

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.

R. D. BROWN & CO
1850 WILLOWHAVEN RD
ENCINITAS, CA 92024

**DRAFT
Habitat Loss Permit**

APPLICATION NUMBER: HLP xx-xxx, ER 06-19-004X

ASSOCIATED PERMIT(S): TM5484; ER 06-19-004; Potrero Valley

NAME OF APPLICANT: R. D. BROWN & CO

DESCRIPTION/LOCATION OF LOSS:

The proposed project will remove a total of 8.3 acres of Buckwheat scrub associated with the Tentative Map 5484 as shown on the attached Habitat Loss Exhibit dated **XXX**.

The site is 73.5 acres and the project proposes the development of 8 single-family residences. The project is located east of Potrero Valley Road approximately 0.25 miles north of Highway 94, in Mountain Empire Community Planning Area, within the unincorporated portion of San Diego County. (APN# 654-020-65) Thomas Brothers Guide Page 429, Grid L/10. The project location is indicated on the attached USGS map.

The proposed project will allow removal of habitat for the construction of 7 future residences with one residence existing are to remain on the property. Proposed earthwork involves **17,300 yd³ of cut and 17,300 yd³ of fill.**

Biological Resources were evaluated by Jones and Stokes (September 2008). The site primarily consists of 24.3 acres of buckwheat scrub, 0.7 acres of coast live oak woodland, 22.4 acres of chamise chaparral, 14.4 acres of non-native grassland, and 11.7 acres of disturbed/developed land (Table 1). There is one (1) sensitive plant species observed onsite: sticky geranium (*geranium viscidum*), and four (4) sensitive wildlife species observed on site: red-shouldered hawk (*Buteo lineatus*), turkey vulture (*Cathartes aura*), southern mule deer (*Odocoileus hemionus*), and western bluebird (*Sialia mexicana*). Protocol Quino surveys were conducted in March and April of 2005 and 2007 with negative results.

The project will impact approximately half of the site (36.3 acres) through the construction of roads, houses, and fire-clearing associated with residential development. To mitigate for direct impacts the project is proposing a 37.2 acre biological open space easement. Impacts to buckwheat scrub are to be mitigated at a 2:1 ratio, and impacts to non native grassland and chamise chaparral are to be mitigated at a 0.5:1 ratio. In addition to the ratios above the project has proposed dedicating an additional 10.8 acres of chamise chaparral into biological open space. The biological open space will consist of the following habitat: 16 acres of buckwheat scrub, 0.7 acres of coast live oak woodland, 18.6 acres of chamise chaparral, 0.8 acres of non-native grassland, and 0.11 acres of disturbed/developed land. There will be out of kind mitigation for 6 acres of non native grassland and 0.6 acres of buckwheat scrub with chamise chaparral onsite. The chaparral provides similar function and value due to the fact that the site has been previously disturbed from agriculture operations allowing for non native grassland to take hold. The chaparral on site is also has an open canopy with well developed understory allowing for similar functions. The large onsite open space at these ratios adjacent to undeveloped land will provide biologically viable areas that support candidate, sensitive, or special status species.

To prevent edge effects to the proposed biological open space easement, the project is proposing a limited building zone adjacent to the open space. To protect sensitive species after construction, permanent fencing and signage will be constructed at the interface between the preserved habitat and residential development.

The Buckwheat scrub habitat is considered to be of Low Quality as determined by the criteria established under the Natural Community Conservation Planning (NCCP) Logic Flow Chart. Mitigation ratios and onsite mitigation acreages are listed in Table 1. All impacts associated with the development of the Potrero Valley property have been mitigated 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 Type	Total Acreage On Site	Total Impacts (Acres)	Proposed Mitigation Ratio	Mitigation Acreage Needed	Proposed Biological Open Space	Difference (Needed vs. Proposed)
Buckwheat Scrub	21.6	5.6	2:1	16.6	16	-0.6
Disturbed Buckwheat Scrub	2.7	2.7				
Coast Live Oak Woodland	0.7	0.0	3:1	0.0	0.7	0.7
Chamise Chaparral	15.4	1.9	0.5:1	1.9	18.6	16.7
Disturbed Chamise Chaparral	7.0	1.9				
Non-Native Grassland	14.4	13.6	0.5:1	6.8	0.8	-6.0
Disturbed Habitat	3.9	3.2	None	None	0.7	N/A
Developed Lands	7.8	7.4	None	None	0.3	N/A
Total	73.5	36.3	N/A	25.3	37.1	10.8 acre excess

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 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 TM 5484. 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.

- C. The following conditions shall be complied with before a Final Map is approved by the Board of Supervisors and filed with the County Recorder of San Diego County (and, where specifically, indicated, shall also be complied with prior to issuance of grading or other permits as specified):
 1. The grading, and or improvement plans, shall indicate permanent fences or walls along the open space boundary of lots 4-8 as shown on the Open Space Fencing and Signage Plan dated **November 24, 2008** on file with the Department of Planning and Land Use as Environmental Review Number 06-19-004.
 - 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.

2. The grading, and or improvement plans shall indicate open space signs along the open space boundary of lots 4-8 as shown on the Open Space Fencing and Signage Plan dated **November 24, 2008** on file with the Department of Planning and Land Use as Environmental Review Number 06-19-004.
 - 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:06-19-004"
3. "Restrict all brushing, clearing and/or grading such that none will be allowed within 300 feet of nesting habitat during the breeding season of raptor and migratory birds. This is defined as occurring between February 1 and August 31. 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 nests are present in the vicinity of the brushing, clearing or grading."
4. Prior to any grading, clearing, or construction activities and, prior to the preconstruction conference, provide evidence to the satisfaction of the Director of Planning and Land Use, that the following "Agency Permits" have been obtained, or evidence that such permits are not required:
 1. "Provide the Director of Planning and Land Use with a copy of a Clean Water Act, Section 401/404 permit issued by the California Regional Water Quality Control Board and the U.S. Army Corps of Engineers for all project related disturbances of waters of the U.S. and/or associated wetlands or provide evidence satisfactory to the Director of Planning and Land Use that such permit is not required."
 2. "Provide the Director of Planning and Land Use with a copy of a Streambed Alteration Agreement issued by the California Department of Fish and Game for all project related disturbances of any streambed or provide evidence satisfactory to the Director of Planning and Land Use that such an agreement is not required."

5. “Prior to the conclusion of grading activities and Final Grading Release, 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 placed along the biological open space boundary of lots 4-8 as shown on these plans and the Open Space Fencing and Signage Plan dated November 24, 2008 on file with the Department of Planning and Land Use as Environmental Review Number 06-19-004.
 1. 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.
 2. 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:06-19-004”

FINAL MAP RECORDATION

Final Map requirements shall be shown on the Final Map or otherwise accomplished to the satisfaction of the Director of Public Works prior to submittal for approval by the Board of Supervisors:

6. Prior to approval of grading and/or improvement plans, and prior to approval of the Final Map 5484, the applicant shall grant to the County of San Diego by separate document, an open space easement as shown on the Open Space Exhibit dated **November 24, 2008** on file with the Department of Planning and Land Use as Environmental Review Number 06-19-004. 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.

The sole exception(s) to this prohibition is:

1. 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.
 2. 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.
 3. Uses, activities, and placement of structures expressly permitted by the Director of Planning and Land Use, whose permission may be given only after following the procedures and complying with all requirements applicable to an Administrative Permit pursuant to The Zoning Ordinance of the County of San Diego.
7. Prior to approval of grading and/or improvement plans, and prior to approval of the Final Map 5484, Grant by separate document to the County of San Diego a Limited Building Zone Easement as shown on the Open Space Exhibit dated **November 24, 2008** on file with the Department of Planning and Land Use as Environmental Review Number 06-19-004. 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:
1. 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.
 2. Decking, fences, and similar facilities.
 3. 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.

ENVIRONMENTAL FINDINGS:

A. CEQA Findings

TO BE PROVIDED

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 8.3 acres of buckwheat scrub and no pairs of California gnatcatcher (*Polioptia californica*). Approved coastal sage scrub losses as of the date of December 3, 2008 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:	2953.30 acres
Cumulative loss of Coastal sage scrub to date:	1113.98 acres
Net loss due to this project:	8.3 acres
Total cumulative loss:	1122.28 acres
Remaining loss under five percent guideline:	1831.02 acres

Therefore, the habitat loss due to this project does not exceed the five percent guideline.

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

The 8.3 acres of buckwheat scrub onsite is of low value as outlined by the flow chart in the NCCP Guidelines. Of the 8.3 acres there is 2.7 acres of disturbed buckwheat scrub that will be directly impacted. Loss of this habitat will not preclude connectivity between areas of high habitat values, because lands to the west, north and south are impacted by existing residential development. A large area of undeveloped land with high habitat values is located on the eastern side of the project site. To avoid impacts the project site is dedicating a 37.2 acre biological open space easement and limited building zone adjacent to this

undeveloped land. To protect sensitive species after construction, permanent fencing and signage will be constructed at the interface between the preserved habitat and residential development. Therefore the project impacts are not considered within a wildlife linkage or corridor. For these reasons, the habitat loss associated with the project will not preclude connectivity between areas of high habitat values.

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

Development of this site would not foreclose on the ability to create a viable preserve in the subarea and subregion. The 37.2 acre proposed open space easement would contribute to the preservation of buckwheat scrub in the region. The 8.3 acres that are impacted includes 2.7 acres of disturbed buckwheat scrub that are proposed for development would not be suitable for long-term preservation due to existing uses and surrounding existing development. In addition no CSS was identified for conservation on Attachment B of the Process Guidelines in this region. No California gnatcatchers were found onsite as this area is outside the species range. One sensitive plant species, sticky geranium was observed onsite. Four sensitive wildlife species were noted on site: red-shouldered hawk (*Buteo lineatus*), turkey vulture (*Cathartes aura*), southern mule deer (*Odocoileus hemionus*), and western bluebird (*Sialia mexicana*). The proposed 37.2 acre open space is located on the eastern portion of the site adjacent to undeveloped land known to support the sensitive species found onsite. The area proposed for development and 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.

There is 24.3 acres of buckwheat scrub and only 8.3 acres of buckwheat scrub habitat on the project site will be impacted by the project. The habitat is considered of "low" value, pursuant to the NCCP Logic Flow Chart. Due to the number of sensitive species and adjacency to undeveloped land preservation of on site habitat was ideal. The project is preserving 37.2 acres of open space which is 10.6 acres in excess than required. The project will also be implementing a 100 ft limited building zone adjacent to the open space. To protect sensitive species after construction, permanent fencing and signage will be constructed at the interface between the preserved habitat and residential development. To prevent impacts to nesting birds, no brushing, clearing, and/or grading will be allowed within 300 feet of buckwheat scrub and/or coast live oak woodland habitat during the avian breeding season.

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

No Protocol California gnatcatcher surveys were performed as this is outside the species range. Protocol Quino surveys were conducted in March and April of 2005 and 2007 with negative results. Site assessments did find one sensitive plant species, sticky geraea and four sensitive wildlife species: red-shouldered hawk (*Buteo lineatus*), turkey vulture (*Cathartes aura*), southern mule deer (*Odocoileus hemionus*), and western blubird (*Salia mexicana*). There will be potential impacts to these sensitive species due to this project, but the site does not contain regionally important populations and impacts are concentrated in the disturbed portions of the site adjacent to existing development to the north, south and west. To mitigate for the loss of buckwheat scrub habitat due to the project, onsite open space will total 37.2 acres consisting of 16 acres of buckwheat scrub, 0.7 acres of coast live oak woodland, 18.6 acres of chamise chaparral, 0.8 acres of non-native grassland, and 0.11 acres of disturbed/developed land. 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 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** -Buckwheat scrub is present.
3. Is Coastal sage scrub the most dense in the subregion? **No.**
4. Is the land close to high value district. **No.**
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 TM 5308 project is defined as being "Low 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:

C.1 – C.7

- Ongoing Mitigation

Compliance with the following conditions is assured because County staff will monitor the on-going requirements and, if necessary, pursue the remedies specified in the project permit, the security agreement, or the mitigation monitoring agreement:

C.3, C.5 – C.7

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.

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, DIRECTOR

BY:

GLENN RUSSELL, Deputy Director
Regulatory Planning Division

MB:TT:lb

Attachments

Habitat Loss Exhibit dated XXX

USGS Map

Biological Technical Report, RC Biological Inc., May 2008

cc: To be provided at issuance of Habitat Loss Permit