

**COUNTY OF SAN DIEGO, CALIFORNIA**  
**BOARD OF SUPERVISORS POLICY**

**Subject**

Use of the County's 5 Percent Allowable Loss of Coastal Sage Scrub by Other Jurisdictions

**Policy Number**

I-122

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Purpose

This Policy sets forth the process for cities to use part of the County's 5 percent take allowance for Coastal sage scrub (CSS). As part of the Habitat Loss process, in conformance to Section 4(d) of the Federal Endangered Species Act (FESA) (16 U.S.C. §1533(d), see also Fed. Reg. Vol. 58, No. 236, Dec. 10, 1979), each jurisdiction is allowed a loss of up to 5 percent of its CSS habitat if it is actively developing a Natural Communities Conservation Plan (Cal. Fish & Game Code §2800 et seq.). As smaller jurisdictions have used up their 5 percent allotment of habitat loss, they have requested the County to share part of its 5 percent allotment.

This Policy will ensure that the County is given fair compensation for allowing other jurisdictions to use the County's 5 percent loss allowance for CSS and will further the goals of open space planning by providing open space land, by transfer of fee title or in mitigation banks or by generating revenue that can be used to acquire open space. Funds generated by this policy will be placed into a Capital Project to be used for open space acquisition and related activities only.

Background

Listing of the California gnatcatcher in 1993 requires a FESA Section 10(a) (16 U.S.C. §1539) or Section 7 Permit before any CSS can be cleared. Under the Natural Communities Conservation Planning (NCCP) program in conjunction with the 4(d) rule of the FESA, a loss of up to 5 percent of Coastal sage scrub (CSS) is allowed provided the jurisdiction in which the take is occurring is enrolled in actively developing a NCCP. As conservation plans are approved in each jurisdiction, the 5 percent limit no longer applies. The jurisdictions within San Diego County agreed that each jurisdiction would maintain and account for its own 5 percent allowable takes.

Several jurisdictions in the County have reached their 5 percent limit of allowable CSS loss or do not have enough to authorize the clearing of CSS by proposed development projects. Other jurisdictions have requested that the Board allow the loss of CSS in their jurisdiction to be counted against the County's total CSS 5 percent allotment.

Establishing procedures for such requests and conditions under which they can be granted will formalize the process so that property owners and other jurisdictions will have knowledge of the requirements in advance of starting the permit approval process.

Policy

It is the policy of the Board of Supervisors that:

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The County of San Diego Board of Supervisors is willing to allocate portions of its five percent Coastal sage scrub loss allowance to jurisdictions that have exhausted their five percent CSS allowance for development projects. Compensation will be in the form of the dedication to the County of priority acquisition areas in the impacted District, funds to acquire priority acquisition areas in the impacted District, or the transfer of mitigation bank credits in the unincorporated area of the County of San Diego. No compensation for the use of a portions of the County's five percent CSS loss allotment will be required if the Board makes a finding that the project in the incorporated city has a significant public benefit. The procedures for application for use a portion of the County's five percent CSS loss allowance follow:

Requesting the use of the County's 5 percent Coastal sage scrub loss allocation for a project

Incorporated cities in which projects are being processed within San Diego County must submit to the Director of Planning and Development Services a letter requesting the use of the County's 5 percent loss allocation. This letter will include a project name and description, the project location (including a map) and jurisdiction, and the number of acres of CSS that will be lost due to the impacts of the project and the proposed method of compensation or request for a finding of public benefit.

The following requirements must be met in order to qualify for the use of the County's 5 percent allotment:

1. The project must conform to all requirements of the Wildlife Agencies for minimizing impacts to CSS, i.e., the application must include the concurrence to the Habitat Loss Permit from the Wildlife Agencies (California Department of Fish and Game and U.S. Fish & Wildlife Service)
2. The jurisdiction for which the project is requesting the use of the County 5 percent allotment must have exhausted its own Coastal sage scrub 5 percent take allocation.
3. Compensation must occur as described below.

The incorporated city through the project applicant will be required to compensate the County for allowing the CSS loss to be subtracted from the County's five percent CSS loss allowance. The compensation may occur in one of the following four ways:

- a. Land is transferred in fee title to the County of San Diego in an equivalent acreage amount to the Coastal sage scrub impacted by

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the project development. Priority will be given to acquisition lands located in the same Supervisorial District as the impact. The Departments of Planning and Development Services and Parks and Recreation with input from District staff will prepare and maintain lists of priority acquisition areas for each Supervisorial District. Transfer of fee title will occur on approval by of the Board of Supervisors once the proposed transaction is recommended for approval by the Departments of General Services, Real Estate Division and by the Directors of Planning and Development Services and Parks and Recreation.

- b. Payment of \$30,000 per acre of Coastal sage scrub impact to the County. Priority will be given to acquisition lands located in the same Supervisorial District as the impact. Funds will be placed in a Capital Project to be used for open space acquisition and related activities only.
- c. Mitigation bank credits within a bank approved by the Wildlife Agencies will be accepted as adequate compensation at a ratio of 3:1, i.e., three acres of credit for each acre of impacted CSS. The mitigation bank must be located in the County of San Diego.
- d. No compensation will be required for the use of the County's five percent Coastal sage scrub loss allowance if the Board of Supervisors concurs and evidence is produced that documents the public benefit of the project development. Examples of such public benefit projects are
  - i) housing for very low, low- or moderate-income households defined as "*at least 20 percent of the total units shall be sold or rented to lower income households*" as defined by Section 50079.5 of the California Health and Safety Code,
  - ii) acquiring a needed public facility such as a sites for a school, hospital, or fire station, and
  - iii) senior housing projects.

This waiver of compensation shall not apply to infrastructure necessary and incidental to a proposed development such as roads or drainage.

If the request conforms to the requirements listed above, the Director of the Department of Planning and Development Services will prepare a letter to the Board of Supervisors with a recommendation to approve the request. If the Board approves the applicant's request, the County will inform the project proponent, the jurisdiction processing the project, the San Diego Association of Governments (SANDAG), and the Wildlife Agencies of the Board's decision.

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Sunset Date

This Policy will be reviewed for continuance by December 31, 2022.

Board Action

10/13/98 (16)

Amended 12/11/02 (3)

06-23-04 (12)

12-09-08 (33)

09-25-12 (11)

12-16-15 (8)

CAO Reference

1. Department of Planning and Development Services
2. Department of Parks and Recreation
3. Department of General Services