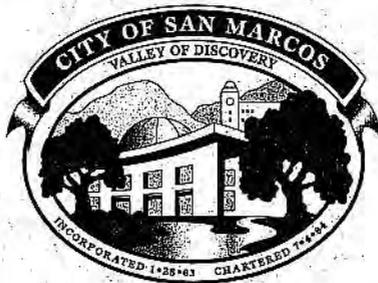


C. Mr. Kaleta



1 Civic Center Drive  
San Marcos, CA 92069-2918

Telephone:  
(760)744-1050

October 26, 2006

Ms. Janet Stuckrath  
U.S. Fish and Wildlife Service  
6010 Hidden Valley Road  
Carlsbad, CA 92009

Mr. David Mayer  
California Department of Fish and Game  
4949 Viewridge Avenue  
San Diego, CA 92123

DELIVERED BY:

Hand on \_\_\_\_\_

Regular mail on \_\_\_\_\_

Certified mail on \_\_\_\_\_

Faxed on \_\_\_\_\_

**FINAL**  
**DECISION OF THE DIRECTOR**  
*de Minimus Habitat Loss Permit*

**APPLICATION NUMBER:** HLP-D 06-13

**ASSOCIATED PERMITS:** None, Single Family Dwelling on a Legal Lot

**NAME OF APPLICANT:** Mr. Paul Kaleta

**DESCRIPTION/LOCATION OF LOSS:**  
The proposed project is to establish conformance pursuant to the NCCP 4(d) standards and guidelines and issuance of a Habitat Loss Permit for the loss of coastal sage scrub associated with the construction of the Paul Kaleta Residence.

The project is located in San Marcos:  
North of Mission Road  
East of Palomar College  
South of La Cienega  
West of the Twin Oaks Valley Road

(See Figure 1 Regional Location Map - Exhibit A)

(See Project Vicinity Map - **Exhibit B**).

The Assessor's Parcel Number (APN) is 218-330-16. Land uses surrounding the proposed project site are residential to the east, native vegetation north and south and west. The land use of the proposed Paul Kaleta single family dwelling site is currently vacant.

CEQA Determination

The project is categorically exempt per CEQA §15303 Class 3(a): New construction of a Single Family Dwelling in a residential zone.

Project Description

The project proposes to develop a single residential structure on one legal lot of 2.73 acres (See Figure 3 Aerial Photograph - **Exhibit C**). The project design includes a permanent fuel management zone that will require ongoing selective thinning of native vegetation.

Take Description

The 2.73 acre site is currently comprised of

Habitat	Existing Acreage	Impacted Acreage	% Impact	Proposed Ratio	Proposed Mitigation
Diegan Coastal Sage Scrub	0.58	0.04	7%	2:1	0.08 Offsite
Non-native Grassland	1.86	0.80	43%	0.5:1	0.40 Offsite
Disturbed	0.24	0.22	92%	0:0	NA
Developed Habitat	0.05	0.0	0%	00.0	NA
Totals	2.73	1.06	NA	NA	0.48

Fuel management within the 150-foot limit of such management would impact an additional 0.51 acre of Diegan Coastal Sage Scrub off-site, so that site development would result in a loss of 0.55 acre (less than one acre) of extant habitat.

However, much of this would take place on and adjacent to the adjoining Rosenberger property to the north ((See Figure 4 Aerial Photograph - **Exhibit C**). The Rosenberger project is anticipated to closely track the subject Kaleta project. An additional 0.35 acre of Non-native Grassland off-site would be impacted. Therefore, by the time the Kaleta property has reached the grading/development stage, much of the requisite fuel management will have been accomplished.

### Surveys

Biologist Cornelius Bouscaren of Pacific Southwest Biological Services evaluated the biological resources (See August 08, 2005 Biological Assessment and Coastal Gnatcatcher Survey – **Exhibit D.** )

This Habitat Loss Permit application covers the impacts from the fuel management zone to 0.11 acre (4,792 sq. ft.) of Diegan coastal sage scrub to the south of the Paul Kaleta Residence site (Exhibit C). Since the City of San Marcos is enrolled in the Natural Communities Conservation program, a protocol presence/absence survey for the coastal California gnatcatcher (*Polioptila californica californica*) was required prior to fuel modification of coastal sage scrub. No coastal California gnatcatcher was detected during the protocol survey. Complete lists of plants and animals observed during the gnatcatcher survey are located within Exhibit D.

### Summary of Impacts and Mitigation

Total CSS acreage	=	0.58 acre
Impact to CSS acreage	=	0.04 acre
Remaining CSS acreage	=	0.54 acre
% of CSS Impacted	=	7%
% of CSS Retained	=	93%
Proposed Mitigation Ratio	=	2:1
Proposed Mitigation	=	0.08 acre of CSS within the Daley Ranch Preserve + 0.40 Non-native grassland w/i Daley)
Mitigation Requirement	=	0.48 acre off site to be acquired within the Daley Ranch Preserve

The impacts to 0.40 acre of (off-site) Diegan coastal sage scrub will be mitigated at the Daley Ranch Mitigation Bank. A total of 0.08 acre of coastal sage scrub credit was purchased by the applicant and the additional 0.40 Non-native grassland credit. (See **Exhibit E**).

Since the project has fully mitigated all impacts to 0.04 of acre of coastal sage scrub and 0.88 of non-native grassland to a level below significance and no coastal California gnatcatcher was located in the project impact area, the 0.04 of acre Diegan coastal sage scrub habitat supported within the Paul Kaleta Residence impact area will require the issuance of a De Minimus Habitat Loss Permit.

## FINDINGS

## MADE IN SUPPORT OF THE ISSUANCE OF THE HABITAT LOSS PERMIT:

1. The project would result in 0.04 acre of impact to Diegan Coastal Sage Scrub, including fuel management, on parcel APN 218-330-16.

In the event that the neighboring property to the northwest, APN 218-330-18, legally grades the site for construction of a single family dwelling, then no offsite nor additional impacts are deemed to occur.

In this scenario, the project would be responsible for mitigation at a 2:1 ratio for impacts described on page two of this Habitat Loss Permit.

However, should this event not occur on APN 218-330-18 prior to grading of parcel APN 218-330-16, then off-site fuel modification would cause the take of an additional 0.51 offsite resulting in a total take of 0.55 acres of costal sage scrub (0.04 acres on-site + 0.51 offsite). The applicant would consequently provide 1.10 acres of mitigation at a bank approved by the Wildlife Agencies.

2. The Diegan Coastal Sage Scrub habitat on site is not occupied by the California Coastal Gnatcatcher.
3. The project will not preclude design of the preserve system since the proposed fuel management zone has been reduced to the maximum extent practicable and the development has been situated within habitat that has previously been partially disturbed. Additionally, because the site is bordered on two sides by the Northern Focused Planning Area, the remaining 0.54 acres of on-site costal sage scrub will be assured of an adequate connection and no mitigation is required
4. Development of the proposed project site does not represent a substantially new extension of development into a pristine natural area; rather, it is a reasonable extension of already established single family residential uses in the immediate area. Furthermore, an established major residential subdivision exists between the project site and Twin Oaks Valley Road.

## NCCP 4(d) FINDINGS

The following NCCP 4(d) findings are prepared in accordance with all standards and guidelines required under the Southern California Coastal Sage Scrub Natural Community Conservation Plan ("NCCP").

Finding 1.a. The habitat loss does not exceed the 5% guideline.

The proposed project would impact 0.04 acre of Diegan Coastal Sage Scrub (DCSS) habitat, while preserving 0.54 acre of DCSS in an onsite Conservation Easement, and would impact zero pairs of the Coastal California Gnatcatcher (*Poliopitila californica californica*). The additional 0.08 acre of mitigation required by CDFG are not available as part of the 5% allocation of take within the City of San Marcos while the City is preparing the Multiple Habitat Conservation Program (MHCP). However, the City may be requesting to use a portion of the County of San Diego's interim coastal sage scrub habitat allocation lands within the County's 5% allocation, under County Board of Supervisor's Policy I-122. Thus, the 5% guideline or allocation for the regional take of DCSS habitat would not be exceeded. Approved DCSS losses as of this date are presented in the following table.

**Table 2. Diegan Coastal Sage Scrub Cumulative Losses for the City of San Marcos**

Total Loss Allowed under 5% Guideline	109.5 acres
Cumulative Loss of Diegan Coastal Sage Scrub to Date under 5% Guideline	109.5 acres
Net Loss Due to This Project	0.04 acre
Remaining Loss under 5% Guideline	0.0 acre

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

The direct loss of 0.04 acre of DCSS habitat resulting from the project would not preclude connectivity between areas of high habitat value. In accordance with the NCCP guidelines, the NCCP Flow Chart was referred to when determining the quality of Coastal Sage Scrub on the project site.

Review of the project under the NCCP Flow Chart indicates that the project contains habitat valued at Lower Potential Value for Long-term Conservation. The project falls between other lower value habitats to the east and south and a potentially higher value habitat to the west where no development occurs for at least 0.5 mile. The proposed development has been designed to avoid as much DCSS as possible and still produce an economically viable residence.

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

The site development plan proposes to conserve 0.54 acre of DCSS within the site, adjacent to areas that could be included in a subregional NCCP preserve area via the MHCP. Land adjacent to the south and southeast is already developed. It is anticipated that the eventually-approved subregional preserve system would focus on the undeveloped hills to the west and north of the project site.

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.

The proposed development has been designed to minimize the take of DCSS by conserving approximately 81% of the DCSS on the site. In accordance with Section 4.3 of the NCCP Process Guidelines, mitigation for impacts to the take of DCSS is adequate; implementation of the proposed project is not likely to foreclose reserve-planning efforts. The proposed 2:1 mitigation off-site in the described mitigation banks would provide for long-term viability and connectivity of high-value districts. The conservation of 81% of the DCSS on-site, plus the 2:1 mitigation, is considered adequate mitigation for 0.04 acre of DCSS that does not support any known rare, threatened, or endangered species, including the Coastal California Gnatcatcher. Therefore, impacts to habitat have been minimized, and mitigation is occurring at the maximum extent practicable in accordance with Section 4.3 of the NCCP Process Guidelines.

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

The proposed project would impact habitat that is defined as having Lower Potential Value for Long-term Conservation (see Attachment A – Kaleta Property Single-Family Residence Grading Plan Check, City of San Marcos – Biological Assessment and Coastal California Gnatcatcher Survey [Pacific Southwest Biological Services, Inc. 8 August 2005 (Revised 24 July 2006)]. U.S. Fish and Wildlife protocol surveys for the Coastal California Gnatcatcher were conducted 11, 18, and 26 June 2005 by permitted biologist Cornelius W. Bouscaren (Permit TE778100-4) (Attachment A). All surveys were negative.

The project site is considered “unoccupied” by the Coastal California Gnatcatcher. The loss of habitat would not appreciably reduce the likelihood of survival and recovery of listed species in the wild.

Finding 3. The habitat loss is incidental to otherwise lawful activities

The project is being processed in accordance with established laws and regulations, including requirements for the preparation and circulation of a California Environmental Quality Act (CEQA) document.

NCCP FLOW CHART

1. **Natural land:** Is natural vegetation present? Yes.
2. **CSS:** Is CSS present? Yes.
3. **Large size:** Is land most dense CSS in the subregion? No.
4. **Proximity:** Is the land close to Higher Value District? No
5. **Linkage:** Is land located in corridor between Higher Value Districts? No
6. **Species:** Are there significant populations of target or endemic species? No.

**RESULT: Lower Potential Value for Long-term Conservation.** Allow development. Adequate conservation.

**DECISION:**

The Planning Division Director has approved this application for a:

**DE MINIMUS HABITAT LOSS PERMIT**

This Habitat Loss Permit allows for the loss of the above-described coastal sage scrub (CSS) habitat to allow construction of:

- a. A permanent fuel management zone (selective thinning) associated with the development of the Paul Kaleta Residence residential development.

This Habitat Loss Permit is valid for a period of one calendar year. 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 CSS habitat expires. The 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:**

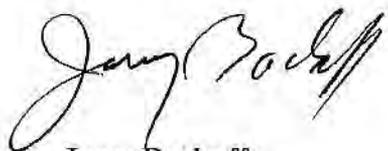
1. Any additional disturbance of coastal sage scrub will require a separate approved permit.
2. No brushing, selective thinning, or construction activity is allowed between March 15th and August 31st without the presence of a biological monitor during initial vegetation clearing.
3. If brushing, selective thinning, and/or construction activities are proposed to occur within this time period and that activity disturbs native habitat described herein within this period, the biological monitor shall insure that

- no impacts occur to those avian species listed in the Federal Migratory Bird Treaty Act.
4. Temporary perimeter fencing shall be installed to separate the fuel management zone from the native habitats not proposed for impact. The removal of temporary fencing is only to occur after all clearing and construction has been completed.
  5. Prior to impacting any coastal sage scrub habitat, the applicant shall verify that the impact area is consistent with the issued habitat loss permit.
  6. No fire management activities shall occur within the biological open space preserve to the south of the fuel management zone. Concurrence from the Fire Marshall will be provided to the Wildlife Agencies within 90 days of reliance upon this permit.
  7. The fuel management zone adjacent to biological open space will have permanent fencing and no gates between the development and the open space; a) landscaping will be restricted to native and/or non-invasive plant species; and b) Best Management Practices (BMPs) during construction in accordance with National Pollutant Discharge Elimination Systems General Permit requirements will be implemented.
  8. The applicant shall conserve at least 0.44 of acre of coastal sage scrub through credit purchase at the Daley Ranch Conservation Bank and shall provide compensation to the City of San Marcos.
  9. If development does not occur on APN 218-330-18 prior to grading of parcel APN 218-330-16, then off-site fuel modification would cause the take of an additional 0.51 offsite resulting in a total take of 0.55 acres of costal sage scrub (0.04 acres on-site + 0.51 offsite). The applicant would consequently provide 1.10 acres of mitigation at a bank approved by the Wildlife Agencies.
  10. Should unforeseen circumstances arise, or additional fuel modification is recommended by the Fire Marshal, that requires additional removal of Coastal Sage Scrub habitat not analyzed under this permit, the applicant shall immediately notify the City and the Wildlife Agencies to determine the appropriate measures (e.g., an amendment to this permit) to offset the additional impacts prior to disturbance of the habitat. Compensation for unauthorized habitat loss may be requested at a ratio higher than required by this permit, depending on impact location and habitat quality.
  11. The City and the Wildlife Agencies shall be immediately notified of any additional disturbance of native habitat beyond that approved for the proposed project as identified herein in order to determine appropriate measures to compensate for the unauthorized removal of coastal sage scrub habitat. Compensation for unauthorized habitat loss may be requested at a ratio higher than required by this permit, depending on impact location and habitat quality."

In accordance with the processing provisions of a de minimus loss, this notice is for your information and records to insure coordination between our agencies. Please

contact David Acuff at (760) 612-8088, if you have any questions or comments on the City's intent to issue an FHLP.

Sincerely,



Jerry Backoff  
Planning Division Director

DACP/SUBAREA/4(d) Kaleta deMinimus HLP

Attachments:

- Exhibit A - Figure 1, Regional Location Map
- Exhibit B - Figure 2, Project Vicinity Map
- Exhibit C - Figure 3, Aerial Photograph
- Exhibit D - Protocol Coastal California Gnatcatcher Survey Report and Biological Resources Report of the Off-Site Fuel Modification Easement for the Paul Kaleta Residence Project.
- Exhibit E - Mitigation Arrangement

**Subj: you have met all your obligations for the take of Coastal Sage Scrub on APN 21 8-330-16.**

**Date: 5/7/2008 3:44:15 P.M. Pacific Daylight Time**

**Fm in:**

**To: bear Mr. Kaleta:**

**1. This email confirms that I am in receipt of a letter dated April 23, 2008 to you from the City of Escondido Planning department signed by Mr. barren Parker, Assistant Planner II, certifying that you have purchased 0.8 Acres of Coastal Sage Scrub Credits from the Daley Ranch Conservation Bank.**

**2. The purchase of this mitigation, combined with the February 6, 2008 letter from Pacific South West Biological Services establishes that mitigation of all biological impacts to a level beneath significance to Coastal Sage Scrub can be accomplish with the purchase of 0.8 acres of Coastal Sage Scrub Credits from the Daley Ranch Conservation Bank to offset the take of 0.4 acres of Coastal Sage Scrub on APN 21-330-16 in the City of San Marcos.**

**3. Based upon the evidentiary basis established in Items 1 and Item 2 above, it is determined that you have met all your obligations for the take of Coastal Sage Scrub on APN 218-330-46 in the City of San Marcos.**

**4. Please note that since the United States Fish and Wildlife Service and the California Department of Fish and & Game joint decision in late 2007 to rescind the 4(d) rule, no additional permits are required for the take of the unoccupied Coastal Sage Scrub on APN 218-330-16.**

**Please let me know if questions arise.**

**best,**

**David Acuff  
Consulting Planner  
City of San Marcos**

Dear Director Backoff:

We are writing you on behalf of our client Paul Kaleta.

The United States Fish and Wildlife Service recently suspended the FESA 4(d) rule.

If we understand this correctly, it means that Mr. Kaleta no longer requires a 4(d) permit for the take of unoccupied Coastal Sage Scrub on his property.

Since the applicant is still required to provide mitigation based upon CEQA compliance, we ask that you accept the mitigations ratios of 1:1 identified in our report of October 26, 2006.

Given the small amount of Coastal Sage Scrub acreage( .04 acres) on Mr. Kaleta's property, we are requesting that you accept an in lieu fee based on the Daly Ranch fee structure of \$18,000 per acre.

This would result in a one-time payment of \$7,200.00. (.04 acres x \$18,000 per acre = \$7,200.00).

Given the long term aspects of the MHCP, it is certainly appropriate to use this in-lieu fee to offset Subarea planning efforts, instead of the acquisition of land.

Please let us know if we can provide you with any additional information.

We look forward to hearing from you in the near future.