



THE CITY OF SAN DIEGO

Report to the Planning Commission

DATE ISSUED: October 12, 2017

REPORT NO. PC-17-085

HEARING DATE: October 19, 2017

SUBJECT: CITY OF SAN DIEGO VERNAL POOL HABITAT CONSERVATION PLAN. Process Five Decision

PROJECT NUMBER: 441044

OWNER/APPLICANT: City of San Diego Planning Department

Requested Action: Recommend to the City Council approval of the City's Vernal Pool Habitat Conservation Plan (VPHCP) and associated actions.

Staff Recommendation(s): Staff recommends that the Planning Commission forward the Final VPHCP, Environmental Impact Report / Environmental Impact Statement (EIR/EIS), Vernal Pool Management and Monitoring Plan (VPMMP), and associated implementation actions to City Council with a recommendation of approval based on the information contained in this report and the evidence offered as the part of the public hearing; specifically,

1. **RECOMMEND** certification of the Final EIR/EIS SCH No. 2011111075 and adoption of the Findings and Mitigation, Monitoring and Reporting Program (MMRP); and
2. **RECOMMEND** approval and adoption of the VPHCP and VPMMP, including implementation funding mechanisms and sources; and
3. **RECOMMEND** approval of an amendment to the General Plan to add policies related to VPHCP and revisions of the MHPA discussion/maps to include expanded boundaries; and
4. **RECOMMEND** approval of an amendment to the Otay Mesa Community Plan to revise land use maps to include expanded MHPA boundaries and revise policies related to the protection, preservation, and long-term management of vernal pool resources; and
5. **RECOMMEND** approval of an amendment to the Kearny Mesa Community Plan to revise land use maps to include expanded MHPA boundaries and add policies related to the protection, preservation, and long-term management of vernal pool resources; and

6. **RECOMMEND** approval of an ordinance amending the Chapter 14, Division 1: Environmentally Sensitive Lands Regulation, Land Development Manual's Biology Guidelines, and Local Coastal Program to implement the VPHCP; and
7. **RECOMMEND** approval of the MHPA Boundary Line Adjustment for Montgomery-Gibbs Executive Airport.

BACKGROUND

Vernal pools are seasonal, depression-type pools of water that provide habitat for distinctive plants and animals. Considered to be a form of temporary wetland, vernal pools are usually devoid of fish, which allows the safe development of amphibian and insect species that are unable to withstand predation by fish. Given their value to the ecosystem and their dwindling numbers, seven threatened and endangered species¹ typically found in vernal pools are protected under state and federal regulations.

In response to a lawsuit (*Southwest Center for Biological Diversity v. Bartel* [Case No. 98-CV-2234-B(JMA)]), the Ninth Circuit Courts of Appeals issued an injunction in 2006 prohibiting the City from permitting projects that would impact vernal pools (more specifically, the seven protected species). Following several years of mediation, the City in 2010 relinquished federal coverage of the vernal pool species (R-305685) under the City's adopted Multiple Species Conservation Program (MSCP) in order to develop a more comprehensive strategy for protecting the species. The comprehensive strategy is referred to as the *Vernal Pool Habitat Conservation Program* (VPHCP).

The VPHCP was developed in close coordination with the U.S. Fish and Wildlife Service (USFWS), as well as the California Department of Fish and Wildlife (CDFW) to address the concerns detailed in the lawsuit and to be consistent with the USFWS Recovery Plan (1998) for Vernal Pools of Southern California. CDFW is required to make a consistency finding with the City's MSCP to maintain state coverage for vernal pool habitat and the seven covered vernal pool species addressed in the VPHCP.

DISCUSSION

Project Description:

The purpose of the Vernal Pool Habitat Conservation Program (VPHCP) is to provide an effective framework to protect, enhance, and restore vernal pool resources within the City's jurisdiction, while improving and streamlining the environmental and permitting process for impacts to seven (7) threatened and endangered species associated with vernal pools (i.e., the covered species).

Once fully implemented, the VPHCP will provide protection for the covered species by adding approximately 275 acres of lands with valuable vernal pools resource to the City's existing Multi-Habitat Planning Area (MHPA). The VPHCP Plan Area's extent is, by design, the same area covered by the City's MSCP Subarea Plan; however, the VPHCP is a separate but complementary

¹ Otay Mesa mint, San Diego Mesa mint, Spreading navarretia, San Diego button-celery, California Orcutt grass, Riverside fairy shrimp and San Diego fairy shrimp

conservation plan for vernal pools and the seven species not covered under the City's federal permit for the MSCP Subarea Plan.

Once developed, the VPHCP will provide funded management strategies, directives, and recommendations for covered lands containing vernal pools within the City's jurisdiction, to preserve and restore their physical function and biotic components, and promote the recovery of the seven covered species. Additionally, the VPHCP would provide the City with federal coverage and allow the City to obtain a federal Incidental Take Permit (ITP) for the covered species, which will allow the City to issue permits for public and private development projects that impact certain vernal pools based on consistency with the VPHCP.

This Program also includes the VPHCP Vernal Pool Management and Monitoring Plan (VPMMP), which outlines the management and monitoring requirements to implement the VPHCP.

Associated with the adoption of the VPHCP are amendments to the following:

- General Plan
- Kearny Mesa Community Plan
- Otay Mesa Community Plan
- Biology Guidelines (Municipal Code – Land Development Code)
- Environmentally Sensitive Lands (ESL) Regulations (Municipal Code – Land Development Code)
- City's existing state Natural Community Conservation Plan (NCCP) MSCP permits
- Local Coastal Program

Project-Related Issues:

The Kearny Mesa Planning Group's motion (see below) reflects their concern over a potential conflict with their community's interest in adding recreational uses on or around Montgomery-Gibbs Executive Airport. This issue is not dependent on approval of the VPHCP; the VPHCP does not add any new restrictions or regulations on development. The Planning Department under the Community Plan Update process will continue to work with the community to provide adequate pedestrian connections adjacent to public rights-of-way in the vicinity of the airport.

Conclusion:

The lands within the VPHCP Plan Area contain valuable vernal pool resources. The VPHCP would preserve the network of vernal pool habitat within this matrix of open space; protect the biodiversity of these unique wetlands; and define a formal strategy for the long-term conservation, management, and monitoring of vernal pools and associated species. The development of the VPHCP included the valuable input of wildlife agencies, community organizations, and stakeholders. The VPHCP offers many benefits, as summarized in the table below.

Program Benefits

WITHOUT THE VPHCP	WITH THE VPHCP
Wildlife Agency permit (Section 7 or 10a) required, which often adds months/years & significant cost to entitlement process.	Incidental Take Permit would allow the City to concurrently issue permits on behalf of the Wildlife Agency, which streamlines permit process.
No adopted long-term vernal pool management and monitoring program.	Establishes a funded approach to preserve, manage, and monitor vernal pools.
No preserve strategy, which leads to the preservation of isolated, low quality pools in 'postage stamp' preserve areas.	Regional preserve strategy, which allows impacts to lower quality pools in exchange for preservation & restoration of higher value pool resources.
Impacts to vernal pools are negotiated on a case-by-case basis (mitigation ratios for endangered fairy shrimp often vary from 3:1 to as high as 5:1.	Established mitigation ratios --- 2:1 for pools with endangered fairy shrimp; 3:1 for SD button celery; 4:1 for remaining threatened and endangered species.
Wetland deviation (Process 4/Planning Commission) required for any impacts to vernal pools inside and outside of the MHPA.	Wetland deviation not required for impacts outside of the MHPA (Process 3/Hearing Officer).
Lack strategy for "road pools" with endangered fairy shrimp.	Covered in the VPHCP and City's Incidental Take Permit.
No timelines for Wildlife Agencies' review of Vernal Pool Restoration/Enhancement Plans, which can be time consuming.	Wildlife Agencies shall have 30 days to review and provide written comments. Failure to timely comply shall result in approval of the plan.

Environmental Review:

A joint Program Environmental Impact Report (PEIR)/Environmental Impact Statement (EIS) Project No. 441044/SCH No. 2011111075, has been prepared for the Vernal Pool Habitat Conservation Plan and Associated Implementing Actions in accordance with the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA). (Attachment 2).

Based on the analysis presented in the EIR/EIS, implementation of the VPHCP and associated actions would result in significant direct and cumulative impacts that can be reduced to below a level of significance with the incorporation of mitigation for Historical Resources (including Historic Properties, Archaeology, and Tribal Cultural Resources). Although no historic buildings were identified within any of the vernal pool complexes, six (6) recorded archaeological resources overlap with vernal pool complexes that have restoration potential. As such, there is a potential to impact to

Historical Resources (including historic properties, archaeological sites, tribal cultural resources or human remains) during ground-disturbing activities related to restoration undertaken as part of the VPHCP (i.e., topographical recontouring) or in areas where covered activities will occur, and therefore, implementation of mitigation as further described in the MMRP will be required. No significant and unavoidable impacts were identified. The following issue areas would result in impacts that are below a level of significance without the incorporation of mitigation: Land Use, Biological Resources, Air Quality, Greenhouse Gases, Hydrology and Water Quality, and Environmental Justice. The Project would not result in a cumulatively considerable contribution to a long-term direct or indirect cumulatively considerable adverse impact related to Land Use, Biological Resources, Air Quality, Greenhouse Gas Emissions, Hydrology and Water Quality, and Environmental Justice.

The joint Draft Program Environmental Impact Report (Draft PEIR/EIS) was released on September 30, 2016 for a 60-day public review which ended on December 1, 2016. Comment letters were received from a variety of stakeholders including local, state and federal agencies, as well as local environmental and tribal groups or individuals. The PEIR/EIS was finalized by the City on September 29, 2017. Responses to comments received during public review for both CEQA and NEPA are included in the Final PEIR/EIS. The Final PEIR/EIS concludes that implementation of the VPHCP would result in significant impacts to Historical Resources (including Historic Properties, Archaeological, and Tribal Cultural Resources) and as such, requires adoption of a Mitigation, Monitoring and Reporting Program (MMRP) and Mitigation Framework, which when implemented would reduce potential impacts to below a level of significance.

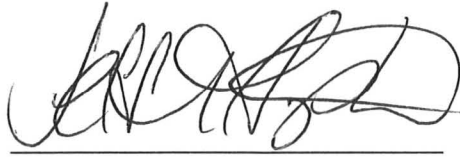
Fiscal Impact Statement:

A detailed programmatic cost analysis for implementing the VPHCP over the life of the program (assumed 31 years) totals \$12,751,938.00 for the City. This total includes one-time costs for the City to restore and enhance vernal pools within the Preserve area, and annual ongoing costs for management and monitoring. Several funding sources will be applied, in part or entirely, toward funding this program: Environmental Growth Fund, General Fund, Enterprise Fund, and Special Funds. More information regarding the funding mechanism is found in Chapter 10 of the VPHCP.

Community Planning Group Recommendation:

On December 14, 2016, the Otay Mesa Community Planning Group voted 12-0-1 to approve the VPHCP. On August 16, 2017, the Kearny Mesa Community Planning Group voted 6-1-3 to not recommend approval (*"The Planning Group will NOT enter a recommendation of support because the Community Plan Update is underway, and we are not certain if the current vernal pool identification and mapping at Gibbs Field by City Planning and City Airport management will forever preclude bicycle, pedestrian, and other recreational uses on or around Gibbs Field."*).

Respectfully submitted,



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JM/KNR

Attachments:

1. Final Vernal Pool Habitat Conservation Plan (September 2017)
2. Final VPHCP Environmental Impact Report/Environmental Impact Statement (September 2017)
3. Vernal Pool Management and Monitoring Plan (September 2017)
4. General Plan Amendment
5. Otay Mesa Community Plan Amendment
6. Kearny Mesa Community Plan Amendment
7. Land Development Code Amendment
8. LDM Biology Guidelines Amendment
9. MHPA Boundary Line Adjustment for Montgomery-Gibbs Executive Airport

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