



# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Ecological Services  
Carlsbad Fish and Wildlife Office  
6010 Hidden Valley Road, Suite 101  
Carlsbad, California 92011



In Reply Refer To:  
FWS-OR-09B0310-12TA0274

APR 27 2012

Mr. Andy Tran, PE  
Senior Civil Engineer  
City of Newport Beach, Public Works Department  
3300 Newport Boulevard  
Newport Beach, California 92658-8915

Subject: Request for Technical Assistance for Revised Sunset Ridge Park Project, City of  
Newport Beach, Orange County, California

Dear Mr. Tran:

We have reviewed the information received on March 21, 2012, regarding the revised Sunset Ridge Park Project in the City of Newport Beach, Orange County, California. This letter is in response to your verbal request on March 20, 2012, for our agency to confirm that the City has addressed compliance with the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), with regard to potential project-related effects to the federally threatened coastal California gnatcatcher (*Polioptila californica californica*, "gnatcatcher"). We reviewed the original project description and addressed potential impacts to the gnatcatcher, federally listed vernal pool species, and burrowing owls (*Athene cunicularia*) in a letter dated October 11, 2011 (FWS-OR-09B0310-12TA0011).

The revised park project is largely contained within the same footprint as the original design and contains the same facilities (i.e., ball fields, a butterfly garden, and playground) (Figure 1). Changes to the project include deletion of the primary access road to the park from Coast Highway and parking lot. An existing parking lot across from Superior Avenue will instead be used to access the park. A new maintenance road will traverse the west side of the park, and a chain link fence will be installed west of the maintenance road for security purposes. No impacts will occur within the adjacent Newport Banning Ranch LLC (Banning Ranch) property. Construction of the recreational park is anticipated to begin in the fall of 2012.

In our previous letter we evaluated the status of the gnatcatcher and its designated critical habitat in the project vicinity and concluded the project was in compliance with the Act. Based on our review of the revised project and the City's continued commitment to implement specific measures to avoid and minimize impacts to gnatcatchers (Enclosure), we do not expect construction or operation of the

revised Sunset Ridge Park Project to “harm” gnatcatchers<sup>1</sup>. In addition, the site will continue to support gnatcatcher habitat and to maintain connectivity with gnatcatchers on the Banning Ranch property. Thus, the ecological role and function of designated critical habitat will not be precluded by the project<sup>2</sup>.

#### *Disturbance and Habitat Loss Associated with Project Construction*

The revised project results in a decrease in impacts to gnatcatcher foraging and sheltering habitat from 9.35 acres to 3.95 acres and avoids the primary breeding season use areas where gnatcatchers have been observed since 1992<sup>3</sup>. Native habitat creation/restoration has also been reduced from 7.35 acres to 4.40 acres; however, the revised project will restore more habitat than is impacted. Therefore, project impacts to foraging and sheltering habitat that are primarily used outside of the breeding season are temporary. As discussed in our previous letter, sufficient habitat is available adjacent to the project site on the Banning Ranch property to allow gnatcatcher pairs located in the project vicinity to compensate for the temporary loss of habitat through minor adjustments to their non-breeding season use areas. In addition, we do not anticipate the revised project to result in direct harm or disturbance to gnatcatchers during construction activities because no changes are proposed to the construction minimization measures included as part of the project (Enclosure).

#### *Habitat Degradation and Disturbance Associated with Project Operation and Maintenance*

We previously evaluated the potential for the park project to disturb gnatcatchers and/or degrade remaining undisturbed habitat due to increased human-generated disturbances associated with operation of the park, including authorized and unauthorized recreational use, waste dumping, night lighting, exotic plant invasion, and an increase in predators. Based on the City’s commitment to incorporate significant design features (e.g., signs, fencing, shielded lighting) and management measures (e.g. non-native plant removal) as part of the project, we determined the quality of gnatcatcher habitat areas within the site would be maintained over the long term and support recovery of the species. With the exception of measures associated with the originally proposed access road, all applicable design features and management measures have been included as part of the revised project (Enclosure). Consequently, when considering potential impacts to gnatcatcher, we have determined that the revised project is in compliance with the Act.

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<sup>1</sup> Section 9 of the Endangered Species Act prohibits the take of endangered and threatened species without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm is further defined by the Fish and Wildlife Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering.

<sup>2</sup> The Endangered Species Act requires consultation with our agency to address potential impacts on critical habitat for projects carried out, funded, or authorized by a Federal agency to ensure that their actions will not destroy or adversely modify critical habitat. A critical habitat designation generally has no effect on situations that do not involve a Federal agency such as this project that involves no Federal funding or permit. Our conclusion in this letter concerning potential effects of the project on critical habitat is provided for information purposes only and does not address a regulatory requirement.

<sup>3</sup> Refer to our October 11, 2011 letter for detailed information regarding status and distribution of the gnatcatcher.

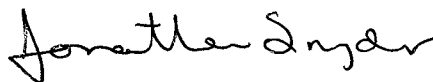
*Recommendations*


We recommend the City include the following additional measures to further discourage non-natives from encroaching into surrounding native vegetation and to increase the quality and quantity of gnatcatcher habitat on the project site:

- Remove invasive species (e.g., *Cortaderia sp.*, *Carpobrotus edulis*) from areas outside the grading limits (Figure 1, "Existing – Not to Be Disturbed").
- Remove non-native species that are similar in appearance to invasive species (e.g., *Pennisetum sp.*) from the plant planting list to avoid inadvertent replacement with invasive varieties in the future.
- To reduce maintenance costs associated with maintaining gnatcatcher habitat areas, remove non-native species from the planting list that have a propensity for dispersal (e.g., *Acacia sp.*).

In summary, we appreciate the City's efforts to coordinate with our agency to ensure regulatory compliance with the Act and your commitment to implement measures in support of gnatcatcher recovery. Should you have any questions regarding this letter, please contact Fish and Wildlife Biologist Christine Medak of this office at 760-431-9440, extension 298.

Sincerely,



 Karen A. Goebel  
Assistant Field Supervisor

cc:

Jonna Engel, California Coastal Commission  
Terry Welsh, Banning Ranch Conservancy  
Matt Chirdon, California Department of Fish and Game

**Enclosure**  
**Sunset Ridge Park Project, City of Newport Beach, California**  
**Project Design and Avoidance Measures**

In coordination with the U.S. Fish and Wildlife Service's Carlsbad Fish and Wildlife Office (CFWO), the City of Newport Beach (City) has committed to implement the following design features and avoidance measures as part of the Sunset Ridge Park Project to avoid and minimize impacts to the Federal listed coastal California gnatcatcher ("gnatcatcher").

*Project Design (refer to Figure 1):*

1. The City will provide foraging habitat for the gnatcatcher within approximately 4.40 acres of landscaped park areas. Revisions to the proposed plant pallet in these areas will be reviewed and approved by the CFWO prior to the initiation of construction.
  - a. The 0.16-acre Expanded CSS will include only native plants of the coastal sage scrub vegetation community (e.g., *Encelia californica*, *Eriogonum fasciculatum*, *Baccharis pilularis*).
  - b. The 1.51-acre Streetscape Slope will be minimally irrigated and consist primarily of native plants of the coastal sage scrub vegetation community (e.g., *Encelia californica*, *Eriogonum fasciculatum*, *Rhus integrifolia*, *Isocoma menziesii*).
  - c. The 0.52-acre Water Infiltration Area will include only native plants, primarily of the coastal sage scrub vegetation community (e.g., *Encelia californica*, *Eriogonum fasciculatum*, *Baccharis pilularis*, *Baccharis salicifolia*).
  - d. The 2.21-acre Residential Buffer located along the northern boundary of the park will include primarily native scrub species compliant with the Orange County Fire Authority OCFA fuel modification plant palette (e.g., *Baccharis pilularis*, *Opuntia littoralis*, *Encelia californica*, and *Rhus integrifolia*).
2. Plants identified by the California Invasive Plant Council as an invasive risk in southern California will be excluded from all landscaping within the park.
3. Park lighting will be limited to 3.5-foot bollards with cut-off louvers and will be positioned, directed or shielded so as to minimize artificial lighting from reflecting into native habitat.
4. Human intrusion into native habitat within the park will be discouraged through the use of signs and fencing. Signs identifying the native habitat areas (such as "No Trespassing Habitat Area Do Not Enter") will be posted at reasonable intervals and likely points of entry along the west side of the park.

5. Fencing (e.g., rope and post) will be installed, as necessary, to discourage unauthorized access into native habitat areas.

*Construction of the Project:*

6. Vegetation removal and clearing for the proposed project will occur between August 1 and February 14, outside the gnatcatcher breeding and nesting season.
7. The limits of vegetation removal will be delineated in all areas adjacent to preserved vegetation by bright orange plastic fencing, stakes, flags, or markers that are clearly visible to personnel on foot and in heavy equipment.
8. A qualified biologist<sup>4</sup> will be present during all vegetation removal and clearing and will have the authority to halt activities that might result in harm to the gnatcatcher or result in impacts beyond the limits of the project footprint as depicted in Figure 1.
9. Construction activities that occur within 200 feet of gnatcatcher habitat during the breeding and nesting season will be conducted in the presence of a qualified biologist. Construction activities will not occur within 200 feet of an active gnatcatcher nest. The qualified biologist will provide, on a weekly basis to the CFWO, a summary (including photos) of project activities completed during the breeding and nesting season.

*Park Operations:*

10. Vegetation clearing/tree trimming/pruning within the Streetscape Slope and will occur between September 1 and February 14, outside the gnatcatcher breeding season.
11. As part of the annual operations budget for the park, the City will dedicate adequate funding to ensure:
  - a. During the first 5 years following public access to park facilities, human intrusion into habitat areas will be assessed on a regular basis. If signs and fencing are not effective, the City's landscape contractor (or qualified biologist) will recommend additional strategies. These recommendations and a record of their implementation will be submitted to the CFWO within 6 years of public access to the park.
  - b. Non-native landscaping within the park will be maintained to prevent spill-over into gnatcatcher habitat.

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<sup>4</sup> The qualified biologist will hold a 10(a)(1)(A) permit for the gnatcatcher.

- c. All non-native landscape plants that have been inadvertently introduced into gnatcatcher habitat areas will be removed a minimum of once per year, as necessary. Habitat maintenance will be conducted outside of the gnatcatcher breeding season.

