

2009-08-20-0652

AN ORDINANCE

**AMENDING CHAPTER 35, UNIFIED DEVELOPMENT CODE, OF THE
CITY CODE OF SAN ANTONIO, TEXAS, BY ADDING PROVISIONS
TO REQUIRE A HABITAT COMPLIANCE FORM CERTIFYING
PROPERTY STATUS REGARDING ENDANGERED SPECIES.**

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WHEREAS, the San Antonio City Council adopted the revised Unified Development Code (UDC) on May 3, 2001 and reenacted it on September 22, 2005; and

WHEREAS, in 1973 the United States Congress passed the Endangered Species Act which reflected America's concern about the decline of many wildlife species throughout the world; and

WHEREAS, the purpose of the Endangered Species Act is to conserve the ecosystems upon which endangered or threatened species depend and to conserve and recover listed species; and

WHEREAS, many species occur partially, extensively or exclusively on private lands; and

WHEREAS the City of San Antonio desires to prevent Camp Bullis and the City of San Antonio Natural Areas and Wilderness Parks from becoming lone islands of refuge for endangered species by creating a procedural mechanism to encourage coordination and compliance for Endangered Species Act protected species and habitat; and

WHEREAS, Habitat Conservation Plans relieve restrictions on private landowners who want to develop land inhabited by endangered or threatened species by providing a mechanism for compliance with the Endangered Species Act of 1973, as amended, whereby the landowner can mitigate for impacts to endangered or threatened species in exchange for an incidental take permit to allow their development to go forward; and

WHEREAS, several endangered animal and plant species and habitat are known to exist within the City of San Antonio and Bexar County; and

WHEREAS, the City of San Antonio Master Plan, adopted May 29, 1997, Vision Statement includes promoting "balanced and responsible urban design, planning and development, and responsible protection of the City's historical, cultural, and natural resources"; and

WHEREAS, the Natural Resources Goals in the Master Plan include the goal to "preserve the unique, rare and significant features of San Antonio's natural environment", including Policy 1b(15) to "Encourage the development of Habitat Conservation Plans for areas of the Edwards Aquifer Drainage and Recharge Zones associated with rare, unique or sensitive biota"; and

WHEREAS, the Natural Resources Goals in the Master Plan include the goal to “integrate environmental quality protection into all phases of local planning and policy implementation”, including Policy 2b: Assist in the development of a comprehensive, regional natural resources plan, to (1) “participate with other agencies and organizations to develop a long-range, comprehensive, regional natural resources conservation and integrated planning process which encourages citizens to make long-range conservation commitments”, and (3) “inventory, rank and organize San Antonio’s land-based natural resources such as significant recharge features, endangered species habitat, and open space”, and Policy 2c(2) to “revise the Unified Development Code to address the protection of natural resources and compliance with all environmental regulations”; and

WHEREAS, the Natural Resources Goals in the Master Plan include the goal to “achieve a sustainable balance between the conservation, use and development of San Antonio’s natural resources”; and

WHEREAS, the Planning Commission has recommended approval of those amendments pertaining to planning issues; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. Chapter 35 of the City Code of San Antonio, Texas is hereby amended as follows:

Chapter 35, Appendix B, Table B101-1 is hereby amended by adding an Endangered Species Habitat Certification and notice requirements as follows:

Sec. 35-B101. Specifications for Documents to be Submitted

* * * * *

Table B101-1, Section G – Design

TABLE B101-1

* * * * *

	<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>	<i>F</i>	<i>G</i>
	<i>(A) Material/Information</i>	<i>Master Development Plan</i>	<i>PUD Plan</i>	<i>Major Plat Application</i>	<i>Minor Plat Application</i>	<i>Development Plat Application</i>	<i>Specific Use Authorization</i>
G.	DESIGN						
	* * * * *						
	<u>(21) Habitat Compliance Form consistent with §35-B133 for properties greater than two acres in size.</u>	*	*	*	*	*	

* * * * *

Chapter 35, Appendix B is hereby amended by amending sections 35-B123, 35-B124, 35-B125 and 35-B127 as follows:

Sec. 35-B123. Tree Permit--Tree Preservation Plan Option.

(a) Number of Copies. The applicant shall submit a tree preservation/affidavit application with three (3) sets of tree preservation plans, a survey showing the location of all significant, heritage, or mitigation trees, including clusters, an inventory with calculations, and tree protection notes as provided herein. The applicant shall also provide a Habitat Compliance Form consistent with 35-B133, as applicable.

* * * * *

Sec. 35-B124. Tree Permit--Tree Affidavit Option.

In lieu of a tree permit, a notarized tree affidavit with fees and required information may be submitted verifying that no significant or heritage tree required to be counted for calculating minimum tree preservation requirements will be damaged or removed as a result of the application or receipt of the approval requested. The applicant shall also provide a Habitat Compliance Form consistent with 35-B133, as applicable.

* * * * *

Sec. 35-B125. Tree Permit--Tree Stand Delineation Plan Option.

As an alternative option to the tree preservation plan, a tree stand delineation plan may be submitted. The tree stand delineation plan that is required with the master development plan shall include at a minimum a current aerial photograph with a minimum resolution of six-inch pixels with a scale of one inch equals four hundred feet (1"= 400'), and additional information contained herein. The applicant shall also provide a Habitat Compliance Form consistent with 35-B133, as applicable.

* * * * *

Sec. 35-B127. Tree Permit--Public Project Preservation Plan.

(a) Number of Copies. A tree preservation plan shall consist of an aerial photograph (where applicable) and one (1) set of construction documents with the contents prescribed herein. The applicant shall also provide a Habitat Compliance Form consistent with 35-B133, as applicable.

* * * * *

Chapter 35, Appendix B is hereby amended by adding a new Section 35-B133 as follows:

Section 35-B133. Habitat Compliance Form.

(a) The owner of property subject to this chapter, who submits an application to the City of San Antonio for development on/of a tract of land greater than two acres in area shall submit a Habitat Compliance Form in accordance with the provisions of this section.

(b) A property owner shall, through a signed and completed Habitat Compliance Form:

(1) indicate obtainment of a Section 10(a) permit, Section 7 biological opinion, participation in a Regional Habitat Conservation Plan or submittal of an endangered species survey to the U.S. Fish & Wildlife Service for properties located in karst zones 1 or 2 as outlined in the 2008 Draft Recovery Plan for Bexar County Karst Invertebrates, available on US Fish and Wildlife Service's website; or for properties identified as potential Golden-cheeked Warbler Habitat as outlined in Texas Parks and Wildlife Department Management Guidelines for the Golden-cheeked Warbler in Rural Landscapes, available on their website; or,

(2) complete a signed, sworn, and notarized affidavit indicating a biologist survey was completed that found that no species would be impacted by the activity subject to the application to the City of San Antonio.

The application to the City of San Antonio shall be deemed incomplete if the Habitat Compliance Form, and affidavit if applicable, is not completed and signed.

(c) The Habitat Compliance Form shall include an indication of coverage under the Endangered Species Act or where there is no coverage an indication of any development greater than two acres in areas known to provide habitat for Golden-cheeked Warblers or Karst Invertebrates. The Habitat Compliance Form shall be substantially in the form of Figure 35-B133-1, as attached.

Commentary: For information on endangered species habitat within the City of San Antonio's jurisdiction and any Military Influence Areas as may be established, see for example March 2008 Draft Recovery Plan for Bexar County Karst Invertebrates, available on US Fish and Wildlife Service's website, Management Guidelines for the Golden-cheeked Warbler in Rural Landscapes by Texas Parks and Wildlife Department and available on their website.

(d) After the Completeness Review (Section 35-402) of an application subject to subparagraph (a), the Director shall provide a copy of the Habitat Compliance Form to the U.S. Fish & Wildlife Service and Texas Parks and Wildlife Department.

* * * * *

SECTION 2. All other provisions of Chapter 35 of the City Code of San Antonio, Texas shall remain in full force and effect unless expressly amended by this ordinance.

SECTION 3. Should any Article, Section, Part, Paragraph, Sentence, Phrase, Clause, or Word of this ordinance, for any reason be held illegal, inoperative, or invalid, or if any exception to or limitation upon any general provision herein contained be held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it had been enacted and ordained without the portion held to be unconstitutional or invalid or ineffective.

SECTION 4. The City Clerk is directed to publish notice of this Ordinance in accordance with Section 17 of the Charter of the City of San Antonio.

SECTION 5. The publishers of the City Code of San Antonio, Texas are authorized to amend said Code to reflect the changes adopted herein and to correct typographical errors and to format and number paragraphs to conform to the existing code.

SECTION 6. This ordinance shall be effective immediately upon passage by eight or more affirmative votes; otherwise, it shall be effective on the tenth day after passage. The penalty provisions shall be effective five days after publication.

PASSED AND APPROVED this 20th day of August, 2009.


M A Y O R
JULIÁN CASTRO

ATTEST: 
City Clerk

APPROVED AS TO FORM 
City Attorney

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Figure 35-B133-1

Habitat Compliance Form

CITY OF SAN ANTONIO

PLANNING & DEVELOPMENT SERVICES DEPARTMENT

1901 S. Alamo, San Antonio, TX 78204

1. Commentary:

For information on endangered species habitat within Bexar County as may be established, see 2008 Draft Recovery Plan for Bexar County Karst Invertebrates, available on US Fish and Wildlife Service's website, and Management Guidelines for the Golden-cheeked Warbler in Rural Landscapes by Texas Parks and Wildlife Department available on their website.

2. Applicant Contact Information:

Project Name: _____		
Property Owner: _____	E-mail: _____	
Address: _____	Zip code: _____	Phone: _____
Agent: _____	E-mail: _____	
Address: _____	Zip code: _____	Phone: _____
Contact Person Name: _____	E-mail: _____	
Company: _____	Relationship to Owner: _____	
Address: _____	Zip code: _____	Phone: _____

3. Property Location:

Property address or nearest street intersection if address not available: _____
Acres: _____ Ferguson map grid: _____ USGS Grid: _____
In addition to this form, please submit an aerial map designating property boundaries based on the most recently available imagery. Maps can be obtained from www.sanantonio.gov/dsd and saved into a PDF format.

4. Application Type (check one):

- | | |
|--|--|
| <input type="checkbox"/> Master Development Plan (MDP) | <input type="checkbox"/> Tree Permit |
| <input type="checkbox"/> Major Plat | <input type="checkbox"/> Planned Unit Development (PUD) Plan |
| <input type="checkbox"/> Development Plat | <input type="checkbox"/> Minor Plat |

5. Endangered Species Act Coverage (check one):

- | |
|--|
| <input type="checkbox"/> The activity subject to the application to the City of San Antonio is covered under an existing Section 10(a) permit or a Section 7 Biological Opinion analyzing the activity as proposed, and the activity is identical or very similar to the activity proposed in permit and located in the same geographic location. <i>Skip to section 7, no affidavit required.</i> |
| <input type="checkbox"/> The activity subject to the application to the City of San Antonio is covered by participation in an approved Regional Habitat Conservation Plan. <i>Skip to section 7, no affidavit required.</i> |
| <input type="checkbox"/> The activity subject to the application to the City of San Antonio is not covered by an existing Section 10(a) permit or a Section 7 Biological Opinion nor participation in an approved Regional Habitat Conservation Plan. <i>(Complete sections 6, 7 and 8 (if applicable) below)</i> |



Habitat Compliance Form
CITY OF SAN ANTONIO
PLANNING & DEVELOPMENT SERVICES DEPARTMENT
1901 S. Alamo, San Antonio, TX 78204

6. Description for Activities Without Coverage (check one box for both sections A and B):

A. Golden-cheeked Warbler Endangered Species	<input type="checkbox"/> There is no requirement for coverage of this listed species because no part of the tract subject to the application to the City of San Antonio contains habitat types that may be used by Golden-cheeked Warblers as set forth in <i>Management Guidelines for the Golden-cheeked Warbler in Rural Landscapes, Texas Parks and Wildlife Department, available on their website</i> . While this requirement applies throughout the jurisdiction of the City of San Antonio, based on the U.S. Fish & Wildlife Service Recovery Plan maps for Golden-cheeked Warblers, there is a rebuttable presumption that areas located inside of Loop 1604 that are within the jurisdiction of the City of San Antonio, as well as areas located to the south of U.S. Highway 90 and east of Interstate Highway 35, do not contain habitat. <input type="checkbox"/> The tract subject to the application to the City of San Antonio is within a presumptive habitat areas and an Endangered Species Survey has been completed within the last 3 years by a Biologist permitted by U.S. Fish and Wildlife and copies sent to: U.S Fish and Wildlife (USFWS) Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758 <input type="checkbox"/> The tract subject to the application to the City of San Antonio is within a presumptive habitat area and no Endangered Species Survey has been submitted to U.S. Fish and Wildlife. <i>(Selecting this box requires the applicant to complete the Habitat Compliance Affidavit in Section 8 below.)</i>
B. Karst Invertebrate Endangered Species	<input type="checkbox"/> There is no requirement for coverage of these listed species because no part of this tract subject to the application to the City of San Antonio is located within karst zone 1 or 2 of the areas in Bexar County identified as karst zones in the USFWS 2008 Draft Bexar County Karst Invertebrates Recovery Plan. <input type="checkbox"/> The tract or portions of the tract subject to the application to the City of San Antonio is located within Karst Zone 1 or 2 as identified in the U.S. Fish & Wildlife 2008 Draft Bexar County Karst Invertebrates Recovery Plan and an Endangered Species Survey has been completed by a Biologist permitted by U.S. Fish and Wildlife and copies sent to: U.S Fish and Wildlife (USFWS) Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758 <input type="checkbox"/> The tract or portions of the tract subject to the application to the City of San Antonio is located within Karst Zone 1 or 2 as identified in the U.S. Fish & Wildlife 2008 Draft Bexar County Karst Invertebrates Recovery Plan and no Endangered Species Survey has been submitted to U.S. Fish and Wildlife. <i>(Selecting this box requires the applicant to complete the Habitat Compliance Affidavit in Section 8 below.)</i>

7. Owner or Authorized Representative (form is considered incomplete without this section):

I certify that the information provided in this Habitat Compliance Form is true and accurate.

Print Name: _____ Signature: _____

Address: _____ City: _____ State _____ ZipCode _____

E-mail: _____



Habitat Compliance Form

CITY OF SAN ANTONIO

PLANNING & DEVELOPMENT SERVICES DEPARTMENT

1901 S. Alamo, San Antonio, TX 78204

8. Affidavit of Compliance (required for properties in karst 1 or 2 or located in the area identified as potential habitat as set forth in Management Guidelines for the Golden-cheeked Warbler in Rural Landscapes, Texas Parks and Wildlife Department, available on their website when there is no Section 10(a) permit, Section 7 biological opinion, Regional Habitat Conservation Plan, nor endangered species survey submitted to US Fish and Wildlife) :

Affidavit of Compliance

Before me, the undersigned authority, on this day personally appeared

_____ ("Affiant") who, being first duly sworn, upon his/her oath states:

My name is _____ and I am the owner of the property that is the subject of this application to the City of San Antonio.

_____ A habitat assessment/survey was not conducted.

_____ A habitat assessment/survey was conducted by a biologist permitted by U.S. Fish & Wildlife Service, _____ (name of individual and firm) #TE _____ (number), and concluded that no species will be impacted by the activity subject to the application to the City of San Antonio and I am relying on that assessment/survey.

Signed this ____ day of _____, ____.

Signature: _____

STATE OF TEXAS §

COUNTY OF BEXAR §

Sworn to and subscribed to before me on _____, by _____,

Notary Public, State of Texas