

**CITY OF DANA POINT
AGENDA REPORT**

Reviewed By:	
DH	<u>X</u>
CM	<u>X</u>
CA	<u>X</u>

DATE: AUGUST 27, 2003

TO: THE HONORABLE MAYOR AND CITY COUNCIL

FROM: EUGENIA GARCIA, ACTING COMMUNITY DEVELOPMENT DIRECTOR

**SUBJECT: CENTRAL/COASTAL ORANGE COUNTY NATIVE COMMUNITY
CONSERVATION PLAN (NCCP) AGREEMENT**

RECOMMENDED ACTION:

That the City Council adopt a resolution entitled:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING AN AGREEMENT WITH THE COUNTY OF ORANGE FOR INCLUSION IN THE CENTRAL/COASTAL SUBREGIONAL NATURAL COMMUNITY CONSERVATION PLAN/HABITAT CONSERVATION PLAN (NCCP/HCP).

BACKGROUND:

On May 14, 2003, the City Council authorized staff to prepare an analysis of any changes in City policies that would have to be implemented if the City were to join the NCCP, and provide a recommendation based upon the analysis to the Council.

The NCCP, which has been in existence since 1996, is a multi-jurisdiction effort to preserve communities of plants and animals in a coordinated process that would result in the survival of sensitive, threatened, and endangered species. The basic concept is to establish a system of nature preserves throughout the NCCP area that provides for a subregional solution to the problem of the loss of Coastal Sage Scrub (CSS), a habitat for the Federally-listed, threatened California Coastal Gnatcatcher. It provides a larger framework for federal, state, and local agencies to plan for and implement a conservation process that can benefit species, while at the same time permit and even encourage development in appropriate areas. The goal of the plan is to insure the communities of plants and animals will have suitable habitat for their existence. Jurisdictions that wish to participate in the NCCP can do so by authorizing the Mayor to execute an Implementation Agreement for the NCCP.

The original signatories to the NCCP Implementation Agreement were the California Resources Agency, California Department of Fish and Game, California Department of Forestry and Fire Protection, California Department of Parks and Recreation, United States Fish and Wildlife Service, County of Orange, San Joaquin Hills Transportation

Corridor Authority, Foothill/Eastern Transportation Corridor Authority, Orange County Fire Authority, Orange County Flood Control District, Regents of the University of California, Santiago Water District, Irvine Ranch Water District, Metropolitan Water District of Southern California, Southern California Edison, M.S. Sherman Company, Chandis Securities Company, Sherman Foundation, and The Irvine Company.

Within the City of Dana Point, the owner of the Headlands property was an original signatory to the NCCP and the Headlands property has existing coverage for impacts to Coastal Sage Scrub (CSS), and therefore gnatcatchers. The Headlands is by far the largest project with any impacts to CSS. However, the Headlands will effectively not be affected by the City's execution of the NCCP as it is already a participant.

DISCUSSION:

The City of Dana Point is one of 13 cities that may join the NCCP by executing the Implementation Agreement. It does not, however, contain any lands determined to be "reserve lands," i.e., considered necessary or essential for the Nature Reserve of Orange County, which was created by the NCCP in 1996.

The Headlands represents the largest, and only known significant impact to CSS that still exists within the City. Since 1996, additional "in fill" development has converted most CSS that existed within the City at that time to developed land. Those projects that impacted CSS were required to obtain both local permits (under City zoning laws and under the California Environmental Quality Act (CEQA) as well as separate Federal permits for impacts to CSS. Currently, staff estimates a minimal amount of developable land (i.e., reasonably foreseeable as being developed) as containing CSS, still exists within the City. Further, any project that may impact CSS will still be required to comply with CEQA, and impacts to biological resources will be reviewed to determine their significance. The only "change" affected by execution of the NCCP is that no additional Federal permits will be required.

General Plan Consistency

The City is required to review its existing land use regulations to ensure their consistency with the NCCP's goals. Given that the goal of the NCCP is preservation of habitat for Gnatcatchers, and there is little possibility of impacting Gnatcatchers within the City due to the scarcity of appropriate, developable land, there are no conflicts between the City's existing land use regulations, the City's General Plan, and the NCCP.

Additionally, Staff has concluded that authorizing the Mayor to sign the NCCP Implementation Agreement (which is the mechanism for joining the NCCP) is not a project under CEQA because it does not have the potential to cause a direct or indirect change to the environment. (See CEQA Guidelines, § 15378.) As such, it is treated as exempt from CEQA under Guidelines § 15060 (c)(3), based upon the fact that the only significant property to be developed, The Headlands, is already covered by the NCCP. However, there may be small "in-fill" development projects within the City and a few properties, if any, with significant amounts of CSS that are reasonably anticipated to be

developed. To the extent other small projects impacting CSS might remain possible, the NCCP does not divest the City of its responsibility under CEQA to review all environmental impacts, including specifically those to sensitive habitats, if such a project later arises. Staff recommends adoption of a Notice of Categorical Exemption under CEQA Guidelines § 15062(a).

City Responsibilities

If the City were to join the NCCP, the City will be expected to address the following responsibilities with regard to actions of the signatory cities and landowners subject to the jurisdiction of such cities:

1. Consideration of amendments to the general plan, zoning, or other implementing ordinances to comply with state planning and zoning requirements;
2. Adopting fuel modification ordinances/standards consistent with the NCCP/HCP fuel modification policies that will be applicable to areas bordering the Reserve System, and within Special Linkage Areas and Existing Use Areas;
3. In cooperation with the individual reserve owner/manager, reviewing project proposals within the Reserve System on lands managed by the particular Local Government to assure consistency with the NCCP/HCP;
4. Assuring the Non-Participating Landowners provide evidence of payment of the Mitigation Fee to the NCCP Non-Profit Corporation where the landowner elects to use the Mitigation Fee option for Take of Listed Coastal Sage Scrub (CSS) Species;
5. Recording/compiling Identified Species, CSS and Covered Habitats impacts within its jurisdiction annually and reporting losses/mitigation to the County EMA to enable the County, as the lead agency, to compile sub-regional data for transmittal to CDFG and USFWS;
6. Ensuring that NCCP construction-related minimization measures set forth in the NCCP/HCP EIR/EIS are enforced;
7. Making best efforts to acquire conservation easements over privately owned Existing Use Areas owned by Non-Participating Landowners;
8. For those Local Governments owning land within the Reserve System, formally committing such lands to the Reserve System, and managing such lands in accordance with the NCCP/HCP and this Agreement;
9. Accepting and using the NCCP/HCP EIR/EIS as the CEQA program EIR, defining the mitigation program and covering all Take Allowed for CSS, Identified Species and Covered Habitat Impacts of Planned Activities;
10. Recognizing the mitigating values of preservation of non-CSS resources in the Reserve System in acting on specific Planned Activities; and

11. Committing to the CSS, Identified Species and Covered Habitat mitigation assurances.

PROCESS:

Upon signing the appropriate number of copies, the City will be deemed a participating Local Government. From that point forward, projects within the City that impact the species and habitat set forth in the NCCP will be able to mitigate through a mitigation fee program, subject to the terms of the NCCP Agreement.

STRATEGIC PLAN IMPLEMENTATION:

In compliance with the Strategic Plan Initiative to evaluate land use issues to ensure that the goals, policies, and programs of the General Plan reflect the community's vision and mission.

FISCAL IMPACT:

There is no fiscal impact with the recommended action at this time.

ALTERNATIVE ACTIONS:

- 1. Defer action at this time.

ACTION DOCUMENTS:

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SUPPORTING DOCUMENTS:

- B. Implementation Agreement (NCCP) available for review in the Community Development Department.

ACTION DOCUMENT A**RESOLUTION NO.****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, APPROVING AN AGREEMENT BETWEEN THE CITY OF DANA POINT AND THE COUNTY OF ORANGE FOR INCLUSION IN THE CENTRAL/COASTAL SUBREGIONAL NATURAL COMMUNITY CONSERVATION PLAN/HABITAT CONSERVATION PLAN (NCCP/HCP).****THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, DOES HEREBY RESOLVE AS FOLLOWS:**

WHEREAS, Dana Point is one of 13 cities where reserve lands may be located for the protection and preservation of communities of plants and animals that are either sensitive, threatened, or endangered species and may further this goal by inclusion in the Central Coastal Subregional Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP).

WHEREAS, the City of Dana Point is a "Non-Reserve" city, meaning that it will have no obligation to acquire land for reserves or to require landowners to contribute land for reserves.

WHEREAS, Dana Point may be included in the NCCP/HCP by signing the Implementation Agreement. Inclusion in the NCCP/HCP will permit, projects within the City that impact the species and habitat set forth in the NCCP to mitigate through a mitigation fee program, subject to the terms of the NCCP Agreement and all other requirements of CEQA and City regulations.

WHEREAS, Dana Point is proposing to become a signatory to the NCCP, which is comprised of the California Resources Agency, the California Department of Fish and Game, the California Department of Forestry and Fire Protection, the California Department of Parks and Recreation, the United States Fish and Wildlife Service, the County of Orange, the San Joaquin Hills Transportation Corridor Authority, the Foothill/Eastern Transportation Corridor Authority, the Orange County Fire Authority, the Orange County Flood Control District, the Regents of the University of California, Santiago Water District, the Irvine Ranch Water District, the Metropolitan Water District of Southern California, Southern California Edison, M.S. Sherman Company, Chandis Securities Company, Sherman Foundation, and The Irvine Company,

WHEREAS, the City has reviewed its existing land use regulations to ensure their consistency with the NCCP's goals and finds that since the goal of the NCCP is preservation of habitat for gnatcatchers, there is little possibility of impacting gnatcatchers within the City due to the scarcity of appropriate, developable land, and that there are no conflicts between the City's existing land use regulations, the City's General Plan, and the NCCP.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Dana Point does hereby resolve as follows:

Section 1. The City of Dana Point:

- A. Approves the Implementation Agreement included in "Attachment A" and agrees to comply with all requirements of the subject agreement; and
- B. Agrees to follow the provisions of the Central/Coastal Orange County Native Community Conservation Plan (NCCP/HCP). and
- C. Designates the City Manager as the authorized representative to sign the agreement with the County of Orange and,

Section 2. City Clerk is directed to certify the Resolution.

PASSED, APPROVED, AND ADOPTED this 27th day of August, 2003.

WILLIAM OSSENMACHER, MAYOR

ATTEST:

Susan A. Ramos, City Clerk

CITY OF DANA POINT)

I, Susan A. Ramos, City Clerk of the City of Dana Point, California, DO
HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No.
_____ adopted by the City Council of the City of Dana Point,
California, at a regular meeting thereof held on the 27th day of August, 2003, by the
following vote:

AYES:

NOES:

ABSENT:

(SEAL)

SUSAN A. RAMOS, CITY CLERK