



AGENDA REPORT

Meeting Date: September 1, 2009

Item Number: D-1

To: Honorable Mayor and City Council

From: George Chavez, Assistant Director of Community Development *GC*
Jesse A. DeAnda, Building Inspector

Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING THE BEVERLY HILLS MUNICIPAL CODE TO
ADD REGULATIONS REGARDING THE FEEDING AND CARE
OF FERAL CATS

Attachments:

1. Staff Response to Letter From Coalition of Environmental Groups
Dated August 18, 2009
2. Feral Cat Ordinance (Red Line and Final Version)
3. Trap-Neuter-Return (TNR) Program Regulations and Guidelines
4. TNR Program - Central Area Map
5. Depiction of Feeder
6. August 18, 2009 Agenda Report

RECOMMENDATION

Staff recommends that the City Council introduce the proposed Feral Cat Ordinance and direct staff to prepare a resolution approving the City of Beverly Hills Feral Cat Trap-Neuter-Return (TNR) Program Regulations and Guidelines.

INTRODUCTION

On July 7, 2009 City Council meeting, the Council provided staff direction to move forward in developing a Feral Cat Ordinance and Trap Neuter Release Program (TNR) addressing the feeding, neutering, and trapping of the feral cat population in the City.

On August 18, 2009, a Public Hearing was held for the proposed TNR Ordinance with significant public testimony entered into the record; this hearing was continued to September 1, 2009. The continued Public Hearing will be open to address the California Environmental Quality Act issues raised in the letter authored by The Urban Wildlands Group, the Endangered

Habitats League, the American Bird Conservancy and the Los Angeles Audubon Society submitted to the City Council on August 18, 2009 ("Audubon Letter") and the changes directed by the City Council resulting from the testimony heard and discussion held at that Council meeting.

DISCUSSION

The following is the summary of the revisions made to the Ordinance and the TNR Program Regulations and Guidelines. Attachment 1 to this Agenda Report addresses the issues raised by the Audubon Letter.

SUMMARY OF ORDINANCE MODIFICATIONS

Feeding and Trapping Hours: Feral cat feeding times would be limited to between the hours of 6:00 a.m. and 8:00 p.m., or sunset, whichever is earlier and trapping would be allowed only between the time of sunset and 2:30 a.m. of the next day, which coincides with the City's overnight street parking restrictions. Additionally, feeding stations must be emptied by the TNR participants so as not to attract nocturnal animals. Also, when conducting trapping activity, the TNR Individual, TNR Partner or Feral Cat Caregiver may not leave the trap unattended. The individual is required to remain in visual contact of the trap so as to engage in humane trapping of the feral cats.

Maintenance: The TNR Individual, TNR Partner and Feral Cat Caregiver shall be required to maintain the feeding and trapping locations. Fecal matter shall be removed within 50 feet of any feeder. This shall occur daily when the person places food in the feeder as well as when food is removed.

Public Notice: There is a required 10-day Public Notice for applications for feral cat feeding and a three-day Public Notice for application for trapping activities. A resident would retain the right to revoke their approval of any feral cat feeding and/or trapping activity proposed on private or public property at any time; this would apply even if the resident has given previous approval to the activity on their private property.

Identification: All feeding and trapping devices used on public property would be required to be labeled with the TNR Partner name and contact information. All TNR Partners and Feral Cat Caregivers would be provided with an permit card that needs to be visibly displayed on the person when conducting TNR activities. Identification must be carried at all times and upon request must be shown to any person along with the permit card when conducting TNR activities.

Complaints: Any person may file a written complaint to the Department. The complaint process was simplified to address residents' concerns.

Fencing Requirements: An exception has been included in the proposed ordinance that would allow feral cat feeding on private property without the normally required six-foot barrier if an approved feeding device that prohibits other animals from accessing the food intended for the feral cats is used. The feeding device shall be approved by the Community Development Department.

Location: TNR Program activity would be limited to the Central Area of the City as defined by the Beverly Hills Municipal Code (see the attached “TNR Program – Central Area Map”). This is the largest area of the City and encompasses the highest urban density. In addition, the Central area contains the majority of the City’s alleys which are more appropriate for TNR activities because the alleys are located off public streets and sidewalks.

Parks: TNR activities would not be allowed in any City public park or within 500 feet of a public park.

Vaccinations: Trapped feral cats shall be required to be evaluated by a licensed veterinarian and shall be provided a rabies vaccine, the FVRCP vaccine and any other vaccine recommended by the veterinarian. If a feral cat appears potentially symptomatic for FIV or FeLV, the medical care provider must administer a test for FIV/FeLV. Feral cats that test positive shall not be returned back to into the colony.

ADDITIONAL INFORMATION

Concern has been expressed for the safety of residents, Feral Cat Caregivers, and feral cats. As directed by City Council, staff consulted with the Police Department. The findings show that there have not been more complaints about late night activity in the alleys compared to other areas in the City.

Additional information was requested regarding the effectiveness of Trap-Neuter-Return (TNR) programs in reducing feral cat colony populations. In researching the subject, staff has concluded that TNR Programs are the only humane solution available at this time. While the information reviewed suggests an overall decline in feral cat populations over time, irresponsible cat ownership often leads to new cats being introduced into cat colonies through animal abandonment which is unlawful and/or the birth of kittens by intact outdoor roaming cats which is also unlawful.

Because of this, an effective TNR program should be viewed as a population management program and must include a strong public education component.

FISCAL IMPACT

There will be an increase in Code Enforcement staff time to initiate and administer the TNR Program. Since the proposed TNR Permit is a no-fee permit, there would be no revenue generated to cover these costs. In view of the fact that staffing levels will not be adjusted, existing Code Enforcement response times will be increased.

Scott G. Miller, Director of
Administrative Services, CFO

George Chavez, Assistant Director of
Community Development



Finance Approval



Approved By

Attachment 1

Staff Response to Letter From
Coalition of Environmental Groups
Dated August 18, 2009

ATTACHMENT 1

RESPONSE TO LETTER FROM COALITION OF ENVIRONMENTAL GROUPS DATED AUGUST 18, 2009

This attachment provides the City's response to the letter dated August 18, 2009 from a coalition of environmental groups, including the Urban Wildlands Group, Endangered Habitats League, Los Angeles Audubon, and American Bird Conservancy (collectively referred to herein as "Audubon").

1. Issue Raised: Scientific Name for Cats. Audubon notes that the scientific name for cats, as set forth in the ordinance, does not follow scientific protocol because the second word is capitalized in the Ordinance.

Staff Response: In response, the revised Ordinance uses the scientifically correct term of "*Felis catus*" in italic font.

Recommended Course of Action: Revise the Ordinance to use the scientifically correct term of "*Felis catus*" in italic font.

2. Issued Raised: Disease Control Measures. Audubon notes that the Ordinance does not specify the vaccinations that would be administered to trapped feral cats before they are returned to the colony¹ from which they came. They suggest that the Ordinance specifically require vaccination for Feline Leukemia Virus (FLV or FeLV) and Feline Immunodeficiency Virus (FIV). They also ask about the frequency of treatment for fleas.

Staff Response: Staff has discussed the issue of vaccinations with experts in the field of TNR. Based on discussions with such persons and our review of the literature, staff has learned that the spread of the FeLV and FIV is strongly linked to reproductive behavior. The primary route of transmission of FIV is through bite wounds of fighting tom cats. FeLV is passed most easily to kittens in utero or after birth through milk or mothering by an infected mother. Spaying and neutering would reduce the spread of both of these viruses because it reduces fighting as well as roaming and mating. Also, because feral cats develop immunities if they survive kittenhood, cats become more resistant to viral diseases, as time goes by, which further reduces transmission. Moreover, FIV and FeLV affect less than 2-4% of the feral cat population—lower than in domestic pet cats.

¹ The term colony is used in the draft Ordinance, Regulations and this memorandum because it appears to be the term most commonly used in the context of TNR programs, although technically a group of cats is referred to not as a "colony," but as a "clowder."

With respect to fleas, the ordinance requires that cats would be trapped for sterilization and vaccinations and at the same time would be defleaded. Once returned, the TNR Regulations require that TNR Partners, Feral Cat Caregivers and TNR Individuals “make reasonable, good faith efforts to provide needed veterinary care to colony cats that are visibly ill or injured.” Thus, if a flea infestation is so severe as to indicate the need for veterinary care, the TNR Partner, Feral Cat Caregiver or TNR Individual would have the duty to provide the veterinary care which might include trapping and treating for fleas.

Recommended Course of Action: Revise the Ordinance to require that any cats, which appear to have symptoms of the diseases, be tested and prohibit the return of those cats back to the colony that are infected.² Revise the TNR Regulations to specify the types of required vaccines, which would include the rabies vaccine and FVRCP vaccine.

3. Issued Raised: Resolution of Complaints

Under this heading, Audubon puts forth a series of questions related to complaints. Specifically the remedies available to residents who complain, issues regarding the removal of cats from a colony, whether TNR Individuals or TNR Partners are considered the legal owners of cats in their colony, whether the ordinance should require microchipping and whether the TNR permit should be subject to a public hearing before approval, and appeal rights for interested parties.

Staff Response: First, the ordinance provides that any person may file a written complaint with the City, which shall be investigated. The TNR Regulations require the TNR participants to address complaints. The intent is to encourage dialogue between the interested parties, in the hope that solutions can be reached before the City is put in the position of issuing citations.

Second, the City of Beverly Hills, pursuant to BHMC § 5-2-301, has adopted the Los Angeles Municipal Code § 53.06.03, which requires a permit before any person can set a trap for any animal except for rats, mice, pocket gophers, ground squirrels, and moles. As such, a resident could not trap feral cats without first obtaining a permit to do so.

As to the issue of whether the TNR Partner or Individual would be considered the legal owner of the cats in a colony, we do not believe the caretakers would be construed as a legal owner or caretaker. When undertaking to trap a feral cat, the intent from the outset is not to take ownership or control over the animal, but instead to provide medical care, and return it to its prior free roaming existence. By analogy, an ownership interest or controlling role would not be imputed to a person who feeds wild birds, deer or other such wild animals.

A question is also raised as to whether microchipping will be required so as to better be able to track the cats. The draft Ordinance does not include any such requirement at present, but could if the Council so desired.

² In a University of Central Florida TNR program, certain trapped cats were tested for these diseases and, if infected, were not allowed to be returned to the colony, but instead were euthenized. *Evaluation of the Effect of a Long-Term Trap-Neuter-Return and Adoption Program on a Free-Roaming Cat Population*, Levy, Gale and Gale, 222 J. Am. Veterinary Med. Assn. 42, 43 (2003).

Audubon also suggests that a TNR permit be subject to a public hearing before approval, and appeal rights for interested parties. The draft Ordinance provides a 10-day notice period prior to the issuance of any TNR permit for feeding and a 3-day notice period prior to the issuance of any TNR permit for trapping during which comments can be provided to the Community Development Director. The Ordinance has also been revised to allow residents and/or property owners to object to a feeder or trap placed adjacent to their property and request removal of a feeder and/or trap located adjacent to the property. If the resident or property owner files such objection then a feeder or trap may not be placed adjacent to the property. Last, the issuance of a TNR permit is ministerial. As such, this decision is neither appealable nor subject to CEQA.

Finally, Audubon suggests that the proposed 150-foot noticing radius is too small, and should be increased. This radius distance was selected by staff because it would capture neighboring properties that are adjacent to the alleys where it is most likely that TNR will be proposed.

Recommended Course of Action: Revise the ordinance to allow residents/property owners to object to the placement of, or request removal of, a feeder and/or trap that is adjacent to their property.

4. Issued Raised: Removal of Excess Food. Audubon claims that the requirement for removal of excess food is vague and asks how wildlife will be excluded from the feeding stations.

Staff Response: Staff, with the assistance of a trapping expert, has designed a feeder that would effectively prevent other wildlife from accessing the food placed in the feeder. The feeder contains an area for a specific size bowl to prevent excess food from being placed in the feeder, it contains a moat around the food to prevent ants and roaches from crawling onto the food source and fence material is provided to keep large animals from entering the access area. The feeding area is of sufficient height to allow cats to enter but prevents other animals from entering into the area. A depiction of the feeder is attached to the Agenda Report. Requiring use of the specially designed feeders is anticipated to discourage use by other animals. Furthermore, the TNR Regulations have been revised to require food to be removed daily to ensure that no food is left overnight and hours of feeding have been revised. Thus, nocturnal animals would be less apt to visit the area, and impacts associated with such nocturnal animals would be reduced to insignificance or eliminated.

Recommended Course of Action: Revise the TNR Regulations as follows: (i) that reasonable amounts of food appropriate for the size of the colony is placed in the feeder; (ii) food is removed daily no later than 8:00 p.m. or sunset, whichever comes first; and (iii) require the use of a staff approved and designed feeder in public rights of way or on private property if the feeder cannot be located in an area that is enclosed by a minimum six foot (6') barrier.

5. Issue Raised: Applicability of State Animal Abandonment Laws. The Ordinance contains language that the return of trapped feral cats back to the colony does not constitute abandonment. Audubon asserts that State law preempts this statement. Specifically, Penal Code Section 579s provides:

597s. (a) Every person who willfully abandons any animal is guilty of a misdemeanor.

(b) This section shall not apply to the release or rehabilitation and release of native California wildlife pursuant to statute or regulations of the California Department of Fish and Game.

Staff Response: Staff believes that the City can reasonably determine that the return of feral cats is not “abandonment.” When the cats are trapped, it is with the full intent that they be only temporarily removed from the colony for medical treatment, and subsequently returned to the location at which they were trapped. There is no intent to “abandon” the cat. Second, Staff believes that the act of trapping an animal for treatment, with the intent at the outset to return the animal to its original location, does not constitute assumption of control over and responsibility for the cat. Without the intent to assume ownership or control over the cat, there isn’t sufficient interest on the part of the trapper to trigger the anti-abandonment law. Finally, contrary to Audubon’s assertions, the Ordinance does not allow dumping of cats, or return of cats to colonies other than the one from which it was initially trapped.

Recommended Course of Action: The Ordinance loosely uses the terms return and release. Staff suggests revisions to the Ordinance to delete any reference to “release” of feral cats, and instead only allow the “return” of feral cats to their colonies after having been trapped. This reinforces the clear intent of the Ordinance to prohibit the dumping or abandonment of cats (or other animals) in Beverly Hills, while allowing the return of cats to their colonies.

6. Issue Raised: Applicability of Municipal Code Provision Prohibiting Defecation on Public or Private Property. Municipal Code Section 5-2-105 prohibits persons from allowing their animals to defecate on public or private property. Audubon suggests that TNR programs would violate the City’s ordinance regarding animal defecation.

Staff Response: Beverly Hills Municipal Code Section 5-2-105 is not applicable to feral cats. That section states that is unlawful for “the owner or person having charge or control of any animal” to permit it to defecate and allow the feces to remain upon any public or private property not owned by said person. As stated earlier, trapping with the intent of returning the cat, and with the further intent not to take ownership or control over the cat, does not constitute assumption of such responsibilities regarding the cat. Feral cats do not have owners or someone in control of them, and thus caretakers would not be required, under Section 5-2-105 to clean up the feral cat feces.

Recommended Course of Action: Beverly Hills Municipal Code Section 5-2-105 is inapplicable to feral cats. Staff, however, recommends that the TNR Regulations be revised to require that TNR Partners, Feral Cat Caregivers and TNR Individuals remove fecal matter daily within 50 feet of the feeding stations. Collection and proper disposal of fecal matter in the public right-of-way will reduce the level of impacts from the current condition, and population reductions over time will reduce the amount of fecal matter produced in the first instance. In addition, this requirement will improve the current environment in which no person has the

responsibility to remove any fecal matter of feral cats. For each of these reasons, it is expected that this Ordinance will reduce the amount of fecal matter that will enter into the storm drain and potentially contribute to the pollution of water sources.

7. Issue Raised: Applicability of Municipal Code Provision Prohibiting Cat Kennels. Municipal Code Section 5-2-107 prohibits persons owning, conducting or maintaining any cat kennel within the City. A cat kennel is defined as “any dwelling unit, structure or premises whereon or wherein six or more cats over the age of four months are kept, harbored, or maintained for any purpose” Audubon suggests that TNR programs would violate the City’s ordinance regarding prohibiting cat kennels.

Staff Response: A feral cat colony does not fall within the definition of a cat kennel because feral cats are not typically “kept, harbored or maintained for any purpose” on or at a “dwelling unit, structure, or premises.” Feral cats typically roam, and are not kept in a single location, unlike cat kennels. Moreover, we understand that there is no intent of the TNR Partners, Feral Cat Caregivers, or TNR Individuals to keep, harbor or otherwise control the feral cats.

Recommended Course of Action: None.

8. Issue Raised: Violation of the Migratory Bird Treaty Act. Audubon asserts that certain implementing actions of a TNR program might violate the Migratory Bird Treaty Act.³ The thrust of this argument seems to be focused on the activities of the TNR Partners, Feral Cat Caregivers and TNR Individuals. Specifically, under the Act one cannot:

“pursue, hunt, take, capture, kill, attempt to take, capture or kill, possess, offer for sale, sell, offer to purchase, purchase, deliver for shipment, ship, cause to be shipped, deliver for transportation, transport, cause to be transported, carry, or cause to be carried by any means whatever, receive for shipment, transportation or carriage, or export, at any time, or in any manner, any migratory bird, included in the terms of this Convention . . . for the protection of migratory birds . . . or any part, nest, or egg of any such bird.”
(16 U.S.C. 703)

Staff Response: Based on the foregoing, the City’s adoption of the Ordinance would not constitute any of the proscribed activities, and thus would not constitute a violation of the Act. Further, compliance with the TNR Program rules and regulations is expected to control and eventually reduce the feral cat population, which would have the effect of also reducing the number of birds killed by feral cats.

³ The Migratory Bird Treaty Act, 16 U.S.C §703 *et. seq.*, protects some 800 species of migratory birds. A list of these birds can be found at the following website:
<http://www.fws.gov/migratorybirds/RegulationsPolicies/mbta/mbtandx.html#b>

Recommended Course of Action: None.

9. Issue Raised: Access to Private Property for TNR Individuals. Audubon asks whether the City intends to allow the establishment of colonies on private property without permission of the property owner.

Staff Response: The Ordinance does not contain a provision to require TNR Individuals to get permission to go on private property because TNR Individuals, by definition, must conduct their activities on their own property. (See proposed BHMC Sec. 5-2-502 I.)

Recommended Course of Action: None.

10. Issue Raised: Protection of Parks. Audubon supports the Ordinance's prohibition on TNR activities in the City's parks. However, they also suggest that the Ordinance include a requirement that no TNR activities be permitted within 300 meters (984.25 feet) of City parks.

Staff Response: Staff has no objection to establishing a distance requirement as suggested by Audubon.

Recommended Course of Action: Revise the Ordinance to prohibit the placement of feeders and/or traps within 500 feet of a City park. 500 feet, in most cases, would provide a one city block perimeter around City parks.

11. Issue Raised: CEQA Analysis. Audubon challenges the City's reliance on the Class 7 and 8 categorical exemptions from CEQA. We believe that Audubon's arguments that the City's reliance on the Class 7 and 8 categorical exemptions is misplaced.

Staff Response: The City currently has no regulation prohibiting the feeding of feral cats or the management of any colonies that may exist in the City. If the existing condition is allowed to continue, there is a reasonable probability that feral cats will still be fed, but that the other aspects of the Ordinance intended to ensure the eventual decrease in the number of feral cats in the City, including the trapping, spay/neutering, disease control measures, and removal of adoptable cats, such as kittens, from the colonies would be less likely to occur. As such, the new comprehensive regulation of TNR activities in the City is intended to maintain, restore, and enhance the City's natural resources by reducing the number of feral cats, and thereby reducing the predation effects of feral cats on the bird populations in the City, and limiting the amount of fecal matter, including that which might contaminate waters in the City's public rights-of-way.

Second, the proposed Ordinance limits TNR activities to the Central Area of the City, but not in the Hillside Areas, because the Central Area of the City generally consists of higher density and more urban land uses, whereas, the Hillside Area of the City has more natural slope and open space areas which could accommodate more native species of birds. With the control of feral cat

populations, long-term impacts of predation will be reduced. Finally, it bears noting that there are no areas of sensitive habitat in the City, and no evidence of any endangered or threatened species or habitats in the City.

Third, the Ordinance strengthens the regulatory standards applicable to the management, care, or feeding of feral cats in the City, and based on the lack of existing regulations, does not represent a relaxation of any existing standards. One goal of the Ordinance is, over time, to reduce the number of, or eliminate, feral cats in the City. There is substantial evidence, including the many comments provided by persons experienced in TNR activities during the public hearings, that TNR programs can stabilize the number of and eliminate growth in colonies, and over time reduce the number of cats in a colony. *See, e.g., A Public Policy Toward Management of Feral Cats*, Gorman and Levy, 2. *Pierce L. Rev.* 157, 176 (2004) (TNR associated with adoption of sociable cats resulted in long-term reduction of feral cat population.) A copy of this article is attached. With the additional restrictions, limitations, and standards of operation, Beverly Hills' TNR Ordinance is designed to be more effective than the other less stringent TNR programs in existence. As noted in *Evaluation of the Effect of a Long-Term Trap-Neuter-Return and Adoption Program on a Free-Roaming Cat Population*, Levy, Gale and Gale, 222 *J. Am. Veterinary Med. Assn.* 42, (2003), long-term reductions in feral cat populations is feasible through TNR, but “[i]mplementation of an aggressive program for adoption for socialized cats accelerates that decline.” (*Id.* at 45.) The proposed program has an emphasis on adoptions, and thus should speed the population declining. Stabilizing feral cat populations through the TNR Program will ensure that current impacts that the feral cats may have on natural resources, including birds, animals, and water quality (from the fecal matter) will not worsen and will, over time, be reduced as colony populations decline.

It should be noted that Audubon's letter admits other programs resulted in a decrease in cats, from 40 to 36 in the cited Centonze and Levy (2002) study, and from 60 to 23 in the Levy, et al, (2003) study. The cited Natoli, et al, (2006) study found that decreases were observed in 55 colonies, although there was stability or increase in 48 other colonies in Rome, Italy. The City Council heard testimony from a number of persons familiar with TNR activities, many of whom testified as to the efficacy of TNR programs.

Further, in *A Review of Feral Cat Control*, by Sheilah A. Robertson (*Journal of Feline Medicine and Surgery* (2008), p. 371), Ms. Robertson finds that “there is an emerging body of scientific evidence documenting the positive outcome of TNR programs around the world...” Although results are not uniform, “[i]n Florida (US), TNR was found to be more cost effective and efficient than extermination and resulted in fewer ‘nuisance’ complaints about cats and fewer admissions to the local animal shelter.” (*Id.* at p. 372.) Further, “[a]nother success in Florida was the implementation of a TNR program on a university campus which resulted in a significant reduction in the cat numbers (from 156 to 23) over 11 years.” (*Id.*) Ms. Robertson concludes: “there is scientific evidence that TNR under certain conditions can control the feral cat population, and is a viable, humane alternative to other methods previously used.” (*Id.*)

Fourth, the standards applicable to Feral Cat Caregivers and their activities will require use of best practices to eliminate nuisance or unsanitary conditions that might otherwise exist if the activities were not regulated. These standards include periodic removal of fecal matter from the City's public rights-of-way in the vicinity of feeders, and use of feeders designed to prevent

other types of animals from being able to access the feeders. Feeding stations will be managed to minimize the attraction of other animals and pests. Further, the Ordinance prohibits leaving food in the feeders over night, as a means to minimize the attraction of other animals to the feeders during nighttime hours. Notably, prevention of leftovers that attract wildlife was a feature of the successful management of feral cats at the University of Central Florida (*Id.* at p. 43.).

Last, the TNR Program will result in vaccinations of feral cats to reduce the spread of fleas and disease and the risks associated therewith. The incidence of FeLV and FIV is low and no more prevalent than in domestic cats. Feral Cats that appear potentially symptomatic for FeLV and FIV will be tested and if positive will not be allowed to return to its colony.

Attachments:

- i. "A Review of Feral Cat Control," Sheila A. Robertson, *Journal of Feline Medicine and Surgery* (2008)
- ii. "Evaluation of the Effect of a Long-Term Trap-Neuter-Return and Adoption Program on a Free-Roaming Cat Population," Levy, Gale and Gale, 222 *J. Am. Veterinary Med. Assn.* 42 (2003)
- iii. "A Public Policy Toward the Management of Feral Cats," Gorman and Levy, 2. *Pierce L. Rev.* 157 (2004)

Attachment (i)



REVIEW ARTICLE

A review of feral cat control

Sheilah A Robertson BVMS (Hons), PhD, DACVA, DECVA, CVA, MRCVS

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Animal overpopulation including feral cats is an important global problem. There are many stakeholders involved in the feral cat debate over 'what to do about the problem', including those who consider them a nuisance, the public at risk from zoonotic disease, people who are concerned about the welfare of feral cats, those concerned with wildlife impacts, and the cats themselves. How best to control this population is controversial and has ranged from culling, relocation, and more recently 'trap neuter return' (TNR) methods. Data support the success of TNR in reducing cat populations, but to have a large impact it will have to be adopted on a far greater scale than it is currently practised. Non-surgical contraception is a realistic future goal. Because the feral cat problem was created by humans, concerted educational efforts on responsible pet ownership and the intrinsic value of animals is an integral part of a solution.

Date accepted: 15 August 2007

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Cats have been closely linked to the evolution of human society for thousands of years. In ancient Egypt cats were associated with the goddess Bast or Bastet (2890–2686 Before Common Era [BCE]) and were revered and protected ('Bastet' *Encyclopedia Mythica* from Encyclopedia Mythica Online. <<http://www.pantheon.org/articles/b/bstet.html>>); the practise of mummification was extended to them and tombs containing thousands of cats have been discovered. There is evidence of co-existence between cats and humans dating back to 6000 BCE in Cypress where cat and human remains have been discovered buried together. In ancient times cats were considered useful for controlling vermin and protecting grain. Cats have also been seen in a negative light by other cultures because of their perceived association with satan, evil and witchcraft; however, since the 19th century, most of these negative connotations have been replaced with a more favorable attitude toward this species. There are an estimated 200 million cats (*Felis catus*) kept as pets worldwide and in many countries including the USA, the

UK and China, pet cats outnumber pet dogs (Bernstein 2005).

In addition to 'pet cats' which are owned, there is another population of cats referred to as feral cats. The definition of a feral cat varies considerably and they have often been referred to as stray cats (an owned cat that has become lost, or one abandoned by its owner), barn cats, alley cats, 'escaped domestic cats gone wild', cats that reproduce in the wild and free-roaming cats that do, or do not rely on humans for food and shelter. One proposed definition is 'a cat that cannot be handled, is unsocialized (with humans), and not suitable for placement in a home as a pet' (Slater 2005). Levy and Crawford (2004) describe a feral cat as any unconfined, unowned cat regardless of its socialization status. Feral cats are not confined and roam freely. A colony is defined as a group of three or more sexually mature animals living and feeding in close proximity to one another (Slater 2005). Feral cats or colonies can further be described based on 'ownership'. Some are completely independent of humans and some are provided with food and shelter on a regular basis by 'caretakers'. A colony is referred to as 'managed' if it is controlled by trap, neuter, and return (TNR) programs (see later under methods for controlling feral cat populations).

E-mail: robertsonsa@vetmed.ufl.edu (SA Robertson)

Where do feral cats come from?

The source of feral cats likely varies depending on the location but they may come from existing feral cats and/or from intact lost and abandoned cats that have become unsocialized. In addition, cats may have been introduced into a locale deliberately for control of vermin. Therefore, it is quite clear that humans are responsible for the growing numbers of feral cats. In many countries and in particular the USA pet overpopulation is a growing problem and is a result of people, albeit a minority, regarding animals as disposable resulting in abandonment. In addition, some owners allow their cats to breed freely, or to have kittens prior to sterilizing them. Both of these attitudes contribute to the growing number of feral cats.

It is difficult to estimate the number of feral cats. Several surveys in the USA showed that up to 22% of households feed outdoor cats that they do not own (Levy et al 2003b, Slater 2005). Patronek (1998) suggested that the number of feral cats was between 25 and 60 million. According to Jessup (2004) the USA may be dealing with 60–100 million feral and abandoned cats. Slater (2005) estimates it to be between one-third to one-half of the owned population; the current (2007) estimate of pet cat numbers in the USA is 90 million which would give a figure between 30 and 45 million for feral cats.

Cats have a high reproductive capacity and it is estimated that free-roaming cats can produce a litter of 1–6 kittens 1.6 times per year (Nutter et al 2004b). Cats are sexually mature by 5 to 6 months of age, therefore, even with high mortality rates (Nutter et al 2004b) cat numbers can be sustained. A consistent source of adequate food, which may be obtained from hunting or be provided by caretakers, is essential for a colony to remain in one location. Other factors including shelter and competition with other species also play a role in the stability of a colony (Liberg et al 2000).

Feral cat issues are a worldwide problem and are found in any place that people have traveled or inhabited.

Feral cat issues

The main issues surrounding feral cats can be categorized as follows:

- Public health and zoonotic disease
- Spread of disease to other species

- Spread of disease to pet cats
- Public nuisance
- Predation of wildlife, extinction of native species, disruption of ecosystems
- The welfare of the cats themselves

Who are the stakeholders in the feral cat debate?

The number of interested parties is substantial in the ongoing feral cat debate; any balanced and unbiased discussion must consider the public who consider them a nuisance, the public at risk from zoonotic disease, the people who are concerned for feral cats, preyed wildlife, the 'pro-wildlife anti-cat' groups, and the cats themselves. The debate is frequently emotional in both the pro-cat and anti-cat camps and until recently there have been few scientific studies on which to base many of the arguments.

Public health and zoonosis issues

There is concern about the possibility of cats transmitting diseases to humans, but in reviewing the literature there is little information on the actual frequency of zoonotic diseases in which cats can be implicated. Transmission of disease to humans will vary between countries and climatic regions and also depend on the health status of the human population. Without doubt rabies is the disease of most concern as once clinical signs appear in humans survival is very rare. Successful treatment of one patient in the USA has recently been reported but the facilities and financial support that were required in that case are unlikely to be available in many poorer countries (Willoughby et al 2005).

In most of Europe and the USA, wildlife (eg, raccoons, bats, and skunks) is the most important source of rabies whereas in Asia and Africa dogs are the primary vector of rabies and the biggest threat to humans; dogs have been the focus of the World Health Organization's rabies control program. In the USA the last reported case of rabies in a human that could be linked to a cat was in 1975. (Data from the Center for Disease Control www.cdc.gov. Accessed March 23, 2007.) In 2003, there was a concern that cats could spread sudden acute respiratory syndrome (SARS) and mass culling of cats was temporarily implemented in Singapore. However, based on lack of scientific evidence and intervention by animal welfare organizations this decision was later reversed.

Fatal human plague (*Yersinia pestis*) has been traced to cat exposure in the western United States (Gage et al 2000). Toxoplasmosis (*Toxoplasma gondii*) is a common protozoal disease of cats that can be transmitted to humans. It is usually self-limiting or subclinical in healthy people but can cause serious illness in immuno-compromised humans (eg, AIDS patients). Infected mothers can transmit the infection to their fetus and children may develop chorioretinitis and cerebral defects (Vutova et al 2002). The disease may be contracted by contact with contaminated soil, food and water and is not always associated with direct cat contact. In one study there was no difference in the prevalence of infection between pet cats and feral cats nor those kept indoors versus outdoors (DeFeo et al 2002). The prevalence of *Toxoplasma gondii* based on IgG and IgM antibody testing in feral cats in North Central Florida was lower (<10%) (Luria et al 2004) than in pet cats in Ohio (48%; Dubey et al 2002) and Colorado (19.7%; Hill et al 2000). *Bartonella henselae* is the cause of cat scratch fever and is prevalent in both owned and feral cats, with infection rates varying between geographical regions; this disease most often becomes clinical in the face of immunosuppression and does require a direct bite or scratch for transmission. Other cat-related zoonotic diseases include typhus like diseases (*Rickettsia felis* and *typhi*), Rocky Mountain spotted fever (*Rickettsia*) and Q fever (*C. burnetti*) which are transmitted by the cat flea. *Giardia* species, *Cryptosporidium* species and *Toxocara cati* are also associated with cats.

The H5N1 virus, the cause of highly pathogenic avian influenza (HPAI) is an important emerging pathogen and has potential for pandemic spread. Infection of cats has been confirmed in Germany and Asia (data from the Center for Disease Control www.cdc.gov (accessed March 23 2007), The Food and Agricultural Organization of the United Nations, www.foa.org, and the World Health Organisation, www.who.int/en). Cats can be infected by close contact with affected birds (eating infected carcasses, fecal exposure) but cat to cat transmission is also possible. Infected cats theoretically pose an exposure threat to pet owners although contact with a large amount of virus is required, and cats (and other mammals) only shed small amounts of virus compared to birds. The World Health Organization state that there is no evidence that cats play a role in the transmission cycle of H5N1 and no human cases have been linked with exposure to diseased cats.

Overall it would appear that feral cats do not have a greater impact on transmissible diseases than free-roaming pet cats (Nutter et al 2004a).

Spread of disease to other species

Toxoplasma gondii has been implicated in the death of southern sea otters in California (Kreuder et al 2003), but as discussed later, feral cats are not the only contributors to the protozoal load that enters freshwater outflows. Efforts to reintroduce the Hawaiian Alala bird were hampered by *Toxoplasma gondii* (Work et al 2000). Equine protozoal myeloencephalitis is a serious neurological disease of horses caused by *Sarcocystis neurona* and both feral and owned cats can be naturally infected and act as one of the many intermediate hosts (Stanek et al 2003).

Feline leukemia virus (FeLV) and feline immunodeficiency virus (FIV) are present in both owned and feral cats and can impact adversely on their health. As discussed above owned and feral cats may be infected with many other infectious organisms that are of concern for the cat and for humans. Overall, cats in managed colonies have a similar prevalence rate of infection as pet cats (Luria et al 2004).

Public nuisance

Complaints about feral cats include the noise they make, especially intact male cats at night, fecal contamination and their presence around restaurants, cafes and other public places. One study in California (Dabritz et al 2006) comprised of approximately 9000 cats in total concluded that they deposited 77.6 tonnes per year of fecal material outdoors but estimated that feral cats were only responsible for less than 30% of this, the rest coming from owned cats that were allowed to roam. People who own cats are less likely to complain about feral cats or be concerned about potential water pollution (Dabritz et al 2006), however, this does not negate the issue.

Predation of wildlife, extinction of native species, disruption of ecosystems

Of all the issues surrounding feral cats the discussion of their impact on wildlife is the one that is most controversial and hotly debated and polarized into 'pro-cat' and 'pro-wildlife' camps. Unfortunately, many of the arguments on both sides

are based on emotion and not on scientific fact leading to conflict when in fact common ground can be found. It is argued that because cats are a domestic species or non-native (introduced) species they should be removed from the environment or prevented from hunting wildlife by confinement indoors or in enclosures. This attitude takes the stance that non-native species are harmful and of lesser value than native species which 'must be protected' and is a normative judgment (Tantillo 2006). However, in reality farm animals are usually non-native (eg, sheep) and are protected from coyotes, mountain lions and foxes, usually by elimination of the predators, which are native species. It has been stated that by allowing cats to hunt wildlife one is placing more value on the life of the cat than the prey species. This is an ethical argument and depends on personal beliefs of the relative importance of different animals. Without doubt wild animals can experience pain and suffering and many may endure injury and painful deaths when hunted by feral cats.

One must not forget that much of the pressure on wildlife is by urban and industrial development causing loss of suitable habitats, and by pollution therefore one sole factor (eg, feral cats) is unlikely to be responsible. Feral cats can impact wildlife by predation, competition for food or by spread of disease. The importance of each factor is likely to vary widely in different locations depending on the availability of different prey species, sources of other food (from garbage or from caretakers), other predators and other pressures such as loss of habitat. It can be difficult to document what cats eat and studies have tried to elucidate this by looking at fecal samples and examining partially eaten prey at different locations. Fitzgerald and Turner (2000) state that mammals are the primary prey of cats, with birds comprising about 20% of their diet. Reptiles can be an important source of food for some cats, depending on the geographical location. Some studies have been taken out of context and have led to headlines such as 'cats kill millions of small mammals and birds' (Harrison 1992). Jessup (2004) states that 'feral cats cause massive killing and crippling of native wildlife and jeopardize biodiversity'. In urban environments endangered species are rare and in fact cats may be useful for controlling other introduced species which are considered pests, for example, rats. Cats have often been blamed for a decline in a native species yet the impact of other predators such as rats, weasels, stoats, ferrets and the mongoose are largely ignored. The situation may be very different between well managed colonies

and unmanaged colonies. Observation of a managed colony revealed minimal predation of birds (Castillo and Clarke 2003).

It has been proposed that if feral cats are removed then the whole situation is resolved and the ecosystem returns to 'normal', or at least to 'pre-cat' conditions. However, this is a very complex situation and requires an understanding of prey, mesopredator and superpredator relationships. Many 'assumed' relationships have turned out to be false when studied carefully. Where birds, rats and cat coexist it has been shown that if cats are removed, there is a sharp increase in the number of rats resulting in almost total loss of the bird population (Courchamp et al 1999), and more recently this has been supported by complex mathematical modeling (Fan et al 2005) where the authors conclude that 'in a prey-mesopredator-superpredator trophic food web, eradication of introduced superpredators such as feral domestic cats is not always the best solution to protect endemic insular prey. The presence of a superpredator may have a beneficial effect in such systems'. In Macquarie Island (between Tasmania and Antarctica) feral cats were eradicated as they were thought to be a threat to what is a national heritage area and home for seabirds. The result was an explosion of the rabbit and rat population and a destruction of the landscape. Now a plan is in place to eradicate rabbits but this could lead to further loss of biodiversity and imbalance and the outcome is unpredictable.

Welfare of feral cats

When considering the well being of feral cats we need to look at both their health and their need for interaction at least to some extent with humans. In many cases caretakers do provide care for colonies of feral cats (Centonze and Levy 2002) by offering food and shelter, basic veterinary care and participating in trap, neuter, and return (TNR) programs. The human-animal bond can be strong in many of these situations and the caretakers cite sympathy and ethical concerns as the main reasons for looking after the cats. Many devote considerable time and sums of money to help these animals (Centonze and Levy 2002).

Body condition scores for feral cats indicate that they are often lean (Scott et al 2002a, b) but emaciated cats are sometimes seen (author's personal experience). Neutering of feral cats improves body score and is also said to improve their health, make them less likely to roam and to become friendlier.

In one survey of feral cats, 75% of kittens died or disappeared within 6 months of birth with trauma (from stray dogs, motor vehicle accidents) being a common cause of death (Nutter et al 2004b). However, reasons for attrition must vary depending on geographical locations and factors such as weather and human population density. Some authors have stated that the mortality rate of feral cats is high and the life expectancy is less than 5 years with causes of death ranging from disease, poisoning, car accidents and attack from other animals (Clarke and Pacin 2002) which equates with a poor quality of life. In summary the welfare of feral cats can vary markedly. In some managed colonies it can be good but in other situations it can be extremely poor. Some people consider destruction of feral cats more humane than allowing them to live with a poor quality of life. As we can see, when considering feral cats, one solution does not fit all situations because all situations are different (Stoskopf and Nutter 2004).

Over the past 20 years there has been an increase in concern for feral cats – both by those who are sympathetic to the cats themselves and those concerned with the real or perceived problems they cause related to wildlife, public health and the health of other animals. There is common agreement that the goal is to reduce the feral cat population but there is much debate and conflict over how this is best achieved.

Feral cat control/solutions

The methods for controlling the feral cat population can be listed as follows:

- Do nothing/‘wait and see’
- Destroy on site
- Trap, remove and euthanase
- Trap and relocate
- Trap, neuter and return (TNR)
- Non-surgical contraception
- Controlling the source of cats

Methods must be effective, practical and humane, so the question is, ‘are there solutions that benefit all stakeholders?’

The ‘do nothing’ approach is an unwise one as history has shown that nature will not ‘take its course and fix the problem’. With the increase in sensitivity toward animals by the majority of the public and pressure on local authorities to act on the problem, doing nothing is no longer acceptable.

Euthanasia

As previously discussed, some people are of the opinion that the life of a feral cat is full of risks and, therefore, not acceptable on welfare grounds, leading to recommendations that the feral cats are ‘pre-emptively’ euthanased before they suffer. However, this often involves destruction of healthy animals, and is not based on their health status at the time of euthanasia. This ‘solution’ brings up the important question of ‘is it ethically acceptable to destroy healthy animals?’ Double standards often exist; wild animals may experience poor welfare and painful deaths yet no one recommends culling them because they ‘might suffer’. The question of ending the life of healthy animals is a far reaching ethical question as humans do kill healthy animals for food and pest control. This current discussion will focus on the plight of the feral cat.

Destroy on site

If destruction is the chosen policy there are important issues to address:

1. Are the techniques used humane?
2. Does it reduce the population?

If poisons are used, cats can suffer a painful and slow death and other species may also be inadvertently poisoned and there is always the risk of human exposure; this is an unacceptable practise and must be condemned. Poisons that have been used include anticoagulants and sodium monofluoroacetate (Compound 1080) (Sherley 2004).

In locations that are not geographically isolated, elimination of cats in one location often results in cats from other locations moving in to take advantage of the space and food sources. Even in isolated areas such as Marion Island eradication of a small (2500) cat population took many years (Nogales et al 2004; www.feralcat.com/sarah2.html). In that situation cats were originally introduced to the island to control house mice but were later blamed for a decrease in the bird population. It took a combination of introduction of feline panleukopenia virus, trapping, hunting and poisoning over 15 years to eradicate the cats. This clearly demonstrates that these techniques are not viable on a large scale basis and are ethically unacceptable. Many other examples of the inefficiency and potential adverse effects of ‘kill on site’ programs are described by Slater (2005).

Destruction of feral cats is becoming increasingly unpopular with the public. For example, in some European cities feral cats are now protected (www.romancats.de) and sanctuaries such as the Torre Argentina Roman cat sanctuary have been set up. It is clear that more humane, ethically acceptable and effective methods are needed.

Trap, remove and euthanase

This process is more humane than the methods used to destroy animals on site. Cats are trapped in humane traps; these are purpose built traps that cats enter to obtain food thereby tripping a gate – no harm comes to the cat as long as traps are checked every 24 h. Cats may be heavily sedated then euthanased with an overdose of barbiturate. However; other less humane techniques including intraperitoneal injection of barbiturate and carbon monoxide gassing are reported. Unless the program is intense and new cats are continually removed, this method is unlikely to succeed for the same reasons as outlined previously.

Trap, remove/relocate

In some cases very young kittens and socialized adults may be adoptable, but this is limited by the availability of suitable homes. Relocation may be the most viable option if a feral cat colony is truly threatening an endangered native species. Some feral cats are relocated to other properties, for example, farms. Another alternative is placement in cat sanctuaries where cats often spend the rest of their lives. These are expensive to run well and can only care for a small percentage of feral cats. Relocation may be useful in addition to other approaches but does not work as a sole technique for dealing with cat overpopulation.

Trap, neuter and return/release (TNR)

Using matrix population models, Andersen et al (2004) calculated that the population of free-roaming cats could be controlled if 50% were euthanased per year, or 75% were sterilized; but stated that euthanasia would be more effective. The validity of the findings in that publication needs to be verified by actual documentation of the outcome of both methods. The authors did not address the issue of the acceptance by the public of euthanasia or the fact that in some countries feral cats are now protected from indiscriminate euthanasia. Foley et al (2005) analyzed feral

cat data in San Diego (California, USA) and Alachua County (Florida, USA) between 1992 and 2004. Using mathematical models to describe population dynamics they stated that monitoring of cat colonies is possible using easily collected data and predicted this data could contribute to modifications of programs and improved future success. A quote from their paper is very pertinent – ‘statistical assessment of the impact of TNR programs on population size is critical to help gain credibility for such programs’.

The goal of TNR programs is to stabilize or reduce a local population by sterilization. It is assumed that because cats are returned to their original site, other cats are less likely to move in to populate a vacated space and there will be natural attrition of the returned sterilized cats. However, it is documented that cats, especially males, move between colonies (Levy et al 2003a). The local population can be reduced more rapidly if young kittens are removed permanently and adopted. This approach accomplishes population control but can allow a sensible number of cats to remain which are often essential for pest control in urban environments. TNR offers the public an opportunity to improve the welfare of feral cats. The visibility of humane solutions to an animal related problem can educate the public on our responsibilities to animals and also allow them to learn about animal behavior and permit some social interaction.

Jessup (2004) claims that maintaining cats in managed colonies compounds feral cat ‘problems’ including the destruction of wildlife and encourages people to abandon cats at the colony sites. His definition of TNR is trap, neuter and *re-abandon*. He states that as abandonment is illegal (under state laws in the USA) trap, neuter and return programs cannot be morally justified. He also claims that some caretakers fail to provide adequate food, water and shelter at TNR sites and, therefore, are committing an act of animal cruelty. However, there is an emerging body of scientific evidence documenting the positive outcome of TNR programs around the world, but within the United States TNR programs are not allowed by law in some municipalities.

In general, TNR involves the humane trapping of cats, sterilization (by a veterinarian), permanent identification of sterilization status (the tip of one ear is removed); vaccination for rabies (in countries where this disease occurs) and release back to the original trapping location. In many cases, other care is provided such as deworming, application of anti-flea medication and vaccination

against feline panleukopenia, rhinotracheitis, calici virus and feline leukemia. Because feral cats are not amenable to nursing, very sick and injured cats are euthanased. Benefits of sterilization (other than population control) include improved body condition (Scott et al 2002b), more interaction with caretakers and decreased roaming and fighting by male cats. Well studied techniques for anesthesia of feral cats are safe and result in minimal mortality (Williams et al 2002, Cistola et al 2004). Newer anesthetic protocols are being developed that focus on postoperative analgesia and a quicker return to normal function (author's unpublished data).

There is some debate as to where and when TNR began but it is known to have been conducted in South Africa and Denmark over 20 years ago and is now well established in the UK, Canada, the Netherlands and the USA as well as many other countries. Some of the earliest scientific reports of its success originated in the UK (Neville and Remfry 1984).

In Florida (USA) TNR was found to be more cost effective and efficient than extermination and resulted in fewer 'nuisance' complaints about cats and fewer admissions to the local animal shelter (Hughes et al 2002). Another success in Florida was the implementation of a TNR program on a university campus which resulted in a significant reduction in cat numbers (from 156 to 23) over 11 years (Levy et al 2003a). The colony initially had 156 cats and over a 5 year period 155 were sterilized. Almost half the cats were adopted and no known births occurred on the campus 5 years after the program began. A few cats disappeared and some sick animals were euthanased. Follow-up studies indicated that the remaining cats had been present for over 6 years suggesting that the welfare and longevity of feral cats can be good under some circumstances.

Provision of free sterilization clinics to a group of caretakers looking after 132 colonies with a total of 920 cats (again in Florida) reduced the population by 26% within a year (Centonze and Levy 2002).

A recent publication describes 10 years of experience with TNR in Rome, Italy (Natoli et al 2006). Since 1991, Italy has had a 'no-kill' policy for the control of feral cats. These authors reported a general decrease in cat numbers after spay/neuter programs were implemented in the city, but their efforts were partly thwarted by the arrival of new cats both by migration into the city and from the abandonment of pet cats within the city. They conclude that a TNR program must be combined

with education of pet owners about early sterilization and abandonment of pets.

Failures of TNR programs are also reported. In one instance, TNR efforts were negated by the abandonment of cats at the highly visible colony (Castillo and Clarke 2003) – it is assumed that owners may drop cats off at these site in the hope that they will be looked after rather than taking them to shelters where they may be euthanased. Again this emphasizes the great need for education and teaching the public that animals are sentient beings and deserve to be cared for. The message must be that owning a pet is a life-long commitment.

In conclusion, there is scientific evidence that TNR under certain conditions can control the feral cat population, and is a viable, humane alternative to other methods previously used. It requires a large group of motivated volunteers which must include veterinarians. Continued and increased funding (by private welfare organizations and by municipal and government agencies) are essential for long-term success. The time and financial costs of trapping cats have been estimated (Nutter et al 2004c), and a TNR program named Operation CatNip in Florida (http://vmc.vetmed.ufl.edu/Operation_Catnip.aspx) is estimated to cost US \$17/cat. Endorsement by government, animal welfare organizations and local authorities is also essential. Education of pet owners is required to prevent abandonment and breeding of owned cats that can thwart TNR efforts.

Non-surgical contraception

Some control techniques such as mass euthanasia are costly, time consuming and ethically unpleasant. TNR is labor intensive and costly and involves anesthesia and surgery with the potential for complications and postoperative pain. A humane approach to animal control involves using a vaccine to block fertility, often by preventing fertilization of ova. This approach, using SpayVac (Spayvac-for-wildlife, Inc) has been successful in deer and seals. Issues such as efficacy, delivery method, safety to the target species, side-effects and possible effects on other species in the same environment must be considered and are complex (Purswell and Kolster 2006). This approach is gaining acceptance both politically and by those concerned for the welfare of feral cats. Recent trials in research cats revealed that although antibodies to the zona pellucida were made and high titers achieved, which would be considered to be immunocontraceptive in other species,

zona pellucida vaccines did not prevent pregnancy in females treated at 8–12 weeks of age (Gorman et al 2002). More recent work involving immunization against gonadotropin-releasing hormone (GnRH) in male cats has been more successful (Levy et al 2004).

The Alliance for Contraception in Cats and Dogs (www.acc-d.org) is searching for a drug, vaccine, or implant that is safe, inexpensive, and capable of rendering a cat permanently sterile after a one-time procedure. Until such a holy grail of sterilization is developed other control measures should be aggressively followed.

Decreasing the source of cats

Abandoned and lost pet cats that have been allowed to roam freely can enter the feral cat population and are a common cause for TNR failures. Abandonment is a blatant failure of human responsibility and represents anti-social and immoral behavior. In many instances it is also illegal, or should be made so, but enforcement is difficult and prosecution rare as it is difficult to prove most cases. If written into legislation, laws against abandonment must be carefully couched with no loopholes so that established TNR programs remain legal, and to allow new ones to become established.

Permanent identification, preferably with a microchip would enable lost cats to be reunited with their owners. The numbers of lost pet cats could be reduced by encouraging owners to keep cats indoors; this is a common theme of many advisory bodies including the American Association of Feline Practitioners (Richards 2004), and the American Veterinary Medical Association (www.avma.org/issues/policy/animal_welfare/feral_cats.asp). Some would argue that this denies the cat one of its five freedoms – that of exhibiting normal behavior by hunting and roaming. However, indoor living is more likely to ensure that the other ‘freedoms’ such as the freedom from thirst and hunger, discomfort, pain, injury, disease, fear and distress are provided. If the term utilitarian is interpreted as meaning that ‘actions are right if they are useful or for the benefit of a majority’, and taking into account all the stakeholders in the feral cat issue, then keeping cats indoors does seem a sensible solution.

A concerted effort to educate the public about responsible pet ownership should emphasize the benefits of early sterilization, provide information on cat behavior, and outline the financial and time commitment required to provide for a cat for its

entire life. Low-cost sterilization clinics should be available for people with low incomes. To prevent abandonment there should be help for re-homing cats if an owner can no longer look after their pet. Teaching that animals are sentient beings and deserving of humane care can start early in childhood and continue into adulthood. The National Association for Humane and Environmental Education (www.nahee.org), which is affiliated with the Humane Society of the United States is one example; this organization offers ‘adopt a classroom’ opportunities and provides teaching materials, grants and professional workshops for teachers so that children can learn about overpopulation issues and humane attitudes toward animals.

The future

Pet overpopulation is a global problem and must be addressed. The scientific literature on feral cats is increasing and is essential for modifying and improving current control methods. Widespread non-surgical contraception is a realistic future goal but until that time, TNR programs and education are pivotal to a successful reduction in numbers.

Conclusion

Feral cats are a result of human actions; we caused the problem and we should be responsible for a solution. Reducing the feral cat population is possible with continued efforts aimed at sterilization, research on contraception and education. In countries where veterinary services are limited, education alone is a worthwhile pursuit.

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Attachment (ii)

Evaluation of the effect of a long-term trap-neuter-return and adoption program on a free-roaming cat population

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Objective—To evaluate the effect of a long-term trap-neuter-return program, with adoption whenever possible, on the dynamics of a free-roaming cat population.

Design—Observational epidemiologic study.

Animals—155 unowned free-roaming cats.

Procedures—Free-roaming cats residing on a university campus were trapped, neutered, and returned to the environment or adopted over an 11-year period.

Results—During the observation period (January 1991 to April 2002), 75% of the cats were feral, and 25% were socialized. Kittens comprised 56% of the original population. Male cats were slightly more numerous (55%) than females. At the conclusion of the observation period, 47% of the cats had been removed for adoption, 15% remained on site, 15% had disappeared, 11% were euthanatized, 6% had died, and 6% had moved to the surrounding wooded environment. Trapping began in 1991; however, a complete census of cats was not completed until 1996, at which time 68 cats resided on site. At completion of the study in 2002, the population had decreased by 66%, from 68 to 23 cats (of which 22 were feral). No kittens were observed on site after 1995, but additional stray or abandoned cats continued to become resident. New arrivals were neutered or adopted before they could reproduce.

Conclusions and Clinical Relevance—A comprehensive long-term program of neutering followed by adoption or return to the resident colony can result in reduction of free-roaming cat populations in urban areas. (*J Am Vet Med Assoc* 2003;222:42–46)

Populations of unowned free-roaming cats exist throughout the world. Concern about the impact of free-roaming cats on the environment and public health, as well as consideration of the welfare of the cats themselves, has led to various efforts to reduce their numbers. After decades of effort, free-roaming cats have been extirpated from several small, uninhabited islands as a result of intensive control measures, including poisoning, hunting, trapping, and introduction of infectious feline diseases.¹⁻⁴ Despite the success of eradication campaigns on geographically isolated islands, logistic barriers and opposition from resident citizens often make application of such strategies to populated mainland territories unfeasible.⁴⁻¹⁰ Cat con-

trol programs in populated areas must incorporate safety considerations for nontarget animals and humans, be affordable for participating municipal agencies or charitable organizations, include plans to curtail continuous cat immigration and reproduction, and be aesthetically acceptable to the public.⁴

The number of unowned free-roaming cats in the United States is unknown, but is suspected to rival that of pet cats (73 million in 2000) and to contribute substantially to cat overpopulation.¹¹⁻¹⁴ The free-roaming cat population consists of both socialized stray cats and unsocialized feral cats. Individual cats may have a variety of lifestyles during their lives, including owned pet, stray, and feral status. Because of the vast overlap of lifestyle and socialization status continuums, it is difficult to define discrete populations of free-roaming cats.¹⁵

Considerable controversy surrounds methods for controlling free-roaming cats, particularly identification of the option that is most practical, effective, and humane. Trap-neuter-return (TNR) programs are intended to halt reproduction without causing harm to the cats.^{7,10,16-18} In this approach, cats are trapped, neutered, returned to the site of capture, and released. Veterinarians are central to the process, because they perform the surgeries and are frequently asked to consult on issues of health and welfare of free-roaming cats. The concept of TNR as a humane method for cat population control is endorsed by the AVMA¹⁹ and many humane organizations.¹⁰ More than 1,000 veterinary members of the California Veterinary Medical Association neutered more than 170,000 cats between July 1999 and May 2002 in a \$12 million project funded by Maddie's Fund. However, virtually no information exists to support the contention that neutering is an effective long-term method for controlling free-roaming cat populations.

The purpose of the study reported here was to evaluate the effect of a TNR program on a free-roaming cat population. The site of the study was a university campus on which several cat colonies had become established soon after inception in the late 1960s; typically, the colonies formed around food services and student dormitories. Periodically, cats were trapped for euthanasia when cat populations increased to nuisance levels. Beginning in 1991, university employees and students developed a program to capture cats for neutering, followed by return to the colony or adoption. For the purposes of this study, the term free-roaming refers to unowned cats of feral or socialized status.

Materials and Methods

Location—The University of Central Florida occupies 1,415 acres; approximately one-third of the campus site, especially the outer perimeter, is heavily wooded. The cam-

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pus population comprises over 38,000 students and employees; resident students are not allowed to keep pets. On-site construction frequently affects the availability of cat habitats.

Data collection—Beginning in 1991, volunteers began an organized effort to capture free-roaming cats on campus for neutering and to keep records of cat sightings and human interventions. Additional colonies were added to the control program as they were discovered. Cats were recorded as kittens if they were believed to be ≤ 6 months of age. Cats were classified as feral if they avoided human contact. The distinction between feral and socialized cats was imprecise because some cats became more tame with time, and some cats were friendly only toward their feeders and not toward other humans. The socialization status of cats was recorded only at the time of first appearance and was not revised to reflect changes over time. By 1996, all cats on campus were identified and cataloged, including photographs and written descriptions of each cat, socialization status (feral vs socialized), colony affiliations, and final outcomes. Data from the daily observation logs were condensed into quarterly reports. These reports were reviewed retrospectively for the period from January 1991 to April 2002.

Cat care program—Free-roaming cats were trapped by members of the Friends of Campus Cats volunteer organization and transported to veterinarians in private practice or Orange County Animal Services for neutering. Cats were vaccinated against panleukopenia, calicivirus infection, rhinotracheitis, and rabies. The tip of an ear was removed or notched to identify neutered cats. Selected cats, primarily those that appeared ill or those that were mature males, were tested for FeLV and FIV. Cats with positive test results were euthanized. Following neutering, most cats were returned to their trapping site and released. Many cats, especially kittens and socialized adults, were eventually removed for adoption, but this often occurred long after neutering and return to the colony. Most socialized cats were transferred to other local rescue organizations for adoption, but some cats were adopted by campus employees and students. Cats found their own shelter, often under buildings. Cat food was provided every day by volunteers. Feeding stations were placed to avoid drawing human attention to the cat colonies; food dishes were placed in small moats to prevent insect infestation. Amounts of food provided were adjusted to prevent accumulation of excessive leftovers that might attract wildlife. Injured or ill cats were recaptured for veterinary attention or euthanasia.

Statistical analyses—Descriptive statistics were calculated for data regarding population variables.

Results

Cats—One hundred fifty-five cats were recorded on the campus during the reporting period; these included 116 unsocialized feral cats and 39 cats that were socialized at the time of first appearance (Table

1). Of the feral cats, 58% were kittens; most (69%) of the socialized cats were adults. Fifty-five percent of the 155 cats were males. Only 7 (5%) cats were neutered at the time of initial capture, including 5 socialized adults, 1 socialized kitten, and 1 feral adult.

Cat colonies—Colonies were defined as a feeding area and shelter frequented by an apparently stable population of cats. Eleven discrete cat colonies were identified. In most instances, cats were initially attracted by a readily available food source and then deliberate feeding ensued. Two of the colonies were located near university food service areas, 3 near dormitories, 5 near academic or administrative buildings, and 1 in a parking garage. The cats typically found their own shelter, usually beneath buildings or trailers. The maximum number of cats in each of the 11 colonies ranged from 3 to 25. During the reporting period, all colonies had reductions in numbers of cats so that the size of colonies at the end of the study ranged from 1 to 5 cats; cats were removed for adoption, disappeared, euthanized, died, or moved to the surrounding wooded environment (Table 2).

All cats did not remain in the same colony throughout the reporting period. Of the 155 cats, 24 moved locations at least once, 17 spent time in other colonies, 11 roamed without a fixed colony, and 10 moved to the perimeter woods where they were not regularly observed. Of the 24 cats that moved between locations, 14 (58%) were males; this finding was similar to the proportion of males overall. Some cats moved locations on 2 or 3 occasions, often after long periods of residence at a single location; median time spent in the original location was 3.0 years (range, 0.1 to 6.0 years). Subsequently, cats spent a median of 3.3 years (range, 0.2 to 5.8 years) in a second site ($n = 24$ cats), 1.3 years (range, 0.3 to 2.6 years) in a third location (6), and 1.5 years in a fourth location (1). For example, 1 male cat was first observed as a feral kitten in August 1993. The cat was castrated in January 1994 and then returned to its colony, where it remained for

Table 1—Characteristics of 155 free-roaming cats at inclusion in a trap-neuter-return and adoption population control program

Variable	Feral cats	Socialized cats	Total
No.	116	39	155
Age			
Kittens	75	12	87
Adults	41	27	68
Sex			
Male	67	18	85
Female	49	21	70

Table 2—Disposition of 155 free-roaming cats included in a trap-neuter-return and adoption population control program

Disposition	No. of cats (%)	Sex		Original socialization status		Age group at disposition		Duration on campus (y)		
		Male	Female	Feral	Socialized	Kitten	Adult	Mean \pm SD	Median	Range
Remaining	23 (15%)	11	12	22	1	0	23	6.7 \pm 2.2	6.8	1.3–11.5
Adopted	73 (47%)	35	38	42	31	22	51	1.6 \pm 2.3	0.4	0–10.5
To woods	9 (6%)	6	3	9	0	0	9	0.6 \pm 0.9	0.1	0–2.2
Disappeared	23 (15%)	15	8	22	1	0	23	3.3 \pm 2.1	2.9	0.4–7.5
Died	10 (6%)	4	6	10	0	0	10	4.6 \pm 2.4	4.7	0.3–8.3
Euthanized	17 (11%)	14	3	11	6	0	17	3.0 \pm 2.7	2.9	0–8.5
Total	155	85	70	116	39	22	133	2.9 \pm 2.9	2.0	0–11.5

3.4 years until its shelter was demolished during construction in June 1997. The cat then roamed without a fixed colony for 2.3 years until September 1999 when it joined a second colony for 1.3 years. None of the cats in the second colony had shared the original colony with this cat. Finally, in January 2001, the cat again roamed without a fixed colony throughout the remainder of the reporting period (1.2 years). Overall, this cat spent 8.3 years in 2 different colonies with 2 extended periods of roaming without a fixed colony.

Three of the 11 colonies were eventually depleted of cats. In 1 colony, the cats' shelter was demolished to make way for construction of new dormitories. Of the 6 cats residing in the colony at the time of demolition, 1 was adopted immediately, 1 was not observed again, 2 immediately joined other colonies, 1 joined another colony after roaming for 2 years, and 1 was adopted after roaming without a fixed colony for 2 years. All 3 cats that relocated selected different colonies to join. Two colonies gradually decreased in size because of attrition and relocation of members to other colonies; eventually, these were depleted as the last members were adopted. Despite the presence of cats for 7 to 9 years before the colonies were disbanded and the ongoing availability of food, these colonies have not been reestablished by new arrivals.

Ten cats relocated to the perimeter woods where they were not regularly observed. Nine of these remained in the woods. One cat had been in its colony for 1.1 years but moved into the woods for 3.9 years; on return to the main campus area, this cat joined a different colony for an additional 1.1 years before it disappeared.

Adoptions—Nearly half (47%) of the 155 cats were adopted, including 70% (19/27) of the socialized adults and all 12 of the socialized kittens. In addition, 9 of 41 (22%) feral adults and 33 of 75 (44%) feral kittens were adopted. Socialized kittens and cats were more likely to be adopted soon after their capture and neutering than were feral cats. All but 1 of the 12 socialized kittens were adopted within 4 months of arrival, and 12 of the 19 socialized adults were adopted within 4 months. The other 8 socialized cats remained on site for a median of 3.2 years (range, 0.5 to 5.8 years) before being adopted. Within 4 months of arrival on site, 11 of 33 feral kittens and 2 of 9 feral adults were adopted. The other 29 feral cats remained on site a median of 2.4 years (range, 0.4 to 10.5 years) before adoption. One female feral cat was observed on site for several years prior to the recording period and was adopted after 10.5 years in the study, at the estimated age of at least 14 years.

Deaths and disappearances—Ten cats (6% of the population) were found dead during the reporting period. In 6 cats, death was attributed to automobile trauma. Cause of death was unknown in the other 4 cats.

Severe illnesses, including neoplasia ($n = 2$), injury (1), and unspecified diseases (3) resulted in the euthanasia of 6 cats (4%). Eleven (7%) cats without outward evidence of illness were euthanatized because of positive test results for FeLV or FIV. Euthanasia performed solely on the basis of positive FeLV or FIV test

results occurred equally among feral and socialized cats and frequently after several years of residence on site. It was not possible to evaluate the actual prevalence of these viral diseases, because only cats for which there was a strong index of suspicion were tested.

Twenty-three (15%) cats were lost to follow up, and all but 1 of these cats were feral. One feral cat escaped during transportation for neutering; it is not known whether the other cats died, relocated to other areas, or were adopted without the knowledge of the study volunteers.

Deaths, euthanasias, and disappearances often occurred after cats had resided on site for several years. Deaths occurred following a median of 4.7 years (range, 0 to 8.3 years), euthanasias of debilitated cats after a median of 5.1 years (range, 0.1 to 8.5 years), euthanasias of cats with positive test results for FeLV or FIV after a median of 2.1 years (range, 0 to 5.8 years), and losses to follow up after a median of 2.9 years (range, 0.4 to 7.5 years).

Impact on the cat population—Although the neutering and adoption program had been in effect since 1991, a complete census of cats was not completed until 1996. At that time, 68 cats were recorded in residence, and all but 1 male feral cat were neutered. The total number of cats present at the end of the reporting period 6 years later was 23, representing a 66% reduction in the cat population from the original census. Of those remaining cats, only 1 was a socialized adult, and the others were adult feral cats; 11 males and 12 females remained. No kittens were observed on site after 1995. Median duration on site for the cats present at the end of the reporting period was 6.8 years (range, 1.3 to 11.5 years).

Discussion

Before the initiation of a TNR program with adoption, free-roaming cats were considered by campus authorities to constitute a nuisance. Periodic trap and removal efforts were made when excessive cat numbers prompted complaints about on-site noise and odor. Campus employees and residents contributed to these problems by offering large amounts of cat food in public locations, attracting not only more cats but also wildlife such as raccoons and opossums and pests including cockroaches and ants. Although records were not kept prior to 1991, observers estimated that the campus cat population might have reached 120 cats. A group of students attempted to reduce the number of resident cats by removing approximately 50 kittens for adoption, and approximately 8 adult cats were neutered and returned to campus. However, the control effort was not sustained, and the cat population again increased.

The TNR program instituted in 1991 incorporated neutering, euthanasia of sick animals, and adoption of socialized cats and feral cats that eventually became tame enough to become pets. With the exception of 1 male cat, all original study cats were neutered between 1991 and 1995, and no kittens were known to be born on campus after 1995. As a result of deaths, disappearances, and adoptions, the known maximum cat popu-

lation (68 cats in 1996) gradually decreased to 23 cats, the lowest number for the entire recording period.

A majority (57%) of the cats entered the project as kittens, and most of those were feral cats born on site. Feral cats were most numerous, comprising 75% of the population. Male cats comprised 55% of the population. Several studies have revealed that males equal²⁰ or outnumber^{6,21,22} females in free-roaming cat populations, although majorities⁹ of females have also been reported. In contrast, female cats are reported to comprise a slight majority (55 to 58%) of cats neutered in 2 large TNR programs, which together have neutered more than 20,000 cats.¹⁸ It is possible that female cats are more easily trapped or that cat caretakers preferentially target females for neutering.

Adoptions accounted for a substantial portion of the decrease in the cat population, even among feral cats. It has been reported^{5,6,10,23,24} that feral cats become less aggressive toward each other and more friendly toward their feeders following neutering, and this may have encouraged adoption of previously feral cats. Cats were often transferred to private homes only after several years of free-roaming status. The permanent placement of cats in homes is consistent with conventional animal welfare values; the more traditional pet lifestyle is considered to meet the needs of domesticated pet species better than a homeless and free-roaming existence.⁷

Despite widespread concern about the welfare of free-roaming cats, many of the animals in our study survived for a number of years. Most cats (83%) still remaining on site at the end of the observation period had been present for > 6 years. This compares favorably with the mean lifespan of 7.1 years reported for pet cats,²⁵ particularly as almost half of the cats in our study were first observed as adults of unknown age. Most cats (61%) that disappeared, died, or were euthanized for debilitating conditions had been present for at least 3 years. In general, the cats were in adequate physical condition, and only 4% were euthanized for humane reasons. Previous studies^{26,27} found no significant differences in body weights of free-roaming cats, compared with pets; commonly, free-roaming cats were in adequate body condition.^{24,28,29} Neutering of free-roaming cats results in increased weight and body condition, similar to that observed following neutering of owned cats.²⁴

The program enhanced the welfare of cats by preventing the birth of kittens. Virtually no information exists concerning survival of free-roaming kittens, but death rate is expected to be high in this age group. It is proposed that a mortality rate of > 50% in free-roaming kittens prior to maturity contributes to the relatively stable population of cats.^{3,21,30-33} Free-roaming female cats produce 1.1 to 2.1 litters of 3.6 to 5.0 kittens/y^{3,18,21,34}; in the population of 70 female cats of this report, the birth rate would therefore be 277 to 735 kittens/y, and most would die before adulthood.

Multiple studies^{26,35-39,a} have confirmed that the provision of food for free-roaming cats is a widespread activity involving 9 to 22% of households. Several studies^{5-7,10,16,32,35,40,41} have also documented the intense human-animal bond that forms between cat feeders

and free-roaming cats, even if the cats are too wild to be approached. Attempts to control populations by removal of cats are often met with opposition and sabotage by cat feeders who have formed an attachment to the cats; in our study, employees and students openly violated policies against feeding the cats and interfered with trapping efforts by university officials during removal campaigns. In contrast, programs that control the population and improve the well-being of cats via neutering frequently have the support of cat feeders who may be recruited to assist with trapping and management.^{5,6,10,16,18} Several TNR programs to control individual colonies of cats have been reported.^{5-7,32,41} In a TNR program to control a population of 41 free-roaming cats at a research and hospital facility, researchers gained the cooperation of patients with assurances that cats would be returned after neutering.⁶ Forty of the cats were returned, and 1 was euthanized because of advanced illness. Three years later, 30 of the original cats remained and 6 new cats had joined the colony, resulting in a slight decrease in colony size. A series of 254 cats in multiple small colonies were neutered at various British locations in the 1970s and 1980s⁷; after 5 years, 21% of the cats were adopted, and 70% of the cats that were returned to the colonies remained. In another long-term study,³² TNR was used to control a colony of cats residing in abandoned garages in London. The original colony size of 20 cats remained relatively stable, primarily because the number of immigrants into the colony was nearly balanced by deaths during the 5-year study period. Only 1 litter of kittens was born during the study. At the end of the study, 17 cats were present, and complaints about the cats were virtually eliminated. These studies concluded that TNR results in stabilization or modest reduction of colony size, reduced cat turnover, and healthier cats.

Failures of TNR to control cat colonies also exist. A 1-year study^b of TNR programs in 2 southern Florida parks revealed that the presence of well-fed cat colonies encouraged illegal abandonment of additional cats. While the original population of 81 cats declined 20% during 1 year, the arrival of new cats prevented reduction of the colonies, and 88 cats were present at the end of the study. Results of the study also refuted an oft-cited claim that an established colony of cats will defend its territory and prevent the immigration of new arrivals. Minimal territorial activity by the cats was observed, and aggressive encounters between cats were usually limited to enforcement of feeding order. In our study, placement of feeding stations in discrete locations minimized public awareness of the cat colonies. Sexually intact socialized cats that were apparently abandoned joined the colonies; their presence could have undermined the control program had they not been promptly captured and neutered. Migration of cats between colonies was common, and resident cats did not always prevent the immigration of new members.

The results of our study indicated that long-term reduction of free-roaming cat numbers is feasible by TNR. However, natural attrition of cats would be expected to result in a slow rate of population decline. Implementation of an aggressive program of adoption for socialized cats accelerates that decline. Immigration

or abandonment of new cats may be a frequent event, and free-roaming cats do not appear to have sufficient territorial activity to prevent new arrivals from permanently joining colonies. These new arrivals could substantially limit the success of TNR if an ongoing surveillance and maintenance program is not effective.

^aWoods JE, Levy JK. Human interactions with free-roaming cats in Alachua County, Florida (abstr), in *Proceedings*. Coll Vet Med Res Presentation Day 2000.

^bCastillo D. *Population estimates and behavioral analyses of managed cat (Felis catus) colonies located in Miami-Dade County, Florida, parks*. MS thesis, Department of Environmental Studies, Florida International University, Miami, Fla, 2001.

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Attachment (iii)

A Public Policy Toward the Management of Feral Cats

SHAWN GORMAN * & JULIE LEVY **

I. INTRODUCTION

There is an ongoing debate concerning the environmental impacts and appropriate control measures for the domestic cat population. Domestic cats have become America's most popular choice for pets, and an estimated 9-12% of households feed "free-roaming"¹ neighborhood cats.² Almost 40% of the estimated seventy million cats in the United States may live a free roaming lifestyle without control of reproduction.³ With a seasonally polyestrus breeding structure and isolated from human influences, feral⁴ cats have acclimated to several habitats ranging from sub-Antarctic islands and urban settings to temperate farmlands.⁵

Because cats have been domesticated by humans and transported throughout the world, they are referred to as "non-indigenous," "exotic," or

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1. Lisa Centonze & Julie Levy, Characteristics of Free-Roaming Cats and Their Caretakers, 220 J. Am. Veterinary Med. Assn. 1627, 1627 (2002) (defining free-roaming cats to include feral cats and stray cats).

2. *Id.* at 1628-29; Karen Johnson et al., *Survey Report on Santa Clara County's Pet Population*, Cat Fancier's Almanac, <http://www.fanciers.com/npa/santaclara.html> (1993, accessed Mar. 10, 2004).

3. Johnson, *supra* n. 2.

4. Feral is defined as "not domesticated or cultivated; wild"; "having reverted to the wild state, as from domestication"; "of or characteristic of wild animals." *Random House Webster's Unabridged Dictionary*, 709 (2d ed., Random House 1998).

5. R.J. Van Aarde, *The Diet and Feeding Behaviour of Feral Cats at Marion Island*, 10 S. Africa J. Wildlife Research 123, 123-128 (1980) [hereafter Van Aarde].

“non-native.”⁶ Several ecologists argue that feral domestic cats should be targeted for population control. These ecologists argue that feral cats prey extensively upon native wildlife and these cats act as a reservoir for infections such as rabies, toxoplasmosis, and other zoonotic parasites.⁷ Conversely, some ecologists argue that, unlike most other “pest species,” cats have followed mankind for centuries and can no longer be considered non-indigenous because native species have since acclimated to their presence. Due to ambiguity in the laws and scientific literature, an emotional debate has ensued adding little insight toward a practical solution to this problem.

This paper examines the current wildlife laws, both federal and state, to determine what laws may apply to managing the feral cat population. It begins with a determination of how domestic cats are classified under these laws. Since many laws are vague, the intent of the legislatures is investigated to determine if domestic cats were meant to be defined as a non-indigenous species. The focus then shifts to indicate ways to control the feral domestic cat population. Current trends in the control of other non-indigenous species appear to revolve around public nuisance claims; however, due to the unique nature of domestic cats, these laws are poor candidates for managing the unwanted domestic cat population.⁸ On the other hand, given the recent increase in the enactment of leash laws,⁹ courts may be more inclined to apply public nuisance laws to cats.

On a national level, the Endangered Species Act (ESA) is an ideal candidate for controlling the feral cat population. Unlike earlier laws, which contain a list of species not permitted to be introduced, the ESA effectively prohibits the introduction of a species that will “harm” a threatened or endangered species. The importance of creating laws that cooperate with the nature of the biological systems is also discussed in detail. Lastly, the paper discusses the importance of public opinion when controlling any non-indigenous species and how failure to address this issue will lead to failure in the attempt to control the unwanted domestic cat population.

6. Although these terms have slightly differing definitions, domestic cats fall within all three classifications. All these terms are used throughout the legal and ecological literature interchangeably, including this paper.

7. William R. Davidson & Victor F. Nettles, *Field Manual of Wildlife Diseases in the Southeastern United States* 203-205 (U. Ga. Press 1997).

8. Unwanted cat population refers to feral cats.

9. See S. C. Code Regs. 30-21(F)(5)(a)(iii)(4) (2002) (leash law targeting free-ranging cats).

II. LEGAL CLASSIFICATION OF DOMESTIC CATS

A. Federal Law

The Federal Government does not classify domestic cats as injurious, non-indigenous wildlife. The government asserts this through its implementation of the Lacey Act. Passed in 1900, the Lacey Act became the first federal legislation to ban the importation of non-indigenous species.¹⁰ Domestic cats are not specifically mentioned in the Lacey Act, however, cats are considered domesticated animals¹¹ not injurious wildlife¹² in the federal regulations which implement the Lacey Act.

The Act utilizes a “black list approach,” requiring the Department of the Interior (Department) to demonstrate that an introduced species will cause harm before requiring a person importing an exotic species to have a permit.¹³ Examples of injurious wildlife recently banned from importation without a permit include the brown tree snake¹⁴ and the snakehead fish.¹⁵ These animals have a potentially devastating effect on native ecosystems. In contrast, the federal government groups domestic cats with cattle, horses, and white lab mice.¹⁶

No permit is required for the importation of a domestic cat.¹⁷ Unlike the snakehead fish, where the Department ardently promulgated regulations to ban its importation,¹⁸ the Department declined to follow the same path of action for domestic cats. In 1973, the Department proposed a “white list” approach that would have required importers of non-native species to demonstrate that the introduction of the species would not harm the native species;¹⁹ however, due to pressure from certain groups, includ-

10. 18 U.S.C. § 42 (2000) (implemented in part by 50 C.F.R. § 16.11 and 50 C.F.R. § 14.4).

11. 50 C.F.R. § 14.4 (2003) (listing domestic cats as domesticated animal); 16 U.S.C. §§ 3371-3378 (2000).

12. 50 C.F.R. § 16.11 (2003) (domestic cat not listed as injurious wildlife).

13. *Id.* at § 16.11.

14. 50 C.F.R. § 16.15a (2003). The brown tree snake (*Boiga Irregruris*) is perhaps best known for being responsible for “the extirpation of most of Guam’s native terrestrial vertebrates ...” 60 Fed. Reg. 22073, 22074 (May 4, 1995).

15. 50 C.F.R. § 16.13 (2003). The snakehead fish was banned because of its potential ecological impact (its predatory nature and its ability to walk across land) along with the difficulty in eradicating it once established. *See* 67 Fed. Reg. 62193, 62202 (Oct. 4, 2002).

16. 50 C.F.R. § 14.4 (2003).

17. Importers must only declare certain wildlife as a customs port in order to import it under 50 C.F.R. § 16.11(b).

18. *See* 67 Fed. Reg. at 62193 (promulgating rule in less than three months and making it effective immediately).

19. Steven A. Wade, *Stemming the Tide: A Plea for New Exotic Species Legislation*, 10 J. of Land Use & Env’tl. L. 343, 347 (Spring 1995).

ing the pet trade, these regulations were not implemented.²⁰ Because domestic cats have been present alongside humans for the century that the Lacey Act has been in place, it remains unlikely that the federal government will change its position and attempt to classify domestic cats as an injurious, non-indigenous species.

B. State Law

Most states do not categorize domestic cats as non-indigenous wildlife species. Domestic cats have been expressly excluded from lists which ban the importation of non-indigenous species. For example, the California Wildlife Code bans the importation of all species in the order *Carnivora* with the express exception of domestic cats and dogs.²¹ Other state legislatures more specifically categorize animal groups, and in doing so, reveal the intention that domestic cats are not to be governed by wildlife laws. Oregon's statute defines exotic animals as those cats, dogs (*except domestic cats* and dogs), primates, wolves and bears that are not indigenous to the state.²² The majority of the states do not have statutes as specific as Oregon and California; however, the statutes from these states show the intent to exclude domestic cats from wildlife species.²³ Even though, by definition, feral cats have returned to a wild state,²⁴ it remains unlikely that feral cats would be covered under most states' wildlife laws because they would be classified as a domestic animal rather than a wild animal under the state's statutes.²⁵

III. TORT LAW AS A CONTROL MECHANISM

Increasingly, there has been interest in applying tort liability law to combat exotic species introductions.²⁶ In *Colorado Division of Wildlife v.*

20. Michael J. Bean, *The Evolution of National Wildlife Law* 115-16 (Environmental Defense Fund 1983); *id.*

21. Cal. Fish & Game Code Ann. § 2118 (West 1999).

22. Or. Rev. Stat. Ann. § 609.305 (2002). Domestic cats are also expressly excluded in other states' statutes. See e.g. Neb. Rev. Stat. § 37-246 (2002).

23. Colo. Rev. Stat. Ann. § 33-1-102(51) (West 2003) (excluding domestic animals from wildlife); Fla. Stat. Ann. § 585.01(10) (West 2001) (defining domestic cat as a "domestic animal" and excluding it from wild animals); Md. Crim. L. Code Ann. § 10-621 (2002) (prohibiting cats, other than domestic cats, from importation); Vt. Stat. Ann. § 20-3541 (2002) (having a separate code section for domestic pets).

24. *Random House Webster's Unabridged Dictionary*, 709 (2d ed., Random House 1998).

25. See generally, *supra* n. 23 (examples of state statutes).

26. See Laura Carlan Battle, *A Transnational Perspective on Extending NEPA: The Convention on Environmental Impact Assessment in a Transboundary Context*, 5 Duke Env'tl. L. & Policy Forum 1 (1995).

Cox,²⁷ the appellee argued that the defendants had created a public nuisance by failing to contain their exotic animals and therefore actionable under tort law.²⁸ The Appeals Court of Colorado agreed, holding that escaped exotic wildlife constituted a public nuisance.²⁹ Although the applicable statute covered “domestic or exotic wildlife,” it is unlikely that feral cats would be considered wildlife, because Colorado defines domestic cats as “companion animals” rather than domestic wildlife.³⁰ Performing a historical analysis of tort law, which has consistently maintained the viewpoint that domestic cats are harmless, lends further support to the hypothesis that cats will not be subject to state wildlife laws.³¹ Restatement (Second) of Torts §518, states:

Except for animal trespass, one who possesses or harbors a domestic animal that he does not know or have reason to know to be abnormally dangerous, is subject to liability for harm done by the animal if, but only if, (a) he intentionally causes the animal to do the harm, or (b) he is negligent in failing to prevent the harm.³²

The question then becomes when does a person “possess” or “harbor” a feral cat? If a cat eats from a dumpster at a shopping center, is the owner of the shopping center liable? Would an individual who feeds feral cats but does not neuter them be liable for harm done by future generations of feral cats? These questions are circumvented by comment j of the Restatement. The comment provides that:

There are certain domestic animals so unlikely to do harm if left to themselves and so incapable of constant control if the purpose for which it is proper to keep them is to be satisfied, that they have traditionally been permitted to run at large. This class includes dogs, cats, bees, pigeons and similar birds and also poultry, in a locality in which by custom they are permitted to run at large ...³³

Thus, the Restatement indicates that humans have allowed domestic cats to become feral because domestic cats are unlikely to cause harm. This suggests that, absent extreme circumstances, individuals would not be liable under tort law for harm caused by cats.

27. 843 P.2d 662 (Colo. App. 1992).

28. *Id.* at 663-664 (affirming that appellant’s red deer, babary sheep, and ibex were not livestock but rather “non-native wildlife” or “exotic wildlife”).

29. *Id.* at 663.

30. Colo. Rev. Stat. Ann. § 35-42-103 (West 2003); *see also, supra* n. 23 (excluding domestic cats from “wildlife” in several states).

31. *Restatement (Second) of Torts* § 518 (2000).

32. *Id.*

33. *Id.* at § 518 cmt. j (permitting animals to run at large).

This belief that cats are generally permitted to roam free is also discussed in *Van Houten v. Pritchard*.³⁴ The *Van Houten* court decided whether owners of roaming cats were liable when the animal caused harm.³⁵ In holding that the owner was not liable for the cat's actions, including those that occurred on private property, the court stated "[this case] involves a domestic animal that is not likely to do harm if allowed to run at large."³⁶ This further supports the contention that feral cats have not been, and are unlikely to be, subject to current federal or state wildlife laws, but rather remain under the domain of domestic animal laws. Unfortunately, the laws regulating domestic animals generally govern animal husbandry and animal transportation without addressing the potential impacts on surrounding ecosystems.

Although it is not possible to pinpoint the logic behind every state court's ruling or the intent of every state legislature, the state statutes may be intentionally excluding domestic cats because of their unique history. Historically, domestic cats have been closely associated with humans and domestic cats have intentionally been introduced to almost every ecosystem in the world. Since cats have been present in large quantities for an extended period of time, they appear to have achieved the legal status of an indigenous species. Looking to the formation of general law enforces this conclusion.

Restatement (Second) of Torts states one who adds a few indigenous animals to an area is not responsible for any damage they may cause because his introduction "does not materially increase the previously existing danger."³⁷ In contrast, one who imports a non-indigenous animal "has created a danger not normal to the area."³⁸ Because domestic cats have historically been owned and relocated alongside humans, whether for utilitarian purposes such as hunting rodents, or for companionship, they are not usually viewed as a newly introduced species. Simply put, does a feral domestic cat present a danger not normal to a typical neighborhood? Even if a cat is shown to kill several birds in a given neighborhood, that danger may not be abnormal for the area if cats have been there for over 200 years. Since the Restatement and *Van Houten* both leave open the possibility for a leash law to negate this general rule, I will address this point later in this paper (Section VI).³⁹ Assuming that feral domestic cats are not

34. 870 S.W.2d 377 (Ark. 1994).

35. *Id.* at 378.

36. *Id.* at 379.

37. *Restatement (Second) of Torts* § 508 cmt. b.

38. *Id.* at § 507, cmt. e.

39. *Id.*, at § 518, cmt. j; see also *Van Houten*, 870 S.W.2d at 380 (stating the rule would not apply if the animal was in violation of a leash law).

classified as pets in a state's statutes, would the default classification be a wild non-indigenous pest species? Since many have defended this stance, I will briefly discuss the implications of this approach.

IV. CLASSIFYING FERAL CATS AS WILDLIFE

If feral domestic cats were classified as a non-indigenous wildlife species, should property owners be held liable for domestic cats preying upon wildlife? Although there is limited case-law on the subject, it does not appear that would be the case. Under the doctrine of *animals ferae naturae*, prevalent since Roman times, owning land does not confer ownership rights over the wild animals on the land.⁴⁰ Once the owner reduces an animal to possession, however, there is an ownership right over the animal until such possession is forfeited. If the animal is released, then the ownership right is extinguished.⁴¹ An exception to this rule occurs for animals such as those feral cats that have the propensity to return to a person's land. The law provides that these animals are still considered the possessions of those who the animal returns to.⁴²

Examining how courts classify wandering bees that return to a landowner provides insight into how courts may classify feral cats. Bees, like feral cats, appear to straddle the line between domesticated and wild animals. In *People v. Kasold*, a bee owner claimed that his bees were domesticated animals and, therefore, allowed by the R-1 zoning of his premises.⁴³ The court stated "it has been said that bees, while generally classed as *ferae naturae*, are so useful and common as to be all but domesticated ... although it may be proper still to class the bee among animals *ferae naturae*, it must nevertheless be regarded as coming very near the dividing line."⁴⁴ The *Kasold* court's reasoning for classifying bees as *animals ferae naturae*, therefore, indicates how other courts might attempt to classify feral cats.

40. See *Wiley v. Baker*, 597 S.W.2d 3, 5 (Tex. Civ. App., 1980) ("no individual property rights exist as long as they remain wild, unconfined, and undomesticated."); *In re Oriental Republic Uruguay*, 821 F.Supp. 950, 953 (D. Del. 1993) ("*ferae naturae* is not the property of a private person unless that person rightfully maintains and retains possession and control, exclusive of others, over said animal"); see also *Toomer v. Witsell*, 334 U.S. 385, 399 (1948) (argument setting forth this practice has been prevalent since Roman Times).

41. *Wiley*, 597 S.W.2d at 5; *In re Oriental Republic Uruguay*, 821 F.Supp. at 953.

42. See *People v. Kasold*, 314 P.2d 241, 242 (Cal. Super. 1957)

43. *Id.* at 241.

44. *Id.* at 241-242 (citing *Parsons v. Manser*, 93 N.W. 86, 88 (Iowa 1903)); *Ammons v. Kellogg*, 102 So. 562, 563 (Miss. 1925) (finding that the general rule among states is that liability for injuries caused by bees will be treated in the same manner as liability for injuries caused by domestic animals).

Additionally, although the doctrine of *ferae naturae* applies to “indigenous wild animals,” it appears that some courts apply the doctrine to exotic species as well. The Texas Court of Appeals held in a 1999 case that “[f]ire ants, by legal definition, are indigenous wild animals, and, without more, they do not pose an unreasonable risk of harm in their natural habitat.”⁴⁵ It must be noted that fire ants are not indigenous to Texas, but were imported accidentally from South America in the 1930’s.⁴⁶ Furthermore, there is currently a concerted effort to control this invasive species by university researchers and the Federal government.⁴⁷ The issue then becomes whether the court was ignorant to the fact that fire ants are not native to Texas or whether the court simply noted that the legal definition of “indigenous” might differ from the biological definition. It can be said that any given neighborhood in the U.S. might contain a feral cat or fire ant; therefore, these species may have obtained the legal definition of indigenous, yet not fulfill the ecological definition.

With so many classifications that are possible for the domestic cat, an ideal law for control feral cats would not depend entirely upon the ecological definition. A federal law, applicable in all of the states, would not only be more efficient and effective but also would add predictability, which cannot be achieved with differing state laws. The Endangered Species Act may be a law that can be used to solve this problem.

V. THE ENDANGERED SPECIES ACT

A. Introduction

Described as the “pit bull of environmental laws,”⁴⁸ the Endangered Species Act (ESA) empowers all federal agencies to use their authority to further the “conservation” of endangered or threatened species.⁴⁹ The ESA does not focus upon the classification of the animal that is causing harm; rather, it focuses upon the classification of the species that is being harmed. The Act requires the Department of the Interior to classify species in danger of extinction as endangered, and species likely to become extinct as threatened.⁵⁰ Although earlier legislation designed to protect the environ-

45. *Nicholson v. Smith*, 986 S.W.2d 54, 64 (Tex. App. 1999) (emphasis added).

46. C. S. Lofgren, W.A. Banks & B. M. Glancey, *Biology and Control of Imported Fire Ants*, 20 Annual Rev. of Entomology 1, 3 (1975).

47. Texas Imported Fire Ant Research and Management Plan Homepage, <http://fireant.tamu.edu/> (accessed May 25, 2004).

48. Steven P. Quarles, *The Pit Bull Goes to School*, Env'tl. Forum 55 (Sept./Oct. 1998).

49. 16 U.S.C. § 1536(a)(1) (2000).

50. 16 U.S.C. §§ 1532(6), 1533(a) (2000).

ment utilized a cost-benefit analysis, this practice was halted when Congress passed the ESA in 1973. Congress discarded economic analysis for a more precise test, one that utilizes the “best scientific and commercial data available”⁵¹ to determine if a species is endangered or threatened.

B. Best “Scientific and Commercial Data” Debate

Utilizing the “best scientific and commercial data available” test on feral cats leads to confusing results, further fueling the debate. A simple review of the scientific literature demonstrates the difficulty of ascertaining a concrete model to control the unwanted cats. The ecological studies employ different sampling criteria in vastly different ecosystems. To illustrate this point, I will briefly compare studies on Antarctic Islands with those conducted on mainland populations.

Cat predation on the Antarctic Marion Island has had a grave impact upon the native bird population. Studies on this island have estimated that feral cats killed 450,000 petrels annually and caused the extirpation of the burrowing petrel.⁵² In contrast, feral domestic cats residing in a mainland area without human disturbance, such as the Wichita Mountains Wildlife Refuge in Oklahoma, had only trace amounts of native birds in their diet.⁵³ Provided with these two peer-reviewed studies, could the Department of the Interior logically conclude whether feral cats are detrimental to bird populations in an ecosystem different from those in the studies?

The mere presence of feral cats is often cited as evidence of damage to native species if feral cats are found within a study area. This occurred in studies concerning turtle predation in Australia. Several authors reported observing feral cats preying on green turtles (*Chelonia mydas*) without investigating the impacts. In 1989, a quantitative study was conducted on Aldabra, which houses the world’s largest green turtle population. Although it revealed 90.4% of cat feces contained turtle hatchlings, it also found a positive correlation between turtle nests and cat activity.⁵⁴ Higher turtle densities existed where cats hunted most over a sustained period of time.⁵⁵

This is not to say that feral cats did not negatively affect the growth of the turtle population, only that the turtle population flourished in areas of

51. 16 U.S.C. § 1533(b)(1)(A) (2000).

52. Van Aarde, *supra* n. 5.

53. Frank McMurry & Charles Sperry, *Food of Feral House Cats in Oklahoma, a Progress Report*, 22 J. Mammalogy 185, 186 (1941) (the study recorded higher avian predation levels in areas characterized by human disturbance, in these areas the highest recorded level was 6.5%).

54. Wendy Seabrook, *Feral Cats (Felis catus) as Predators of Hatchling Green Turtles (Chelonia mydas)* 219 J. Zoology 83, 87 (1989).

55. *Id.*

highest cat densities. Direct human exploitation may be a more powerful factor in these turtle populations; one study noted that the green turtle population rose significantly since 1968, when it became illegal to capture the turtles on this island.⁵⁶ Conversely, the author cited another study, in which cat predation occurred on a nearby island with much lower turtle densities. Theoretically, cat predation at these lower densities could lead to a decline in genetic diversity or even extirpation. This example demonstrates that feral cats may harm an endangered species in one area, but may not affect the same species in a different environment. Although these results suggest that the same turtle species can be threatened by feral domestic cats on one island, while not being harmed on other, the “best scientific and commercial data” analysis is still a well-suited test, as detailed below.

When interpreting the ESA, the court in *Defenders of Wildlife v. Babbitt*⁵⁷ (*Defenders*) held that the “best available data” test requires less than conclusive proof.⁵⁸ In *Defenders*, the United States Fish and Wildlife Service (USFWS) refused to list the lynx despite a decline in numbers, because the species was thriving in most other areas of its range.⁵⁹ The court set aside the USFWS listing decision.⁶⁰ The court reasoned that the ESA does not require the USFWS to have conclusive proof that an animal is threatened in an area in order to list it.⁶¹ Instead, the ESA requires the USFWS to issue a biological opinion with the best available data.⁶²

Applying the “less than conclusive proof” rule to the feral cat predations previously mentioned yields a solution. The main difference between the studies of cats on the Antarctic Islands and the study conducted in mainland areas appears to be the evolutionary history of the islands. These petrels are not only ground nesting, but also evolved in the absence of terrestrial carnivores.⁶³ Additionally, there were no shrubs or trees to shelter birds on the islands, and various species of birds differed in susceptibility to predation.⁶⁴ In this situation, harm, as defined in the ESA, could easily be demonstrated.⁶⁵ This is not to say that expert biologists with the USFWS cannot disagree with the limited scientific data available. The

56. Jeanne A. Mortimer, *Recovery of Green Turtles on Aldabra*, 19 *Oryx* 146, 148-149 (1985).

57. 958 F.Supp. 670 (D.D.C. 1997).

58. *Id.* at 679.

59. *Id.* at 677.

60. *Id.* at 685.

61. *Id.* at 679.

62. *Id.*

63. Van Aarde, *supra* n.5.

64. *Id.*

65. The ESA currently requires that the listed species be “harmed.” This interpretation and applicability will be discussed in Section V of this paper.

agency may consider, and act on, its expert's opinion as long as the opinions are not arbitrary, capricious, or unsubstantiated.⁶⁶

When listing species under the ESA, the Department of the Interior considers more than just the best scientific evidence from independent ecosystems. The Department of Interior must also consider the best way to manage areas containing listed species that are threatened by these feral cats. The ESA requires the USFWS, in deciding management actions, to consider the distinct needs of separate ecosystems or recovery zones occupied by threatened or endangered species.⁶⁷ To accomplish this, the USFWS creates a recovery plan. Under the ESA, recovery plans must include a practical outline of needed management actions for conservation of the listed species which will move the species closer to delisting and sustainable population levels.⁶⁸ Because ecosystems are complex and often difficult to predict, such recovery plans are only framework approaches, and are not treated as binding contracts. In *Fund for Animals v. Rice*,⁶⁹ the court stated the laws make it "plain that recovery plans are for guidance purposes only."⁷⁰

C. Harm Through a "Taking" - The Palila Cases

Construction of recovery plans requires a determination of whether there has been a "taking" of the species. *Palila v. Hawaii Department of Land and Natural Resources (Palila I)*⁷¹ closely shadows the problem faced with feral domestic cats. The palila (*Loxioides bailleui*) is an endangered bird endemic to the Hawaiian Isles. Once plentiful, the palila has declined in numbers and range due to environmental pressures. Recent scientific studies attributed the decline to feral sheep.⁷² The feral sheep were permitted to heavily graze on two tree species which the palila utilized for nesting and feeding.⁷³ The feral sheep were predominately located on state land managed by the defendant for preservation of natural resources. Because the defendant managed the sheep for hunting purposes, the plaintiffs contended that the defendants were "taking" the palila in violation of the ESA.⁷⁴

66. 5 U.S.C.A. § 706(2)(A) (West 2002).

67. 16 U.S.C. § 1533(f)(1)(B)(i) (2000).

68. *Id.* at § 1533(f)(1)(B).

69. 85 F.3d 535 (11th Cir. 1996).

70. *Id.* at 547.

71. 471 F.Supp. 985 (D. Haw. 1979) [hereinafter *Palila I*].

72. Ironically, the problem was originally thought to be caused by domestic cat predation. A subsequent study demonstrated the feral cats were not a significant threat to the indigenous palila population.

73. *Palila I*, 471 F.Supp. at 987-989.

74. *Id.*

The court focused on fact-specific scientific evidence that demonstrated a correlation between the sheep's grazing and the palila decline.⁷⁵ Unrefuted expert testimony backed this evidence.⁷⁶ The district court concluded removal of the sheep was a feasible solution.⁷⁷ Substituting domestic cats into this scenario illustrates that a different result would have been likely. First, depending on the "scientific data" used, domestic cats may have not been directly correlated to the decline of the endangered species. Even if it were unequivocally shown that domestic cats were directly linked to an endangered species decline, the issue still would not be solved. The judge in *Palila I* based his decision on the fact that complete removal of feral sheep and goats was feasible. This has rarely been observed when dealing with domestic cats. Even when isolated on Marion Island, exterminating the domestic cat population with the combination of hunting, poisoning, and introducing infectious diseases took decades.⁷⁸

Following the *Palila* saga further demonstrates how the ESA may solve feral cat overpopulation. After the *Palila I* ruling, the Hawaiian Department of Land and Natural Resources (DLNR) removed the feral sheep.⁷⁹ Nonetheless, within five years a different species of exotic animal, the mouflon sheep, was found in the area.⁸⁰ The plaintiffs, again a coalition of concerned environmental groups on behalf of the palila, argued that the presence of the feral mouflon sheep was harming the palila through the degradation of palila habitat. The DLNR countered with evidence that the overall number of palila had not declined, but rather increased: therefore, there was no "harm."⁸¹ Siding with the environmentalists, the court viewed the DLNR's policy as a "shortsighted and limited interpretation" because actual injury to an individual animal must not be proven.⁸² The court reasoned that habitat degradation may harm species by altering breeding or feeding habits.⁸³ This ruling, however, still required the show-

75. *Id.*

76. *Palila v. Haw. Dept. of Land and Nat. Resources*, 639 F.2d 495, 497-98 (9th Cir. 1981) [hereinafter *Palila I Appeal*].

77. *Palila I*, 471 F.Supp. at 990.

78. John Egekeze & Frederick Oehme, *Sodium Monofluoroacetate (SFMA, Compound 1080): A Literature Review*, 21 *Veterinary & Human Toxicology* 411, 411-412 (1979); P.G. Howell, *An Evaluation of the Biological Control of the Feral Cat*, 172 *Acta Zoologica Fennica* 111, 113 (1984); J. P. Bloomer & M. N. Bester, *Effects of Hunting on Population Characteristics of Feral Cats on Marion Island*, 21 *S. Africa J. Wildlife Research* 97, 100-101 (1991).

79. *Palila v. Haw. Dept. of Land and Nat. Resources*, 649 F. Supp. 1070,1071 (D. Haw. 1986) [hereinafter *Palila II*].

80. *Id.*

81. *Id.* at 1075.

82. *Id.*

83. *Id.* at 1076-1077.

ing of a critical link between the habitat degradation and an actual injury to the species.⁸⁴

After the Palila rulings, there appeared to be a circuit split concerning the broad interpretation of “harm.” The Court in *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, however, adopted the *Palila I* and *Palila II* rulings. The Supreme Court instructed that “harm” constitutes a significant habitat modification on private property that actually kills or injures wildlife by significantly impairing essential behavioral patterns.⁸⁵ In *Babbitt*, the Department of the Interior prohibited logging in forests where endangered avian species were present, believing such activity constituted a “taking.”⁸⁶ The Supreme Court upheld the broadened interpretation of taking which included “significant habitat modification or degradation that actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.”⁸⁷ This holding expands the possibility that the actions of feral domestic cats would be found to constitute a “taking” of a listed species.

Although *Babbitt* is often cited as a case demonstrating how private land rights are easily reduced or how the judicial branch can broadly interpret a statute to achieve its goals, the six-three Supreme Court decision remains true to the ideals behind the ESA. In 1973, Congress believed the two largest threats to species survival were pressures from hunting and habitat loss. Although hunting would be covered under the statutory definition of “take,” the Court’s decision in *Babbitt* now encompasses the second leading cause of species decline, habitat loss. Protection under section nine, however, is a two-edged sword as it only offers protection for endangered species, not species which are threatened.⁸⁸ Feasibly, domestic cats could heavily prey upon a threatened species, and no protection would be found under section nine until the numbers of a threatened species reduced to the point that the species was considered endangered. By then, genetic diversity could be greatly diminished, leading to the possibility of genetic bottlenecks.

D. *If Cats Are Found to Constitute a “Taking”*

If the presence of feral cats is found to constitute a “taking,” removal of the individual cats may not be done without following guidelines. Be-

84. *Id.* at 1077 (“there can be no finding of taking unless habitat modification or degradation has an adverse impact on the protected species.”) (quoting 46 Fed. Reg. 56736, 56748 (Nov. 18, 1981)).

85. *Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 115 S. Ct. 2407 (1995).

86. *Id.* at 2408.

87. *Id.* at 2418.

88. 16 U.S.C. § 1528(a)(1)(B) (2000).

fore an eradication or removal effort is undertaken, it must be determined whether such a removal would harm the targeted environment. In *Animal Lover's Volunteer Association v. Carlucci*, the United States Fish and Wildlife Service (USFWS) attempted to remove the non-indigenous red fox from parts of California.⁸⁹ The USFWS argued that since the foxes were not part of the natural ecosystem there was no need to assess the harm to the ecosystem.⁹⁰ The Court disagreed, adding there was evidence that the foxes had been present in the ecosystem for over 100 years and it should not be assumed that removal of the foxes would be without negative consequences.⁹¹ Indeed, an attempt to remove an exotic species may harm the endangered species more than simply allowing the exotic species to remain. For example, non-indigenous fire ants were introduced into the Southwest United States throughout the early to mid-1900's, and quickly established.⁹² For thirty years, the chemicals heptachlor and mirex were spread by plane in an attempt to kill the ants.⁹³ Although the pesticides were effective in killing the targeted ants, the chemicals also harmed the ant's competitors and predators.⁹⁴ The collateral destruction of these non-targeted organisms left the habitat suitable for recolonization.⁹⁵ Once the government stopped spraying the pesticides, the ants quickly recolonized.⁹⁶

As previously mentioned, cats have been introduced into almost every ecosystem. Because many of these introductions occurred centuries ago, cats may now serve a beneficial role in some of these ecosystems. For example, a year-long Australian study which collected prey items from domestic cats found avian species to constitute 27% of prey caught or scavenged by cats. The study concluded, however, that the majority (64%) of prey gathered was non-indigenous.⁹⁷ This is not the only instance of cats potentially controlling levels of non-indigenous species. A study conducted in Orongorongo Valley, New Zealand, concluded that by suppressing the introduced rat population, cats allowed a denser population of native birds to exist.⁹⁸ One of the same authors later demonstrated that the rat

89. *Animal Lover's Volunteer Assn. v. Carlucci*, 849 F.2d 1475 (table), 1988 WL 63741 (9th Cir. Cal. 1988).

90. *Id.* at *2.

91. *Id.*

92. U.S. Congress, Off. of Tech. Assessment, *Harmful Non-Indigenous Species in the United States*, OTA-F-565, 10 (U.S. Gov. Prtg. Off. Sept. 1993) [hereinafter OTA].

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. D.G. Baratt, *Predation by House Cats, Felis Catus (L.), in Canberra, Australia. I. Prey Composition and Preference*, 24 *Wildlife Research* 263, 263-277 (1991).

98. B.M. Fitzgerald & B.J. Karl, *Foods of Feral House Cats (Felis Catus L.) in Forest of the Orongorongo Valley, Wellington, New Zealand*, 6 *New Zealand J. Zoology* 107, 121 (1979).

population increased when the cats were reduced.⁹⁹ As it turned out, the cats were eating the rats in higher quantities than they were eating the native birds.¹⁰⁰ Fewer rats, therefore, preyed upon the native species. Feral cats also were found to consume a higher proportion of non-indigenous species on Antarctic Macquarie Island where the non-indigenous European rabbit constituted 82% of the diets of island cats, while all species of native penguins consumed were scavenged, not hunted.¹⁰¹ These studies, although not popular with some ecologists, reinforce other studies conducted by the government concerning other exotic species. The U.S. Congress Office of Technology Assessment has stated “[n]on-indigenous organisms of many types have beneficial uses as biological control agents, frequently for control of non-indigenous pests.”¹⁰²

Although the Department of the Interior is not required to, and could not possibly, predict every eventual action and result, the Department must adequately provide a plan of action that, if undertaken, is likely to “move the species closer to recovery.” In such cases, it may not be advisable to remove the feral cats, because they prey upon other exotic species. The fact that domestic cats may severely harm a protected species in one ecosystem, while controlling other exotic species in another, should not pose a problem. In *Morrill v. Lujan*, the court held that “the contents of [recovery] plans are discretionary.”¹⁰³ While it is true that section 4(f) “does not permit an agency unbridled discretion” and “imposes a clear duty on the agency to fulfill the statutory command to the extent that it is feasible or possible,” it does not mandate the agency to abide by a one-size fits all management plan.¹⁰⁴ In situations where the government decides not to reduce the feral cat population, it should continue to monitor changes in those populations. Obviously, a drastic increase in a feral cat population, whether occurring naturally or occurring due to “dumping” by humans, could alter the ecosystem’s dynamics. A management plan that includes this approach should periodically compare the listed species population in relation to the feral cat population.

Because of the ESA’s wording, the government should be able to avoid citizens’ lawsuits alleging that the government’s decision to allow populations of domestic cats to remain in some environments constitutes a

99. B.M. Fitzgerald, *Diet of Domestic Cats and Their Impact on Prey Populations*, in *The Domestic Cat: The Biology of its Behaviour*, 123-146 (Dennis C. Turner & Patrick Bateson eds., Cambridge U. Press 1988).

100. *Id.*

101. Evan Jones, *Ecology of the Feral Cat in Macquarie Island*, 4 *Aust. Wildlife Res.* 249, 257 (1977).

102. See OTA, *supra* n. 92, at 56.

103. *Morrill v. Lujan*, 802 F.Supp. 424, 433 (S.D. Ala. 1992).

104. *Id.* (citing *Fund for Animals v. Babbitt*, 903 F. Supp. 96, 107 (D.D.C. 1995)).

“taking.” When amending the ESA, the government realized not all Department activity could benefit all listed species; As amended, the Act contains the following provision:

The Secretary may permit, under such terms and conditions as he shall prescribe--

(A) any act otherwise prohibited by section 1538 of this title for scientific purposes or to enhance the propagation or survival of the affected species, including, but not limited to, acts necessary for the establishment and maintenance of experimental populations pursuant to subsection (j) of this section; or

(B) any taking otherwise prohibited by section 1538(a)(1)(B) of this title if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.¹⁰⁵

Such takings, though, must be incidental to the lawful activity of preserving the targeted environment, and should only be allowed where the takings are not more harmful to the survival of the listed species than if the cats were removed.

To extend similar protection to private landowners, Congress included incidental taking amendments within the 1982 amendments to the ESA.¹⁰⁶ As on public lands, these amendments allow the Secretary of the Interior to permit incidental takings of endangered species for scientific purposes. The amendments also allow takings that are ‘incidental’ to another lawful activity.¹⁰⁷ The Secretary grants permits to private landowners as long as such incidental takings are minimized as much as practicable.¹⁰⁸ Such incidental takings do not lessen the likelihood of the species’ recovery or survival;¹⁰⁹ and such incidental takings meet other appropriate and necessary measures.¹¹⁰

States’ laws, incorporating the Federal Endangered Species Act, may also have provisions allowing for incidental takings. One such case involving a state statute for incidental takings deals with domestic cats directly. In *Mangrove Chapter of Izaak Walton League of America, Inc. v. Florida Game and Fresh Water Fish Commission*, the state wildlife commission granted a permit to subdivision developers to allow the developers

105. 16 U.S.C. § 1639 (2000).

106. Pub. L. No 97-304, 96 Stat. 1411 (1982).

107. 16 U.S.C. § 1539 (a)(1)(A) (2000).

108. 16 U.S.C. § 1539 (a)(2)(B)(ii) (2000).

109. 16 U.S.C. § 1539 (a)(2)(B)(iv) (2000).

110. *Id.* at § 1539 (a)(2)(B)(iii), 1539 (a)(2)(B)(v).

to destroy the nests of endangered rodent species.¹¹¹ In exchange for destruction of the nests, the developers agreed to create a new habitat for the rodents and to improve other lands that could be occupied by the protected species.¹¹² Under the applicable state law, such permits are allowed if “[the] permitted activity will clearly enhance the survival potential of the species.”¹¹³ In addition to mitigation, a Game and Freshwater Fish Commission finding of fact stated “[o]ne of the conditions imposed by the Proposed Permit would prohibit free ranging pets within the subdivision pursuant to a subdivision covenant to run with the land. The specific wording of such a covenant has not been provided.”¹¹⁴ If enforceable, applying this law would allow development to occur while preventing an exotic species (cats) from potentially harming the listed species. Such a covenant would be a step in the right direction because preventing the introduction of an exotic species is much cheaper and effective than controlling the exotic species once they establish.

At trial, the question arose as to whether the Commission had such powers to enforce the covenant over a subdivision.¹¹⁵ The *Mangrove* court ruled that although state law allows the Commission to prosecute those who violate its rules and orders, the Commission would have no standing once the permittees relinquish their rights in the subdivision, nor would the Commission have privity through the buyers of the subdivision.¹¹⁶ The court also addressed whether predation of protected species by pet cats would violate any of the commission’s rules. In a footnote, the court questioned whether the cat owners would be responsible for lost wildlife.¹¹⁷ Applying the state’s statute, the court answered this in the negative. The court did acknowledge, however, that in certain circumstances owners may be responsible for their pets’ actions.¹¹⁸ The footnote appears to be a message from the court to subtly urge the state to amend the current laws if the commission wishes to prosecute such violations.

111. 592 So.2d 1162, 1163 (1992).

112. *Id.*

113. F.A.C. Rule 39-27.002(1) (West 2002).

114. *Mangrove*, 592 So.2d at 1165-66.

115. *Id.*

116. *Id.* at 1166 (citing Fl. Stat. § 372.83 (West 1989)).

117. *Id.* at 1166, n. 3.

118. *Id.*; see also GFC Rule 39-27.0011, F.A.C. (West 2002).

VI. LOCAL REGULATORY CONTROL

Because the environmental impact of domestic cats varies in different ecosystems, perhaps the best and most efficient method to cope with this problem is through localized regulation. Increasingly, local governments are passing ordinances for controlling feral domestic cats. These ordinances, however, are not usually based upon the "best available scientific or commercial data," but are instead based upon public opinion. Accordingly, adjacent cities that share similar ecosystems may have differing and incompatible regulations to cope with the problem.

Looking to an exemplary ordinance in Akron, Ohio, the advantages and drawbacks of current public ordinances are illustrated. In Akron, an ordinance makes it illegal for cats to run "at large."¹¹⁹ The ordinance also prohibits cat owners from allowing their cats to be unrestrained outside of their property boundaries.¹²⁰ The ordinance declares that it is officially the duty of the animal control warden to capture every cat observed "running at large." Because public parks and shopping centers are hardly the locations the ESA or other laws intended to protect, this law is not likely to perform any useful environmental solution.¹²¹ Akron's law is similar to most animal control laws throughout the country, except that it applies to any cat, including those with identification tags. Under the current trap and kill policies, however, millions of cats are already being euthanized annually and the problem has not improved - for the landowners, cats, or the wildlife.

This law, while at least identifying the problem, has two main flaws. First, most domestic cats are on private property, along with a large fraction of protected species.¹²² Second, domestic cats are currently the nation's most popular pet and roughly one in ten households feed "free-roaming" neighborhood cats.¹²³ These people, along with thousands more, are unlikely to kill a cat or even report its presence to local animal control officials. Although this ordinance may be an attempt to solve the problem, it does not consider the public opinion. The ordinance may work in rural

119. Ordinance No 332-2002 (March 25, 2002) (amending and/or supplementing Title 9 Chapter 92, Sections 92.01, 92.13 and 92.15 of the Code of Ordinances of the City of Akron, Ohio to prohibit cats from running at large: and declaring an emergency).

120. *Id.*

121. Although it may not protect endangered species, it may reduce the number of cats defecating in public areas, which is most likely the driving factor for its enactment.

122. Michael J Bean, *The Endangered Species Act and Private Land: Four Lessons Learned from the Past Quarter Century*, 28 *Env'tl. L. Rptr.* 10701, 10701 (1998) (reporting that most land is private and a large portion of protected species occur entirely on such land).

123. See Johnson, *supra* n. 2.

areas where the cats are “out of sight, out of mind” to the public, but these laws are increasingly being negatively viewed by the public.

VII. PUBLIC OPINION

A. Introduction

Public opinion is a powerful factor in the government’s attempts to control feral cats and other “pest species.” For example, public opposition to the culling of wild horses and burros led to the passage of the Wild Free-Roaming Horse and Burro Act in 1971.¹²⁴ The Act protects the feral horse and burro population in the western United States, and does not allow management to include death as a control mechanism.¹²⁵ Additionally, when public outcry in Canada ended the hunting of harp seal pups, the seal population increased from 10,000 in 1978 to 45,000 in 1996. Unfortunately, increased seal numbers are now implicated in the subsequent reduction of Canadian fish populations. Public insistence on humane population control has led to interest in non-lethal options such as sterilization, but is it effective?

B. Sterilization of Feral Cats

Increasingly, surgical sterilization of feral cats by veterinarians followed by release back into the environment has been proposed as a “public approved” tool to lower feral cat populations.¹²⁶ Vaccinations usually accompany this procedure to halt the spread of diseases. The American Veterinary Medical Association and the Humane Society of the United States, among other organizations, accept this procedure. The California Veterinary Medical Association coordinated a three-year program in which more than 1,000 veterinarians surgically sterilized 170,000 feral cats with over twelve million dollars of private and donated funds.¹²⁷

Increasingly county animal control facilities join with community groups to perform Trap-Neuter-Return (TNR) as an alternative to continuous trapping and euthanasia. In Orange County, Florida, a five-year program, in which the county provides free sterilization and vaccination for

124. Pub. L. 92-195, 85 Stat. 649 (1971).

125. *Id.*

126. See Jenny Remfry, *Feral Cats in the United Kingdom*, 208 J. Am. Veterinary Med. Assn. 520, 520-23 (1988).

127. Julie Levy, David Gale & Leslie Gale, *Evaluation of the effect of a long-term trap-neuter-return and adoption program on a free-roaming cat population*, 222 J. Am. Veterinary Med. Assn. 42, 42 (2003) [hereinafter Levy]

feral cats, has decreased cat complaints, admissions, euthanasia, and shelter operating costs.¹²⁸ The program goal is to eventually reduce or eliminate the harm cats may have on wildlife there.

A comprehensive eleven-year study of 155 cats in a TNR program demonstrated that surgical sterilization, accompanied by the adoption of sociable cats, resulted in a long-term reduction of the feral cat population.¹²⁹ A recent study concluded, however, that the practice of sterilizing the cats, followed by their return to their habitat, failed in a Florida park because it encouraged the dumping of abandoned cats.¹³⁰ As previously discussed, there are many questions that must be answered about the TNR program's impact on feral domestic cats' predatory behavior.

California incorporated both mechanisms in an attempt to appease the general public while continuing traditional methods. A state law provides that:

[I]f an apparently feral cat has not been reclaimed by its owner or caretaker within the first three days of the required holding period, shelter personnel qualified to verify the temperament of the animal shall verify whether it is feral or tame by using a standardized protocol. If the cat is determined to be docile or a frightened or difficult tame cat, the cat shall be held for the entire required holding period ... [i]f the cat is determined to be truly feral, the cat may be euthanized or relinquished to a nonprofit ... animal adoption organization that agrees to the spaying or neutering of the cat if it has not already been spayed or neutered. In addition to any required spay or neuter deposit, the pound or shelter, at its discretion, may assess a fee, not to exceed the standard adoption fee, for the animal released.¹³¹

This law retains traditional methods, while allowing the public to determine whether or not they wish to "humanely" reduce the unwanted cat population by donating their personal funds to support this goal. More importantly, it initiates a system that will help determine if the TNR method will successfully reduce the feral cat population.

The two-fold approach appears to be a step in the right direction; however, it may invite litigation from those who feed these feral cats on their

128. Haller, L., Director of Animal Control, Personal Communication, Orange County, FL.

129. Levy, *supra* n. 127, at 42-45. Other studies finding similar results are also discussed.

130. Daniel Castillo, *Population Estimates and behavioral analysis of managed cat (Felis catus) colonies located in Miami-Dade County, Florida Parks*: Thesis for Masters of Science Degree in Environmental Studies (Florida International University, 2001) (on file with *Pierce Law Review*).

131. Cal. Food & Agric. Code Ann. § 31752.5(c) (West 2002) (added by Stats. 1998, c. 752 (S.B. 1785), § 14). California defines feral cats as "cats with temperaments that are completely unsocialized." *Id.* at § 31752.5(a)(2).

property. If a California resident regularly feeds a feral cat on her property, then she may have a property right in the cat. The citizen may argue that the new law reduces a person's time frame to reclaim their animal and, therefore, unlawfully reduces her right to reclaim her property.¹³² Yet, if the locality in which this California resident lives in has enacted a "leash law," the citizen may not have a right to the animal in the first place. Localities with this dual approach must be sure to incorporate such leash laws and other applicable ordinances. With the advent of animal cruelty laws, most municipalities are already entitled to these procedures. For example, Colorado's companion animal statute states:

'Mistreat' means every act or omission which causes or unreasonably permits the continuation of unnecessary or unjustifiable pain or suffering ... 'Neglect' means failure to provide food, water, protection from the elements, or other care generally considered to be normal, usual, and accepted for an animal's health and well-being consistent with the species, breed, and type of animal.¹³³

It has been argued, though, that feral cats were not "protected from the elements" or were experiencing unjustifiable pain or suffering by not receiving veterinary care. Connecticut circumvented this whole debate by allowing municipalities to require individuals that keep feral cats to register with the animal control officer for the municipality.¹³⁴ In exchange for remaining the possessor of the cats, the feeders must vaccinate all cats against rabies and sterilize them.¹³⁵

VIII. CONCLUSION /SOLUTIONS

Charles Darwin's quote "what havoc the introductions of any new beast of prey must cause in a country, before the instincts of the indigenous inhabitants have become adapted to the stranger's craft or power" summarizes the problem of exotic species generally and domestic cats particularly.¹³⁶ There is an abundance of data demonstrating the impact of exotic

132. I think this argument will fail in most courts because courts have generally held that such actions are warranted under police powers. See e.g. *Howell v. Daughet*, 230 S.W. 559, 561 (Ark. 1921) (holding that a statute concerning animals running at large did not place an unreasonable limitation on the time period to reclaim an animal).

133. Co. Rev. Stat. Ann. § 35-42-103 (West 1998).

134. Conn. Gen. Stat. Ann. § 22-339d(a) (West 2001). In this section a "keeper" includes any person or organization regularly feeding a feral cat. Feral cat is defined as a free-roaming domestic cat that is not owned. *Id.*

135. *Id.*

136. Charles Darwin, *The Voyage of the Beagle*, 401 (Anchor Books 1962) (originally published 1839).

species on native animals. This is especially seen in places where introductions concern species unlike those already present; however, as time goes on, the impacts of the introduction decline. Cats, being present along with man in almost every ecosystem for centuries, may no longer have significant impacts on native wildlife in some areas. In other areas, where humans have introduced cats into a new ecosystem or into one devoid of any terrestrial carnivores, such as Marion Island, we see the tell-tale destruction resulting from exotic species. For this reason, management plans must not merely assume cats are the culprit if present, or vice-versa, assume that domestic cats are not the underlying problem. Management plans must detail the impact of each input into the ecosystem to best place limited funds for recovering the species in a given area.

In short, feral cats have undisputed ecological impacts in some situations, including predation, limiting resources for indigenous species, or transmitting disease. Their impact is more likely observed in sensitive environmental areas or islands that have evolved without predators similar to the feral cat. Human-influenced areas may also increase the predation of feral cats for several reasons. First, cats may scavenge refuse or be fed by humans, which in turn causes their populations to be higher and healthier. On the other hand, areas inhabited by humans may attract artificially high numbers of birds and wildlife species, which the cats will capture in higher numbers than in natural areas. In such areas, feral cats may be desired to control rodent and other exotic populations; however, this desire may depend on the threat of disease and predation on native species posed by this situation.

One ecologist has suggested objectives to attain proper management of feral cats. They include:

- Explore methods to accurately determine the number of cats.
- Determine the scope of wildlife depredation by cats in various environments
- Discover acceptable means for controlling the domestic population of cats.¹³⁷

The third objective that the ecologist suggests might prove to be the most challenging to achieve. There is not a current method in use proven to be effective in reducing the number of feral cats that fits the definition of "acceptable means" by wildlife agencies in different jurisdictions. That does not mean, however, that the problem cannot be solved; rather, the

137. R. Warner, *Demography and Movements of Free-Ranging Domestic Cats in Rural Illinois*, 49 J. Wildlife Man. 340, 345 (1985).

solution requires a multi-faceted approach which depends on utilizing, with close scrutiny, the best scientific data available. Unfortunately, ecological data on domestic cats are limited to a few studies, each with drastically different conclusions. Due to the logistics and complexity of predation studies, these investigations are complicated by the means in which prey is captured or counted. But there are indicators that biologists can use to detect which path is best for the environment.

The current trend in applying nuisance laws to other non-indigenous species will probably not be effective in controlling feral domestic cats. This is due to their long-time association with mankind. For centuries, cats have been imported to aid humans in hunting rodents. Courts are reluctant to find a cause of action against an owner whose cat trespassed on another's land. With the recent enactments of leash laws, however, the courts may be more inclined to apply these laws to cats. Leash laws affirmatively change the long accepted view that cats may freely trespass. Yet, the reach of leash laws remains limited because most cats reside on private land, not in city parks or beaches, where few endangered species are found.

The Endangered Species Act (ESA) is one avenue for solving this problem. Unlike earlier laws, that employ a "black list" of prohibited species, the ESA does not target specific invasive species, rather the Act concerns any "harm" to the protected species. Additionally, the judicial branch has allowed the broad interpretation of "harm" to include habitat degradation. This broad definition is likely to cover situations in which feral domestic cats may not be directly preying upon a protected species, but rather, killing the protected species' preferred prey. Additionally, the ESA provides the government some leeway in effectively managing ecosystems in which removing the feral domestic cats will 1) harm the ecosystem more than simply leaving the cats, or 2) directly harm the species because the feral domestic cats are regulating a predator of the protected species. In these situations the government will not be held liable for not removing the cats that may be "harming" a few protected species.

Lastly, as observed in previous governmental attempts at controlling non-indigenous species, public opinion must be factored into the management plan. As well suited as the ESA is for assisting in the solution, it cannot be solely relied upon. As the nation's most popular pet, most Americans would rather let a native rodent species go extinct, than to control feral cats by a lethal method. This is especially the case when past attempts at controlling the feral cats have included poisoning and shooting, with only success on remote islands uninhabited by the general public. In urban areas, governments, both local and state, should attempt to employ a method that encourages people to assist in solving the problem, rather than

fighting it. The Federal government has recognized this, but as of yet, has failed to act on it. When commenting on the Office of Technology Assessment's report on non-indigenous species, the House of Representatives stated: "Increasingly, State and Federal agencies[,] nongovernmental organizations, agricultural interests, and universities see harmful [non-indigenous species] as a unifying threat and public education as an important tool to alleviate it."¹³⁸ Feral domestic cats are a perfect example to illustrate this point. Cats are such a threat because they reproduce quickly and efficiently. They can have multiple litters each year and reproduce at a young age. Currently, many localities are trapping and destroying feral cats, with no reduction of the overall number of feral cats. These same locales allow adoption of these feral cats with no requirement of sterilization or education on environmental impacts they may cause. Funds should be allocated to sterilize adopted animals and educate pet owners. For every cat adopted without sterilization or education, the animal catcher will may need to trap many more each year.

The law in California that allows non-profit organizations to remove feral cats from animal shelters as an alternative to destruction appears to incorporate past lessons on the need for public support. The California and Connecticut statutes provide an initial beginning to control the unwanted cat population with the public's support, but a final solution to the problem needs to incorporate laws that require more responsible pet ownership.

In summary, on the national level, the Department of the Interior should strategically utilize the ESA to regulate feral domestic cats. In doing so, the agency should be permitted to use its discretion when applying the "best available scientific and commercial data" to individual ecosystems. This practice will inevitably lead to situations where feral domestic cats are not removed from areas due to an increase of adverse impacts to the native wildlife. Courts should not interpret this as inaction and failure of the Department to protect listed species, but rather the proper utilization of its resources.

On the state and local level, governments should work with the public to control unwanted cats. Plans should include educating the public on the importance of sterilizing their cats and other pets and preventing possible predation of native wildlife. Plans could also incorporate stiffer penalties for those who fail to follow ordinances requiring sterilization and confinement. By providing the public with the option of humanely reducing the population, governments give the public the option of becoming responsi-

138. *National Biological Act of 1993*, 139 Cong. Rec. H8476 (daily ed. Oct. 26, 1993), 1993 WL 433203 (Cong. Rec.).

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ble pet owners while retaining the option to utilize other means to control the population if the public fails to act.

Attachment 2

Feral Cat Ordinance
(Red Line and Final Version)

Feral Cat Ordinance - Redline

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING THE BEVERLY HILLS MUNICIPAL CODE TO ADD
REGULATIONS REGARDING THE FEEDING AND CARE OF
FERAL CATS

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS ORDAINS AS
FOLLOWS:

Section 1. A new Article 5 (Regulations Pertaining to Feral Cats) is hereby added
to Chapter 2 of Title 5 of the Beverly Hills Municipal Code to read as follows:

“Article 5. Regulations Pertaining to Feral Cats

5-2-500: Trap-Neuter-Returnlease Program Purpose and Applicability Background.

A. A program is hereby adopted to control feral cat populations in ~~the certain areas of the City of Beverly Hills (“City”) city,~~ and to address associated health and safety hazards, and other impacts in the ~~City of Beverly Hills.~~ The program was developed in a collaborative effort with community residents and feral cat Trap-Neuter-Returnlease (TNR) program professionals. The program shall be known as the City of Beverly Hills Feral Cat TNR Program.

5-2-501: Applicability of Feral Cat TNR Program

A. Permits may be issued under this Article only for TNR activities in the Central Area of the City as depicted in the City’s zoning map.

B. No feeding and/or trapping activity shall be permitted within 500 feet of the perimeter of any City park.

5-2-502~~1~~: Definitions.

For the purposes of this Article, the words and phrases set forth in this section shall be construed as defined herein.

A. “Cat” means a member of the species *Felis ~~C~~catus*.

B. “Director” means the Director of Community Development or his/her designee.

BC. “Feral Cat” means a cat that lives permanently outside of a domestic home and is not owned and cared for as a typical companion animal or pet, as a result of having been born feral, abandoned by an owner, or rendered homeless, wild or stray by any other means.

C.D. “Feral Cat Caregiver” means any person who:

1. feeds feral cats, humanely traps feral cats, provides care, including shelter or medical care, to the feral cats, or any combination of the foregoing activities, and works in cooperation with a TNR Partner permitted by the City; and
2. is registered with a permitted TNR Partner and has proof of such registration.

DE. “Food” as well as “Feeding” includes water.

EF. “Trap-Neuter-Return,” also referred to as “TNR” is the practice whereby Feral Cats are humanely trapped by Feral Cat Caregivers or TNR Individuals, taken to a veterinary hospital or spay-neuter facility where they are sterilized and vaccinated, ear tipped, de-fleaed, and adopted or returned to their Colony to be cared for until the end of their natural life.

FG. “Trap-Neuter-Return Program Regulations and Guidelines” or “TNR Program Regulations and Guidelines” means the rules adopted by the City Council allowing permitted organizations or individuals to undertake TNR activities, which rules include standards of care and guidelines for implementation activities.

GH. “Feral Cat Colony” or “Colony” means a group of cats and the geographic location where **that group Feral Cats** typically live or where they forage or hunt for food, or are fed and generally cared for by a TNR Partner by associated Feral Cat Caregivers or by TNR Individuals.

HI. “TNR Partner” means an organization permitted by the City to engage in implementing TNR via education, training, funding spay-neuter, providing traps, holding spay-neuter clinics, providing long-term Colony care through volunteers or otherwise implementing TNR.

IJ. “TNR Individual” means a person who is permitted by the City to engage in implementing the TNR Program Regulations and Guidelines on the property of their primary residence without being affiliated with a TNR Partner.

5-2-5032: Feeding of Feral Cats Prohibited; Exceptions.

The feeding of feral cats is prohibited in the City of Beverly Hills unless otherwise permitted pursuant to this Article and conducted in accordance with the TNR Program Regulations and Guidelines.

5-2-5034: TNR Permit and Application Requirements

A. An annual permit shall be required for any organization or individual that wishes to operate as a TNR Partner or TNR Individual in the City.

B. A separate permit shall be required for each feral cat colony, even if multiple colonies are cared for by the same entity or person.

C. A permit application shall be submitted in the form and with the information required by the City, including the following:

1. TNR Partner Permit Requirements.

A completed TNR Partner Permit application form shall be submitted, and accompanied with the following supplemental information:

- (a) Applicant contact and address information;
- (b) TNR Partner contact and address information;
- (c) A map of the colony location and colony details to the extent known, including but not limited to an approximate number of;
 - (i) cats in colony;
 - (ii) successful spayed-neutered, de-fleaed, and ear tipped cats; and
 - (iii) successful adoptions;
- (d) A map showing the location of each feeder and trapping location.
- (e) A list of all Feral Cat Caregivers providing TNR support for the colony, and contact information for each Caregiver.
- (f) Feral Cat Caregiver affidavit forms signed by each affiliated Feral Cat Caregiver confirming their receipt of a copy of the City of Beverly Hills Feral Cat TNR Program Regulations and Guidelines and stating that they have read, understand, and will comply with those regulations and guidelines.
- (g) If feeding or trapping is proposed on private property, a copy of both the property owner's and the resident's consent agreeing to allow TNR activities on the private property.
- (h) If feeding or trapping locations are proposed on public property, proof of comprehensive general liability insurance in a form acceptable to and in an amount determined by the City's Risk Management Department, with the City named as an additional insured. The insurance shall be maintained in force through the life of the permit, including any renewals, and coverage shall not be modified without the consent of the City.
- (i) A statement accepting and agreeing to abide by all of the standard conditions of approval set forth in the TNR Program Regulations and Guidelines signed by a duly authorized representative of the TNR Partner.

- (j) Envelopes addressed to each owner of property within 150 feet of each proposed feeding and trapping location, with first class postage attached.
- (k) Envelopes addressed to the occupant of each residential unit within 150 feet of each proposed feeding and trapping location, with first class postage attached.

2. TNR Individual Permit Requirements.

A completed TNR Individual Permit application form shall be submitted, and accompanied with the following supplemental information:

- (a) Applicant contact and address information;
- (b) TNR Individual's contact and address information;
- (c) A map of the colony location and colony details to the extent known, including but not limited to an approximate number of;
 - (i) cats in colony;
 - (ii) successful spayed-neutered, de-fleaed, and ear tipped cats; and
 - (iii) successful adoptions;
- (d) A map showing the location of each feeder and trapping location.
- (e) Feral Cat Caregiver affidavit forms signed by each TNR Individual ~~and any Feral Cat Caregiver~~ confirming their receipt of a copy of the City of Beverly Hills Feral Cat TNR Program Regulations and Guidelines stating that they have read, understand, and will comply with those regulations and guidelines; and
- (f) A statement accepting and agreeing to abide by all of the standard conditions of approval set forth in the TNR Program Regulations and Guidelines signed by the TNR Individual.
- (g) Envelopes addressed to each owner of property within 150 feet of each proposed feeding and trapping location, with first class postage attached.
- (h) Envelopes addressed to the occupant of each residential unit within 150 feet of each proposed feeding and trapping location, with first class postage attached.

5-2-5054: Notice and Comment Period—Feeding.

A. Upon determination that an application for a TNR permit is complete for processing, the Director ~~of Community Development~~ shall provide notice of the application and a ten (10) day

comment period by first class mail to the owners of all property and residents within a 150 foot radius of each proposed feeding ~~or trapping~~ location.

B. The notice shall include, but is not limited to, the following:

1. The locations of feeding ~~and trapping~~ devices;
2. The feeding ~~and trapping~~ hours; and
3. Contact information for the TNR Partner and all affiliated Feral Cat Caregivers, or the TNR Individual

C. Notice for feeding ~~and trapping~~ devices that are not separated by more than twenty-five (25) feet from another feeding or trapping device may use a single notice, but which shall be mailed to all owners of properties and residents within the 150 foot radius of any device.

D. Interested parties may submit ~~written comments to the Director on whether the application meets the criteria of this Article or may submit a written objection to the location of the feeder if it is proposed to be placed adjacent to their property regarding the proposed permit in writing to the Director of Community Development during the ten (10) day comment period, and timely comments will be considered when making a decision regarding the permit and conditions of approval that may be appropriate.~~

5-2-505: Notice and Comment Period—Trapping.

A. Upon determination that an application for a TNR permit is complete for processing, the Director shall provide notice of the application and a three (3) day comment period by first class mail to the owners of all property and residents within a 150 foot radius of each proposed trapping location.

B. The notice shall include, but is not limited to, the following:

1. The locations of trapping devices;
2. The trapping hours; and
3. Contact information for the TNR Partner and all affiliated Feral Cat Caregivers, or the TNR Individual

C. Notice for trapping devices that are not separated by more than twenty-five (25) feet from another feeding or trapping device may use a single notice, but which shall be mailed to all owners of properties and residents within the 150 foot radius of any device.

D. Interested parties may submit written comments to the Director on whether the application meets the criteria of this Article or may submit a written objection to the location of the trap if it is proposed to be placed adjacent to their property during the ten (10) day comment period.

5-2-5056: Determination on Permit.

A. The City shall review permit applications deemed to be in compliance with the TNR Program and Guidelines requirements. The Director shall approve the application unless.

1. The pPermit applications does not comply with the that do not comply with TNR Program and Guidelines requirements;

2. The permit application does not include or do not include all of the required information as set forth in this Article;

3. A letter objecting to the location of feeder and/or trap has been submitted by a resident or property owner whose property is adjacent to the proposed location of the feeder and/or trap.

3. A permit has already been issued to another TNR Partner for the same feral cat colony or a feral cat colony located in the same area or general vicinity;

4. The applicant has been previously issued a permit pursuant to this Article and has violated the requirements of this Article or the TNR Program Requirements and Guidelines; or

5. The Director of Public Works has reported that the proposed location of a feeder or trap will interfere with public works activities.

~~will be denied. The location of a feeding device and traps on public property shall be subject to approval by Public Works Department in conjunction with Community Preservation.~~

B. Upon approval of a permit application, the Department of Community Development shall issue a permit card(s) to the TNR Partners, Feral Cat Caregivers, and TNR Individuals as applicable. The permit card shall be worn by the permittee and any person conducting TNR activity so that it is clearly visible to another person at all times while conducting TNR activity. Residents and/or property owners personally conducting TNR activity on their own property are not required to wear the permit card.

5-2-5067: TNR Permit Conditions.

A. As a prerequisite to receiving approval of a permit for a TNR Partner or a TNR Individual, the TNR Partner or Individual shall agree to comply with the standard conditions of approval set

forth in the adopted TNR Program Requirements and Guidelines. ~~Additional conditions may also be imposed as necessary based on specific features of a colony.~~

5-2-5078: Standards of Care and Responsibilities of TNR Partners, Feral Cat Caregivers, and TNR Individuals.

TNR Partners, Feral Cat Caregivers, and TNR Individuals shall comply with and fulfill the responsibilities and minimum standards of care as set forth in the TNR Program Regulations and Guidelines.

5-5-5089: Return of Feral Cats. The ~~release or~~ return of feral cats as part of a TNR program is exempt from any abandonment laws because the feral cat is trapped solely for the purpose of neutering or adopting.

5-5-510: Feeding and Trapping Times. ~~Food may be placed in authorized feeding stations and traps may be placed in permitted locations during the hours set forth in the TNR Program Regulations and Guidelines.~~

5-2-51109: TNR Programs on Public Property; Restrictions.

~~A. Feeding and Trapping Times. Food shall not be provided, and traps shall not be placed at any time between 10:00 pm — 6:00 am.~~

~~B. A.~~ Feeding locations shall be maintained in accordance with the adopted TNR Program Regulations and Guidelines.

~~C.~~ Recipients of a TNR Individual permit shall not be allowed to feed feral cats on public property.

~~D.~~ Feeding and trapping of feral cats in public parks shall not be permitted.

5-2-512: Request to Remove Feeders or Traps Located on Public or Private Property.

A. After the issuance of a TNR Partner Permit, a property owner may submit a request to the Director to request removal of a feeder or trap that is located adjacent to their property or on their private property.

B. Upon receipt of the request, the Director shall notify the permittee. The permittee shall remove the feeder and/or trap within 72 hours of such notice. If the feeder and/or trap is not

removed, the city shall cause the feeder and/or trap to be removed without any further notice to the permittee.

C. The Department of Public Works shall receive copies of all applications involving placement or feeders or traps in the public right-of-way. The City at any time may request removal of a feeder or trap located on the public right-of-way by providing notice to the permittee. The permittee shall remove the feeder and/or trap within 72 hours of such notice. If such feeder and/or trap is not removed, the City shall cause the feeder and/or trap to be removed without any further notice to the permittee.

5-2-5130: Annual Permit Renewals.

A. Permits mayshall be renewed annually, and requests for renewal shall be submitted at least thirty (30) days prior to expiration of the existing permit on forms approved by the City. The permittee shall have no property interest in the renewal and the permit shall not be renewed if the Director makes any of the determinations et forth in Section 5-2-506, subsection A. to provide the city with sufficient processing and review time.

B. Notice pursuant to Section 5-2-504 and 5-2-505 of this Article is not required unless changes in feeder ~~of~~ trap locations or new feeders or traps, or a combination thereof, are requested in conjunction with a renewal.

5-2-5141: Permit Modifications.

A. A permittee may request modifications to an existing permit to add or otherwise change the approved locations for feeding, trapping or combination thereof. Modifications applications shall be submitted on a form approved by the City.

B. Removal of feeding or trapping locations shall not require permit modification but the permittee shall inform the city of the removal of the location. The permit shall not be modified if the Director makes any of the determinations set forth in Section 5-2-506, subsection A.

C. Permit modifications shall be accompanied with the same documentation required for an initial permit application.

D. Noticing shall be required if a new location is requested for a feeder, trap, or combination thereof. Relocation of any feeder, trap, or combination thereof shall require a new notice to be sent as required by Section 5-2-504 and 5-2-505.

5-2-5152: Enforcement.

A. The City may enforce the standards of care applicable to TNR Partners, Feral Cat Caregivers and TNR Individuals in accordance with the City's Administrative Penalty Process or may refer to violations of the standards of care to the appropriate TNR Partner or TNR Individual for assistance in correcting the violations. Nothing in this paragraph is intended to restrict the remedies available to the City for a violation of the requirements of this Article or the TNR Programs Regulations and Guidelines.

B. In addition to any other remedy available to the City, the City may revoke ~~at~~ the permit of a TNR Partner or TNR Individual if the Director determines that the TNR Partner, TNR Individual or a Feral Cat Caregiver have violated the provisions of this Article or the TNR Program Regulations and Guidelines. ~~violations of this program or permit conditions are observed or verified, including violations committed by a Feral Cat Caretaker, whether listed on the permit or not.~~

C. Complaints. Any person may file a written complaint with the Department of Community Development Community Preservation regarding any permit issued under this Article. ~~pertaining to a specific Feral Cat Colony. The complaint shall be in writing and shall set forth sufficient facts to describe the location of the colony, and the problems being caused by the Colony.~~ Upon receipt of such a complaint, an investigation will be initiated by the City regarding the ~~to verify~~ allegations in the complaint.”

Section 2. The City Council has considered the TNR Program and Ordinance and finds that this project is exempt from the requirements of the California Environmental Quality Act (“CEQA”). The project is exempt pursuant to State CEQA Guidelines, 14 Cal. Code Regs Sec. 15307 as an action taken to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. The project is also exempt pursuant to Guidelines Section 15308 as an action to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. The project qualifies for these exemptions for several reasons, including, without limitation, the following reasons:

A. Stabilizing feral cat populations through the Trap-Neuter-Returnlease Program will ensure that current impacts that the cats may have on natural resources, including birds,

animals, and water quality (from the fecal matter) will not worsen and will, over time, be reduced as colony populations decline.

B. Adopting standards applicable to feral cat caregivers and their activities will require use of best practices to eliminate nuisance or unsanitary conditions that might otherwise exist if the activities were not regulated.

C. Feeding stations will be managed to minimize the attraction of other animals and pests.

D. The Trap Neuter Return Program will result in vaccinations of feral cats to reduce the spread of fleas and disease and the risks associated therewith.

Section 3. Persons and organizations currently feeding or otherwise caring for Feral Cats shall obtain permits within sixty (60) days of the effective date of this ordinance, but may continue to feed or otherwise care for feral cats during this sixty-day period. If a permit is not obtained within that period of time, feeding and other care activities must cease. Failure to cease activities will be deemed a violation of the City's ordinances and TNR Program.

Section 4. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 5. The City Clerk is directed to forward a certified copy of this ordinance to the Director of the City of Los Angeles Department of Animal Services.

Section 6. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

PASSED, APPROVED and ADOPTED this ___ day of _____, 2009.

NANCY KRASNE
Mayor of the City of
Beverly Hills, California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD, CCM
Interim City Manager

SUSAN HEALY KEENE, AICP
Director of Community Development

Feral Cat Ordinance - Final

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING THE BEVERLY HILLS MUNICIPAL CODE TO ADD
REGULATIONS REGARDING THE FEEDING AND CARE OF
FERAL CATS**

**THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS ORDAINS
AS FOLLOWS:**

Section 1. A new Article 5 (Regulations Pertaining to Feral Cats) is hereby added to Chapter 2 of Title 5 of the Beverly Hills Municipal Code to read as follows:

“Article 5. Regulations Pertaining to Feral Cats

5-2-500: Trap-Neuter-Return Program Purpose and Applicability.

A program is hereby adopted to control feral cat populations in certain areas of the City of Beverly Hills (“City”), and to address associated health and safety hazards, and other impacts in the City. The program was developed in a collaborative effort with community residents and feral cat Trap-Neuter-Return (TNR) program professionals. The program shall be known as the City of Beverly Hills Feral Cat TNR Program.

5-2-501: Applicability of Feral Cat TNR Program.

- A. Permits may be issued under this Article only for TNR activities in the Central Area of the City as depicted in the City’s zoning map.
- B. No feeding and/or trapping activity shall be permitted within 500 feet of the perimeter of any City park.

5-2-502: Definitions.

For the purposes of this Article, the words and phrases set forth in this section shall be construed as defined herein.

- A. “Cat” means a member of the species *Felis catus*.
- B. “Director” means the Director of Community Development or his/her designee.
- C. “Feral Cat” means a cat that lives permanently outside of a domestic home and is not owned and cared for as a typical companion animal or pet, as a result of having been born feral, abandoned by an owner, or rendered homeless, wild or stray by any other means.

D. “Feral Cat Caregiver” means any person who:

1. feeds feral cats, humanely traps feral cats, provides care, including shelter or medical care, to the feral cats, or any combination of the foregoing activities, and works in cooperation with a TNR Partner permitted by the City; and
2. is registered with a permitted TNR Partner and has proof of such registration.

E. “Food” as well as “Feeding” includes water.

F. “Trap-Neuter-Return,” also referred to as “TNR” is the practice whereby Feral Cats are humanely trapped by Feral Cat Caregivers or TNR Individuals, taken to a veterinary hospital or spay-neuter facility where they are sterilized and vaccinated, ear tipped, de-fleaed, and adopted or returned to their Colony to be cared for until the end of their natural life.

G. “Trap-Neuter-Return Program Regulations and Guidelines” or “TNR Program Regulations and Guidelines” means the rules adopted by the City Council allowing permitted organizations or individuals to undertake TNR activities, which rules include standards of care and guidelines for implementation activities.

H. “Feral Cat Colony” or “Colony” means a group of cats and the geographic location where that group typically live or where they forage or hunt for food, or are fed and generally cared for by a TNR Partner by associated Feral Cat Caregivers or by TNR Individuals.

I. “TNR Partner” means an organization permitted by the City to engage in implementing TNR via education, training, funding spay-neuter, providing traps, holding spay-neuter clinics, providing long-term Colony care through volunteers or otherwise implementing TNR.

J. “TNR Individual” means a person who is permitted by the City to engage in implementing the TNR Program Regulations and Guidelines on the property of their primary residence without being affiliated with a TNR Partner.

5-2-503: Feeding of Feral Cats Prohibited; Exceptions.

The feeding of feral cats is prohibited in the City of Beverly Hills unless otherwise permitted pursuant to this Article and conducted in accordance with the TNR Program Regulations and Guidelines.

5-2-504: TNR Permit and Application Requirements

A. An annual permit shall be required for any organization or individual that wishes to operate as a TNR Partner or TNR Individual in the City.

B. A separate permit shall be required for each Feral Cat Colony, even if multiple colonies are cared for by the same entity or person.

C. A permit application shall be submitted in the form and with the information required by the City, including the following:

1. TNR Partner Permit Requirements.

A completed TNR Partner Permit application form shall be submitted, and accompanied with the following supplemental information:

- (a) Applicant contact and address information;
- (b) TNR Partner contact and address information;
- (c) A map of the colony location and colony details to the extent known, including but not limited to an approximate number of;
 - (i) cats in colony;
 - (ii) successful spayed-neutered, de-fleaed, and ear tipped cats; and
 - (iii) successful adoptions;
- (d) A map showing the location of each feeder and trapping location.
- (e) A list of all Feral Cat Caregivers providing TNR support for the colony, and contact information for each Caregiver.
- (f) Feral Cat Caregiver affidavit forms signed by each affiliated Feral Cat Caregiver confirming their receipt of a copy of the City of Beverly Hills Feral Cat TNR Program Regulations and Guidelines and stating that they have read, understand, and will comply with those regulations and guidelines.
- (g) If feeding or trapping is proposed on private property, a copy of both the property owner's and the resident's consent agreeing to allow TNR activities on the private property.
- (h) If feeding or trapping locations are proposed on public property, proof of comprehensive general liability insurance in a form acceptable to and in an amount determined by the City's Risk Management Department, with the City named as an additional insured. The insurance shall be maintained in force through the life of the permit, including any renewals, and coverage shall not be modified without the consent of the City.

- (i) A statement accepting and agreeing to abide by all of the standard conditions of approval set forth in the TNR Program Regulations and Guidelines signed by a duly authorized representative of the TNR Partner.
- (j) Envelopes addressed to each owner of property within 150 feet of each proposed feeding and trapping location, with first class postage attached.
- (k) Envelopes addressed to the occupant of each residential unit within 150 feet of each proposed feeding and trapping location, with first class postage attached.

2. TNR Individual Permit Requirements.

A completed TNR Individual Permit application form shall be submitted, and accompanied with the following supplemental information:

- (a) Applicant contact and address information;
- (b) TNR Individual's contact and address information;
- (c) A map of the colony location and colony details to the extent known, including but not limited to an approximate number of;
 - (i) cats in colony;
 - (ii) successful spayed-neutered, de-fleaed, and ear tipped cats; and
 - (iii) successful adoptions;
- (d) A map showing the location of each feeder and trapping location.
- (e) Feral Cat Caregiver affidavit forms signed by each TNR Individual confirming their receipt of a copy of the City of Beverly Hills Feral Cat TNR Program Regulations and Guidelines stating that they have read, understand, and will comply with those regulations and guidelines; and
- (f) A statement accepting and agreeing to abide by all of the standard conditions of approval set forth in the TNR Program Regulations and Guidelines signed by the TNR Individual.
- (g) Envelopes addressed to each owner of property within 150 feet of each proposed feeding and trapping location, with first class postage attached.
- (h) Envelopes addressed to the occupant of each residential unit within 150 feet of each proposed feeding and trapping location, with first class postage attached.

5-2-505: Notice and Comment Period—Feeding.

A. Upon determination that an application for a TNR permit is complete for processing, the Director shall provide notice of the application and a ten (10) day comment period by first class mail to the owners of all property and residents within a 150 foot radius of each proposed feeding location.

B. The notice shall include, but is not limited to, the following:

1. The locations of feeding devices;
2. The feeding hours; and
3. Contact information for the TNR Partner and all affiliated Feral Cat Caregivers, or the TNR Individual

C. Notice for feeding devices that are not separated by more than twenty-five (25) feet from another feeding or trapping device may use a single notice, but which shall be mailed to all owners of properties and residents within the 150 foot radius of any device.

D. During the ten (10) day comment period, interested parties may submit written comments to the Director on whether the application meets the criteria of this Article or may submit a written objection to the location of the feeder if it is proposed to be placed adjacent to their property.

5-2-506: Notice and Comment Period—Trapping.

A. Upon determination that an application for a TNR permit is complete for processing, the Director shall provide notice of the application and a three (3) day comment period by first class mail to the owners of all property and residents within a 150 foot radius of each proposed trapping location.

B. The notice shall include, but is not limited to, the following:

1. The locations of trapping devices;
2. The trapping hours; and
3. Contact information for the TNR Partner and all affiliated Feral Cat Caregivers, or the TNR Individual

C. Notice for trapping devices that are not separated by more than twenty-five (25) feet from another feeding or trapping device may use a single notice, but which shall be mailed to all owners of properties and residents within the 150 foot radius of any device.

D. During the ten (10) day comment period, interested parties may submit written comments to the Director on whether the application meets the criteria of this Article or may submit a written objection to the location of the trap if it is proposed to be placed adjacent to their property.

5-2-507: Determination on Permit.

A. The determination of whether to issue a permit is a ministerial action. The City shall review permit applications deemed to be in compliance with the TNR Program and Guidelines requirements. The Director shall approve the application unless,

1. The permit application does not comply with the TNR Program and Guidelines requirements;

2. The permit application does not include all of the required information as set forth in this Article;

3. A letter objecting to the location of feeder and/or trap has been submitted by a resident or property owner whose property is adjacent to the proposed location of the feeder and/or trap;

4. A permit has already been issued to another TNR Partner for the same feral cat colony or a feral cat colony located in the same area or general vicinity;

5. The applicant has been previously issued a permit pursuant to this Article and has violated the requirements of this Article or the TNR Program Requirements and Guidelines; or

6. The Director of Public Works has reported that the proposed location of a feeder or trap will interfere with public works activities.

B. Upon approval of a permit application, the Department of Community Development shall issue a permit card(s) to the TNR Partners, Feral Cat Caregivers, and TNR Individuals as applicable. The permit card shall be worn by the permittee and any person conducting TNR activity so that it is clearly visible to another person at all times while conducting TNR activity. Residents and/or property owners personally conducting TNR activity on their own property are not required to wear the permit card.

5-2-508: TNR Permit Conditions.

A. As a prerequisite to receiving approval of a permit for a TNR Partner or a TNR Individual, the TNR Partner or Individual shall agree to comply with the standard conditions of approval set forth in the adopted TNR Program Requirements and Guidelines.

5-2-509: Standards of Care and Responsibilities of TNR Partners, Feral Cat Caregivers, and TNR Individuals.

TNR Partners, Feral Cat Caregivers, and TNR Individuals shall comply with and fulfill the responsibilities and minimum standards of care as set forth in the TNR Program Regulations and Guidelines.

5-5-510: Return of Feral Cats.

The return of feral cats as part of a TNR program is exempt from any abandonment laws because the feral cat is trapped solely for the purpose of neutering or adopting.

5-5-511: Feeding and Trapping Times.

Food may be placed in authorized feeding stations and traps may be placed in permitted locations during the hours set forth in the TNR Program Regulations and Guidelines.

5-2-512: TNR Programs on Public Property; Restrictions.

- A. Feeding locations shall be maintained in accordance with the adopted TNR Program Regulations and Guidelines.
- B. Recipients of a TNR Individual permit shall not be allowed to feed Feral Cats on public property.
- C. Feeding and trapping of Feral Cats in public parks shall not be permitted.

5-2-513: Request to Remove Feeders or Traps Located on Public or Private Property.

- A. After the issuance of a TNR Partner Permit, a property owner or resident may submit a request to the Director to request removal of a feeder or trap that is located adjacent to their property or on their private property.
- B. Upon receipt of the request, the Director shall notify the permittee. The permittee shall remove the feeder and/or trap within 72 hours of such notice. If the feeder and/or trap is not removed, the City shall cause the feeder and/or trap to be removed without any further notice to the permittee.
- C. The Department of Public Works shall receive copies of all applications involving placement or feeders or traps in the public right-of-way. The City at any time may request removal of a feeder or trap located on the public right-of-way by providing notice to the permittee. The permittee shall remove the feeder and/or trap within 72 hours of such notice. If such feeder and/or trap is not removed, the City shall cause the feeder and/or trap to be removed without any further notice to the permittee.

5-2-514: Annual Permit Renewals.

- A. Permits may be renewed annually, and requests for renewal shall be submitted at least thirty (30) days prior to expiration of the existing permit on forms approved by the City. The permittee shall have no property interest in the renewal and the permit shall not be renewed if the Director makes any of the determinations set forth in Section 5-2-507, subsection A.
- B. Notice pursuant to Section 5-2-505 and 5-2-506 of this Article is not required unless changes in feeder or trap locations or new feeders or traps, or a combination thereof, are requested in conjunction with a renewal.

5-2-515: Permit Modifications.

- A. A permittee may request modifications to an existing permit to add or otherwise change the approved locations for feeding, trapping or combination thereof. Modification applications shall be submitted on a form approved by the City.
- B. Removal of feeding or trapping locations shall not require permit modification but the permittee shall inform the city of the removal of the location. The permit shall not be modified if the Director makes any of the determinations set forth in Section 5-2-507, subsection A.
- C. Permit modifications shall be accompanied with the same documentation required for an initial permit application.
- D. Noticing shall be required if a new location is requested for a feeder, trap, or combination thereof. Relocation of any feeder, trap, or combination thereof shall require a new notice to be sent as required by Section 5-2-505 and 5-2-506.

5-2-516: Enforcement.

- A. The City may enforce the standards of care applicable to TNR Partners, Feral Cat Caregivers and TNR Individuals in accordance with the City's Administrative Penalty Process or may refer violations of the standards of care to the appropriate TNR Partner or TNR Individual for assistance in correcting the violations. Nothing in this paragraph is intended to restrict the remedies available to the City for a violation of the requirements of this Article or the TNR Programs Regulations and Guidelines.
- B. In addition to any other remedy available to the City, the City may revoke the permit of a TNR Partner or TNR Individual if the Director determines that the TNR Partner, TNR Individual or a Feral Cat Caregiver have violated the provisions of this Article or the TNR Program Regulations and Guidelines.

C. Complaints. Any person may file a written complaint with the Department of Community Development regarding any permit issued under this Article. Upon receipt of such a complaint, an investigation will be initiated by the City regarding the allegations in the complaint.”

Section 2. The City Council has considered the TNR Program and Ordinance and finds that this project is exempt from the requirements of the California Environmental Quality Act (“CEQA”). The project is exempt pursuant to State CEQA Guidelines, 14 Cal. Code Regs Sec. 15307 as an action taken to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment. The project is also exempt pursuant to Guidelines Section 15308 as an action to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. The project qualifies for these exemptions for several reasons, including, without limitation,

A. Stabilizing feral cat populations through the Trap-Neuter-Return Program will ensure that current impacts that the cats may have on natural resources, including birds, animals, and water quality (from the fecal matter) will not worsen and will, over time, be reduced as colony populations decline.

B. Adopting standards applicable to feral cat caregivers and their activities will require use of best practices to eliminate nuisance or unsanitary conditions that might otherwise exist if the activities were not regulated.

C. Feeding stations will be managed to minimize the attraction of other animals and pests.

D. The Trap Neuter Return Program will result in vaccinations of feral cats to reduce the spread of fleas and disease and the risks associated therewith.

Section 3. Persons and organizations currently feeding or otherwise caring for feral cats shall obtain permits within sixty (60) days of the effective date of this ordinance, but may continue to feed or otherwise care for feral cats during this sixty-day period. If a permit is not obtained within that period of time, feeding and other care activities must cease. Failure to cease activities will be deemed a violation of the City's ordinances and TNR Program.

Section 4. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 5. The City Clerk is directed to forward a certified copy of this ordinance to the Director of the City of Los Angeles Department of Animal Services.

Section 6. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

PASSED, APPROVED and ADOPTED this ___ day of _____, 2009.

NANCY KRASNE
Mayor of the City of
Beverly Hills, California

ATTEST:

BYRON POPE
City Clerk

(SEAL)

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD, CCM
Interim City Manager



SUSAN HEALY KEENE, AICP
Director of Community Development

Attachment 3

Trap-Neuter-Return (TNR) Program Regulations and Guidelines

City of Beverly Hills Feral Cat
Trap-Neuter-Return (TNR) Program
Regulations and Guidelines
(September 2009)

I. Introduction

Pursuant to the Provisions of Article 5 of Chapter 2 of Title 5 of the Beverly Hills Municipal Code, the City Council has adopted the following regulations and guidelines applicable to the conduct of feral cat TNR Programs.

II. Permit Required

TNR Partners and TNR Individuals shall obtain permits pursuant to Article 5 of Chapter 2 of Title 5 of the Beverly Hills Municipal Code, prior to commencing feeding or other TNR activities.

III. Application Requirements

Applicants for TNR permits shall complete the standard application form set forth in Attachment A to these Regulations and Guidelines. The City does not charge a fee for processing these applications.

IV. Standard Conditions of Approval

Applicants for TNR Permits shall agree to comply with and implement the following standard conditions of approval.

A. TNR Individual Permit Conditions

1. Feeding and trapping in alleys or on public property by a TNR Individual is prohibited.
2. TNR Individual shall
 - a) Comply with the TNR Program and Guidelines Acceptable Standards of Care and Responsibilities
 - b) Utilize humane TNR Program procedures of feeding and trapping techniques.
3. The TNR Individual shall maintain records of colony information and shall make such records available to the City upon request. Colony information shall include feeder and trap locations and cat

City of Beverly Hills
TNR Program Regulations and Guidelines

colony details to the extent known, including but not limited to an approximate number of:

- a) Cats in colony;
 - b) Successful spayed-neutered, de-fleaed, and ear tipped cats;
and
 - c) Successful adoptions.
4. The TNR Individual shall keep and maintain records for each colony cat, including each cat's rabies vaccination record/certificate, and the records shall be available and submitted to the City upon request.
 5. The TNR Individual shall assist the City in resolving feral cat issues and respond to complaints involving feral cat colonies served.
 6. A current and valid permit must be maintained and renewed prior to expiration; renewal requests shall be submitted at least thirty (30) days prior to expiration of the permit.
 7. Any changes to permit feeding, trapping, or TNR Individual information must be immediately updated on existing valid permits with the City and may require permit modifications.
 8. The TNR Individual shall have a licensed veterinarian evaluate the health of all trapped feral cats. Feral cats that have been spayed-neutered shall be ear-tipped for identification and be vaccinated, de-fleaed and returned back to the colony after surgery, if they cannot be adopted. If a feral cat appears potentially symptomatic for FIV or FeLV, the TNR Individual shall have a licensed veterinarian administer a test for FIV/FeLV. Feral cats that test positive shall not be returned back into the colony.
 9. Vaccinations required to be administered shall include a rabies vaccine, the FVRCP vaccine and any other vaccine recommended by the licensed veterinarian who evaluates the feral cat(s).
 10. Unless all known cats in a colony are neutered, the TNR Individual shall set humane traps regularly for the purpose of capturing feral cats to be spayed-neutered, and returned if they cannot be adopted.
 11. The TNR Individual shall trap kittens and make every effort to have the kittens adopted and not returned to the colony.

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12. The TNR Individual shall provide food and water to the colony cats on a regular basis, year round, using best practices to eliminate nuisance and unsanitary conditions.
13. The TNR Individual shall make reasonable, good faith efforts to provide needed veterinary care to colony cats that are visibly ill or injured.
14. TNR Individuals shall address and respond to complaints regarding colony cats.
15. Feedings on private property may only be done within an area that is enclosed by a minimum six foot (6') barrier to prevent the food from luring unintended animals into the area, unless a feeding device, approved by the Director of Community Development, is used that prevents other animals from accessing the food intended for the feral cats.
16. All feeders and traps shall have affixed to it an identification sticker in the form approved by the Director of Community Development.
17. The TNR Individual shall ensure that any associated Feral Cat Caregivers comply with all sanitation requirements and guidelines as provided in the TNR Program.
18. Sanitation of feeding and trapping areas, removal of food from containers, clean up, and maintenance of the feeding area is the responsibility of the TNR Individual.
19. A reasonable amount of food that is appropriate for the size of the colony utilizing the feeder may be placed in the feeder daily between the hours of 6:00 a.m. and 8:00 p.m., or sunset, whichever is earlier. Before 8:00 p.m. or sunset, whichever is earlier, of each day, the TNR Individual shall empty the food from the feeder so that no food remains in the feeder overnight.
20. Traps may be placed at the permitted location between the time of sunset and 2:30 a.m. of the next day, at which time said trap shall be removed from the location. A reasonable amount of food that is appropriate for the trapping of the feral cat(s) may be placed in the trap.
21. All feeding and trapping locations shall be kept free of excess food, debris and other materials used to maintain the colony. Cleanup and maintenance is the responsibility of the TNR Individual.

City of Beverly Hills
TNR Program Regulations and Guidelines

22. The TNR Individual shall be responsible for removing fecal matter within 50 feet of any feeder. Such removal shall be performed daily when the TNR Individual places food in the feeder as well as when the TNR Individual removes food from the feeder. All fecal matter shall be properly disposed.
23. When conducting trapping activities, the TNR Individual shall not leave traps unattended. The TNR Individual should remain within visual contact of the trap so as to engage in humane trapping of the feral cats.
24. The TNR Individual must comply with all applicable City, State, and Federal laws.

B. TNR Partner Permit Conditions

1. TNR Partners and Feral Cat Caregivers shall make reasonable, good faith efforts to have all cats in a colony neutered with the intention of reducing the size of the colony.
2. TNR Partners and Feral Cat Caregivers shall have a licensed veterinarian evaluate the health of all trapped feral cats. Feral cats that have been spayed-neutered shall be ear-tipped for identification and be vaccinated, de-fleaed and returned after surgery, if they cannot be adopted. If a feral cat appears potentially symptomatic for FIV or FeLV, the medical care provider shall administer a test for FIV/FeLV. Feral cats that test positive shall not be returned back into the colony.
3. Vaccinations required to be administered shall include a rabies vaccine, the FVRCP vaccine and any other vaccine recommended by the licensed veterinarian who evaluates the feral cat(s).
4. Unless all known cats in a colony are neutered, TNR Partners and affiliated Feral Cat Caregivers shall set humane traps regularly for the purpose of capturing feral cats to be spayed-neutered, and returned if they cannot be adopted.
5. TNR Partners and affiliated Feral Cat Caregivers shall trap kittens and make every effort to have the kittens adopted and not returned to the colony.
6. TNR Partners and affiliated Feral Cat Caregivers shall provide food and water to the colony cats on a regular basis, year round, using best practices to eliminate nuisance and unsanitary conditions.

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TNR Program Regulations and Guidelines

7. TNR Partners and affiliated Feral Cat Caregivers shall make reasonable, good faith efforts to provide needed veterinary care to colony cats that are visibly ill or injured.
8. TNR Partners and affiliated Feral Cat Caregivers shall keep and maintain records for each colony cat, including each cat's rabies vaccination record/certificate, and the records shall be made available to the City upon request. Feral Cat Caregivers' records must be submitted to the TNR Partner.
9. Before engaging in any feeding and trapping activities on private property, TNR Partners shall obtain the written and signed authorizations of the resident(s) and property owner(s), delineating the specific location(s) of feeding and trapping. Feedings on private property may only be done within an area that is enclosed by a minimum six foot (6') barrier to prevent the food from luring unintended animals into the area, unless a feeding device, approved by the Director of Community Development, is used that prevents other animals from accessing the food intended for the feral cats.
10. Feeding and trapping in alleys or on public property is prohibited, unless allowed by a TNR Partner permit issued by the City on an annual basis.
11. Types and Locations of Containers. The location and types of feeding containers must be pre-approved by the City and TNR Partners. Submittal of proposed feeding container information shall include but not be limited to photos, specifications, dimensions, and other pertinent information, and shall be provided to the City for approval prior to use.
12. TNR Partners shall ensure that associated Feral Cat Caregivers comply with all sanitation requirements and guidelines as provided in the TNR Program.
13. TNR Partners and Feral Cat Caregivers shall:
 - a) Comply with the TNR Program Regulations and Guidelines Acceptable Standards of Care and Responsibilities (as defined within).
 - b) Utilize humane TNR Program procedures for feeding and trapping.
14. TNR Partners shall provide training, guidance, and maintain records for Feral Cat Caregivers under the TNR Partner Permit and shall make such records available to the City upon request.

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TNR Partners shall also maintain Colony information and shall make such information available to the City upon request. Colony information shall include feeder and trap locations and Colony details to the extent known, including but not limited to an approximate number of:

- a) Cats in colony;
 - b) Successful spayed-neutered, de-fleaed, and ear tipped cats; and
 - c) Successful adoptions.
15. TNR Partners and affiliated Feral Cat Caregivers shall assist the City in resolving feral cat issues and respond to complaints involving permitted feral cat colonies served.
 16. A current and valid permit must be maintained and renewed prior to expiration; renewal requests shall be submitted at least thirty (30) days prior to expiration of the permit.
 17. Any changes to permit feeding, trapping, and Feral Cat Caregiver information must be immediately updated for existing valid permits with the City.
 18. TNR Partners are encouraged to participate in public outreach and education programs in coordination with City staff at events such as the Farmers' Market, Health and Safety Expo and Team Beverly Hills and other means of outreach.
 19. TNR Partners shall comply with any requirement of the City that the City believes may be necessary or desirable to address specific issues unique to the Feral Cat Colony to be served.
 20. Feral Cat Caregivers associated with the TNR Partner may not add new feeding or trapping devices, and shall not relocate any approved trapping or feeding device without prior approval of a modification to a TNR Partner permit. Feeding devices may only be temporarily removed to service, maintain, or remedy any complaint situation.
 21. Sanitation of feeding and trapping areas, removal of food from containers, clean up, and maintenance of the feeding area is the responsibility of the Feral Cat Caregiver or TNR Partner.
 22. A reasonable amount of food that is appropriate for the size of the colony utilizing the feeder may be placed in the feeder daily between the hours of 6:00 a.m. and 8:00 p.m., or sunset, whichever

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- is earlier. Before 8:00 p.m. or sunset, whichever is earlier, of each day, the TNR Partner or affiliated Feral Cat Caregiver shall empty the food from the feeder so that no food remains in the feeder overnight.
23. Traps may be placed at the permitted location between the time of sunset and 2:30 a.m. of the next day, at which time said trap shall be removed from the location. A reasonable amount of food that is appropriate for the trapping of the feral cat(s) may be placed in the trap.
 24. All feeding and trapping locations shall be kept free of excess food, debris and other materials used to maintain the colony. Cleanup and maintenance is the responsibility of the Feral Cat Caregivers or TNR Partner.
 25. The TNR Partner or affiliated Feral Cat Caregiver shall be responsible for removing fecal matter within 50 feet of any feeder. Such removal shall be performed daily when the TNR Partner or affiliated Feral Cat Caregiver places food in the feeder as well as when the TNR Partner or affiliated Feral Cat Caregiver removes food from the feeder. All fecal matter shall be properly disposed.
 26. When conducting trapping activities, TNR Partners and affiliated Feral Cat Caregivers shall not leave traps unattended. TNR Partners and affiliated Feral Cat Caregivers should remain within visual contact of the trap so as to engage in humane trapping of the feral cats.
 27. Feedings on private property may only be done within an area that is enclosed by a minimum six foot (6') barrier to prevent the food from luring unintended animals into the area, unless a feeding device, approved by the Director of Community Development, is used that prevents other animals from accessing the food intended for the feral cats.
 28. Feedings on public property may only be done within a feeding device, approved by the Director of Community Development, that is designed to prevent other animals from accessing the food intended for the feral cats.
 29. All feeders and traps shall have affixed to it an identification sticker in the form approved by the Director of Community Development.
 30. Permittee shall inform the City of any changes in Feral Cat Caregivers or their contact information within 10 days of such changes.

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31. The TNR Partners and affiliated Feral Cat Caregivers shall display the City issued permit card on their person in a visible manner at all times while conducting TNR activities.
32. The TNR Partners and affiliated Feral Cat Caregivers shall carry with them an identification card or drivers license at all times while conducting TNR activities.
33. The TNR Partners and affiliated Feral Cat Caregivers shall show their identification card or drivers license to any person who requests to see such identification card or drivers license while the TNR Partner or affiliated Feral Cat Caregiver is conducting TNR activities.
34. The TNR Partners and Feral Cat Caregivers must comply with all applicable City, State, and Federal laws.
35. TNR Partners shall provide and maintain insurance as required in Article 5 of Chapter 2 of Title 5 of the Municipal Code, throughout the term of the permit. In addition, TNR Partners and Feral Cat Caregivers shall execute an indemnification, release and hold harmless agreement in the form approved by the City's Risk Manager.

V. Revisions to TNR Program Regulations and Guidelines.

The City Manager, or his or her designee, shall have the authority to revise these TNR Regulations and Guidelines from time to time, in order to further the purpose of the City of Beverly Hills Feral Cat TNR Program. Notice shall be provided to TNR Individuals, TNR Partners and Feral Cat Caregivers of any revisions to these Regulations and Guidelines. Within 10 days of receipt of such notice, or within such other time approved by the Director of Community Development, TNR Individuals, TNR Partners and Feral Cat Caregivers shall bring their practices into the compliance with the revised Regulations and Guidelines.

Attachments:

[Please note that these forms will be developed based on the provisions in the ordinance regarding feral cats, and will be incorporated before these Regulations and Guidelines are presented to the City Council for formal adoption.]

- A. TNR Permit Application Form
- B. TNR Permit Notice Form
- C. Affidavit of Receipt of Regulations and Guidelines

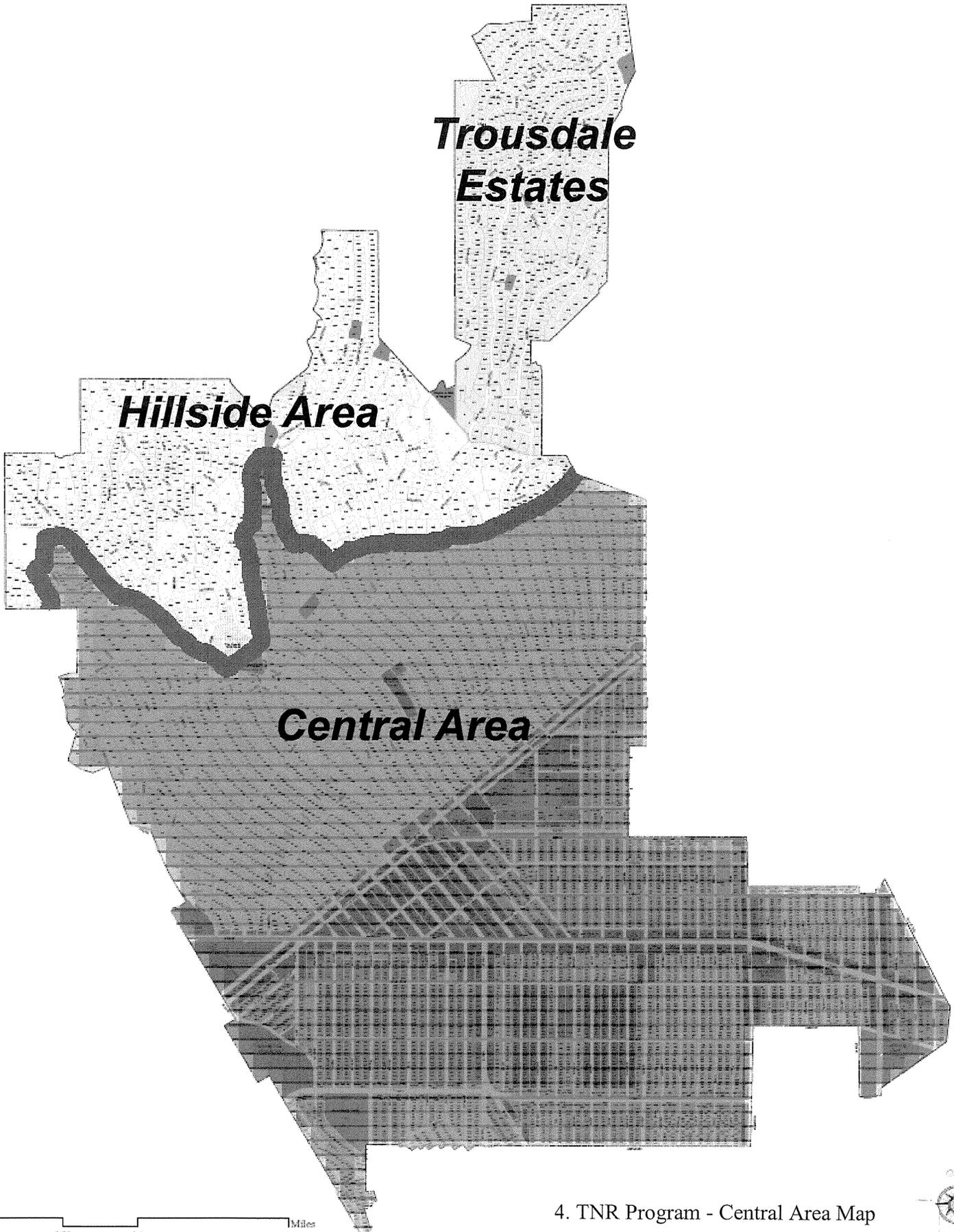
Attachment 4

TNR Program – Central Area Map



City of Beverly Hills

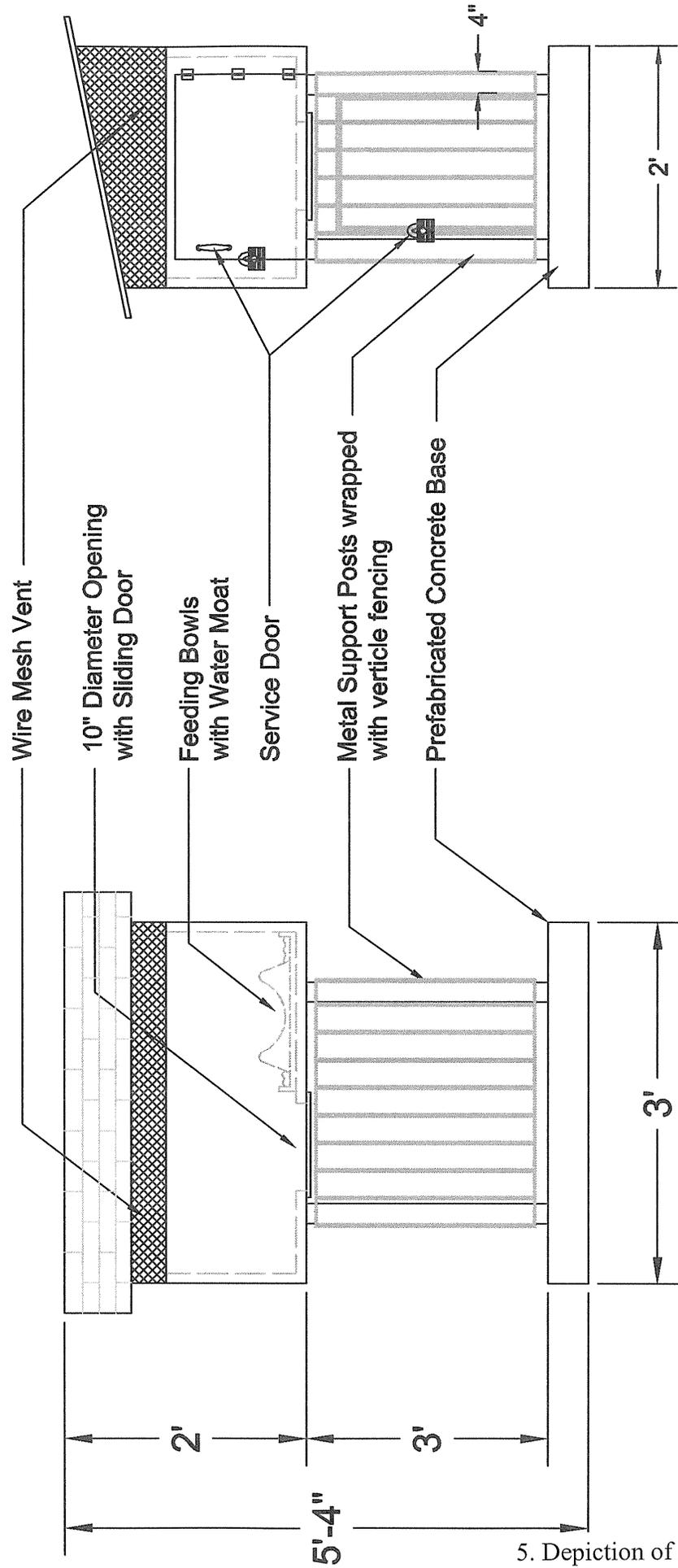
TNR Program - Central Area Map



Attachment 5

Depiction of Feeder

City of Beverly Hills Feral Cat Feeding Station Concept



5. Depiction of Feeder

Attachment 6

August 18, 2009 Agenda Report



AGENDA REPORT

Meeting Date: August 18, 2009
Item Number:
To: Honorable Mayor and City Council
From: George Chavez, Assistant Director of Community Development 
Nestor Otazu, Code Enforcement Manager
Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS
AMENDING THE BEVERLY HILLS MUNICIPAL CODE TO
ADD REGULATIONS REGARDING THE FEEDING AND CARE
OF FERAL CATS
Attachments: 1. Proposed Feral Cat Ordinance
2. Proposed Trap-Neuter-Return (TNR) Program Regulations and
Guidelines

RECOMMENDATION

Staff recommends that the City Council introduce the Feral Cat Ordinance and direct staff to prepare a resolution approving the City of Beverly Hills Feral Cat Trap-Neuter-Return (TNR) Program Regulations and Guidelines.

INTRODUCTION

On July 7, 2009, the City Council provided staff direction to move forward to develop a Feral Cat Ordinance and TNR Program to address the feeding, neutering, and trapping of the feral cat population in the City. In order to better understand the concerns of the community as it relates to the feeding, neutering, and trapping of feral cats and cat colonies, a series of meetings with several recognized feral cat organizations and residents were held, the most recent being with the City Council sub-committee on July 30, 2009.

As a result of those meetings, language relating to concerns and standards of care and responsibilities was incorporated in the TNR Program which was used as the basis for preparation of a proposed ordinance and TNR Program Regulations and Guidelines.

Staff's goal is to include sufficient flexibility to permit the feeding, neutering, and trapping of feral cats by TNR Partners and their Feral Cat Caregivers, and TNR Individuals, while providing sufficient controls to adequately protect the community's public health and safety.

In addition, approval of the Feral Cat Ordinance would prohibit the feeding and trapping of feral cats unless otherwise permitted by the City and performed a manner consistent with the TNR Program Regulations and Guidelines requirements.

DISCUSSION

The purpose of the Trap-Neuter-Release (TNR) Program is to control feral cat populations in the City, and to address associated health and safety concerns and other impacts within the City of Beverly Hills. This Program is the result of a collaborative effort between community members and Feral Cat TNR professionals and City staff.

The proposed TNR Ordinance along with the Program Regulations and Guidelines allow an organization or individual that wants to operate as a TNR Partner or TNR Individual to apply for an annual permit to undertake TNR activities including the feeding and trapping of feral cats. Upon review of the information requested on an application, the City may approve and issue a "no fee" permit for a period of one year, which may be renewed annually. The renewal process requires permit holders to report the number of cats trapped, the number of cats adopted, as well as any changes in the size of the feral cat colonies.

The permit would include participant contact information and standard conditions pertaining to compliance with TNR Program requirements. Because geography, environment and neighborhood conditions vary throughout the City, permits may also include specific conditions related to the unique characteristics of a given area.

Participants in the program must abide by the permit conditions, the TNR Ordinance, and the Regulations and Guidelines. Participants are also expected to respond to complaints related to the feral cat colonies for which they are responsible. If a complaint remains unresolved, the City will take appropriate measures to resolve verified violations. Continuing violations may result in the revocation of a permit and may also be resolved through the City's Administrative Penalty process.

TNR PERMIT NOTICE

In addition to the requirements of the TNR Permit, the proposed ordinance would require a notice be mailed to residents within a 150-foot radius of each feeding and trapping location. This notice is intended to inform residents of the following:

- A feral cat colony exists in their neighborhood.
- TNR activity is being proposed.
- Feral cat caregiver and contact information.
- Location of feeding and trapping devices including feeding times, and
- Educational information related to feral cat colonies.

This is a subject on which the residents and feral cat representatives have differing opinions. The residents prefer that the notice be sent prior to the issuance of TNR Permits. Feral Cat experts expressed concern that due to a lack of an understanding of the intent of TNR, permits may become delayed or difficult, if not impossible, to obtain.

Meeting Date: August 18, 2009
Feral Cat Ordinance

To balance these concerns, staff included a noticing requirement in the ordinance that would require the mailing of a notice prior to issuance of the permit, and providing a 10-day period during which written comments may be submitted. Any timely comments received as a result of the notice would be evaluated, and if concerns are raised that cannot be mitigated by the standard conditions imposed on all permits, additional conditions would be placed on the permit before it is issued.

COMPREHENSIVE GENERAL LIABILITY INSURANCE

Another subject on which residents and feral cat representatives have a difference of opinion is the requirement to provide comprehensive general liability insurance for the placement of a feeding station on public property.

Feral Cat experts think that imposing insurance requirements on non-profit volunteers may deter the volunteer from obtaining a permit which would promote the un-authorized feeding of feral cats without the benefit of the TNR program. Resident representatives think it is important to maintain an insurance requirement.

Staff discussed this with the City's Risk Manager who stated some insurance should be provided just as it is for all other encroachments in the public right-of-way. He suggested that a reduced amount of insurance be required for a TNR permit: \$250,000 instead of the standard \$1,000,000 normally required by the City.

FISCAL IMPACT

There will be an increase in Code Enforcement staff time to initiate and administer the TNR Program. Since the proposed TNR permit is a no-fee permit, there would be no revenue generated to cover these costs. Since staffing levels will not be adjusted, existing Code Enforcement response time will likely be extended.

Scott G. Miller, Director of
Administrative Services, CFO

George Chavez, Assistant Director of
Community Development



Finance Approval



Approved By