAS PREPARED FOR THE PRIVATE ROAD AND FACILITIES REQUIRED BY THE FINAL NOTICE OF APPROVAL AND THE SAN DIEGO COUNTY STANDARDS FOR PRIVATE STREETS. SAID COVENANT SHALL BE TITLED "COVENANT OF IMPROVEMENT REQUIREMENT, A BUILDING PERMIT PROHIBITION". IF THE COVENANT HAS BEEN RECORDED, NO BUILDING PERMIT, AND NO FURTHER GRANT OF APPROVAL FOR DEVELOPMENT MAY BE ISSUED UNTIL THE SUBDIVIDER PRESENTS A COPY OF THE RELEASE OF IMPROVEMENT REQUIREMENTS RECORDED BY THE DEPARTMENT OF PUBLIC WORKS, STATING THAT ALL OF THE REQUIRED IMPROVEMENTS LISTED IN THE COVENANT OF IMPROVEMENT REQUIREMENTS AND NOTED ON THE PARCEL MAP HAVE BEEN COMPLIED WITH, EXCEPT A GRADING OR CONSTRUCTION PERMIT AND/OR A PERMIT TO INSTALL UTILITIES WITHIN THE PRIVATE EASEMENT, MAY BE ISSUED. (NOTE: FOR WATER STORAGE FACILITIES AND/OR FUELBREAKS, A RELEASE OF IMPROVEMENT REQUIREMENTS IS ONLY REQUIRED TO STATE THAT THE IMPROVEMENTS HAVE BEEN COMPLIED WITH FOR THE PARTICULAR PARCEL FOR WHICH A BUILDING PERMIT IS BEING REQUESTED.) [DPW] [DPLU]

BIOLOGICAL REQUIREMENTS [DPLU]

1. Prior to the approval of the grading, improvement, or building plans, submit to the satisfaction of the Director of Planning and Land Use; a statement from a California Registered Engineer, or licensed surveyor that temporary construction fences have been placed in all locations of the project where proposed grading or clearing is within 100 feet of an open space easement boundary. The temporary fencing condition shall be released on a parcel-by-parcel basis.
[DPLU, FEE]

2. Prior to the issuance of any Building, grading, or construction permit, or approval of any grading, improvement, or building plans, provide evidence to the satisfaction of the Director of Planning and Land Use the grading, and or improvement plans, and or building plans show permanent fences or walls along the open space boundary of lot 3 as shown on the Open Space Fencing and Signage Exhibit dated **April 25, 2008** on file with the Department of Planning and Land Use as Environmental Review Number 04-08-030. **[DPLU, FEE]**
 - a. The fence or wall shall be a minimum of four feet (4') high and consist of split rail. Any change in construction materials and fence or wall design shall be approved by the Department of Planning and Land Use prior to installation.

 - b. Prior to the issuance of any building, grading, or construction permit, or approval of any grading, improvement, or building plans, provide evidence to the satisfaction of the Director of Planning and Land Use that the open space signage has been installed. The applicant shall submit a statement from a California Registered Engineer, or licensed surveyor that all open space signs along the open space boundary of lots 3 as shown on the Open Space Fencing and Signage Exhibit dated **April 25, 2008** on file with the Department of Planning and Land Use as Environmental Review Number 04-08-030 have been installed.
[DPLU, FEE]

 - c. The signs must be corrosion resistant, a minimum of 6" x 9" in size, on posts not less than three (3) feet in height from the ground surface, and must state the following:

"Sensitive Environmental Resources"
Disturbance Beyond this Point is Restricted
by Easement
Information:

Contact County of San Diego, Department of Planning and Land Use
Ref: 04-08-030"

(Biological Notes)

3. Prior to the approval of any grading, improvement, or building plans and issuance of any permit, provide evidence to the satisfaction of the Director of Planning and Land Use or Public Works, that the following specific environmental notes have been placed on any of the following plans as applicable: grading, and or improvement plans, and or building plans:
- "Temporary construction fencing is required in all locations of the project where proposed grading or clearing is within 100 feet of an open space easement boundary. The temporary fencing shall be removed after the conclusion of such activity."
 - "Prior to the conclusion of grading activities and Final Grading Release or Occupancy of any building: Placement of permanent fencing or walls is required. Provide evidence to the satisfaction of the Director of Planning and Land Use that the permanent fences or walls, and open space signs have been installed along the biological open space boundary of lot 3 as shown on the Open Space Fencing and Signage Exhibit dated **April 25, 2008** on file with the Department of Planning and Land Use as Environmental Review Number 04-08-030. Evidence shall be site photos and a statement from a California Registered Engineer, or licensed surveyor that the permanent walls or fences, and open space signs have been installed."
 - "Prior to the conclusion of grading activities and Final Grading Release or Occupancy of any building: Placement of open space signs is required.
 - a. Provide evidence to the satisfaction of the Director of Planning and Land Use that the permanent fences or walls, and open space signs have been installed along the biological open space boundary of Parcel 3 as shown on the Open Space Fencing and Signage Exhibit dated **April 25, 2008** on file with the Department of Planning and Land Use as Environmental Review Number 04-08-030.
 - b. Evidence shall be site photos and a statement from a California Registered Engineer, or licensed surveyor that the permanent walls or fences, and open space signs have been installed."
 - a. Restrict all brushing, clearing and/or grading such that none will be allowed within Diegan coastal sage scrub and granitic southern mixed chaparral habitat during the breeding season of migratory birds. This is defined as occurring between February 15th and August 31st. The Director of Planning and Land Use may waive this condition, through written concurrence from the US Fish and Wildlife Service and the California Department of Fish and Game, that no active nests are present in the vicinity of the brushing, clearing or grading."

- b. "Restrict all brushing, clearing and/or grading such that no tree removal will be allowed during the breeding season of tree-nesting raptors. This is defined as occurring between January 15th and July 15th. The Director of Planning and Land Use may waive this condition, through written concurrence from the US Fish and Wildlife Service and the California Department of Fish and Game, that no nesting raptors are present in the trees to be removed."

NOTICE: The project will be required to pay the Department of Planning and Land Use Mitigation Monitoring and Condition Review Fee. The fee will be collected at the time of the first submittal for Condition Satisfaction to DPLU, including Mitigation Monitoring requests. The amount of the fee will be determined by the current Fee Ordinance requirement at the time of the first submittal and is based on the number of **xxx DPLU conditions** that need to be satisfied. The fee amount will only be paid one time for those conditions that are indicated with the [DPLU, FEE] designator. The fee will not apply to subsequent project approvals that require a separate submittal fee such as, Revegetation and Landscape Plans, Resource (Habitat) Management Plans, Habitat Loss Permits, Administrative Permits, Site Plans, and any other discretionary permit applications.

ENVIRONMENTAL FINDINGS:

A. CEQA Findings

TO BE PROVIDED WITH FINAL HLP

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 (CDFG, November 1993):

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

The proposed project will impact 1.04 acres of coastal sage scrub and zero pairs of California gnatcatchers (*Polioptila californica*). Approved coastal sage scrub losses as of the date of February 26, 2007 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:	2,953.30 acres
Cumulative loss of Coastal sage scrub to date:	1,113.98 acres

Net loss due to this project:	1.04 acres
Total cumulative loss:	1,115.02 acres
Remaining loss under five percent guideline:	1,838.28 acres

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

All the 1.20 acres of coastal sage scrub is of intermediate value as outlined by the flow chart in the NCCP Guidelines. The site is primarily granitic southern mixed chaparral habitat (approximately 37.23 acres out of 41.14 acres). The project will directly impact the majority of the Diegan coastal sage scrub habitat on site (approximately 1.04 acres out of 1.20 acres).

The loss of 1.04 acres of Diegan coastal sage scrub and 29.80 acres of granitic southern mixed chaparral on-site and off-site will not preclude connectivity between areas of high habitat values, because the Diegan coastal sage scrub is located in three relatively small patches and is adjacent to agricultural operations to the east, and residential development to the west and south. The site is located in an area that is mostly considered intermediate in value and is mostly granitic southern mixed chaparral habitat. Areas of medium and high value chaparral habitat are located primarily to the north in the Merriam Mountain region. Wildlife could move onto the project site from this habitat area. However, the project site is surrounded by agriculture to the immediate east, and development to the west and south. Although wildlife could move onto the site from the north, there is no habitat in any other direction that would encourage movement through the project site from a regional perspective. For this reason, the habitat loss associated with the project would have minimal impact on connectivity between medium and high value areas located to the north to low value areas of agriculture and development to the east, south, and west of the project.

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

Development of this site would not exclude the ability to create a viable preserve in the subarea and subregion, as the CSS on-site is not suitable for long-term preservation due to its small size and surrounding existing development. In addition, the CSS habitat on-site is not identified for conservation on Attachment B of the Process Guidelines. No California gnatcatchers were found on-site during on site surveys and the majority of the habitat is granitic southern mixed chaparral habitat. One sensitive plant species and three sensitive wildlife species were observed on-site: summer holly, Cooper's hawk, red-shouldered hawk, and black-tailed jackrabbit. Development of the site will not have a significant regional impact to these and other sensitive species through the preservation of habitat off-site in areas known to support this sensitive species.

Since the acreage of the Diegan coastal sage scrub habitat is small and patchy, 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.

Approximately 1.04 acres of the 1.20 acres of Diegan coastal sage scrub habitat on the project site will be impacted. The habitat is considered of "intermediate" value, pursuant to the NCCP Logic Flow Chart because the Diegan coastal sage scrub habitat on site is relatively patchy and small on-site relative to the 37.23 acres of granitic southern mixed chaparral. The on-site chaparral habitat is contiguous off-site to the north and is connected to vast areas of chaparral habitat proposed for development on Merriam Mountain. Despite this intermediate value, the preservation of on-site habitat proposed for a biological open space would not create a viable preserve because it is located in the southern portion of the property (with the proposed development to the north, existing development to the south and west, and existing agriculture to the east). Therefore, the project will be required to purchase no less than 2.08 acres of Diegan coastal sage scrub to mitigate for impacts at a 2:1 ratio and 14.90 acres of granitic southern mixed chaparral. This habitat must be purchased either within a County-approved mitigation bank or a County-approved off-site location. For habitat purchases outside of a formal mitigation bank, a Habitat Management Plan would be required to the satisfaction of the County. The purchase of off-site habitat will provide for the long-term viability of habitat that has connectivity to high value districts. In addition, no brushing, clearing or grading will occur during migratory bird breeding season (February 15th through August 31st) in the granitic southern mixed chaparral or Diegan coastal sage scrub and no trees will be removed during the breeding season for tree-nesting raptors (January 15th July 15th). As such, the loss of Diegan coastal sage scrub will be mitigated to the maximum extent practicable for intermediate-value habitat in accordance with Section 4.3 the NCCP Process Guidelines.

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

No sensitive plant or wildlife protocol surveys were performed because the majority of the site is composed of granitic southern mixed chaparral, with three relatively small patches of Diegan coastal sage scrub. Three sensitive wildlife species were identified on-site and one sensitive plant species was observed on-site. There will be potential impacts to this sensitive species due to this project, but the site does not contain regionally viable populations. To mitigate for the loss of Diegan coastal sage scrub habitat due to the project, off-site purchase of Diegan coastal sage scrub habitat will be required at a 2:1 ratio equivalent to no less than 2.08 acres. Off-site mitigation is also required for impacts to granitic

southern mixed chaparral at a ratio of 0.5:1. These off-site habitat purchases 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 plans and improvement plans for development of roads, driveways and house pads. The issuance of a Habitat Loss Permit by the County of San Diego, with the concurrence of the Department of Fish and Game 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. 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. **No.**
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 TPM 20846 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:

A.1, A.2, A.3, A.4, A.5, B.1, B.2, B.3

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.

NOTIFICATION TO APPLICANT: The County of San Diego hereby notifies the applicant that State law (S.B. 1535) effective January 1, 2007, requires certain projects to pay fees for purposes of funding the California Department of Fish and Game. If you made this payment at the time of public review of the environmental document pursuant to Administrative Code Section 362, Article XX, effective August 27, 1992, you have met this obligation. If the fee has not been paid, to comply with State law, the applicant should remit to the County Department of Planning and Land Use, within two (2) working days of the effective date of this approval (the "effective date" being the end of the appeal period, if applicable), a certified check payable to "County Clerk" in the amount of \$1,850 for a project with a Negative Declaration, or \$2,550 for a project with an Environmental Impact Report. These fees include an authorized County administrative fee of \$50. The fees (excluding the administrative fee) may be waived for projects that are found by the Department of Planning and Land Use and the California Department of Fish and Game to have a no effect impact on fish and wildlife resources. Failure to remit the required fee in full within the time specified above will result in County notification to the State that a fee was required but not paid, and could result in State imposed penalties and recovery under the provisions of the Revenue and Taxation Code. In addition, Section 21089(b) of the Public Resources Code, and Section 711.4(c) of the Fish and Game Code, provide that no project shall be operative, vested, or final until the required filing fee is paid.

DEFENSE OF LAWSUITS AND INDEMNITY: The applicant shall: (1) defend, indemnify and hold harmless the County, its agents, officers and employees from any claim, action or proceeding against the County, its agents, officers and employees to

attack, set aside, void or annul this approval or any of the proceedings, acts or determinations taken, done or made prior to this approval; and (2) reimburse the County, its agents, officers or employees for any court costs and attorney's fees which the County, its agents, officers or employees may be required by a court to pay as a result of such approval. At its sole discretion, the County may participate at its own expense in the defense of any such action, but such participation shall not relieve the applicant of any obligation imposed by this condition. The County shall notify the applicant promptly of any claim or action and cooperate fully in the defense.

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, Department of Planning and Land Use, 5201 Ruffin Road, Suite B, San Diego, California 92123.

The foregoing decision was approved by the Director of Planning and Land Use on date of decision. A copy of this decision, and the documentation supporting the decision, is on file in the Department of Planning and Land Use offices at 5201 Ruffin Road, Suite B, San Diego, California.

DEPARTMENT OF PLANNING AND LAND USE
ERIC GIBSON, INTERIM DIRECTOR

BY:

Glen Russell, Interim Deputy Director
Regulatory Planning Division

Attachments

Habitat Loss Exhibit dated xxx
USGS Map
Biological Resources Report and Map (Pacific Southwest Biological Services,
January 2008)

cc: To be provided at issuance of Habitat Loss Permit