

**PLANNING COMMISSION OF THE CITY OF SAN DIEGO
MINUTES OF
JANUARY 30, 1997
IN COUNCIL CHAMBERS - 12TH FLOOR
CITY ADMINISTRATION BUILDING**

CHRONOLOGY OF THE MEETING:

The meeting was called to order by Vice-Chairperson Anderson at 9:11 a.m.
Vice-Chairperson Anderson adjourned the meeting at 5:48 p.m.

ATTENDANCE DURING THE MEETING:

Chairperson Christopher Neils-not present
Vice-Chairperson William Anderson-present
Commissioner Patricia Butler-present
Commissioner Verna Quinn-present
Commissioner Andrea Skorepa-present
Commissioner David Watson-present
Commissioner Frisco White-present
Betsy McCullough, Community Planning & Development Manager-not present
Mike Stang, Principle Planner, Community Planning & Development-present
Rick Duvernay, Deputy City Attorney-present
Tina Christiansen, DSD Director-not present
Gary Halbert, Deputy Director, DSD-not present
Rob Hawk, Engineering Geologist, DSD-not present
Linda Lugano, Recorder-present

ITEM-1: ANNOUNCEMENTS/PUBLIC COMMENT - ISSUES WITHIN THE JURISDICTION OF THE COMMISSION NOT PREVIOUSLY HEARD.

Request by Carolyn Chase regarding the draft EIR ZCU. Requested that the City issue a side-by-side comparison of the current RPO vs. what the proposed changes are going to be. This was referred to the ZCU staff for a response.

ITEM-2: REQUESTS FOR CONTINUANCE FOR MORNING AGENDA ITEMS.

None.

ITEM-3: DIRECTOR'S REPORT.

None.

ITEM 3A: COMMISSION COMMENT.

None.

ITEM-4: APPROVAL OF THE MINUTES OF JANUARY 16, 1997.

COMMISSION ACTION:

MOTION BY QUINN TO APPROVE THE MINUTES OF JANUARY 16, 1997. Second by Watson. Passed by a 5-0 vote with Chairperson Neils and Commissioner White not present.

ITEM-5: MULTIPLE SPECIES CONSERVATION PROGRAM (MSCP) - CONDITIONAL APPROVAL OF MSCP PLAN, MSCP SUBAREA PLAN AND IMPLEMENTING POLICIES AND AGREEMENTS.

Tom Story and Meryl Balko presented Report to the Planning Commission No. P-97-017.

Testimony in favor:

Michael Beck, Endangered Habitats League. Spoke to the issues on a "program" level, not necessarily the MSCP for the City level, but the subregional MSCP program. These issues were: consistency with the conservation guidelines; program level mitigation monitoring measures;

additional guidance for the framework management plans; and the extent of infrastructure impacts and the environmental review for those.

Ann Harvey, Carmel Valley Community Planning Board, Oliver Ryder, Geneticist at the San Diego Zoo; Isabelle Kay, Carmel Mountain Conservancy; and Eric Bowlby, Surf Rider Foundation; organized presentation on Neighborhood 8A. Spoke to the issue of Neighborhood 8A and new land use plan. The exclusion of all or most of 8A from the MSCP Preserve is unacceptable; the development proposed for 8A is identical to that of the 1995 Manager/Pardee Compromise Plan which has not been approved; concern with the far-reaching land use regulation changes the MSCP proposes by environmentally sensitive lands regulations. The MSCP reduces the importance of community open space, and concern about the ability to review future projects on their own merits.

Jim Peugh, Janet Anderson, San Diego Audubon; presentation on Wetlands. Spoke to the Wetlands issue. Stated that there has been a very high loss of wetlands in San Diego in the past due to dredging and development. They are now in support of trying to preserve the wetlands remaining. The current RPO definitions and subsequent protection has been superior to the proposed Federal and State regulations in the proposed MSCP document. They appreciate the wetlands preservation that they now enjoy, using that RPO, and they hope that the MSCP could come up to that standard to preserve the current RPO definition.

Gerri Stryker, Chair CPC; Jan Fuchs, CPC Sub-Committee; Craig Adams, Sierra Club. Spoke to the Open Space Element of the General Plan and as well as the Environmentally Sensitive Lands Regulations. They asked the Commission for their support in their efforts to reach the goal of protecting non-MSCP open space lands throughout the City of San Diego.

Mike Kelly, Kevin Crooks, Allison Rolf, Jim Whalen, Craig Benedetto, Laurie McKinley, Rikki Alberson, Alliance for Habitat Conservation and the Building Industry Association. They have identified the following eleven unresolved issues: Wetlands permitting; Maintenance and management obligations; local funding; Ambiguous program requirements; "habitat accounting Model" (HAM) Methodology; permit transferability; program EIR/EIS; "No surprises" lawsuit; third party beneficiary status; grasslands mitigation without coverage; response to comments on ESL/BIO guidelines . They feel great progress has been

made on this issue but feel more work needs to be done. They would like to assist in whatever way possible to make certain that the MSCP works for all concerned.

Opal Trueblood, representing herself. Advised she is in favor with conditions. One concern has to do with the open space issue. New community plans have come into play and most of these plans have listed open space areas. Most of these are not within the MSCP. They are open space areas not contiguous with MSCP, but they are needed. Her other concern is the brush management buffer is within the boundaries.

Gail MacLeod, MacLeod Consulting Services, David Phifer. Spoke on behalf of Black Mountain Ranch. Asked for clarification regarding the creation of third party beneficiary status and submitted her own language which she felt will assure property owners that they will not be held responsible for biological value changes from fire, drought, flood, species mitigation, etc, and protect the designated mitigation land from impacts caused by humans and machines.

Michael Liebhaber, Phil Whalling, Carmel Mountain Conservancy. Formally offered their plan they have developed as an alternative to the plans for Neighborhood 8A that currently exist. This plan has the support of the community. Requested that the Commission pass this on to the Council for their inclusion in the MSCP plan.

Kathleen McIntosh, League of Women Voters. The league supports the concept of the MSCP; they believe local government should plan for the preservation of open space and that land use decisions should relate to and protect the overall quality of the environment. They are concerned about mitigation ratios, protection of wetlands, linkage problems and edge effects, concerns about specific species; alignment of Route 56 and the lines for Neighborhood 8A; and more importantly, the impact on existing communities.

Thomas Schoene, representing Loma Sorrento Investors. Discussed Neighborhood 8A and how it relates to their land; they reserve the right to challenge the MSCP in the event the gnatcatcher currently listed as threatened is not longer threatened; discussed the inclusion of a portion of their property so called "preserve" and they reserve the right to challenge the mitigation formulas. Please assure that the MSCP brings fairness for all and does not lead to additional opportunity for abuse.

Gail Kobetich, U.S. Fish & Wildlife Service. The Fish & Wildlife Service commends the efforts of the City and the other participating jurisdictions for recognizing the need for a comprehensive conservation plan to address the region's unique resources and for moving forward to complete the process. This process imposes no new state or federal laws or regulations, but offers methods to streamline compliance with these existing authorities.

Ron Rempel, California Department of Fish & Game. The MSCP and subarea plan is the most far reaching program in trying to integrate endangered species permitting with community planning, and work with the local jurisdictions to let them move forward in looking at their own planning procedures and for them to hand over previous issues to the local jurisdictions, trying to simplify the process for development and also to improve the amount of conservation that will occur in the future.

David Phifer, representing himself. Addressed several issues common to Habitat Conservation Programs being developed in Southern California and San Diego County in particular.

Testimony in opposition:

Lynne Heidel; Bruce Warren, San Diego County Rock Producers Association. Advised that the SD County Rock Producers Association must oppose adoption of the MSCP because it does not accommodate Mineral Extraction. The underlying problem is that it protects endangered species while partially ignoring important and essential resources. The EIR is flawed because it concludes that the MSCP has no significant impacts on mineral extraction. In the absence of the State mandated Mineral Resource Management Plan, there is insufficient data to make such findings.

Joanne Pearson, representing herself. In opposition not to the MSCP, but expressed her concern that the way this project has been brought forward looks as though it will compromise the ultimate acceptability of this project by the public. How do you regulate both the MSCP preserve and the City through one set of city-wide guidelines.

Richard Miller, disabled community. Discussed the issue of including off-highway vehicles in areas referred to as "preserves". It would seem

that it's okay for horseback riders, bikers, etc., to tramp through very sensitive land, but then make the statement that the off-roaders are the ones that tear up the land and make it unfit for animals.

Arthur Schmitz, Citizens For Private Property Rights. It seems that everyone is against this program except Fish & Game. The real issue is whether the people have a say about the local environment or adhere to the U. S. Constitutional Rights.

Jan Fuchs, Carmel Valley Community Planning Board. Summarized their letter dated January 14, 1997. Does the current MSCP plan meet the stated goal of the August 1996 executive summary. A major flaw in the process is that the undertaking was done by a working group that excluded community planning boards. Now these boards are being asked to review complicated and lengthy documents. The plan does not explain the real effects of sufficiently covered or significantly covered natural communities.

Irene Brandt, Bernie Brandt, Jack Gibson, Darrell Beck, representing Citizens for Private Property Rights. It is maintained that the U.S. Fish & Wildlife Services uses the best available scientific evidence. She feels that much of this evidence is deceptive at worst. This plan is a big "rip off" in this country. Zoning regulations are contrived with the premeditated objective to take away private property use without compensation and this is extortion. Feels this whole program is supporting theft to steal people's property.

Carolyn Chase, Earth Media, Inc. Californians for Quality of Life. Their interests are in the conservation of infrastructure to implement smart growth in a region that supports and protects the quality of life. They have not taken a position on the plan but if it was the plan they would oppose it as it stands. Issue they are concerned about is the small land owners and what exactly is the number of acreage.

Herman Schneider, John Elliott, National Off-Road Coalition. San Diego claims to have the most endangered species in the U.S. yet every other City makes this same statement. They understand that if they mitigate at a ratio of five to one acres, they can have land for motorized use. Motorized use does not destroy habitat when it is properly managed. This plan must address this issue. This plan's overall management guidelines states that off road vehicle use is incompatible within the preserve. This conflicts with the County's subarea plan and existing uses.

Linda Wall, representing herself. Property owner on Otay Mesa. She is opposed to the MSCP plan as unconstitutional and discriminatory against vacant land owners.

Bertha McKinley, representing California Native Plant Society. They have been involved with the MSCP process since the beginning as an advisory group. They feel there are continuous flaws in the plan in particular to the protection of plants. Addressed areas where the Commission could provide a remedy in their recommendations.

Ron Perez, representing himself. Property owner on the edge of a preserve, and that property is up for rezoning. Part of his disagreement with the MSCP is that he doesn't know how he will be affected. If the property he owns is going to be sold from him with no recourse.

Ted Griswald, representing Jack Ingber, General Partner to Torrey Pines Investment Group. Property owners in 8A. Addressed the issue of the fact that TPIG property is not to be set aside as open space unless the City is willing to purchase the property for such purpose; TPIG is currently in litigation with the City regarding previous attempts to designate the property as open space without compensation. TPIG has requested from the City a clear statement in writing of its intentions regarding this property.

Eric Anderson, President Farm Bureau. Spoke to their remaining concerns with the EIR. This plan contends that it will not cause premature conversion of AG lands. In reality it will. Spoke to incidental take for agriculture. The language has been clarified - actual incidental take coverage is for subareas. The coverage must occur when the subarea enrolls in the MSCP plan, not at their option. They are asking for these assurances and the EIR doesn't assure them that they have this protection.

Philip Zoebisch, representing himself. He is against the entire project. What percent of San Diego County should be government owned. Either 55, 62%, etc. Maine and Vermont are 1% government owned. While most of the world is privatizing government assets and services, we in San Diego are taking land off the property tax rolls. To compensate we must either increase other taxes to make up for the loss, or decrease services, like schools.

Public testimony was closed.

COMMISSION ACTION:

MOTION BY WATSON TO RECOMMEND THE FOLLOWING TO THE CITY COUNCIL:

1. NEIGHBORHOOD 8A: THAT THE MAP THAT IS CURRENTLY ATTACHED AS AN EXHIBIT TO THE STAFF REPORT, WOULD DELINEATE OPEN SPACE AND POSSIBLE FUTURE DEVELOPMENT AREA, AND WOULD INCLUDE A LEGEND THAT STATES THE LINE REPRESENTS WORSE CASE FOR BIOLOGICAL IMPACTS, AND THAT FUTURE DEVELOPMENT WOULD PROCEED IN ACCORDANCE WITH THE PRECISE PLAN AND GENERAL PLAN APPROVED BY THE CITY COUNCIL, AND WILL BE ANALYZED IN ACCORDANCE WITH SOUND, BIOLOGICAL, ENVIRONMENTAL CRITERIA. Second by White. Passed by a 6-0 vote with Chairperson Neils not present.

2. WETLANDS: MOTION BY QUINN TO RECOMMEND CONCEPTUALLY TO MAINTAIN THE CURRENT DEFINITION OF WETLANDS AND THE REQUIREMENT FOR BUFFERS IN OUR WETLAND REGULATIONS. Second by White. Passed by a 4-2 vote with Commissioners Butler and Watson voting nay and Chairperson Neils not present.

3. MOTION BY BUTLER TO BUFFERS: RECOMMEND THAT THE CONCEPT OF BUFFERS BE ADDED TO THE LAND USE ADJACENCY GUIDELINES ~~EMPHASIZING~~ THE USE OF BUFFERS, AS APPROPRIATE TO ACHIEVE PROTECTION OF THE VIABILITY OF THE ADJACENT SENSITIVE HABITAT. Second by Quinn. Passed by a 6-0 vote with Chairperson Neils not present.

4. MOTION BY QUINN TO -- COMMUNITY OPEN SPACE AND CPC RECOMMENDATION: SUPPORT THE CONCERNS EXPRESSED IN CPC'S LETTER OF JANUARY 30, 1997 REGARDING CONTINUED CONSERVATION OF COMMUNITY WIDE, NON-MSCP OPEN SPACE, SUPPORTING THE NEED TO CONTINUE TO CONSERVE NON-MSCP OPEN SPACE AND SUPPORTING THE SPECIFIC RECOMMENDATION OF CPC. Second by Skorepa. Passed by a 4-2 vote with Vice-Chairperson Anderson and Commissioner Watson voting nay and Chairperson Neils not present.

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ADDING

5. SR-56. MOTION BY WATSON TO RECOMMEND ADOPTION OF THE SIERRA CLUB'S RECOMMENDATION REGARDING ROUTE 56, REFERRING TO THE ALIGNMENTS IN THE SAME MANNER AS FOR 125 WITHOUT A SPECIFIC ALIGNMENT RECOMMENDED IN THE EIR. Second by Quinn. Passed by a 6-0 vote with Chairperson Neils not present.

6. NARROW ENDEMICS LIST: MOTION BY QUINN TO ADD THE TWO SPECIES RECOMMENDED BY THE CALIFORNIA NATIVE PLANT SOCIETY TO THE NATIVE ENDEMIC SPECIES LIST. Second by White. Passed by a 6-0 vote with Chairperson Neils not present.

7. SMALL PROPERTY OWNERS: ~~MOTION BY BUTLER TO REQUEST STAFF CONVEY THAT THE PLANNING COMMISSION FELT THAT THE MSCP HAD SUFFICIENT FLEXIBILITY TO ADDRESS SMALL PROPERTY OWNERS IN THE MHPA.~~
 STAFF WAS DIRECTED TO

8. MAINTENANCE OF LANDS: MOTION BY WATSON TO RECOMMEND THAT BIA LANGUAGE BE ADDED TO IA IN THIRD PARTY BENEFICIARY SECTION TO ENSURE THAT THE CITY WILL ACCEPT LANDS IF OFFERED FOR DEDICATION SO THAT PRIVATE OWNERS WILL NOT NEED TO PAY FOR MAINTENANCE OF HABITAT LANDS. No Second.

9. FINANCING: MOTION BY BUTLER TO BROADEN THE REFERENCE TO THE SAFE HARBOR PROVISION FROM THE CURRENT REFERENCE FOR USING THE PROVISION IN AGRICULTURE, AND ADDING THAT THE MSCP SHOULD SEEK OTHER CREATIVE INCENTIVES FOR CONSERVATION. Second by White. Passed by a 6-0 vote with Chairperson Neils not present.

10. EAST ELLIOTT: MOTION BY SKOREPA TO SHOW BOTH LAND USE ALTERNATIVES DESCRIBED IN THE MSCP AND EIR FOR EAST ELLIOTT IN THE EAST ELLIOTT COMMUNITY PLAN AMENDMENT BEING PROPOSED TO IMPLEMENT THE MSCP. Second by Watson. Passed by a 6-0 vote with Chairperson Neils not present.

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 L. Lugano

11. OFF-ROAD VEHICLES: STAFF WAS DIRECTED TO CONTACT THE REPRESENTATIVES WHO WERE AT THIS HEARING AND OFFER TO MEET WITH THEM TO DISCUSS THEIR CONCERNS FURTHER BEFORE THE MSCP GOES TO COUNCIL.
- 12., IMPACTS FROM NATURAL CAUSES: PER GAIL MacLEOD'S LETTER, RON REMPEL SAID THE WILDLIFE AGENCIES WILL WORK WITH THEIR SOLICITORS TO DEVELOP THE CORRECT LANGUAGE TO REFLECT THAT DEVELOPERS WILL NOT BE RESPONSIBLE FOR ACTS OF GOD (IA TO BE REVISED).
13. LAND USE FINDING OF EIR: MOTION BY BUTLER TO DIRECT STAFF TO REANALYZE THE FINDING THAT THERE IS NO SIGNIFICANT IMPACT OF THE MSCP ON LAND USE AND EITHER FIND THAT THERE IS A SIGNIFICANT IMPACT OR ADD FACTS TO SUPPORT THE EXISTING FINDING. Second by Watson. Passed by a 6-0 vote with Chairperson Neils not present.
14. MSCP PLAN: MOTION BY WATSON TO RECOMMEND APPROVAL OF THE MANAGER'S RECOMMENDATION WITH MODIFICATIONS AS MADE BY THE PLANNING COMMISSION. Second by White. Passed by a 6-0 vote with Chairperson Neils not present.

The Planning Commission meeting was adjourned by Vice-Chairperson Anderson at 5:48 p.m.