

RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:

State of California
DEPARTMENT OF TRANSPORTATION
Caltrans - District 12
Office of Right of Way
3337 Michelson Drive Suite CN380
Irvine, CA 92612-1699

Attn: R/W Excess Lands

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

NO FEE

2006000813583 10:16am 12/05/06

106 33 D10 8

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Map No.: E120010-15
RWPE: C. SMYTHE (01/04/01)
Written:CS Check:DO

Space above this line for Recorder's Use

DIRECTOR'S DEED

District	County	Route	Post	Number
12	Orange	1	19.7	DD 040766-01-01

OCT - 2006 - 01

The STATE OF CALIFORNIA, acting by and through its Director of Transportation, does hereby grant to the

City of _____ of _____ Newport Beach

all that real property in the City of Newport Beach County of Orange, State of California, described as:

Parcel No. DD 040766-01-01

That portion of Lot 1 of Tract No. 463 in the City of Newport Beach, County of Orange, State of California as shown per a map filed in Book 32, Pages 2 and 3 of Miscellaneous Maps in the office of the County Recorder of said county; that portion of Lot 1 of Tract No. 2250 as shown per a map filed in Book 104, Pages 6 and 7 of said Miscellaneous Maps; that portion of Melrose Mesa (Tract No. 15) as shown on a map filed in Book 9, Page 19 of said Miscellaneous Maps; that portion of Lot D of the Banning Tract, as shown on a map of said tract filed in the case of Hancock Banning, et al. vs. Mary H. Banning for partition, and being Case No. 6385 upon the Register of Actions of Superior Court of Los Angeles County, California, bounded as follows:

Bounded northeasterly by the northeasterly line of the lands described as Parcel 1 of State Parcel No. 40767 in a Grant Deed recorded February 14, 1966 in Book 7839, Page 739 of Official Records in the office of the County Recorder of Orange County, California;

MAIL TAX

STATEMENTS TO:

City of Newport Beach
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92658-8915

This office is exempt from
filing fees under Government
Code Section 6103

Page 1 of 5

Bounded westerly by the westerly line of said Grant Deed, said westerly line also being described as a portion of the northerly prolongation of the westerly line of Annexation No. 55 to the City of Newport Beach dated September 19, 1963;

Bounded southwesterly by the northeasterly line of "new" Pacific Coast Highway as described in a Director's Deed (State Parcel No. DD 040767-03-01) from the State of California to the City of Newport Beach, a municipal corporation, recorded May 6, 1993 as Instrument No. 93-0304178 of said Official Records;

and bounded southerly and southeasterly by the center line of "new" Superior Avenue as described in a Director's Easement Deed (State Parcel No. DE 040766-1) from the State of California to the City of Newport Beach, a municipal corporation and charter city, recorded May 6, 1993 as Instrument No. 93-0304175 of said Official Records.

EXCEPTING THEREFROM those rights and interests previously excepted from that parcel of land described in the deed from A.E.S. Chaffey, et al., to the State of California (State Parcel No. 40766), recorded January 7, 1966 in Book 7801, Page 108 of said Official Records.

ALSO EXCEPTING THEREFROM those rights and interests previously excepted from those parcels of land described in the deed from BEECO, LTD., to the State of California (State Parcel No. 40767), recorded February 14, 1966 in Book 7839, Page 739 of said Official Records.

SUBJECT TO an easement for storm drain purposes, 35.00 feet wide; and an easement for sanitary sewer purposes, 30.00 feet wide, both as described in a Director's Deed (State Parcel No. DE 040767-01-02) from the State of California to the Newport Crest Homeowners Association, a California Nonprofit Mutual Benefit Corporation, recorded September 11, 1990 as Instrument No. 90-479322 of said Official Records.

There shall be no abutter's rights of access appurtenant to the above-described real property in and to the adjacent state highway over and across those portions of the northeasterly line of "new" Pacific Coast Highway hereinabove described in said deed recorded as Instrument No. 93-0304178 of Official Records, said portions of the northeasterly line being further described as having a bearing and a distance of "North 54°21'52" West, 215.42 feet" and "North 53°13'07" West, 167.37 feet".

PARCEL 040766-3

RESERVING UNTO THE GRANTOR AN EASEMENT FOR SCENIC VIEW AND OPEN SPACE PURPOSES OVER THE AFOREMENTIONED PROPERTY, LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE INTERSECTION OF THE SOUTHWESTERLY LINE OF LOT 3 OF TRACT NO. 7817, PER MAP FILED IN BOOK 308, PAGES 33 AND 34 OF MISCELLANEOUS MAPS, IN SAID OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, WITH A LINE PARALLEL WITH AND DISTANT 100.00 FEET WESTERLY OF THE WESTERLY LINE OF SAID LOT 3; THENCE ALONG SAID PARALLEL LINE, S00°19'10"W 505.12 FEET TO THE TRUE POINT OF BEGINNING; THENCE N71°14'04"E 254.46 FEET TO A POINT ON A LINE PARALLEL WITH AND DISTANT 263.60 FEET SOUTHWESTERLY OF SAID SOUTHWESTERLY LINE OF SAID LOT 3; THENCE ALONG SAID PARALLEL LINE S62°13'53"E 838.20 FEET TO A POINT ON THE NORTHERLY LINE OF "NEW" SUPERIOR AVE AS DESCRIBED IN A DOCUMENT RECORDED MAY 6, 1993 AS INSTRUMENT NO. 93-0304175 OF SAID OFFICIAL RECORDS.

EXCEPTING THEREFROM THAT PORTION OF SUPERIOR AVENUE AS DESCRIBED IN SAID DOCUMENT RECORDED MAY 6, 1993 AS INSTRUMENT NO. 93-0304175 OF SAID OFFICIAL RECORDS.

GRANTEES USE OF SAID EASEMENT AREA SHALL BE LIMITED TO THOSE "PERMITTED" USES UNDER GRANTEE'S ZONING DESIGNATION OPEN SPACE - ACTIVE AS DEFINED UNDER TITLE 20 OF GRANTEES ZONING CODE AS IT EXISTED ON OCTOBER 12, 2006. ADDITIONALLY THE GRANTEE IS PROHIBITED FROM PLACING PERMANENT STRUCTURES OR PAVEMENT WITHIN THE EASEMENT AREA, AND NO PARKING OF MOTORIZED VEHICLES SHALL BE PERMITTED WITHIN THE EASEMENT AREA.

GRANTEE SHALL BE RESPONSIBLE FOR ALL MAINTENANCE WITHIN THE EASEMENT AREA.

Attached hereto and made a part hereof is a map entitled "Exhibit 'A'". This map is for informational purposes only and is subordinate in all respects to the above legal description.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act.

Signature: _____

**SCOTT E. ESTEP, PLS 7066
EXPIRATION: 12-31-2006**

Date: _____

9-24-2006



Subject to special assessments if any, restrictions, reservations, and easements of record.

This conveyance is executed pursuant to the authority vested in the Director of Transportation by law and, in particular, by the Streets and Highways Code.

WITNESS my hand and the seal of the Department of Transportation of the State of California, this
30th day of OCTOBER 2006.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

Will Kempton
Director of Transportation

By
George L. Pink Jr.
Attorney in Fact

APPROVED AS TO FORM AND PROCEDURE
Joanne van Buren
ATTORNEY
DEPARTMENT OF TRANSPORTATION

STATE OF CALIFORNIA } SS
County of Sacramento

PERSONAL ACKNOWLEDGMENT

On this the 30th day of OCTOBER 2006, before me, SAMANTHA PENNALA, Notary Public
Name, Title of Officer-E.G., "Jane Doe, Notary Public"
personally appeared GEORGE L. PINK JR.
Name of Signer

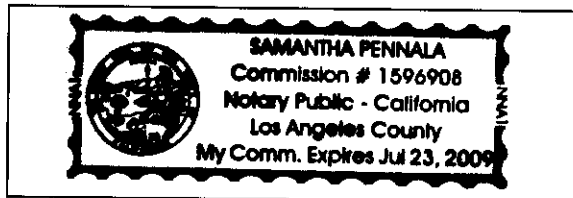
☒ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and acknowledged to me that _____ he/~~she~~ executed the same in _____
his/~~her~~ authorized capacity, and that by _____ his/~~her~~ signature on the instrument the person, or the entity upon behalf of which the person
acted, executed the instrument.

WITNESS my hand and official seal.

Samantha Pennala

(Notary Public's signature in and for said County and State)



(for notary seal or stamp)

THIS IS TO CERTIFY that the California Transportation Commission has authorized the Director of Transportation to execute the foregoing deed at its meeting regularly called and held on the 12th day of October 2006, in the City of Santa Rosa.

Dated this 16th day of October 2006.

John F. Barna Jr.
JOHN F. BARNA, JR., Executive Director
CALIFORNIA TRANSPORTATION COMMISSION

RESOLUTION 2006-89

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF NEWPORT BEACH
AUTHORIZING THE PURCHASE OF SUNSET RIDGE PARK
AND AGREEING TO TERMS AND CONDITIONS ASSOCIATED WITH A
PURCHASE AND SALE AGREEMENT FOR THE PARK PROPERTY**

WHEREAS, the City of Newport Beach and its residents have long envisioned the 15 acres of land at the corner of Superior Avenue and West Coast Highway as a park, including both active and passive components; and

WHEREAS, extensive dealings with the owner of the property, California Department of Transportation ("Caltrans"), have occurred in the nearly thirty years since this property was declared surplus in 1976; and

WHEREAS, the City of Newport Beach was successful in sponsoring Senate Bill 124 (Johnson, 2001) which authorized the transfer of Sunset Ridge Park to the California Department of Parks and Recreation from Caltrans for a purchase price of \$1.3 million as long as the City entered into an Operating Agreement with State Parks to operate the land as a state park facility; and

WHEREAS, further discussions with Governor Schwarzenegger's administration, the State Department of General Services, members of the Legislature, and others, have led the City and Caltrans to propose a direct sale of the property to the City at a price of \$5,000,000; and

WHEREAS, the direct sale would be completed through a Purchase and Sale Agreement, a scenic easement, and deed restrictions that would provide that:

- The \$5 million be paid in three installments and at 4.75% interest;
- The property must be used as a park consistent with the current Open Space-Active (OS-A) zoning; and
- The City agrees to a 197,920 square foot Scenic Easement that would allow only uses of the property that are consistent with the OS-A zoning in place as of the date of this Resolution with the exception of permanent structures and pavement in the Scenic Easement Area.

WHEREAS, this Purchase and Sale Agreement requires the approval of the California Transportation Commission (CTC); now, therefore, be it:

RESOLVED by the City Council of the City of Newport Beach that it hereby:

1. Finds and declares that the Caltrans West Parcel (15.05 acres) shall be used by the City to develop Sunset Ridge Park and shall use the Parcel solely for park purposes, consistent with OS-A zoning; and

2. Authorizes the purchase of the Caltrans West Parcel from Caltrans at a price of \$5 million paid in three installments at 4.75% interest; and
3. Authorizes the placement of a Scenic Easement (or similarly-named easement) over 197,920 square feet of the parcel, within which all Open Space-Active (OS-A) uses that exist as of the date of this Resolution are permitted except for permanent structures and pavement (the latter two uses are not permitted); and
4. Authorizes the Mayor of the City of Newport Beach to execute a Purchase and Sale Agreement to this effect; and
5. Authorizes the City Manager to execute any related documents that might accompany the Purchase and Sale Agreement in order to accomplish the sale of the property.

ADOPTED this 26th Day of September, 2006.



DON WEBB

Mayor of Newport Beach

ATTEST:



LAVONNE HARKLESS

City Clerk



STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, LaVonne M. Harkless, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2006-89 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 26th day of September 2006, and that the same was so passed and adopted by the following vote, to wit:

Ayes: Curry, Selich, Rosansky, Ridgeway, Daigle, Nichols, Mayor Webb

Noes: None

Absent: None

Abstain: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 27th day of September 2006.

LaVonne M. Harkless
City Clerk
Newport Beach, California

(Seal)





CITY OF NEWPORT BEACH

OFFICE OF THE MAYOR

Mayor

Don Webb

Mayor Pro Tem

Steven Rosansky

Council Members

Keith D. Curry

Leslie J. Daigle

Richard A. Nichols

Tod W. Ridgeway

Edward D. Selich

November 16, 2006

California Department of Transportation
21073 Pathfinder Road, Suite 100
Diamond Bar, CA 91765
Attn: Vincent Lundblad

LETTER OF ACCEPTANCE – DD #040766-01-01

Dear Mr. Lundblad:

The City of Newport Beach hereby accepts the property described in Director's Deed #040766-01-01 and agrees to the terms of the Purchase and Sale Agreement (attached to this letter).

I have also enclosed a check for \$2,000,000.00. This is the initial payment as prescribed by the Purchase and Sale Agreement.

The City appreciates Caltrans' assistance and support of this important purchase. If you have any questions about these documents, please do not hesitate to contact us at 949-644-3000.

Sincerely,

DON WEBB
Mayor of Newport Beach

Attachments

cc: Members of the Newport Beach City Council
City Manager Homer Bludau
Assistant City Manager Dave Kiff
Caltrans Director Will Kempton
Ms. Bimla Rhinehart, Caltrans

City Hall • 3300 Newport Boulevard • Post Office Box 1768
Newport Beach California 92658-8915 • www.city.newport-beach.ca.us
(949) 644-3004

Senate Bill No. 124

CHAPTER 761

An act relating to state property.

[Approved by Governor October 11, 2001. Filed
with Secretary of State October 12, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

SB 124, Johnson. Department of Transportation: property transfer: Department of Parks and Recreation: City of Newport Beach.

(1) The California Constitution authorizes the Legislature, by statute, with respect to state surplus property located in the coastal zone and acquired by the expenditure of certain tax revenues, to transfer the property, for a consideration at least equal to the acquisition cost paid by the state to acquire the property, to the Department of Parks and Recreation for state park purposes.

This bill would require the Department of Transportation to transfer a certain parcel of land in the City of Newport Beach to the Department of Parks and Recreation, for use as a park upon payment of consideration of \$1,356,485 by the City of Newport Beach. The bill would require the funds to be deposited in the State Highway Account. The bill would make the transfer of the property contingent on the execution of an agreement between the Department of Parks and Recreation and the City of Newport Beach that requires the city to perform all of the responsibilities related to, and to assume the liability for, the construction, operation, and maintenance of the park and its improvements.

(2) The bill would declare that, due to the special circumstances concerning the Department of Transportation property in the City of Newport Beach, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution, and the enactment of a special statute is therefore necessary.

(3) To the extent that the bill would impose new duties on the City of Newport Beach, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. (a) The Department of Transportation shall transfer to the Department of Parks and Recreation, upon payment by the City of Newport Beach of consideration of one million three hundred fifty-six thousand four hundred eighty-five dollars (\$1,356,485), which is at least equal to the acquisition cost paid by the state, pursuant to Section 9 of Article XIX of the California Constitution, the state-owned real property described in subdivision (b), for state park purposes. The funds paid pursuant to this section shall be deposited in the State Highway Account.

(b) The property to be transferred pursuant to subdivision (a) consists of approximately 15.05 acres, located in the coastal zone of the City of Newport Beach, adjacent to Superior Avenue and Pacific Coast Highway, identified by Director's Deed #040766-01-01 and known as "Caltrans West."

SEC. 2. Execution of the property transfer specified in Section 1 of this act shall be contingent upon the execution of an agreement between the Department of Parks and Recreation and the City of Newport Beach that requires the city to accept and perform all of the responsibilities relating to, and to assume the liability for, the construction, operation, and maintenance of the park and its improvements.

SEC. 3. Due to the unique circumstances concerning the Department of Transportation property in the City of Newport Beach, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution, and that this special statute is necessary.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

O



CITY OF NEWPORT BEACH

OFFICE OF THE CITY ATTORNEY

Aaron C. Harp, City Attorney

October 14, 2011

Via E-Mail to jdelarroz@coastal.ca.gov

Mr. John Del Arroz
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802

RE: SUNSET RIDGE PARK / SENATE BILL 124 (2001)
Matter No. A10-00630

Dear Mr. Del Arroz:

To follow up our discussion yesterday, enclosed please find a copy of Senate Bill 124, which is referenced in your staff report dated September 23, 2011, for the City's Sunset Ridge Park project. During our discussion yesterday, it was suggested that a passive park would be supported by the Commission staff. However, we believe that a passive park would be in direct contravention of the Legislature's intent in enacting SB 124.


For your background, enclosed are copies of the Assembly Committee Report on Appropriations and the Senate Committee on Governmental Organization pertaining to SB 124. As I am certain your legal counsel will agree it is well established that, when interpreting a statute, courts must ascertain legislative intent so as to effectuate purpose of a particular statute. Of prime consideration in statutory interpretation are the legislature's objectives. The enclosed reports reflect an intent to facilitate a transfer of the property to the City to effectuate the construction of baseball and soccer fields, restroom facilities, parking on the site, and walking/bike trails. These reports, prepared contemporaneously with passage and before signing, will be considered by a court to be instructive on matters of legislative intent.

Mr. John Del Arroz
October 14, 2011
Page: 2

As a result, it is our opinion that the suggestion that a passive park is preferred over the active park proposed by the City is inconsistent with California law, and in particular Senate Bill 124.

Sincerely,

CITY ATTORNEY'S OFFICE



Leonie Mulvihill
Assistant City Attorney

LM:slm

Enclosure

cc: Don Schmitz, Schmitz and Associates
Dave Webb, Deputy Director of Public Works

[A10-00630]

BILL ANALYSIS

SB 124
Page 1

Date of Hearing: August 22, 2001

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Carole Migden, Chairwoman

SB 124 (Johnson) - As Amended: June 4, 2001

Policy Committee: Business and
Professions Vote: 12-0

Urgency: No State Mandated Local Program:
No Reimbursable:

SUMMARY

This bill requires the Department of Transportation (Caltrans) to transfer a 15-acre state-owned parcel to the Department of Parks and Recreation (DPR) upon payment by the City of Newport Beach of almost \$1.4 million and agreement by the city to assume responsibility for construction, operation, and maintenance of any improvements on the property.

FISCAL EFFECT

Potential net revenue loss of \$2.8 to the Public Transportation Account (PTA), which represents the difference between the \$4.2 million appraised value and the \$1.4 million specified in the bill.

COMMENTS

1) Background and Purpose . According to the author, this bill is intended to invoke a constitutional provision aimed at encouraging the preservation of park and agricultural land in the coastal zone. Article XIX, Section 9 of the State Constitution authorizes the transfer of surplus state property located in the coastal zone that was purchased with fuel tax or vehicle registration fee funds. The transfer must be made to the Department of Parks and Recreation for state park purposes, to the Department of Fish and Game for the protection of fish and wildlife habitat, to the Wildlife Conservation Board, or the Coastal Conservancy to preservation of agricultural lands. The department receiving the property must pay a cost at least equal to the state's original acquisition cost.

SB 124
Page 2

The 15-acre parcel was purchased by Caltrans in January 1966 as potential right-of-way for the Coast Freeway, which was never built. Caltrans indicates that it identified the property as surplus land in 1975 and has been negotiating with the City of Newport Beach for 10 years regarding sale of the property, which is zoned in the city's general plan for residential or open space use. A March 2000 appraisal valued the property at approximately \$4.185 million, assuming the development of a 40-unit single family residential tract on the parcel. The City of Newport Beach intends to build baseball and soccer fields, restroom facilities and parking on the site and include walking/bike trails linked to the proposed 1,000+ acre Orange Coast River Park adjacent to the nearby Santa Ana River.

The city recently determined that due to budget constraints (the city's annual general fund expenditures for all capital projects are about \$4 million) it could not pay market value for the property and still commit the \$5-6 million of additional funds necessary for construction of a park on the property. Proponents believe that the California Constitution clearly authorizes this parcel to be acquired and preserved as parkland at its original price. The sponsor of this bill, the City of Newport Beach, emphasizes that this parcel is a regional asset that should be preserved for the public trust to provide convenient access from the Pacific Coast Highway to park users throughout Orange County.

2) Opposition . Caltrans and the California Transportation Commission do not support the use of Article XIX, Section 9 by local public agencies to obtain state properties at less than market value, because the loss of revenue to the PTA for reinvestment in transportation projects.

Analysis Prepared by : Chuck Nicol / APPR. / (916) 319-2081

City Letter Dated 10/14/2011 re SB124

EXHIBIT 16 to 5-11-302
3 of 6

BILL ANALYSIS

124

Bill No: SB

SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION
 Senator Don Perata, Chair
 2001-2002 Regular Session
 Staff Analysis

SB 124 Author: Johnson
 As Amended: March 14, 2001
 Hearing Date: April 3, 2001
 Consultant: Art Torzakis

SUBJECT

State Property Transfer: City of Newport Beach

DESCRIPTION

SB 124 requires Caltrans to transfer a specified parcel of land located in the City of Newport Beach to the Department of Parks and Recreation so that the property may be preserved for the public benefit. Specifically, this measure:

1. Requires Caltrans to transfer to the Department of Parks and Recreation, upon payment by the City of Newport Beach of consideration at least equal to the acquisition cost paid by the state, approximately 15.05 acres of coastal zone property located in the city, adjacent to Superior Avenue and Pacific Coast Highway, for state park purposes.
2. Stipulates that the property transfer shall be contingent upon an agreement between the Department of Parks and Recreation and the city that requires the city to assume liability and responsibility for operation, construction, and maintenance of the park and its improvements.
3. Contains a "special statute" disclaimer provision, as specified. In addition, the measure contains "boiler plate" language absolving state government responsibility for certain costs incurred by a local agency.

SB 124 (Johnson) continued
 Page 2

RELATED LEGISLATION

SB 543 (Vasconcellos) 2001-2002 Session. Would authorize the director of the Department of General Services (DGS) to sell, lease, or exchange a specified parcel of real property in the City of Santa Clara upon terms and conditions and subject to reservation and exceptions that the director determines are in the best interests of the state. (Pending in this committee)

SB 809 (Ortiz) 2001-2002 Session. Would authorize the director of DGS to purchase, exchange, or acquire real property and construct facilities within the County of Sacramento or the City of West Sacramento for use by specified state agencies. (Pending in this committee)

SB 901 (Costa) 2001-2002 Session. Would authorize the director of DGS to enter into a joint powers agreement with the Fresno Redevelopment Agency in connection with the development of new state-owned office space in the City of Fresno. (Pending in this committee)

SB 951 (Committee on Governmental Organization) 2001-02 Session. The annual DGS surplus property bill. (Pending in this committee)

EXISTING LAW

The California Constitution (Article XIX, Section 9) authorizes the Legislature, with respect to surplus state property located in the coastal zone and acquired by the expenditure of tax revenues, to transfer such property, for a consideration at least equal to the acquisition cost paid by the state to acquire the property, to the Department of Parks and Recreation for state park purposes, or to the Department of Fish and Game for the protection and preservation of fish and wildlife habitat, or to the

City Letter Dated 10/14/2011 re SB124

EXHIBIT 16 to 5-11-302
 4 of 6

Wildlife Conservation Board for purposes of the Wildlife Conservation Law of 1947, or to the State Coastal Conservancy for the preservation of agricultural lands.

BACKGROUND

Purpose of Bill: According to the author's office, SB 124 is intended to invoke a constitutional provision aimed at

SB 124 (Johnson) continued
Page 3

encouraging the preservation of park and agricultural land in the coastal zone. Pursuant to Article XIX, Section 9 of the California Constitution, SB 124 would provide for a parcel of surplus land owned by Caltrans to be transferred to the State Department of Parks and Recreation at a price equal to the property's purchase price (approximately \$1.18 million in 1966) for use as a park. The City of Newport Beach would assume all costs associated with the transfer, development, and operation of the park. In addition, the city would indemnify the state and assume any liability associated with the park.

Subject Property: The property consists of approximately 15.05 acres of vacant land, within the coastal zone, in the City of Newport Beach. The parcel, known as "Sunset Ridge Park" or "Caltrans Wast" was purchased by Caltrans in January 1966, for about \$1.18 million, as a possible right-of-way for the never built Coast Freeway using gas tax revenue. The property is in the Newport Beach General Plan and is zoned residential or open space. A March 2000 appraisal valued the property at approximately \$4.185 million -- assuming the development of a 40-unit "high quality single family residential tract development" on the parcel. The City of Newport Beach intends to build ballfields, restroom facilities and parking on the site and include walking/bike trails linked to the proposed 1,000+ acre Orange Coast River Park adjacent to the nearby Santa Ana River. The city estimates that construction costs for the 15-acre parcel will amount to \$5-6 million.

Recent History: The City of Newport Beach and Caltrans had been negotiating the city's purchase of the property, however, the city recently determined that because of budget constraints (the city's general fund annual expenditures for all capital projects is about \$4 million) it could not pay market value (about \$4-6 million) for the 15-acre parcel and still commit \$5-6 million additional funds for construction of a park on the property.

Arguments in Support: Proponents believe that the California Constitution clearly authorizes this parcel to be acquired and preserved as parkland at its original price. Proponents emphasize that this parcel is a regional asset that should be preserved for the public trust to provide park users throughout Orange County convenient

SB 124 (Johnson) continued
Page 4

access from the Pacific Coast Highway.

Arguments in Opposition: The California Transportation Commission points out that it has a long standing policy to protect the State Highway Account against transfers of revenue to non-transportation uses. The Commission claims that it seeks to sell excess Caltrans property at current market value and to reinvest the revenue for transportation purposes. The Commission contends that to transfer the 15-acre parcel to the Department of Parks and Recreation would cost the State Highway Account over \$3 million and could serve as a costly precedent in future sales of excess Caltrans properties. Thus, the Commission believes that the parties involved in the negotiations should continue good faith efforts to agree on a "current fair market value" for the property.

Suggested Amendment: The author may wish to consider amending this measure either in this committee or the Senate Appropriations committee to clarify that the City of Newport Beach will reimburse the state General Fund for costs associated with the transfer of the property.

SUPPORT: As of March 29, 2001:

City of Newport Beach
Orange County Coastal Coalition
California Park and Recreation Society

City Letter Dated 10/14/2011 re SB124

EXHIBIT 16 to 5-11-302
5 of 6

Orange County Supervisor Thomas W. Wilson
Endangered Habitats League
Newport Beach Chapter, Surfrider Foundation
West Newport Beach Association

SUPPORT: (continued)

Central Newport Beach Community Association
Friends of Harbors, Beaches and Parks
Biomarica
Newport Crest Home Owners Association
Homeowners of Park Lido Association, Newport Beach (23
individuals)
Newport Harbor Area Chamber of Commerce
Bottoncourt & Associates
Lido Sands Community Association
The Newport Conservancy
Orange County Coastkeeper

SB 124 (Johnson) continued
Page 5

Numerous private citizens

OPPOSE: As of March 29, 2001:

California Transportation Commission

FISCAL COMMITTEE: Senate Appropriations Committee

ORANGE COUNTY FIRE AUTHORITY

Planning & Development Services Section

1 Fire Authority Road, Building A, Irvine, CA 92602 714-573-6100 www.ocfa.org

Vegetation Management Technical Design Guideline



Approved and Authorized by

Guideline C-05

Laura Blaul
Fire Marshal / Assistant Chief

Date: January 1, 2011

Serving the Cities of: Aliso Viejo • Buena Park • Cypress • Dana Point • Irvine • Laguna Hills • Laguna Niguel • Laguna Woods • Lake Forest • La Palma • Los Alamitos • Mission Viejo • Placentia • Rancho Santa Margarita • San Clemente • San Juan Capistrano • Santa Ana • Seal Beach • Stanton • Tustin • Villa Park • Westminster • Yorba Linda • and Unincorporated Areas of Orange County

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DESIRABLE PLANT LIST - List of plants exhibiting characteristics of low fuel volume, fire resistance, and drought tolerance which make them desirable for planting in areas of high fire danger.

DRIPLINE - Ground area at the outside edge of the canopy.

DROUGHT TOLERANT - The ability of a plant or tree to survive on little water.

FIRE BREAK - Removal of growth, usually in strips, around housing developments to prevent a fire from spreading to the structures from open land or vice versa.

FIRE RESISTANT - Any plant will burn with enough heat and proper conditions. Resistance is often used as a comparative term relating to the ability of a plant to resist ignition.

FIRE RETARDANCE - Relative comparison of plant species related to differences in fuel volume, inherent flammability characteristics, and ease of fire spread.

FUEL BREAK - A wide strip or block of land on which the native or pre-existing vegetation has been permanently modified so that fires burning into it can be more readily extinguished.

FUEL LOAD - The weight of fuels in a given areas, usually expressed in tons per acre.

FUEL MODIFICATION ZONE - A strip of land where combustible native or ornamental vegetation has been modified and partially or totally replaced with drought tolerant, fire resistant, plants.

FUEL MOISTURE CONTENT - The amount of water in a fuel, expressed as a percentage of the oven dry weight of that fuel.

FUEL VOLUME - The amount of fuel in a plant in a given area of measurement. Generally, an open-spaced plant will be low in volume.

HORIZONTAL CONTINUITY - The extent or horizontal distribution of fuels at various levels or planes.

LADDER FUELS - Fuels which allow the vertical transmission of fire to over-story vegetation. Fire is able to carry from ground surface fuels into crowns with relative ease.

LITTER - The uppermost layer of loose debris composed of freshly fallen or slightly decomposed organic material such as dead sticks, branches, twigs, leaves or needles.

LONG TERM - In perpetuity of the fuel modification plan requirement.

Attachment 8

FUEL MODIFICATION ZONE PLANT LIST

(Note: Legend can be found on page 35)

	<u>Code</u>	<u>Botanical Name</u>	<u>Common Name</u>	<u>Plant Form</u>
1.	W	Abelia x grandiflora	Glossy Abelia	Shrub
2.	n	Acacia redolens desert carpet	Desert Carpet	Shrub
3.	o	Acer macrophyllum	Big Leaf Maple	Tree
4.	X	Achillea millefolium	Common Yarrow	Low Shrub
5.	W	Achillea tomentosa	Woolly Yarrow	Low Shrub
6.	X	Aeonium decorum	Aeonium	Ground cover
7.	X	Aeonium simsii	no common name	Ground cover
8.	W	Agave attenuata	Century Plant	Succulent
9.	W	Agave shawii	Shaw's Century Plant	Succulent
10.	N	Agave victoriae-reginae	no common name	Ground Cover
11.	X	Ajuga reptans	Carpet Bugle	Ground Cover
12.	W	Alnus cordata	Italian Alder	Tree
13.	o	Alnus rhombifolia	White Alder	Tree
14.	N	Aloe arborescens	Tree Aloe	Shrub
15.	N	Aloe aristata	no common name	Ground Cover
16.	N	Aloe brevifoli	no common name	Ground Cover
17.	W	Aloe Vera	Medicinal Aloe	Succulent
18.	W	Alogyne huegeii	Blue Hibiscus	Shrub
19.	o	Ambrosia chammissonis	Beach Bur-Sage	Perennial
20.	o	Amorpha fruticosa	Western False Indigobush	Shrub
21.	W	Anigozanthus flavidus	Kangaroo Paw	Perennial/accent

22.	o	<i>Antirrhinum nuttalianum</i> ssp.	no common name	Subshrub
23.	X	<i>Aptenia cordifolia</i> x 'Red Apple'	Red Apple Aptenia	Ground cover
24.	W	<i>Arbutus unedo</i>	Strawberry Tree	Tree
25.	W	<i>Arctostaphylos</i> 'Pacific Mist'	Pacific Mist Manzanita	Ground Cover
26.	W	<i>Arctostaphylos edmundsii</i>	Little Sur Manzanita	Ground Cover
27.	o	<i>Arctostaphylos glandulosa</i> ssp.	Eastwood Manzanita	Shrub
28.	W	<i>Arctostaphylos hookeri</i> 'Monterey Carpet'	Monterey Carpet Manzanita	Low Shrub
29.	N	<i>Arctostaphylos pungens</i>	no common name	Shrub
30.	N	<i>Arctostaphylos refugioensis</i>	Refugio Manzanita	Shrub
31.	W	<i>Arctostaphylos uva-ursi</i>	Bearberry	Ground Cover
32.	W	<i>Arctostaphylos</i> x 'Greensphere'	Greensphere Manzanita	Shrub
33.	N	<i>Artemisia caucasica</i>	Caucasian Artemisia	Ground Cover
34.	X	<i>Artemisia pycnocephala</i>	Beach Sagewort	Perennial
35.	X	<i>Atriplex canescens</i>	Four-Wing Saltbush	Shrub
36.	X	<i>Atriplex lentiformis</i> ssp. <i>breweri</i>	Brewer Saltbush	Shrub
37.	o	<i>Baccharis emoyi</i>	Emory Baccharis	Shrub
38.	W o	<i>Baccharis pilularis</i> ssp. <i>consanguinea</i>	Chaparral Bloom	Shrub
39.	X	<i>Baccharis pilularis</i> var. <i>pilularis</i>	Twin Peaks #2'	Ground Cover
40.	o	<i>Baccharis salicifolia</i>	Mulefat	Shrub
41.	N	<i>Baileya multiradiata</i>	Desert Marigold	Ground Cover
42.	W	<i>Beaucarnea recurvata</i>	Bottle Palm	Shrub/Small Tree
43.	N n	<i>Bougainvillea spectabilis</i>	Bougainvillea	Shrub
44.	N n	<i>Brahea armata</i>	Mexican Blue Palm/Blue Hesper Palm	Palm
45.	N n	<i>Brahea brandegeei</i>	San Jose Hesper Palm	Palm
46.	N n	<i>Brahea edulis</i>	Guadalupe Palm	Palm
47.	o	<i>Brickellia californica</i>	no common name	Subshrub

48.	W o	<i>Bromus carinatus</i>	California Brome	Grass
49.	o	<i>Camissonia cheiranthifolia</i>	Beach Evening Primrose	Perennial Shrub
50.	N	<i>Carissa macrocarpa</i>	Green Carpet Natal Plum	Ground Cover/Shrub
51.	X	<i>Carpobrotus chilensis</i>	Sea Fig Ice Plant	Ground Cover
52.	W	<i>Ceanothus gloriosus</i> 'Point Reyes'	Point Reyes Ceanothus	Shrub
53.	W	<i>Ceanothus griseus</i> 'Louis Edmunds'	Louis Edmunds Ceanothus	Shrub
54.	W	<i>Ceanothus griseus horizontalis</i>	Yankee Point	Ground Cover
55.	W	<i>Ceanothus griseus</i> var. <i>horizontalis</i>	Carmel Creeper Ceanothus	Shrub
56.	W	<i>Ceanothus griseus</i> var. <i>horizontalis</i>	Yankee Point Ceanothus	Shrub
57.	o	<i>Ceanothus megacarpus</i>	Big Pod Ceanothus	Shrub
58.	W	<i>Ceanothus prostratus</i>	Squaw Carpet Ceanothus	Shrub
59.	o	<i>Ceanothus spinosus</i>	Green Bark Ceanothus	Shrub
60.	W	<i>Ceanothus verrucosus</i>	Wart-Stem Ceanothus	Shrub
61.	W	<i>Cerastium tomentosum</i>	Snow-in-Summer	Ground cover/Shrub
62.	W	<i>Ceratonia siliqua</i>	Carob	Tree
63.	W	<i>Cercis occidentalis</i>	Western Redbud	Shrub/Tree
64.	X	<i>Chrysanthemum leucanthemum</i>	Oxeye Daisy	Ground Cover
65.	W	<i>Cistus Crispus</i>	no common name	Ground Cover
66.	W	<i>Cistus hybridus</i>	White Rockrose	Shrub
67.	W	<i>Cistus incanus</i>	no common name	Shrub
68.	W	<i>Cistus incanus</i> ssp. <i>Corsicus</i>	no common name	Shrub
69.	W	<i>Cistus salviifolius</i>	Sageleaf Rockrose	Shrub
70.	W	<i>Cistus x purpureus</i>	Orchid Rockrose	Shrub
71.	W	<i>Citrus species</i>	Citrus	Tree
72.	o	<i>Clarkia bottae</i>	Showy Fairwell to Spring	Annual
73.	o	<i>Cneoridium dumosum</i>	Bushrue	Shrub

74.	o	<i>Collinsia heterophyllia</i>	Chinese Houses	Annual
75.	W o	<i>Comarostaphylis diversifolia</i>	Summer Holly	Shrub
76.	N	<i>Convolvulus cneorum</i>	Bush Morning Glory	Shrub
77.	W	<i>Coprosma kirkii</i>	Creeping Coprosma	Ground Cover/Shrub
78.	W	<i>Coprosma pumila</i>	Prostrate Coprosma	Low shrub
79.	o	<i>Coreopsis californica</i>	California Coreopsis	Annual
80.	W	<i>Coreopsis lanceolata</i>	Coreopsis	Ground Cover
81.	N	<i>Corea pulchella</i>	Australian Fuschia	Ground Cover
82.	W	<i>Cotoneaster buxifolius</i>	no common name	Shrub
83.	W	<i>Cotoneaster congestus</i> 'Likiang'	Likiang Cotoneaster	Ground Cover/Vine
84.	W	<i>Cotoneaster aprneyi</i>	no common name	Shrub
85.	X	<i>Crassula lactea</i>	no common name	Ground Cover
86.	X	<i>Crassula multicava</i>	no common name	Ground Cover
87.	X	<i>Crassula ovata</i>	Jade Tree	Shrub
88.	X	<i>Crassula tetragona</i>	no common name	Ground Cover
89.	W o	<i>Croton californicus</i>	California Croton	Ground Cover
90.	X	<i>Delosperma</i> 'alba'	White trailing Ice Plant	Ground Cover
91.	o	<i>Dendromecon rigida</i>	Bush Poppy	Shrub
92.	o	<i>Dichelostemma capitatum</i>	Blue Dicks	Herb
93.	N	<i>Distinctis buccinatoria</i>	Blood-Red Trumpet Vine	Vine/Climbing vine
94.	N	<i>Dodonaea viscosa</i>	Hopseed Bush	Shrub
95.	X	<i>Drosanthemum floribundum</i>	Rosea Ice Plant	Ground Cover
96.	X	<i>Drosanthemum hispidum</i>	no common name	Ground Cover
97.	X	<i>Drosanthemum speciosus</i>	Dewflower	Ground Cover
98.	o	<i>Dudleya lanceolata</i>	Lance-leaved Dudleya	Succulent
99.	o	<i>Dudleya pulverulenta</i>	Chalk Dudleya	Succulent

100.	W	<i>Elaeagnus pungens</i>	Silverberry	Shrub
101.	o	<i>Encelia californica</i>	California Encelia	Small Shrub
102.	o *	<i>Epilobium canum</i> [<i>Zauschneria californica</i>]	Hoary California Fuschia	Shrub
103.	o	<i>Eriastrum Sapphirinum</i>	Mojave Woolly Star	Annual
104.	N	<i>Eriobotrya japonica</i>	Loquat	Tree
105.	o	<i>Eriodictyon crassifolium</i>	Thick Leaf Yerba Santa	Shrub
106.	o	<i>Eriodictyon trichocalyx</i>	Yerba Santa	Shrub
107.	W o	<i>Eriophyllum confertiflorum</i>	no common name	Shrub
108.	W	<i>Erythrina species</i>	Coral Tree	Tree
109.	N	<i>Escallonia species</i>	Several varieties	Shrub
110.	W o	<i>Eschscholzia californica</i>	California Poppy	Flower
111.	X	<i>Eschscholzia mexicana</i>	Mexican Poppy	Herb
112.	N	<i>Euonymus fortunei</i>	Winter Creeper Euonymus	Ground Cover
113.	N	<i>Feijoa sellowiana</i>	Pineapple Guava	Shrub/Tree
114.	N	<i>Fragaria chiloensis</i>	Wild Strawberry/Sand Strawberry	Ground Cover
115.	o	<i>Frankenia salina</i>	Alkali Heath	Ground Cover
116.	W	<i>Fremontodendron californicum</i>	California Flannelbush	Shrub
117.	X	<i>Gaillardia x grandiflora</i>	Blanketflower	Ground Cover
118.	W	<i>Galvezia speciosa</i>	Bush Snapdragon	Shrub
119.	W	<i>Garrya ellipta</i>	Silktassel	Shrub
120.	X	<i>Gazania hybrids</i>	South African Daisy	Ground Cover
121.	X	<i>Gazania rigens leucolaena</i>	Training Gazania	Ground Cover
122.	o	<i>Gillia capitata</i>	Globe Gilia	Perrenial
123.	W	<i>Gilia leptantha</i>	Showy Gilia	Perrenial
124.	W	<i>Gilia tricolor</i>	Bird's Eyes	Perrenial
125.	W	<i>Ginkgo biloba</i>	Maidenhair Tree	Tree

126.	o	Gnaphalium californicum	California Everlasting	Annual
127.	W	Grewia occidentalis	Starflower	Shrub
128.	o	Grindelia stricta	Gum Plant	Ground Cover
129.	N n	Hakea suaveolens	Sweet Hakea	Shrub
130.	W	Hardenbergia comptoniana	Lilac Vine	Shrub
131.	N	Heliathemum muutabile	Sunrose	Ground Cover/Shrub
132.	o	Helianthemum scoparium	Rush Rose	Shrub
133.	o	Heliotropium curassavicum	Salt Heliotrope	Ground Cover
134.	X	Helix Canariensis	English Ivy	Ground Cover
135.	W	Hesperaloe parviflora	Red Yucca	Perennial
136.	o n	Heteromeles arbutifolia	Toyon	Shrub
137.	X	Hypericum calycimum	Aaron's Beard	Shrub
138.	N	Iberis sempervirens	Edging Candytuft	Ground Cover
139.	N	Iberis umbellatum	Globe Candytuft	Ground Cover
140.	o	Isocoma menziesii	Coastal Goldenbush	Small Shrub
141.	o	Isomeris arborea	Bladderpod	Shrub
142.	W	Iva hayesiana	Poverty Weed	Ground Cover
143.	N	Juglans californica	California Black Walnut	Tree
144.	o	Juncus acutus	Spiny Rush	Perrenial
145.	o	Keckiella antirrhinoides	Yellow Bush Penstemon	Subshrub
146.	o	Keckiella cordifolia	Heart Leaved Penstemon	Subshrub
147.	o	Keckiella ternata	Blue Stemmed Bush Penstemon	Subshrub
148.	W	Kniphofia uvaria	Red Hot Poker	Perennial
149.	W	Lagerstroemia indica	Crape Myrtle	Tree
150.	W	Lagunaria patersonii	Primrose Tree	Tree
151.	X	Lamprathus aurantiacus	Bush Ice Plant	Ground Cover

152.	X	Lampranthus filicaulis	Redondo Creeper	Ground Cover
153.	X	Lampranthus spectabilis	Trailing Ice Plant	Ground Cover
154.	W	Lantana camara cultivars	Yellow Sage	Shrub
155.	W	Lantana montevidensis	Trailing Lantana	Shrub
156.	o	Lasthenia californica	Dwarf Goldfields	Annual
157.	W	Lavandula dentata	French Lavender	Shrub
158.	W	Leptospermum laevigatum	Australian Tea Tree	Shrub
159.	W	Leucophyllum frutescens	Texas Ranger	Shrub
160.	o	Leymus condensatus	Giant Wild Rye	Large Grass
161.	N	Ligustrum japonicum	Texas privet	Shrub
162.	X	Limonium pectinatum	no common name	Ground Cover
163.	X	Limonium perezii	Sea Lavender	Shrub
164.	W n	Liquidambar styraciflua	American Sweet Gum	Tree
165.	W	Liriodendron tulipifera	Tulip Tree	Tree
166.	X	Lonicera japonica 'Halliana'	Hall's Japanese Honeysuckle	Vining Shrub
167.	o	Lonicera subspicata	Wild Honeysuckle	Vining Shrub
168.	X	Lotus corniculatus	Bird's Foot Trefoil	Ground Cover
169.	o	Lotus hermannii	Northern Woolly Lotus	Perennial
170.	o	Lotus scoparius	Deerweed	Shrub
171.	W	Lupinus arizonicus	Desert Lupine	Annual
172.	W	Lupinus benthamii	Spider Lupine	Annual
173.	o	Lupinus bicolor	Sky Lupine	Flowering annual
174.	o	Lupinus sparsiflorus	Loosely Flowered Annual Lupine/Coulter's Lupine	Annual
175.	W	Lyonothamnus floribundus ssp. Asplenifolius	Fernleaf Ironwood	Tree
176.	W	Macadamia integrifolia	Macadamia Nut	Tree
177.	W	Mahonia aquifolium 'Golden Abundance'	Golden Abundance Oregon Grape	Shrub

178.	W	Mahonia nevenii	Nevin Mahonia	Shrub
179.	o	Malacothamnus fasciculatus	Chapparal Mallow	Shrub
180.	X	Malephora luteola	Training Ice Plant	Ground Cover
181.	W	Maytenus boaria	Mayten Tree	Tree
182.	W	Melaleuca nesophila	Pink Melaleuca	Shrub
183.	N	Metrosideros excelsus	New Zealand Christmas Tree	Tree
184.	o *	Mimulus species	Monkeyflower	Flower
185.	o	Mirabilis californica	Wishbone Bush	Perrenial
186.	N	Myoporum debile	no common name	Shrub
187.	W	Myoporum insulare	Boobyalla	Shrub
188.	W	Myoporum parvifolium	no common name	Ground Cover
189.	W	Myoporum 'Pacificum'	no common name	Ground Cover
190.	o	Nassella (stipa) lepidra	Foothill Needlegrass	Ground Cover
191.	o	Nassella (stipa) pulchra	Purple Needlegrass	Ground Cover
192.	o	Nemophila menziesii	Baby Blue Eyes	Annual
193.	X	Nerium Oleander	Oleander	Shrub
194.	o	Nolina cismontana	Chapparal Nolina	Shrub
195.	N	Nolina species	Mexican Grasstree	Shrub
196.	W	Oenothera belandieri	Mexican Evening Primrose	Ground Cover
197.	N	Oenothera hookeri	California Evening Primrose	Flower
198.	W	Oenothera speciosa	Show Evening Primrose	Perrenial
199.	X	Ophiopogon japonicus	Mondo Grass	Ground Cover
200.	o *	Opuntia littoralis	Prickly Pear	Cactus
201.	o *	Opuntia oricola	Oracle Cactus	Cactus
202.	o *	Opuntia prolifera	Coast Cholla	Cactus
203.	W	Osmanthus fragrans	Sweet Olive	Shrub

204.	X	<i>Osteospermum fruticosum</i>	Training African Daisy	Ground Cover
205.	X	<i>Parkinsonia aculeata</i>	Mexican Palo Verde	Tree
206.	W	<i>Pelargonium peltatum</i>	Ivy Geranium	Ground Cover
207.	X	<i>Penstemon species</i>	Beard Tongue	Shrub
208.	W	<i>Photinia fraseria</i>	no common name	Shrub
209.	W	<i>Pistacia chinensis</i>	Chinese Pistache	Tree
210.	X	<i>Pittosporum undulatum</i>	Victorian Box	Tree
211.	o	<i>Plantago erecta</i>	California Plantain	Annual
212.	**	<i>Plantago insularis</i>	Woolly Plantain	Annual
213.	X	<i>Plantago sempervirens</i>	Evergreen Plantain	Ground Cover
214.	W	<i>Plantanus racemosa</i>	California Sycamore	Tree
215.	W	<i>Plumbago auriculata</i>	Plumbago Cape	Shrub
216.	o	<i>Populus fremontii</i>	Western Cottonwood	Tree
217.	X	<i>Portulacaria afra</i>	Elephant's Food	Shrub
218.	o	<i>Potentilla glandulosa</i>	Sticky Cinquefoil	Subshrub
219.	X	<i>Potentilla tabernaemontanii</i>	Spring Cinquefoil	Ground Cover
220.	X	<i>Prunus caroliniana</i>	Carolina Cherry Laurel	Shrub/Tree
221.	o	<i>Prunus ilicifolia ssp. Ilicifolia</i>	Holly Leafed Cherry	Shrub
222.	X	<i>Prunus lyonii</i>	Catalina Cherry	Shrub/Tree
223.	N	<i>Punica granatum</i>	Pomegranate	Shrub/Tree
224.	W	<i>Puya species</i>	Puya	Succulent/Shrub
225.	W	<i>Pyracantha species</i>	Firethorn	Shrub
226.	o	<i>Quercus agrifolia</i>	Coast Live Oak	Tree
227.	o n *	<i>Quercus berberidifolia</i>	California Scrub Oak	Shrub
228.	o n *	<i>Quercus dumosa</i>	Coastal Scrub Oak	Shrub
229.	X	<i>Quercus engelmannii</i>	Engelmann Oak	Tree

230.	X	<i>Quercus suber</i>	Cork Oak	Tree
231.	X	<i>Rhamnus alaternus</i>	Italian Buckthorn	Shrub
232.	o	<i>Rhamnus californica</i>	California Coffee Berry	Shrub
233.	o	<i>Rhamnus crocea</i>	Redberry	Shrub
234.	o	<i>Rhamnus crocea</i> ssp. <i>ilicifolia</i>	Hollyleaf Redberry	Shrub
235.	N	<i>Raphiolepis</i> species	Indian Hawthorne	Shrub
236.	o	<i>Rhus integrifolia</i>	Lemonade Berry	Shrub
237.	N	<i>Rhus lancea</i>	African Sumac	Tree
238.	o n	<i>Rhus ovata</i>	Sugarbush	Shrub
239.	o	<i>Ribes aureum</i>	Golden Currant	Shrub
240.	o	<i>Ribes indecorum</i>	White Flowering Currant	Shrub
241.	o	<i>Ribes speciosum</i>	Fuschia Flowering Gooseberry	Shrub
242.	W	<i>Ribes viburnifolium</i>	Evergreen currant	Shrub
243.	o *	<i>Romneya coulteri</i>	Matilija Poppy	Shrub
244.	X	<i>Romneya coulteri</i> 'White Cloud'	White Cloud Matilija Poppy	Shrub
245.	W n	<i>Rosmarinus officinalis</i>	Rosemary	Shrub
246.	W n	<i>Salvia greggii</i>	Autums Sage	Shrub
247.	W n	<i>Salvia sonomensis</i>	Creeping Sage	Ground Cover
248.	o	<i>Sambucus mexicana</i>	Mexican Elderberry	Tree
249.	W	<i>Santolina chamaecyparissus</i>	Lavender Cotton	Ground Cover
250.	W	<i>Santolina virens</i>	Green Lavender Cotton	Shrub
251.	o	<i>Satureja chandleri</i>	San Miguel Savory	Perennial
252.	o	<i>Scirpis scutus</i>	Hard Stem Bulrush	Perennial
253.	o	<i>Scirpus californicus</i>	California Bulrush	Perennial
254.	X	<i>Sedum acre</i>	Goldmoss Sedum	Ground Cover
255.	X	<i>Sedum album</i>	Green Stonecrop	Ground Cover

256.	X	<i>Sedum confusum</i>	no common name	Ground Cover
257.	X	<i>Sedum lineare</i>	no common name	Ground Cover
258.	X	<i>Sedum x rubrotinctum</i>	Pork and Beans	Ground Cover
259.	X	<i>Senecio serpens</i>	no common name	Ground Cover
260.	o	<i>Sisyrinchium bellum</i>	Blue Eyed Grass	Ground Cover
261.	o	<i>Solanum douglasii</i>	Douglas Nightshade	Shrub
262.	o	<i>Solanum xantii</i>	Purple Nightshade	Perennial
263.	W	<i>Stenocarpus sinuatus</i>	Firewheel Tree	Tree
264.	W	<i>Strelitzia nicolai</i>	Giant Bird of Paradise	Perennial
265.	W	<i>Strelitzia reginae</i>	Bird of Paradise	Perennial
266.	o	<i>Symphoricarpos mollis</i>	Creeping Snowberry	Shrub
267.	W	<i>Tecoma stans</i> (<i>Stenolobium stans</i>)	Yellow Bells	Shrub/Small Tree
268.	X	<i>Tecomaria capensis</i>	Cape Honeysuckle	Ground Cover
269.	N	<i>Teucarium chamedrys</i>	Germander	Ground Cover
270.	N	<i>Thymus serpyllum</i>	Lemon Thyme	Ground Cover
271.	N	<i>Trachelospermum jasminoides</i>	Star Jasmine	Shrub
272.	o	<i>Trichosstems lanatum</i>	Woolly Blue Curls	Shrub
273.	X	<i>Trifolium hirtum</i> 'Hyron'	Hyron Rose Clover	Ground Cover
274.	X	<i>Trifolium fragerum</i> 'O'Connor's'	O'Connor's Legume	Ground Cover
275.	o	<i>Umbellularia californica</i>	California Laurel	Tree
276.	o	<i>Verbena lasiostachys</i>	Western Vervain	Perennial
277.	N	<i>Verbena peruviana</i>	no common name	Ground Cover
278.	X	<i>Verbena species</i>	Verbena	Ground Cover
279.	X	<i>Vinca minor</i>	Dwarf Periwinkle	Ground Cover
280.	o	<i>Vitis girdiana</i>	Desert Wild Grape	Vine
281.	X	<i>Vulpia myuros</i> 'Zorro'	Zorro Annual Fescue	Grass

282.	W	Westringia fruticosa	no common name	Shrub
283.	W	Xannithorrhoea species	Grass Tree	Perennial accent/shrub
284.	W	Xylosma congestum	Shiny Xylosma	Shrub
285.	X	Yucca Species	Yucca	Shrub
286.	o	Yucca whipplei	Yucca	Shrub

Legend:

- X = Plant species prohibited in wet and dry fuel modification zones adjacent to reserve lands. Acceptable on all other fuel modification locations and zones.
- W = Plant species appropriate for use in wet fuel modification zones adjacent to reserve lands. Acceptable in all other wet and irrigated dry (manufactured slopes) fuel modification locations and zones.
- o = Plant species native to Orange County. Acceptable in all fuel modification wet and dry zones in all locations.
- N = Plant species acceptable on a limited basis (maximum 30% of the area) in wet fuel modification zones *adjacent to reserve lands*. Acceptable on all other fuel modification zones.
- * = If locally collected.
- ** = Not native but can be used in all zones.
- n = Plant species acceptable on a limited use basis. Refer to qualification requirements following plant palette.

Approved Plant Palette – Qualification Statements for Select Plant Species

2. **Acacia redolens desert carpet:** May be used in the upper ½ of the “B” fuel modification zone. The plants may be planted at 8-foot on center, maximum spacing in meandering zones not to exceed a mature width of 24 feet or a mature height of 24 inches.
43. **Bougainvillea spectabilis (procumbent varieties):** Procumbent to mounding varieties may be used in the mid “B” fuel modification zone. The plants may be planted in clusters at 6-foot on center spacing not to exceed eight plants per cluster. Mature spacing between individual plants or clusters shall be 30-foot minimum.
44. **Brahea armata:** Additional information may be required as directed by the OCFA.
45. **Brahea brandegeel:** Additional information may be required as directed by the OCFA.

-
46. **Brahea edulis:** May be used in upper and mid “B” fuel modification zone. The plants shall be used as single specimens with mature spacing between palms of 20-foot minimum.
129. **Hakea suaveolens:** May be used in the mid “B” fuel modification zone. The plants shall be used as single specimens with mature spacing between plants of 30-foot minimum.
136. **Heteromeles arbutifolia:** May be used in the mid to lower “B” fuel modification zone. The plants may be planted in clusters of up to 3 plants per cluster. Mature spacing between individual plants or clusters shall be 30-foot minimum.
164. **Liquidambar styraciflua:** May be used in the mid “B” fuel modification zone. The plant shall be used as single specimens with mature spacing between trees and 30-foot minimum.
227. **Quercus berberdifolia:** Additional information may be required as directed by the OCFA.
228. **Quercus dumosa:** May be used in the mid to lower “B” fuel modification zone. The plants may be planted in clusters of up to 3 plants per cluster. Mature spacing between individual plants or clusters shall be 30-foot minimum.
238. **Rhus ovata:** May be used in the mid to lower “B” fuel modification zone of inland areas only. The plants may be planted in clusters of up to 3 plants per cluster. Mature spacing between individual plants or clusters shall be 30-foot minimum.
245. **Rosmarinus officinalis:** Additional information may be required as directed by the OCFA.
246. **Salvia greggii:** Additional information may be required as directed by the OCFA.
247. **Salvia sonomensis:** May be used in the mid to upper “B” fuel modification zone. The plants may be planted in clusters of up to 3 plants per cluster. Mature spacing between individual plants or clusters shall be 15-foot minimum.



CALIFORNIA FARM BUREAU FEDERATION

GOVERNMENTAL AFFAIRS DIVISION

1127 11TH STREET, SUITE 626 SACRAMENTO, CA 95814 • PHONE (916) 446-4647

July 3, 2012

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JUL 5 2012

CALIFORNIA
COASTAL COMMISSION

Honorable Mary Shallenberger, Chair
California Coastal Commission
c/o John Del Arroz, Coastal Program Analyst
200 OceanGate, 10th Floor
Long Beach, CA 90802-4416

SUBJECT: CDP Application No. 5-11-302 (City of Newport Beach-Sunset Ridge Park Project)

Dear Chair Shallenberger:

The California Farm Bureau Federation ("Farm Bureau") reviewed with great interest the staff report (hereinafter "staff report") for the above-referenced project which is to be considered by you on July 12, 2012. As you are aware, Farm Bureau represents more than 74,000 agricultural, associate and collegiate members in 56 counties and strives to protect and promote agricultural interests throughout the state of California. We submit this letter to you to express our strong concerns with California Coastal Commission (CCC) staff's analysis and conclusions with respect to the historical site disturbance of the City of Newport Beach's Sunset Ridge Park project. CCC Staff's position on this matter has potential detrimental ramifications for our coastal farming communities and we respectfully request your careful consideration and decision on this issue.

The staff report acknowledges in numerous areas that it is undisputed that the Park property has been subject to "large amounts of disturbance over the years, including a major grading event which removed thousands of cubic yards of earth from the site. Additionally, the site has been subject to mowing activities which have occurred since prior to the Coastal Act." (CDP 5-11-302 staff report, pg. 18) Nevertheless, staff concludes that the ongoing weed abatement/site maintenance activities constitute "unpermitted development" and thus the property must be viewed as if the site disturbance and annual maintenance activities, which commenced as far back as at least the 1960s, did not occur when evaluating its biological resources. This conclusion is reached despite the statement on pg. 19 of the staff report that,

"Although neither Caltrans nor the City of Newport Beach requested a determination from staff, it is likely that, prior to the designation of the gnatcatcher as a species threatened by extinction, Commission staff would have determined that no CDP would be required for the clearance of vegetation due to the disturbed nature of the site."

Staff clearly acknowledges that the subject site maintenance activities would not have required a CDP from the CCC due to the historical and "disturbed nature of the site" but for the fact the designation of a particular species as threatened. Thus, staff makes clear that the designation of "major vegetation" and environmentally sensitive habitat area (ESHA) on the Park property stems from the fact that a designated threatened species has been observed **off-site** on adjacent private property and thus there is the *potential* for the species to utilize the Park property. The circular argument continues with the finding that because the site contains "major vegetation"/ESHA, the property owner should have applied for and obtained a Coastal Development Permit (CDP) before the removal of such vegetation on the property.

Honorable Mary Shallenberger

July 3, 2012

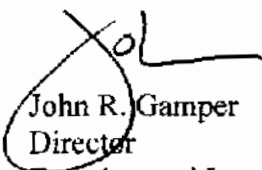
Page Two

Staff reasons that because no CDP was ever issued, the site disturbance must therefore be viewed as if it did not occur.

The logic and conclusion is extremely disconcerting to the Farm Bureau and the ramifications of your acceptance of this analysis and findings could have far reaching implications on farmlands within the Coastal Zone. Virtually all of California coastal farmland has been in operation since prior to the effective date of the Coastal Act; accordingly, these farmlands are not required to have CDPs from the Coastal Commission pursuant to Public Resources Code § 30106. However, we can envision numerous scenarios wherein a farm has been in existence and operational since well before the Coastal Act, and suddenly a threatened or endangered species is identified to be located off-site on "nearby" property. If the staff's analysis and conclusion for the Sunset Ridge Park property are applied, it is reasonable to imagine that the CCC could suddenly classify the regularly disturbed farmlands to contain ESHA and therefore require a Coastal Development Permit despite the aforementioned exemption. It is clear from the Sunset Ridge Park situation that the outcome is not just a requirement of a CDP after-the-fact, but a denial of use of the historically highly disturbed property due to the perceived (not demonstrated) *potential* habitat value.

In short, we are gravely concerned that the Coastal Commission can deem property that has been incontrovertibly disturbed and maintained for half a century to suddenly contain "major vegetation"/ESHA due to the perceived *possibility* that if the disturbance had not occurred, the property *could potentially* provide foraging habitat for a threatened or endangered species. Farm Bureau respectfully urges the Coastal Commissioners to reject this erroneous logic and unsubstantiated conclusion.

Sincerely,



John R. Gamper
Director

Taxation and Land Use

Cc: Honorable Members, California Coastal Commission
Governor Jerry Brown
Senator Darryl Steinberg
Speaker John Perez

Letter of Support
Page 2

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South Coast Region

JUL 3 2012

CALIFORNIA
COASTAL COMMISSION

June 29, 2012

The California Coastal Commission

Re: Permit# 5-11-302/ City of Newport Beach for Sunset Ridge Park

Dear Sirs:

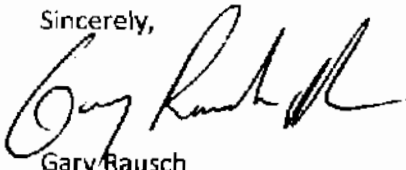
I am extremely troubled at the amount of Time and Expense being spent to build a small park the City and citizens of Newport Beach wishes to build. I find it to be a monumental waste of taxpayers money and everyone's time on this issue. Your commission seems to be arbitrary and uneven in your judgements you make on what projects go forward and which don't.

To be clear on my position, the guitarist for the Rock Band U-2 can build several mansions on 147 coastal acres in Malibu, however, children in Newport Beach/ Costa Mesa can't play soccer on a dirt lot above Pacific Coast Highway.

I hope you realize the folly in this matter and approve the park. Please spare the already stressed taxpayers additional money and time over this issue. I hope you will approve it forthwith.

Thank you for your time.

Sincerely,



Gary Rausch
260 Cagney Lane Suite 120
Newport Beach, Ca. 92663

*Letters of
Support
Page 3*

June 28, 2012

California Coastal Commission

South Coast District

200 Oceangate, Ste. 1000, 10th FL

Long Beach, CA 90802

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JUN 29 2012

CALIFORNIA
COASTAL COMMISSION

In Favor

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South Coast Region

CALIFORNIA
COASTAL COMMISSION

Subject: July 12, 2012 Chula Vista Meeting

Item No: th 11c, Application No: 5-11-302

Dear Commissioners and Staff:

I live in the West Newport "Tsunami Danger Zone". One of three 40 foot City poles with Tsunami alarm horns on top is located directly across our street in the West Newport Park. Pacific Coast Highway (PCH) is on the other side of the Park's block wall. If a Tsunami alarm occurs, a nearby City sign advises the public to head for higher ground.

The nearest higher ground on the North side of PCH is now unreachable due to wire fencing. We need a PCH Sunset Ridge Park entrance as our escape destination. Currently, our only choice is to walk/run rapidly along PCH to the distant Balboa/Superior intersection and halfway up the Superior Avenue hill to be safe.

Having lived in this area for fifty years, I have experienced the traffic gridlock when everyone is trying to leave the lowlands by car at the same time. On one summer day, several years ago, the lifeguards ordered everyone off the beaches due to a reported poison gas cloud drifting towards West Newport. It took over an hour to leave the area by car. The Japanese recently had fifteen minutes to reach higher ground after their Tsunami warning.

Please keep in mind the importance of this Sunset Ridge Park's hilly location as a safe retreat for those of us who are living here or for visitors to our attractive beaches in this Tsunami Danger Zone.

Sincerely,



Mike Johnson

5803 Seashore Drive

Newport Beach, CA 92663

(949) 642-3125

Letters of Support
Page 4

CALIFORNIA CATTLEMEN'S ASSOCIATION

1221 H STREET • SACRAMENTO, CALIFORNIA • 95814-1910

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JUL 11 2012

Honorable Mary Shallenberger, Chair
California Coastal Commission
c/o John Del Arroz, Coastal Program Analyst
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

SUBJECT: CDP Application No. 5-11-302 (City of Newport Beach-Sunset Ridge Park Project)

The California Cattlemen's Association (CCA) has reviewed the staff report for the application for the Newport Beach Sunset Ridge Park Project, which is up for consideration on July 12, 2012. CCA represents more than 2,000 ranchers, many of whom ranch along California's coastal areas and within the jurisdiction of the California Coastal Commission (Commission).

As most of our members have been ranching for generations and surely before the passage of the Coastal Act (Act), we are writing this letter to express grave concern with the Commission staff's analysis and conclusions with respect to the historical land use and site disturbance on the project site. While the application in question does not directly relate to agriculture or livestock grazing, we believe that the conclusions drawn by staff set a dangerous precedent. Staff's circuitous reasoning to deny a permit to the City of Newport demonstrate faulty and inconclusive evidence combined with an egregious lack of logical thought, giving the greater regulated community reason for pause. We respectfully ask your consideration on this matter and hope that a more logical policy will be adopted prior to finalizing a decision on the permit application.

Of several concerning policy conclusions raised by the staff analysis, the most unsettling determination is that the project should not go forward as proposed because of damage to environmentally sensitive habitat areas (ESHA). The staff report makes reference several times to the well-acknowledged and documented fact that the project property in question had, over the course of 40 years, been subject to regular disturbances, including grading and mowing, including several years of mowing which occurred prior to the passage of the Coastal Act¹.

Although staff confirms this action, and states that "For the years where Caltrans appears to have cleared vegetation on the site, staff used satellite imagery and aerial photography showing the site's condition on one day, each image taken on various dates of the year, in the following years: 1965, 1968, 1972, 1973, 1974, 1975, 1977, 1979, 1982, 1983, 1986, 1987, 1989, 1991, 1993, 1994, 1995, 2002, 2003, 2004, 2005, and 2006."² It is yet concluded, however, "there is insufficient evidence to conclude that the mowing events regularly occurred on an annual or semi-annual basis since before passage of the Coastal Act."³ This conclusion seems to be in direct conflict with the evidence of six years of photo documentation prior to the passage of the Act.

Staff proceeds to state that the weed abatement and fuel management constitute "unpermitted development", and if the park site had not been mowed, it would be considered ESHA. According to staff, "although the site has been subject to disturbance, staff finds that the vegetation constitutes 'Major Vegetation' due to its special ecological role in supporting the federally threatened California gnatcatcher. Section 30106 of the Coastal Act defines 'development', in part, as '...removal or harvesting of major vegetation...'. Thus the mowing of the Disturbed Encelia Scrub requires a coastal development permit and

¹ California Coastal Commission, Staff Report, Application 5-11-302, pg 2.

² Ibid.9.

³ Ibid.11.

Letter of Support
Page 5

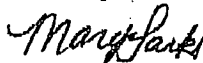
is subject to the requirements of the Coastal Act." According to the logic of staff, because the Encelia Scrub provides *potential* habitat for the endangered gnatcatcher, any mowing would constitute a violation of the Act. However, staff does note that "Although neither Caltrans nor the City of Newport Beach requested a determination from staff, it is likely that, prior to the designation of the gnatcatcher as a species threatened by extinction, Commission staff would have determined that no CDP would be required for the clearance of vegetation due to the disturbed nature of the site."⁴ The conclusions outlined in the staff report based off this sequence of events seem ambiguous and wholly contradict the historical record of the site.

A more appropriate and logical conclusion would be that because mowing occurred before the passage of the act and before the listing of the species, that the property cannot possibly be determined to be ESHA. Additionally, no gnatcatcher has ever been observed on the property, and the US Fish and Wildlife Service has determined that the project has little to no effect on the population or habitat of the gnatcatcher.⁵ The Service is the agency responsible for determining what species and habitat are endangered or threatened, not the Commission. As such, the Commission should not contradict the conclusions of the Service that continued mowing will not impact the gnatcatcher.

This flawed logic based off the recorded site history and presented evidence is extremely concerning to CCA, and should this analysis be accepted, we are concerned this logic might be used in future decisions affecting agricultural production on the coast. As previously stated, an overwhelming majority of the family ranches on the coast have been operating long before the passage of the Coastal Act, and thus, these ranchers are not required to obtain CDPs from the Commission, pursuant to Public Resources Code § 30106. However, it is possible to imagine scenarios in which a ranch or nearby property is identified as habitat for an endangered species. In this case, the logic as presented by the Commission staff to deny this permit leads us to believe that vegetation management of the property, or other routine and beneficial management activities that involve land disturbance would be seen as violating the provisions of the Coastal Act.

We urge the Commission to base their conclusions on evidence, the best available science and most importantly solely within the framework of the Coastal Act. Anything else, would be inappropriate and an overreach of regulatory authority. It is of great concern that the Commission would be willing to entertain this sort of analysis and retroactively require permitting on land that has the *potential* to qualify as ESHA had its historic management been different. CCA respectfully urges the Coastal Commissioners to reject this staff report which has been based on egregiously flawed logic.

Sincerely,



Margo Parks

Associate Director of Government Relations

Cc: Honorable Members, California Coastal Commission

Governor Jerry Brown

Senator Tom Harman

⁴ Ibid.19.

⁵ Ibid.8.

KEVIN KESTER
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JUL 11 2012

CALIFORNIA
COASTAL COMMISSION

July 11, 2012

Ms. Sherilyn Sarb
California Coastal Commission
200 OceanGate, 10th Floor
Long Beach, CA 92802-4416

Dear Ms. Sarb:

The Newport Beach Association of REALTORS® would like to express our support for the application of Sunset Ridge Park, which we feel will greatly enhance the communities we serve.

The Sunset Ridge Park is a sports only park which will fill the need in West Newport Beach when there is an immediate and overwhelming demand for sports facilities.

Sunset Ridge Park should be considered separate from the Banning Ranch project.

Sincerely,

Tricia Moore, RCE, CAE
Executive Vice President

TM:kf

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PATRICIA MOORE, CAE, RCE

Letters of Support

Page 7



PROUDLY SERVING THE COMMUNITIES OF COSTA MESA AND NEWPORT BEACH



Del Arroz, John@Coastal

From: Kris Graves [kgraves@schmitzandassociates.net]
Sent: Tuesday, July 10, 2012 10:38 AM
To: Del Arroz, John@Coastal; Schwing, Karl@Coastal
Subject: Sunset Ridge Park CDP 5-11-302 Letter sent to Commissioners
Attachments: 2012 July CSFA letter - Th11c.pdf

Good morning,

I emailed the following attachment and message to Chair Shallenberger and the Commissioners.

On behalf of Gene Gantt, Executive Director, of the California State Firefighters' Association, Inc. I have attached a comment letter for the Sunset Ridge Park project.

After your review, should you have any questions, please contact us at your convenience.

Thank you very much for your time.

Best regards,
Kris Graves
Kris Graves / Schmitz & Associates Inc.
5234 Chesebro Road Ste. 200
Agoura Hills, CA 91301
V: (818)338-3636 / F: (818)338-3423
E: [Kgraves@SchmitzandAssociates.net](mailto:kgraves@schmitzandassociates.net)

Letters of Support
Page 8



California State Firefighters' Association, Inc.

2701 K Street, Suite 201 • Sacramento, CA 95816-5113 • (916) 446-9880 • (800) 451-CSFA • Fax (916) 446-9889

www.csfa.net

"CSFA: A Strong and United Voice."

Organized: November 10, 1922

Mary Shallenberger, Chair
California Coastal Commissioners
c/o John Del Arroz, Coastal Program Analyst
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

SUBJECT: CDP Application No. 5-11-302 (City of Newport Beach – Sunset Ridge Park Project)

Chair Shallenberger and Honorable Commissioners:

The California State Firefighters Association (CSFA), a professional state-wide fire trade organization is asking you to support and uphold the findings made by the California Department of Forestry and Fire Protection (CAL FIRE). Cal Fire has reviewed the Coastal Development Permit application staff report (hereinafter "staff report") for the City of Newport Beach ("City") Sunset Ridge Park project which is to be considered by you at this month's CCC hearing. One of CSFA's and Cal Fire's missions is to protect life and property through fire prevention engineering programs, while managing and protecting California's natural resources. CSFA understands that it is the City's position, which the historical records support, that the Park property has been maintained and the subject of weed abatement activities since the 1960s. CSFA is asking you to support of the City's ability to make nuisance abatement and necessary fuel modification determinations as is authorized specifically by the California Fire Code and the California Coastal Act.

It is our understanding that CCC staff has recommended denial of the City's Park project due to the fact that the historical and ongoing mowing of the property for weed abatement purposes occurred without the benefit of a Coastal Development Permit. Specifically, the staff report acknowledges in numerous areas that it is undisputed that "the site has been subject to mowing activities which have occurred since prior to the Coastal Act." (CDP 5-11-302 staff report, pg. 18) Nevertheless, staff concludes that because the ongoing weed abatement/site maintenance activities constitute "unpermitted development," it must be viewed as if the site disturbance and annual maintenance activities did not occur when evaluating the project's potential impacts on biological resources.

It is the City's Fire Department's responsibility to protect their community through fire prevention activities, policies and programs. Requiring appropriate and adequate fuel modification and conducting regular weed abatement activities are an essential part of these policies and programs. As you may be aware, California Fire Code Section 1103.2.4 (Combustible Vegetation) requires "Cut or uncut weeds, grass, vines and other vegetation shall be removed when determined by the chief to be a fire hazard. Designated areas shall be cleared of combustible vegetation to establish the fuel breaks." Moreover, Section 30005 of the Coastal Act provides: "No provision of this division [the Coastal Act] is a limitation on any of the following: . . . (b) On the power of any city or county or city and county to declare, prohibit, and abate nuisances."

It is clear from the historical records that the Park property has been graded and cleared of vegetation since as far back as the 1960s and continued annually to present day. It is also clear that the City of Newport Beach Fire Department has determined each year that weed abatement/fuel modification is necessary for the safety of the community. We support municipalities' authority in making such a determination and believe that the Coastal Act explicitly cannot impede the same. Accordingly, we request that you carefully consider the implications of your decision on this project on imperative nuisance abatement activities throughout coastal communities up and down the State. We believe that a determination that the City's annual weed abatement activity constitutes unpermitted development and an illegal activity will have detrimental ramifications to critical fire prevention programs in California.

Sincerely,

Gene Gantt
Gene Gantt
Executive Director

Letters of Support

Page 9

Del Arroz, John@Coastal

From: Sheila Pfafflin [spfafflin@gmail.com]
Sent: Thursday, July 05, 2012 3:08 PM
To: Del Arroz, John@Coastal
Subject: Opposition to Newport Beach park proposal at Superior and PCH

Dear Mr. DelArroz:

I wish to express my strong opposition to the park which Newport Beach is proposing for the property on the corner of Superior and the Pacific Coast Highway(PCH), near the Banning Ranch property. I frequently drive down Superior to its intersection with the PCH. It is a steep, curved road, on which people are often changing lanes so as to be able to make a turn at the bottom. The last thing that should be build here is a playground with the potential for greatly increased bicycle traffic, and parking located where it would lead to many children and teenagers trying to cross Superior. Any additional access here, or on the Pch side of this property would be a hazard as well.

I believe that Newport Beach itself originally opposed the arrangement they are now advocating, and changed their minds only when their original proposal was rejected. They seem to be more concerned with getting something in place which will destroy the natural character of the area, and act as a stalking horse for the very extensive proposal for development on the Banning Ranch itself, than they are with a suitable use for this land which will preserve its character for future generations.

This property is environmentally sensitive. It should be left in as natural state as possible. An appropriate use, which would allow it to be enjoyed by nature lovers and others who appreciate its beauty and views, would be to set it up as a nature preserve, with perhaps one or two trails. The proposed parking arrangement would probably not create a hazard under such a scenario.

I urge the Coastal Commission to reject this application by Newport Beach.

Sincerely,

Sheila M Pfafflin
 1750 Whittier Ave., # 42
 Costa Mesa, CA 92627
 (949) 646-3123
spfafflin@gmail.com

..

*Letter of
Opposition
Page 1*

Del Arroz, John@Coastal

From: Jim Mosher [jimmosher@yahoo.com]
Sent: Thursday, July 05, 2012 12:33 PM
To: Del Arroz, John@Coastal
Subject: Public comment letter re Th11c-7-2012

Attachments: Comments on Th11c-7-2012 -- Jim Mosher_to_CoastalCommission.pdf



Comments on
Th11c-7-2012 -- Ji.

John,

Please find attached a letter regarding the new Sunset Ridge CDP application (5-11-302) which I hope can be included in any supplement distributed to the Commissioners in advance of next Thursday's hearing.

Thank you,

Jim Mosher

P.S.: there are several references in the current staff report to "Semeniuk Slough." Should it need to be mentioned in a future staff report, I believe the spelling used in the Newport Beach General (and Coastal Land Use?) Plans is "Semeniuk" (without the "o").

*Letter of
Opposition
Page 11*

Agenda Item: Title (July 12, 2012)

Application Number: 5-11-302

My name: MOSHER

Position: OPPOSED

California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, Ca 90802-4416

Attn: John Del Arroz (via e-mail, for distribution to the Commissioners)

Dear Commissioners,

The captioned item is the City of Newport Beach (CNB)'s application for development of an active sports park on its Sunset Ridge property. The staff report offers compelling evidence why the application must be denied due to its impact on Coastal Act protected ESHA consisting primarily of illegally mowed *Encelia* – a situation which, based on the recent photos in Exhibit 12, as well as my personal observation, extends considerably beyond the 3.3 acre area cited on page 11 and depicted in Exhibit 7 (Figures 3, 4 and 8). In fact, despite the history of grading and mowing, the area appears so favorable to *Encelia* that it can be observed sprouting from the cracks in the concrete culverts.

In addition to that, I hope the Commission will continue to recognize the larger concern regarding the impossibility of making a rational decision about an appropriate use for this land separate from its imminent decision regarding the adjacent Newport Banning Ranch (NBR) property. As Commissioner Stone observed when a similar application for Sunset Ridge was heard on November 2, 2011, this parcel is essentially landlocked, precluding most development unless done in cooperation with the adjoining landowner.

For example, page 2 suggests the current proposal relies on a currently unimproved road across the NBR property to provide access for maintenance vehicles, handicapped visitors, and possibly shuttles. Yet earlier grants of easements to the City appeared to be predicated on development of that path into a major improved road, and it is unclear if NBR would agree to permanently dedicate the road in its current state for park use, or if that would even fit into their more general plans for development of their land. Similarly, alternative II.F.c. on pages 34-35 of the staff report refers to the possibility of placing the sports fields on a site on the NBR property "*depend[ing] on the City's ability to purchase the area from the property owner, and on the habitat resources located in that area.*" Although the impacts on habitat at any alternative location remain to be resolved, the Commission may want to know that the Newport Beach City Council is tentatively set to consider at a July 23, 2012 meeting an NBR application which involves the development of a North Community Park immediately north of Sunset Ridge, which would provide three lighted soccer fields overlaid with youth baseball and youth/adult softball fields, six lighted tennis courts, one lighted basketball court and 274 off-street parking spaces, all of which would be dedicated to the City at no cost to taxpayers. That proposal, if approved by the Council, will then be going to the Commission, and it would seem highly premature for the Commission to grant an approval for a specific plan at Sunset Ridge without knowing what may or may not be approved adjacent to it on NBR.

Beyond that I would like to offer the following additions to the staff report:

1. Under **History** (II.A.3.), on page 6, the report correctly observes that the formerly pristine coastal bluffs at Sunset Ridge were acquired by Caltrans in the pre-Coastal Act 1960's and then pillaged as a "borrow" site to provide dirt for operations elsewhere. The report then suggests that "*In 2001, Senate Bill 124 directed Caltrans to transfer the property to the City.*" CNB did indeed lobby for that special legislation, but it actually directed Caltrans to transfer the property to the California Department of Parks and Recreation for development as a park upon reimbursement to Caltrans by

*Letter of
Opposition
Page 3*

CNB of Caltrans' original 1960's purchase price of \$1.3 million. It appears that CNB, apparently not wanting the public access restrictions that might attend a State Park designation, chose to ignore the special legislation and in 2006 paid Caltrans the much higher then-current fair market value of \$5 million to acquire the property outright, with no state parks involvement.

2. On page 1 of Exhibit 9, CNB's agent addresses the problem of the adequacy of the 64 space City parking lot, already intended for beach visitors, to handle the additional demands created by active sports fields by noting that athletic games will be scheduled to avoid beach holidays, specifically July 4th. I am not sure scheduling events to avoid times of high beach use is actually practical, but the Commission may be interested to know that to discourage visitors CNB closes this parking lot on July 4th.
3. When the previous application was heard in November 2011, there was considerable testimony and correspondence regarding the need for active youth sports fields in the area around Sunset Ridge, a proposition partially rebutted by Bruce Bartran in the letter at page 13 of Exhibit 13 to the current report. I would submit in addition, not only as the report acknowledges that ball fields are not a coastal resource dependent use, but that there is an equally pressing need for spaces where city dwellers can get away from such typically urban activities.
4. Finally, although not explicitly mentioned in the report, I am not sure CNB has fulfilled its legal obligation to properly notice the current CDP application. Shortly before the June 13, 2012 hearing (on the 180th day) there appeared on a stake at the northwest corner of PCH and Superior a single regulation yellow notice of the application which said it had been posted on "May 17, 2012." Since then that sign has been lying illegibly in the dirt, but whether visible or not, it is difficult to reconcile the date on it with the requirement in California Code of Regulations Title 14, Division 5.5, Section 13054 for posting "*At the time the application is submitted for filing.*" Since the staff report indicates the current application was filed on December 16, 2012 (which I assume is a typo for 2011), CNB's posting of the notice appears to have been six months late.

In my view, this plot of land has a shameful history, from its thoughtless rape by Caltrans prior to the Coastal Act, to the City's failure to provide public access to it in the five years of its ownership. In a perfect world I would like to see the bluffs at Sunset Ridge restored to their original state – an opportunity CNB recently missed when it had massive amounts of coastal fill dirt available from its Civic Center construction. Short of that, removing yet another 20,000 cubic yards to construct youth sports fields does not seem like a rational choice to me. Pending full restoration and/or a definitive decision on use of the adjacent NBR property, I think Sunset Ridge would be of more value to our state's youth if preserved as a passive, interpretive park – an object lesson in the need for the Coastal Act, and nature's ability to recover from the abuses inflicted on it by man's follies.

Yours sincerely,

James M. Mosher, Ph.D. (Caltech, 1977)
2210 Private Road
Newport Beach, CA. 92660

*Letters of
Comment
Page 4*

Del Arroz, John@Coastal

From: Penny Elia [greenp1@cox.net]
Sent: Sunday, July 01, 2012 9:41 AM
To: Del Arroz, John@Coastal
Cc: Schwing, Karl@Coastal; Willis, Andrew@Coastal; Haage, Lisa@Coastal; Veasart, Pat@Coastal; Sarb, Sherilyn@Coastal; Henry, Teresa@Coastal; Engel, Jonna@Coastal
Subject: Fwd: Code Enforcement on Sunset Ridge

Good morning, John -

Mr. Bennett asked me to forward the email stream below to you for your information as well as inclusion in any addendi you might be preparing for the Sunset Ridge Park staff report (I did not include the photos as they exceeded your limit, but they have already been uploaded to the CCC ftp site in the past). In our ex-parte with Commissioners the subject of enforcement does come up but our focus of request is support of the staff recommendation for denial.

Thank you for your consideration of this information.

Penny Elia
Sierra Club
949-499-4499

Begin forwarded message:

Letter of Opposition
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From: Penny Elia [mailto:greenp1@cox.net]
Sent: Monday, July 02, 2012 1:40 PM
To: Schwing, Karl@Coastal; Del Arroz, John@Coastal; Sarb, Sherilyn@Coastal; Haage, Lisa@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Engel, Jonna@Coastal
Subject: Fwd: Code Enforcement on Sunset Ridge

----- Forwarded message -----

From: Harp, Aaron <aharp@newportbeachca.gov>
Date: Mon, Jul 2, 2012 at 7:30 AM
Subject: RE: Code Enforcement on Sunset Ridge
To: bill bennett <shokobennett@gmail.com>
Cc: "Cosylion, Matt" <MCosylion@newportbeachca.gov>, "Mulvihill, Leonie" <LMulvihill@newportbeachca.gov>

Hi Bill,

I appreciate your sending me your concerns over this matter. The city has thoroughly researched these issues and it is our opinion that the actions taken at Sunset Ridge Park fully comply with all applicable laws. Once again, thank you for expressing your concerns regarding this matter.

Aaron C. Harp
City Attorney
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA, 92658
Phone: (949) 644-3131
Fax: (949) 644-3139
Email: aharp@newportbeachca.gov

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From: bill bennett [mailto:shokobennett@gmail.com]
Sent: Sunday, July 01, 2012 9:26 AM
To: Harp, Aaron
Subject: Fwd: Code Enforcement on Sunset Ridge

Mr Aaron Harp
City Attorney
City of Newport Beach

*Letter of
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Page 6*

Dear Mr Harp,

On May 26, I sent the email below to Mr Matt Cosylyon. It is my understanding that he forwarded this email to you for review and comment. My question remains. In light of the opinion of Coastal Commission members and staff, is the City moving forward with any program to modify it's fuel abatement program on Sunset Ridge?

Thank you to your attention to this matter.

Yours,

**Bill Bennett
10 Odyssey Court
Newport Beach, 92663 949 642 8616**

----- Forwarded message -----

From: bill bennett <shokobennett@gmail.com>

Date: Sat, May 26, 2012 at 6:54 AM

Subject: Code Enforcement on Sunset Ridge

To: mcosylion@newportbeachca.gov

**Cc: dkiff@newportbeachca.gov, palford@newportbeachca.gov,
msinacori@newportbeachca.gov**

**To: Mr. Matt Cosylyon
Senior Code Enforcement Officer
City of Newport Beach**

Dear Mr Cosylyon,

I am writing to you out of concern over the manner in which relevant codes are enforced regarding mowing on the Sunset Ridge property.

Over the last couple of years, the Fire Department has insisted that it has always been necessary to mow the entire property as a measure of fire protection and that the City and the previous owner, California Department of Transportation, have been doing so for many years and it is permitted and required under current City codes.

This issue was specifically addressed at a meeting of the California Coastal Commission on November 2 of last year. I will quote here the relevant Commission staff report summary from that meeting:

"In sum, staff finds that (1) the subject site supports the existence of major vegetation during the growing season, (2) the City has not submitted substantial evidence to indicate that the subject site does not support the

Letter of Appreciation
[Signature]

existence of major vegetation, (3) the City has not submitted documentation that shows that it has followed proper nuisance declaration and abatement procedures for weed abatement on the subject property and (4) even if the City properly declared a nuisance on the subject property, the City's alleged weed abatement nuisance activities are not narrowly or carefully tailored to abate the alleged nuisance. Thus, based on evidence currently available to staff, it appears that the City's mowing activities constitute unpermitted development."

In fact, at that very same meeting Coastal Commissioner Steve Blank addressed this issue when speaking to a representative of the City. He said, "[When] total removal is impractical due to size or environmental factors, [an] approved fuel break shall be established".

He emphasized that the Coastal Commission feels that there are environmental factors involved and the City has always had the discretion to modify its mowing pattern.

Yet, as seen in the three attached photos taken in February of this year, the City continues to ignore environmental and Coastal Commission concerns. These photos show the before and after condition of the property when the City contracts for "weed abatement" under its current plan. The fact that the City would send a workman to thin, by hand, this remote brush on Sunset Ridge has nothing to do with fuel modification and everything to do with habitat fragmentation.

My question to you is, what is the City doing to comply with Commissioner Blank's request for discretion and the establishment of an approved fuel break and what is the City doing to resolve the issue of unpermitted development as stated in the Commission staff report?

Thank you in advance for your time and attention to this matter.

Yours,

Bill Bennett
10 Odyssey Court
Newport Beach, CA 949 642 8616 shokobennett@gmail.com

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Page 8

Del Arroz, John@Coastal

From: Don Bruner [don_bruner@hotmail.com]
Sent: Monday, July 23, 2012 11:35 AM
To: Del Arroz, John@Coastal; Dixon, John@Coastal; Sarb, Sherilyn@Coastal; Engel, Jonna@Coastal; Veesart, Pat@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Schwing, Karl@Coastal; Haage, Lisa@Coastal; Lester, Charles@Coastal
Cc: Gary Garber; dorothy kraus
Subject: Sunset Ridge Park
Follow Up Flag: Follow up
Flag Status: Red

Charles D. Bruner
 11 Serena Court
 Newport Beach, CA 92663
 Phone (949) 646-8092
 E-Mail: don_bruner@hotmail.com

July 22, 2012

Mr. John Del Arroz, Coastal Program Analyst
 California Coastal Commission
 200 OceanGate, 10th Floor
 Long Beach, CA 90802

Dear Mr. Del Arroz:

Please find attached my e-mail of November 8, 2011 to Patrick Alford, Associate Planner, City of Newport Beach, Planning Department with copies to all the Members of City Council, at that time, pointing out my concerns Cancer Burden calculations referred to on pages 4.10-31 and 32 of the Air Quality second of the DEIR appear to be based on incorrect distances of the nearest receptors to the Project fence line. The Tier 1 analysis under "Threshold 4.10-4 refers to off-site receptors 100 meters from the Project fence line. One hundred meters is 328 feet. What happens to people who are closer than 100 meters from the Project fence line?

Virtually all of the 52 perimeter courtyards are within 328 feet of the Project fence line, which means that this will impact between 300 to 400 people, if just two people live in each condo. None of these people are included in the Tier 1 analysis. It also appears that Carden Hall School may be within the 100 meter distance. And it appears the new Coastline Community College may be within the 100 meter distance. The analysis only applies to people beyond 100 meters. What is the cancer burden for those who are inside the boundaries?

How many people of the 86,000 could be expected to get cancer? And what about the Newport Crest residents who are inside the 100-meter boundary used for the calculations? How many of them could be expected to get cancer?

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I requested for the calculations to be redone using figures that actually reflect the distances of the nearest receptors from the Project fence line? The response included the reference to the same data base, indicating no change in the DEIR.

7/25/2012

To ensure the minimum Cancer Burden regarding the active park development plan the calculations need to be redone using figures that reflect the correct distances of the nearest receptors from the Project fence line. **It would be appreciated if you would include this information in any staff report to the Commission.**

Sincerely,
Charles D. Bruner

Charles D. Bruner
11 Serena Ct
Newport Beach, CA 92663

November 8, 2011

City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92663

Attention: Patrick Alford
palford@newportbeachca.gov

Dear Mr. Alford:

The calculations for the **Cancer Burden** referred to on pages 4.10-31 and 32 of the Air Quality second of the DEIR appear to be based on incorrect distances of the nearest receptors to the Project fence line. The Tier 1 analysis under "Threshold 4.10-4 refers to off-site receptors 100 meters from the Project fence line. One hundred meters is 328 feet. What happens to people who are closer than 100 meters from the Project fence line?

Based on the DEIR's "Community Transitions and Interface Key Map," which includes a series of exhibits that depict the distances between Newport Crest residences "immediately contiguous to the Project" and the Community Park and Bluff Road, the distances of the nearest receptors to the Project fence line will be much closer than 100 meters or 328 feet. Exhibit 4.1-2g "Central Community Park Interface with Newport Crest" Section E1-E1 depicts the interface of Bluff Road with the most northwestern portion of the Newport Crest complex. According to Section E1-E1 the narrowest point of Community Park separating Newport Crest residences from Bluff Road is twenty-two feet (22 ft).

Virtually all of the 52 perimeter courtyards are within 328 feet of the Project fence line, which means that this will impact between 300 to 400 people, if just two people live in each condo. None of these people are included in the Tier 1 analysis. It also appears that Carden Hall School may be within the 100 meter distance. And it appears the new Coastline Community College may be within the 100 meter distance. The analysis only applies to people beyond 100 meters. What is the cancer burden for those who are inside the boundaries?

On page 4.10-31, what does "provide reductions of cancer risk at 40 percent of the fence line receptors" mean? Also, "reduction of chronic non-cancer risk at 29 percent of the receptors?" How does this apply to the hundreds within the 100-meter distance?

On page 4.10-31 and 32, under "Cancer Burden," it refers to 19 census tracts with a combined population of just over 86,000 people. It then says that if everyone in the tracts was exposed to a 4 in 1 million incremental cancer risk, the cancer burden would be 0.34, which is less than the SCAQMD significance threshold of 0.5."

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Page 2 Cancer Burden

What conditions would create a 4 in 1 million incremental cancer risk? It seems the cancer burden at 0.34 is uncomfortably close to the SCAQMD significance threshold of 0.5. **At 0.34, how many people of the 86,000 could be expected to get cancer? And what about the Newport Crest residents who are inside the 100-meter boundary used for the calculations? How many of them could be expected to get cancer?**

Thank you for taking the time to review my letter. In your response, would you please advise if these calculations will be redone using figures that actually reflect the distances of the nearest receptors from the Project fence line?

Yours truly,

Mr. and Mrs. Don Bruner
11 Serena Ct.
Newport Beach, CA 92663

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Del Arroz, John@Coastal

From: Stacy Kline [stacykline@gmail.com]
Sent: Saturday, July 21, 2012 11:56 PM
To: Del Arroz, John@Coastal; Dixon, John@Coastal; Sarb, Sherilyn@Coastal; Engel, Jonna@Coastal; Veesart, Pat@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Schwing, Karl@Coastal; Haage, Lisa@Coastal; Lester, Charles@Coastal
Subject: City of Newport Beach Coastal Development Application (CDP) for the Sunset Ridge Park project
Follow Up Flag: Follow up
Flag Status: Red

It would be appreciated if you would include this information in any staff report to the Commission.

Dear Honorable Coastal Commission Members,

We are sending this email to ask our California Coastal Commission to reject the City of Newport Beach's application to develop the Sunset Ridge Park. As residents of Newport Beach, we feel that this is one of the last vestiges of wilderness in our beautiful city, and we would like to see it protected in its natural state, as the citizens of Newport Beach voted when they adopted their updated General Plan.

The following are a list of concerns regarding Sunset Ridge and the Banning Ranch property:

- Excessive mowing has been an ongoing issue on Sunset Ridge Park. The City continues to mow all of Sunset Ridge though the fire safety guidelines only call for mowing within 100' structures. The reason for this appears obvious: to destroy the natural, sensitive, and endangered habitat by removing plants, animals, and birds.
- We have enjoyed the Sunset Ridge area for a many years, and relish the wealth of habitat that exists there. We are upset by the destruction that has occurred from the excessive mowing done by the City of Newport Beach.
- We object to the needless destruction of habitat and the ruination of our quality of life given there is no fire threat.
- The City is going far beyond the prescribed fuel modification in an effort to destroy environmentally sensitive habitat, and potentially sensitive habitat for threatened and endangered species.
- Is there some sort of enforcement action regarding an injunction against the City of Newport Beach that can take place to protect this sensitive habitat from being destroyed again in the future?
- One can only conclude that this mowing is a deliberate and systematic effort to eliminate the habitat for the gnatcatcher (and other wildlife) living on Sunset Ridge.
- We would like to see the Banning Ranch natural area to be protected in its entirety, with absolutely no develop of the area allowed for commercial or residential use.

As the final open space areas in Newport Beach keeps being divided up into the smallest possible units for our economic purposes, it's no surprise that key predators and sensitive species suffer unexplained drops in numbers. We have not left enough open space/wilderness for these fragile species to survive.

Thank you for helping protect this exquisite remaining pocket of wilderness in Newport Beach.

Sincerely yours,

Stacy & Greg Kline

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Del Arroz, John@Coastal

From: s mankarious [smankar2004@yahoo.com]
Sent: Saturday, July 21, 2012 1:31 PM
To: Del Arroz, John@Coastal
Cc: Dixon, John@Coastal; Sarb, Sherilyn@Coastal; jengle@coastal.ca.gov; Veearl, Pat@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Schwing, Karl@Coastal; Haage, Lisa@Coastal; Lester, Charles@Coastal
Subject: Comments on the plans for Sunset Ridge Park, City of Newport Beach, CA
Follow Up Flag: Follow up
Flag Status: Red

Dear Mr John del Arroz:

In reviewing the plans submitted by the city of Newport Beach, we noticed that they have included a lookout structure, complete with seats and shelter [ie. roof] in the East part of the park,

While we can understand the reason behind providing a seating arrangement, the rationale behind building a tall structure to shelter those seated is unclear. Such a structure would stick out in contrast to the surroundings of the proposed serene part of the park.

In addition, we view the justification of a shelter in the form of a tall structure as rather weak, when you consider that the sunset observers would not be protected from the sun above as it normally sets horizontally in the west. If that protection is intended against the rain, then it is quite obvious there will be no sunsets to gaze at, and therefore no need for protection, on rainy days.

We fear that such a structure would become more of an attractive nuisance in addition to being an eye sore and we hope that the coastal commission would agree with our comment and approve the seating but not the tall sheltered structure attached to it.

Please include our comments in the above Park file.

Your attention and input are greatly appreciated.

Mr. and Mrs R. Mankarious
 7 Tribute Ct.
 Newport Beach, CA

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GARY A. GARBER
8 LAND FALL COURT
NEWPORT BEACH, CALIFORNIA 92663-2307

Phone (949) 650-6661 - Fax (949) 650-6661
E-Mail garbergary@yahoo.com

RECEIVED
South Coast Region

JUL 23 2012

CALIFORNIA
COASTAL COMMISSION

July 20, 2012

Mr. John Del Arroz, Costal Program Analyst
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, Ca 90802

Dear Mr. Del Arroz:


Please see attached my e-mail of December 1, 2009 to Janet Johnson Brown, Associate Planner, City of Newport Beach, Planning Department with copies to the all Members of City Council, at that time, pointing out my concerns with General Habitat and Wildlife Loss due to frequent mowing by the City.

Also see attached photos taken over the years since 1997 of various birds that I once was able to see from my balcony at, 8 Landfall Court, overlooking Sunset Ridge Park. Please also note the pictures show green foliage at that time. At present there is little green foliage due to constant mowing of natural vegetation by the City of Newport Beach. The ground squirrels are gone with only some of the holes left.

To enlarge photo's click picture, then download and open.

I am requesting that the Costal Commission direct the City of Newport Beach to stop frequent mowing, to protect the habitat and wildlife and turn down the Sunset Ridge Active Park project as currently planned.

Sincerely,


Gary A. Garber

Attachments

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Subject: Fw: General Habitat Loss & Wildlife Loss-p4.625

From: Gary Garber (garbergary@yahoo.com)

To: jbrown@newportbeachca.gov;

Cc: curryk@pfm.com; gardnerncy@aol.com; mfhenn@verizon.net; parahdigm@aol.com; edselich@roadrunner.com; don2webb@earthlink.net; lesliejaigle@aol.com;

Bcc: moosmann@adelphia.net; vcellini@ix.netcom.com; flesvig_Christine@allergan.com; b.bartram@verizon.net; sharon.boles@adelphia.net; don_bruner@hotmail.com; dursttaylor@sbcglobal.net; medjkraus@yahoo.com; ginnylombardi@yahoo.com; cmmalkemus@yahoo.com; pcmalkemus@gmail.com; smankar2004@yahoo.com; jtmansfield@ca.rr.com; terrywelsh@hotmail.com;

Date: Tuesday, December 1, 2009 1:20 PM

December 1, 2009

Janet Johnson Brown, Associate Planner
City of Newport Beach, Planning Department
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92658-8915

Re: Draft Environmental Impact Report – 4.6-25 General Habitat Loss and Wildlife Loss

Dear Ms. Brown:

The following represents my comments regarding Section 4.6 Biological Resources - p.4.6-25 General Habitat Loss and Wildlife Loss.

Removing or altering habitats on the Project site would result in the loss of small mammals, reptiles, amphibians, and other slow-moving animals that live in the proposed Project's direct impact area. More mobile wildlife species that are now using the Project site would be forced to move into the remaining areas of open space, which would consequently increase competition for available resources in those areas. This situation would result in the loss of individuals that cannot successfully compete. The loss of native and non-native habitats that provide wildlife habitat is considered an adverse impact. However, the loss of habitat would not be expected to reduce wildlife populations below self-sustaining levels in the region. Therefore, this impact would be considered adverse, but less than significant.

There is no analysis of the potentially affected species, and the impacts to their self-sustaining levels. Would any of the species approach thresholds that could cause extirpation if unusual, but not impossible, environmental events occur, e.g. disease, fire, presence of a new predator? Please provide analysis of the potentially affected species, and impacts to their self sustaining levels.

Where have all the birds and ground squirrels gone?

- Please see attached five photos taken over the years since 1997 of various birds that I once was able to see from my balcony overlooking Sunset Ridge Park. Please note three birds are sitting on my balcony railing.
- Also note in three cases there is green ground cover in background. In one case there is

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- some green ground cover,
- In one case (most recent photo of bird) only dead ground cover in background due to what appears to be grass and weed killing agents.
 - At present the dirt is now darkened and most if not all of the lovely ground squirrels are dead. Only their holes are left. I would be happy to send you photographs of the area now after someone dropped poison down the ground squirrel holes.
 - To see enlarged photo's click picture, then download and then open. At that point you can enlarge the picture or reduce it.

Threshold 4.6-6: Would the project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? The Project site occurs within the Santa Ana River Mouth Existing Use Area of the Central/Coastal Subregion NCCP/HCP. Existing Use Areas are comprised of areas with important populations of Identified Species but which are geographically removed from the Reserve System. The NCCP/HCP does not authorize Incidental Take within the Existing Use Areas; such activities must be submitted to the USFWS for review and approval, consistent with existing federal law. The Project would not conflict with the provisions of an adopted HCP/NCCP because it does not impact areas identified as part of the Central/Coastal Subregion Reserve System nor does it utilize the Take allocations associated with projects in the Subregion that are outside the Existing Use Areas. Impact Summary: No impact would occur.

A diagram showing the relevant Central/Coastal Subregion Reserve System NCCP/HCP areas under discussion should be provided.

p.4.6-33, MM 4.6-4 and 4.6-5: Implementation of the Project would result in the loss of 0.41 acres of coastal sage scrub habitat. Permanent impacts on coastal sage scrub vegetation must be mitigated at a two-to-one (2:1) ratio on the Project site or in suitable off-site locations in the Newport Beach/Costa Mesa area. Identify appropriate areas for mitigation on site under discussion, and in other City locations. To what extent does the current Sunset Ridge Park landscaping plan promote mitigation on site, and maintain / reflect the natural character of the site?

All of the above issues are a major valuation concern since Newport Crest front line unit owners paid a premium for their units to be close to nature and watch the wonders of wildlife from their balconies. I have brought up many of the above issues and other issues with City Council and the previous City Manager. I seriously object to the approval of this project in its present form. The above comments and all references contained therein are hereby incorporated into official record of proceeding of this project and its successors.

I look forward to receiving your timely response from you and the City Council on this matter.

Gary A. Garber
8 Landfall Court
Newport Beach

See Attachments Above

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Slideshow



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3/10/2012



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Public Comment Letters
Dated 6/28 - 7/24

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Banning Ranch Conservancy

July 20, 2012

Via Email Transmission

Officers:

Terry Welsh, M.D.
President
James Mansfield
Vice-President
Deborah Koken
Secretary
Jennifer Frutig, PhD.
Treasurer

Steve Ray
Executive Director

Board Members:

Patricia Barnes
Suzanne Forster
Mark Tabbert
John Sisker
Ciane Silvers

Jan Vandersloot, M.D.
in Memoriam

John del Arroz
California Coastal Commission
South Coast District Office
200 OceanGate, 10th Floor
Long Beach, CA 90802-4416

Re: Application Number: 5-11-302

Dear Mr. del Arroz,

The Banning Ranch Conservancy ("Conservancy") reiterates our support for a park on Sunset Ridge. Our support is guided by two basic principles: 1) The park design must recognize, preserve and enhance the valuable natural resources that exist on the site, and 2) The uses proposed for the park must be appropriate for the topography, access and other restrictions particular to the site, and be consistent with principle No. 1 above.

The Conservancy once again offers our resources, services, expertise and cooperative attitude to the City of Newport Beach and the Coastal Commission to create a beautiful and useful Sunset Ridge Park.

The City of Newport Beach ("city" and "applicant") wisely withdrew its original application for Sunset Ridge Park given that it violated the California Environmental Quality Act and the California Coastal Act and that it would assuredly be denied by the Coastal Commission ("Commission"). In the current application (5-11-302) before the Commission, the City has significantly diminished the scope and impact of the proposed park design. However, all the impacts and issues have not been addressed in the new application and several remain to be resolved.

In an effort to eliminate or reduce the impacts and resolve identified issues to the end that the Commission may find a park project design that can be approved and sustained, Commissioners, at the July hearing of the application, directed staff to identify conditions necessary to sustainably approve the project.

The Banning Ranch Conservancy is pleased to offer conditions to be placed on the project that ensure that it conforms to the Coastal Act and that meet our two guiding principles stated above. The Conservancy looks forward to supporting the Sunset Ridge Park project subject to approval of the following numbered conditions. Information and discussion to support the conditions is also provided.

The Conditions are:

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P. O. Box 16071
Newport Beach,
CA 92659-6071

(310) 961-7610

Public Comment Letters
Dated 6/28 - 7/24

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www.banningranchconservancy.org

ENVIRONMENTALLY SENSITIVE HABITAT AREA ("ESHA")

1. The 3.3 acres identified as "disturbed encelia scrub" shall be declared ESHA and preserved as such.
2. Three other areas identified in the plan as "major vegetation" (southwest corner, northwest corner and "southeast polygon") shall be declared ESHA and preserved as such.
3. Buffers shall be required and sited to preserve the habitat value of all ESHA identified in conditions 1 and 2 above.

The Conservancy maintains that the only sustainable decision for the encelia identified in No. 1 is that it be declared and preserved as ESHA. The Conservancy's expert biologist has opined that this encelia scrub serves as forage habitat for the federally threatened California Gnatcatcher and has potential to serve as nesting habitat if not for regular destruction of the encelia scrub by the applicant. The Commission's staff biologists have made a similar determination that the encelia scrub qualifies as ESHA, if it is not being mowed illegally by the applicant. The applicant has engaged in frequent removal of this major vegetation with no legally granted vesting rights or Coastal Development Permit (CDP) as required by the Coastal Act. The applicant claims to have granted itself vesting rights, which is contrary to the provisions of the Coastal Act. Further, the applicant claims to mow it in the name of fuel modification; however, the extent of the mowing conflicts with the stated policies of the city and in sharp contrast to the city's fuel modification practices in every other area of the city's jurisdiction. Evidence supporting all these statements has already been entered into the record of these proceedings.

Not only does the applicant fail to conform to the Coastal Act in the areas discussed above, but it also fails to conform to the city's own Certified Land Use Plan (LUP), as approved by the Coastal Commission. The LUP specifies that the City must conform to the Coastal Act and must identify, protect and preserve actual or "potential" ESHA. In the Environmental Impact Report ("EIR") for the project, the City proclaims that it has no responsibility to conform to the Coastal Act requirements to identify ESHA, claiming that such declarations are the sole responsibility and duty of the Coastal Commission and/or other resource agencies. Since the City abrogates its responsibility to comply with the Act and their own LUP, the Commission should not countenance such self-serving, non-conforming behavior by rewarding it.

In order to authorize the destruction of this ESHA or potential ESHA, the Commission must provide legal findings to support one or both of the city's claims stated above. There is a specified process outlined in the Coastal Act for claims of vested rights. Put simply, the city has not followed it. For the Commission to recognize the applicant's self-proclaimed vested rights would be in error. Likewise, for the Commission to concur with the city's singular practice of a "scorched earth" policy (quoting Chair Shallenberger) on this property as opposed to its practice on any other property in the city, and without the city consulting or cooperating with the Commission staff regarding this excessive mowing, would also be in error and not sustainable.

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Therefore, the only viable options for the Commission are to deny the application or to condition the project so that the encelia scrub habitat ESHA is preserved and properly buffered.

The three areas identified in No 2 above seem to be recognized and hopefully uncontested by the applicant. To ensure proper protection of all three sites, a declaration of ESHA should be made by the Commission for these areas and properly buffered to ensure their preservation.

Buffers should extend 100 feet from ESHA delineation with an absolute minimum of 50 feet. The construction and grading plans for the park indicate that buffers will be graded, in some instances, right up to the ESHA. The Coastal Act requires buffers to be protected from development. Grading is defined in the Act as development. The construction and grading plans must be altered to protect the buffers from landform alteration and destruction of habitat caused by grading. Necessary landscaping activity in buffers can be performed manually.

WETLANDS

- 4. Wetlands shall be delineated and preserved.**
- 5. Buffers of 100 feet shall be placed to preserve the habitat value of all wetlands.**

Wetlands have been identified on the Sunset Ridge property. The wetlands should be formally delineated, declared and protected. Here again, the city has abrogated its responsibility under the Coastal Act and its own LUP to do so.

Buffers of 100 feet, as specified in the City's LUP, should be established to protect the delineated wetlands. The construction and grading plans must be altered to protect the buffers from landform alteration and destruction of habitat caused by grading. Necessary landscaping activity in buffers can be performed manually.

ROADWAY

- 6. The roadway proposed on the Sunset Ridge property, including the turn-around feature, shall be redesigned and sited to avoid interference with ESHA and the buffers established for ESHA.**
- 7. The northerly portion of the proposed roadway shall be sited and constructed on top of the planned buried storm drain feature to enhance habitat values to its east and west.**
- 8. The proposed roadway shall be constructed with permeable surface material.**

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9. Since access to the proposed park and its roadway is through the adjacent Newport Banning Ranch (NBR) property, the portion of the NBR property containing the access roadway shall be included as part of this project application. Any NBR access roadway improvements planned to support this project, whether accomplished by applicant or NBR owners, shall be included as part of this project application, including required environmental review and analysis specific to the access roadway usage and improvements.
10. An "access agreement" between the city and NBR owners specifying a grant of access and all conditions pertaining thereto relative to the access to and usage of the NBR access roadway and improvements thereof shall be made a part of the application for this project and submitted to the Commission for review and concurrence prior to hearing the application.
11. Usage of the project roadway shall be limited to emergency and maintenance vehicles. The undefined term, "shuttles" shall be removed from the application prior to any approval. Usage of the roadway for any other purpose shall be specifically requested and defined as to purpose and scope. Any regular, ongoing access shall constitute regular public access and require appropriate environmental review and analysis prior to approval.

Simply stated, redesign and siting of the roadway to avoid ESHA and ESHA buffers is absolutely required by the Coastal Act.

The northerly portion of the roadway can be constructed over the planned buried storm drain, thereby providing additional habitat space on each side of the road, especially the west side. The current design for the northerly portion of the roadway to drastically swerve to the west and then back to the east results in unnecessary destruction of habitat with no vital reason.

Constructing the roadway with a permeable surface is, of course, the most environmentally sustainable methodology (and probably the most economical).

The proposed roadway is, essentially, a "road to nowhere" without access from the contiguous NBR property. The proposed project roadway clearly intends to connect with and utilize the "historic" oil road on NBR that traverses the southeast polygon ESHA. Otherwise, there is no other access opportunity to the park. That's clear. Therefore, the portion of NBR that contains the roadway must, of legal necessity, be included in the park project application for planning and environmental review and analysis. It is also reasonable to assume that some improvements to the NBR portion of the roadway will also be performed as a result of this project. These must also be included in this project application with appropriate environmental review and analysis.

Access to the park site, especially for emergency and maintenance vehicles (in addition to whatever other traffic is permitted), is vital. It is also vital to ensure such access.

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Access from the park site and through NBR is controlled by locked gates and security. Therefore, an agreement between the city and NBR owners is necessary to grant access through the privately-held NBR to the city and specifying all provisions related to that access. The agreement should include all necessary or planned improvements to the NBR portion of the project roadway and adjacent areas and specify conditions relative to those issues. This agreement must be processed and approved by the city through its statutory requirements and presented to the Commission for review and approval for conformance with Coastal Act requirements. It should be accomplished prior to approval of the project application.

Use of the project roadway is intended for emergency and maintenance vehicles. The Conservancy has no objection to this. However, the city has included the undefined term "shuttles" to designate additional usage. What does "shuttles" mean? That is unknown and must be stricken from the application prior to approval. If the city has other uses planned, they must disclose the specific as to what and who those uses are, the type(s) of vehicle(s) expected, and provide information on the numbers and frequencies of usage. Because this roadway traverses directly through protected ESHA and ESHA buffers, on both the city and NBR portions of the road, any regular usage by other than emergency and maintenance vehicular traffic constitutes this roadway as a public access road. Therefore, public access must be assured. Further, all information on this usage must be detailed, reviewed for conformity with the Coastal Act and analyzed for environmental impacts and/or mitigation prior to approval.

LANDSCAPING AND NATIVE VEGETATION

- 12. The proposed landscaping plan shall be redesigned to exclude all plant species that are non-native to Southern California. Further, the plant palette shall exclude all invasive plant species, native or non-native, and any plant species which could result in current or future negative impacts to ESHA.**
- 13. All recommendations of the California Native Plant Society, Orange County Chapter, detailed in their letter of June 10 2012, to the Coastal Commission shall be adopted and are incorporated herein by reference.**
- 14. All recommendations and conditions of the U.S. Fish and Wildlife Service detailed in their letter of April 27, 2012, pages 3 through 6, to the City of Newport Beach shall be adopted and are incorporated herein by reference.**

The goal of every project before the Commission should be to preserve and/or enhance the habitat values of the site. In this case, permitting the destruction of any native plants should result in an equal or better native plant habitat. The plant palette proposed for this project contains many questionable species that are either non-native, or highly invasive, or both, and some which could damage ESHA located on the project site or on the contiguous NBR property. Simply, the landscape plan needs revision.

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The Conservancy endorses every recommendation and/or condition listed in the two letters that are referenced.

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LIGHTING

15. No stationary pole or lighting or portable lighting, except portable lighting for emergency purposes only, shall be permitted on the park project site.
16. Park lighting shall be limited to 3.5-foot bollards with cut-off louvers and shall be positioned, directed or shielded to as to minimize artificial lighting from reflecting into native habitat or adjoining residences.

Inappropriate lighting causes glare, disturbance and other negative impacts to wildlife functions, to neighboring residents and to vehicular traffic on adjacent streets.

In summary, placing all of the above conditions on the proposed Sunset Ridge Park project still permits a significant opportunity to design and construct a park that protects natural resources and provides valuable recreational opportunities for residents. It will meet most objectives for the park while providing a superior environmental alternative to the current proposed application. Further, it will assure compliance with the California Environmental Quality Act and conformance with the California Coastal Act and the city's Certified Land Use Plan.

With the aforementioned conditions included on the project application, the Banning Ranch Conservancy will enthusiastically support the Sunset Ridge Park project.

Please contact the undersigned for any questions or for further information. Thank you for the opportunity to comment.

Please include this letter with the Staff Report for the August hearing.

Sincerely,

Steve Ray /s/

Steve Ray
Executive Director

Cc: Charles Lester
Sherilyn Sarb
Teresa Henry
Karl Schwing
Jonna Engel

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Schwing, Karl@Coastal

From: Penny Elia [greenp1@cox.net]
Sent: Wednesday, July 11, 2012 9:14 AM
To: Schwing, Karl@Coastal
Cc: Robb Hamilton
Subject: Sunset Ridge Park - response to late submittal from City of Newport Beach
Importance: High
Attachments: Fuel Mod PRAR Hobo Aliso.pdf
 Good morning, Karl -

Thank you for allowing us to submit these very late comments in response to the City of Newport Beach's latest submittal of July 9th. It's unfortunate the City and their agents could not have had the courtesy of bringing these issues forward at an earlier date given that the staff report was released in early June.

Please find attached:

- Photos and captions from Robb Hamilton, Banning Ranch Conservancy biologist on the fire departments application of their fuel mod regulations.
- Document submitted to Coastal Commission in 2009 detailing the "partnership" between the applicant (including their agent, Steven Kaufmann), City of Laguna Beach and Laguna Beach Fire Department in an effort to destroy ESHA prior to the release of the applicant's Draft EIR.

At the November 2, 2011 hearing on this issue (application withdrawn at the last minute by applicant's agent) it became very apparent that Steven Kaufmann had been hired to initiate this same type of "partnership" to circumvent the Coastal Act.

We object strongly to these tactics and once again reiterate our support of staff's recommendation for denial. It is rather insulting for the applicant to think that the Commission, Commission staff and the environmental community would actually believe this charade that's been foisted upon everyone at the last minute. This is a major waste of staff time and resources.

Again, thank you for including our comments. We will speak to this issue at the hearing tomorrow in greater detail. This is a very abbreviated version of our comments.

Penny Elia
 On behalf of the Sierra Club's Save Banning Ranch Task Force
 949-499-4499

From: Robert Hamilton <robb@hamiltonbiological.com>
Date: July 10, 2012
To: Penny Elia <greenp1@cox.net>
Subject: Response to City of Newport Beach - Sunset Ridge Park

A 43 page attachment accompanied this email. The contents of that attachment are not included in the printed version of this staff report, but are available to view/download as part of the staff report posted on the Commission's web site.

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Thicket of "unapproved" Acacia and Eucalyptus growing right up to the edge of Newport Crest that has not been required for clearance by the Fire Department

Please note photos below (before and after destruction) showing what the City did to mulefat 260 feet from the nearest structure where A PAIR OF GNATCATCHERS were observed on 11-4-09:

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Public Comment Letters
Dated 6/28 - 7/24

Exhibit 18 Page 38 of 83

7/11/2012



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Public Comment Letters
Dated 6/28 - 7/24

Exhibit 18 Page 39 of 83

7/11/2012



Why is it that the Fire Department is so intent on doing "weed abatement" on native plant species THAT ARE APPROVED FOR ALL FUEL MOD ZONES and yet has no problem with a thicket of unapproved Acacia and Eucalyptus growing right up to the edge of Newport Crest? This inconsistency in application of regulations can only be attributed to strategically planned and blatant destruction of gnatcatcher habitat.

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Date: January 26, 2009

To: California Coastal Commission

Re: City of Laguna Beach Proposed City-Maintained Fuel Break Zones 10 & 11
and Athens Group Driftwood Properties, LLC

After Athens Group purchased the Driftwood properties, Laguna Beach, in 2004, they and the Laguna Beach City Manager, Fire Department and Community Development department began a vigorous and methodical campaign to reinstate fuel modification on Athens property that had been abandoned in 1994. These newly established City-Maintained Fuel Breaks (Zones 10 & 11) are indicated on a 2005 city map as being "proposed". These fuel break zones are only proposed and have not been incorporated into the city's Local Coastal Program.

The city of Laguna Beach and Fire Department management did not respond to ongoing email and phone call inquiries from us in 2007 and 2008 regarding proposed City-Maintained Fuel Break Zones 10 & 11/Driftwood Properties, LLC.

With the accompanying documents, we are seeking to demonstrate the following:

1. As of December 2008, when we filed a Public Records Act Request, the city of Laguna Beach and Fire Department management had not copied, scanned/dated pertinent city, county and state documents related to fuel modification of the Driftwood Property, and had not submitted these documents to the city file for the Aliso Creek Area Plan that includes Driftwood Properties, LLC (31106 Coast Hwy, Laguna Beach, CA, 92651). This absence of pertinent documentation raises serious questions about the accuracy of the pending application and upcoming Draft Environmental Impact Report process that includes this property as a proposed subdivision.
2. The Athens Group initiated the fuel modification campaign for their property.
3. The city of Laguna Beach and Athens worked together to reintroduce fuel modification on the Driftwood property, and the resulting fragmentation of ESHA to facilitate a proposed 9-lot residential subdivision which would be highly lucrative for both the land owner and city.
4. The city of Laguna Beach and Athens worked together in way that could circumvent the California Coastal Act and the Coastal Commission staff's endeavors in negotiating fuel modification plans that would insure the preservation of endangered flora and fauna species and ESHA on Athens' property located on Hobo Aliso Ridge.

We are submitting the accompanying documents, acquired from the city of Laguna Beach through the Public Records Act, in support of a harmonious solution to protect and preserve this unique coastal resource.

Dan and Penny Elia
30632 Marilyn Drive
Laguna Beach, California 92651
949-499-4499

COMMENTS ON DOCUMENT (Selected Excerpts)
Information Pertaining to The City of Laguna Beach
PROPOSED CITY-MAINTAINED FUEL BREAKS ZONES 10 & 11
and THE ATHENS GROUP DRIFTWOOD PROPERTIES, LLC

Pg. 7

The Athens Group Driftwood Properties, LLC initiates fuel modification (fuel mod) efforts for their property.

Pg. 8

The City of Laguna Beach (CLB) attempts to facilitate building permits (development) for the Driftwood property containing endangered Crownbeard (*Verbesina*) with the cooperation of California Department of Fish & Game. The California Coastal Commission (CCC) is not contacted for their input.

Pg. 9

The Athens Group conducts unpermitted fuel mod in a city-mapped watercourse located on the Driftwood property without a directive from the city to do so and incurs a Coastal Act violation resulting in Violation CCC-06-NOV-02 and Consent Order CCC-06-RO-03.

Pg. 11

The Athens Group (Bill Claypool) again requests the city to begin fuel mod of the Driftwood property.

Pg. 12

2005 map of the proposed city-maintained fuel break zones 10 & 11:
To date, these fuel break zones are not a part of the city's Local Coastal Program (LCP).

Pg. 13–14

The Athens Group (Martyn Hoffman) continues to inquire how to accomplish fuel mod of the Driftwood property.

Pg. 31–32

The Athens Group (Martyn Hoffman) could be attempting to pass the fuel mod and permitting on to the adjacent property owners and the non-existent homeowners association (HOA). An adjacent property owner (Curt Bartsch) states that fuel mod of the Driftwood property has been ignored for many years.

Pg. 36

The CLB Community Development Director (John Montgomery) could be attempting to usurp CCC authority.

Pg. 38

The CLB City Manager (Ken Frank) and The Athens Group (Martyn Hoffman) work together in a way that could circumvent the Coastal Act and CCC staff's endeavors. The City Manager states that he will contact an attorney (Steven Kaufman) to assist in dealing with the fuel mod issue.

Pg. 39

The Athens Group (Martyn Hoffman) continues to initiate fuel mod of the Driftwood property by introducing *police power* policy to the CLB City Manager via CLB Community Development Director.

Pg. 45

The Athens Group (Martyn Hoffman) acknowledges the need for a Coastal Development Permit (CDP) for fuel mod activities.

Pg. 57

Attorney Steven Kaufman responds to CLB City Manager with an analysis of Martyn Hoffman's plan for fuel mod *police power* that could circumvent the Coastal Act and CCC authority.

Pg. 58, 64–66

The CLB City Manager states the city's opposition to a required CDP. He also states that fuel breaks existed in 1956. If these fuel breaks were truly developed prior to the Coastal Act of 1972, then the ensuing Emergency Nuisance Abatement Order of 2007 (*police power*) would not have been necessary for fuel mod of the Driftwood property.

Pg. 93–94 & 102

The CLB City Manager could usurp CCC authority by exercising the city's *police power* to create proposed city-maintained fuel break zones 10 & 11 on the Athens Group Driftwood property.

Pg. 103–104

The CLB Fire Department states "creation" (new + maintenance = required CDP & LCP amendment) of proposed fuel break zones 10 & 11 had begun.

Pg. 108–110

The CLB City Manager states that the city does not need a CDP for the "creation" of proposed city fuel breaks on the Driftwood property and uses *police power* that could usurp CCC authority. Also, he could be providing a tactic for reimbursement from The Athens Group for *city-maintained* fuel break duties.

Pg. 120–121

The CLB City Manager states that debris from 2007 fuel mod activities on the Driftwood property was left on the land to "retard future growth". This method is inconsistent with CCC staff's attempts at restoration of this land's endangered flora and fauna species and Environmentally Sensitive Habitat Area (ESHA). This could be another tactic to fragment existing ESHA on the site and that might facilitate development.

Pg. 126–127

Glenn Lukos Associates (biological services) states the need for a new plan to expand the proposed fuel mod boundaries from 200 feet from “existing structures” to 200 feet “within property boundaries” to facilitate “development of portions of the site in the near future”. CCC staff disagrees and states that fuel breaks for future proposed development should be considered as part of the CDP process for new construction.

Pg.142

The CLB Fire Department repeats fuel mod in zones 10 & 11 at the end of 2008. After receiving The Athens Group's (Greg Vail) cooperation, the Fire Department uses “imminent threat” and the city's *police power* to prevent CCC intervention again.

Pg. 143

The CLB Fire Department could be attempting to further legitimize fuel mod activities in zones 10 & 11.

Pg. 144

The CLB City Manager (Ken) gives approval for the Fire Department to contact attorney Steven Kaufman regarding fuel mod on the Driftwood property and to seek his opinions on the city's LCP requirements and permitting.

Pg. 146

The CLB Fire Department receives new state law that defines *defensible space* as being no greater than 100 feet. The Fire Department asks Cal Fire if there are any conditions that would allow a property owner to prevent CCC involvement.

Pg. 150

Excerpt from a local newspaper article:

The CLB City Manager states he ordered emergency action to fuel mod the Driftwood property. He acknowledges that this is contrary to CCC recommendations. Also, he acknowledges that The Athens Group (*not the city*) would be doing the fuel mod and he seems to feel fortunate that Athens can easily afford it.

Pg. 154–155

Again, CCC staff attempts to negotiate a long-term fuel mod and maintenance plan for the Driftwood property with the CLB Fire Department.

Pg. 156

Again, The CLB Fire Department exercises the city's *police power* to conduct fuel mod on the Driftwood property which could affect CCC staff and CLB negotiations.

Prepared by
Dan and Penny Elia
30632 Marilyn Drive
Laguna Beach, CA 92651
949-499-4499

Information Pertaining to
The City of Laguna Beach

**PROPOSED CITY-MAINTAINED
FUEL BREAK ZONES 10 & 11**

and

**THE ATHENS GROUP
DRIFTWOOD PROPERTIES, LLC**

Prepared by:
Dan and Penny Elia
January 26, 2009



MEMORANDUM



DATE: November 29, 2004

TO: Ken MacLeod, Fire Chief

FROM: Kris Head, Fire Marshal

SUBJECT: Goat Grazing – Barracuda/Nyes/Driftwood

Chief, the goats were moved behind Nestal this last weekend and we anticipate they will be in the area for approximately two months. Where we move the goats next depends on our ability to secure approval to graze the Barracuda/Nyes/Driftwood areas.

Attached is a map with the proposed areas for fuel modification utilizing the goat program. Ray Lardie has been approached by the owners of Driftwood Properties Llc. (Montage) to move the goats into this area. I am told that we have previously grazed the area behind Nyes (City owned) as recently as 2-3 years ago.

After meeting with Don Barnes and Ray Lardie I am assured that we have some excess capacity for grazing. This proposed addition could be incorporated with our current grazing program without detrimental effect to the other areas we currently maintain.

We have a valid Rare Plant Survey prepared in June of 1995 an it identifies Crown Beard and other Very High Value resources in much of the proposed area. I have met with the area representative from Fish and Game regarding grazing around the Crown Beard and she is OK with our current techniques for protecting the plant. We would utilize this technique as well for the other identified species.

Please let me know if this something we could pursue further with written permission from the property owner(s) and City Council approval.

Thanks, Kris



LAGUNA BEACH FIRE DEPARTMENT

February 7, 2005

Mary Ann Showers, Lead Botanist
Department of Fish and Game
Habitat Conservation Planning Branch
1416 9th Street, 12th Floor
Sacramento, CA 95814

Dear Mrs. Showers,

Thank you for meeting with representatives from the City of Laguna Beach on January 31st, 2005 to discuss the Verbesina. The Verbesina is one more reason why Laguna Beach is such a special place. As you might imagine the City is interested in receiving a definitive plan from your office on how to move forward with processing building permit applications for lots with Verbesina located on them.

It is also the hope of the City that your office can expedite a solution that is reasonable and timely for installing a fuel modification zone utilizing the goat program. Of great concern is the possibility that the City may enter the 2005 fire season without a fuel break in the wildland interface behind Barracuda Way, Nyes Place, and Driftwood. The absence of a fuel modification zone exacerbates our wildland fire threat; a situation that the City wishes to avoid. Should a reasonable and timely plan become unlikely, please give consideration to exempting the City from a take permit for installing a fuel modification zone based on the need of the City to provide for public safety.

Please call me at (949) 497-0354 should you have any questions.

Sincerely,

Kris Head
Fire Marshal

Cc: Ken MacLeod, Fire Chief
Ann Larson, Planning Administrator
Liane Schuller, Zoning Administrator
Nancy Csira, Senior Planner

Head, Kris FD

From: Head, Kris FD
Sent: Tuesday, October 25, 2005 4:10 PM
To: Larson, Ann CD
Cc: Macey, Mike FD; Frank, Ken CM; 'kthompson@montagelagunabeach.com'; 'mhoffmann@athensdevco.com'; 'bclaypool@montagelagunabeach.com'
Subject: Fuel Mod - Montage

Ann,

I met today with representatives from the Montage and Athens Group today regarding fuel modification behind Ocean Vista Condos and the water reservoir. As you are aware Penny Elia complained to the City today regarding the work that was done in this area by the Montage. The representatives from the Montage and Athens Group were very apologetic about the procedural miss-step of not gaining DRB approval prior to doing the clearance. I am in large part to blame for this error because I met at the site with representatives from the Montage to discuss the scope and method for completing the work. At no time did I mention the need for a DRB approved fuel modification plan because I was unaware of the requirement.

The work completed by the Athens Group and Montage will enhance the adjacent properties chances of surviving a wildland fire event. The motivation for doing this work appears to be one good neighbor doing the right thing to help another neighbor. To the Montage and Athens Group's credit it appears that they are not discouraged by this new wrinkle and will work within the City's requirements to achieve the desired results and correct this issue. The alternative of doing nothing is still an option; however it would serve as a detriment to F/F safety, public safety, and property conservation if inaction was their policy. Please feel free to call me if you have any questions.

Thanks,

Kris

Head, Kris FD

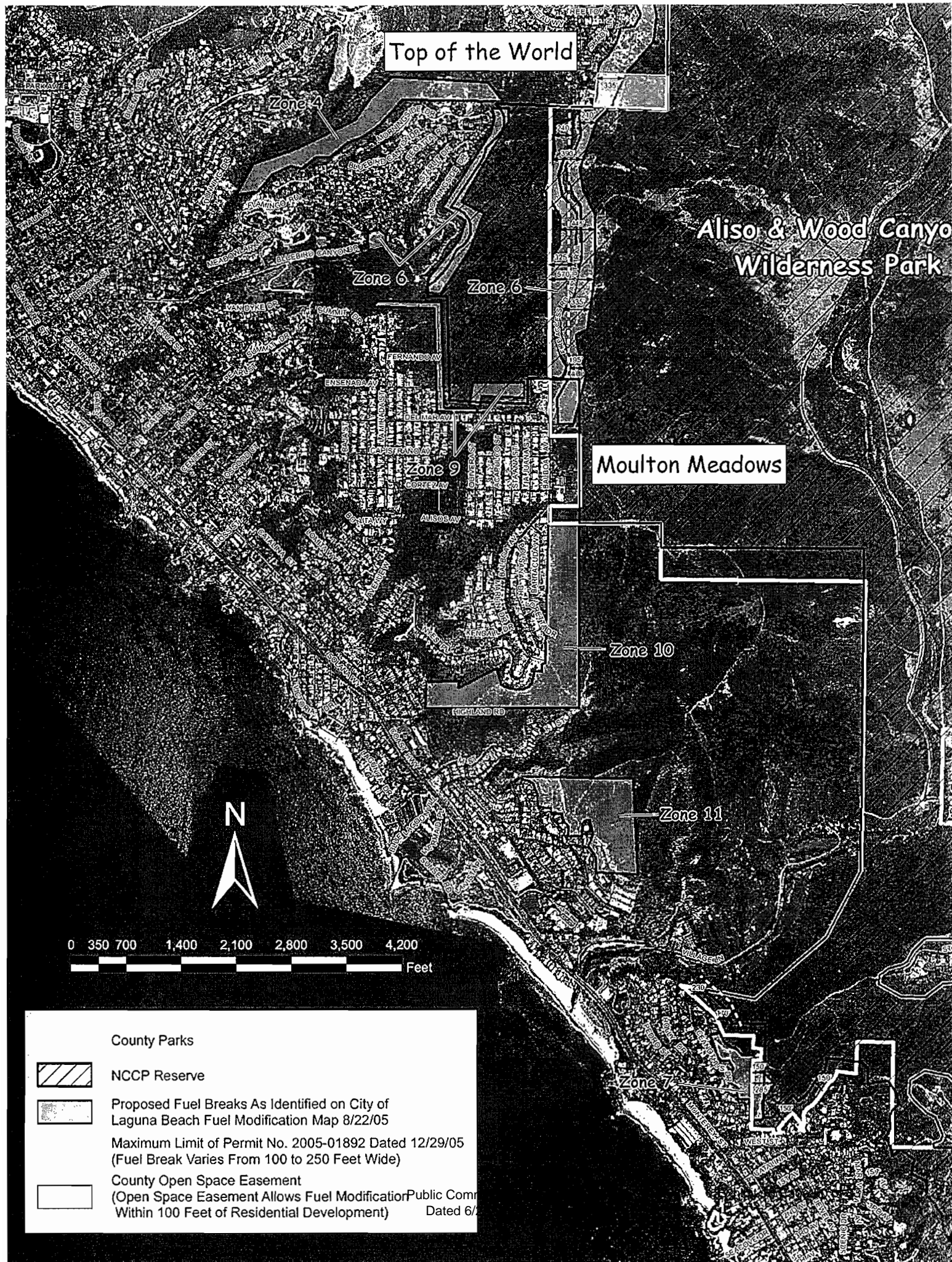
From: Head, Kris FD
Sent: Thursday, December 15, 2005 7:17 AM
To: Frank, Ken CM; Macey, Mike FD; 'bclaypool@montagelagunabeach.com'
Cc: Lardie, Ray FD
Subject: Fuel Modification at Nyes, Bolsana , Barracuda
Attachments: RECOMMENDATION_FOR_FIRE_MANAGEMENT_BY_GRAZING_OF_VERBESINA_DISSITA_HABITAT_IN_LAGUNA_BEACH.doc;
 10-31-05 Bio Study of Grazed Areas - Glen Lukos.pdf

After much work with California Fish and Game and our own biologist we have developed a workable plan for grazing in Zone 10. With the blessing of Fish and Game we may graze amongst the Crown Beard during select times of the year. January happens to be a very good month and it appears that we can move the heard into the area around the first of the year. We may get complaints since we have not been there in quite a long time. I have attached a letter from Fish and Game with their affirmation that grazing is acceptable and a bio-study commissioned by the City that suggests the same thing.

Mr. Claypool requested the services of the goats in this area almost a year ago but a lot has occurred during that time. Bill, does the Montage still want to address this property with vegetation management by way of the goats? I would consider the presence of a biologist more of a CYA-political move but wise given the atmosphere. Would you be interested in providing a biologist for monitoring in this area during the grazing? We will have a biologist visit the site post grazing and the Fish and Game may stop by too. Please contact me at 497-0354 if you have any questions.

Sincerely,

Kris





LAGUNA BEACH FIRE DEPARTMENT

May 1, 2006

Martyn Hoffman
Director of Forward Planning
The Athens Group
3110 Pacific Coast Highway
Laguna Beach, CA 92651

Dear Mr. Hoffman:

This letter is in response to your inquiry April 24th, 2006 regarding fuel modification at the Driftwood site. I have provided a response to each of your questions.

- 1). What are the required fuel mod zones (distances) and treatments surrounding the water tank, fuel storage area associated with the water tank, and condos?

The City's requirement for a fully installed fuel modification zone is 195' measured from the edge of combustible construction into all directions of the interface. The closest zone to the structure(s) being protected is zone A which is 20' wide and should contain only lush, irrigated, and highly maintained vegetation if any at all. Zone A is considered "Defensible Space" where Firefighters can operate during a fire. Zone B is 50' wide and should also be irrigated, high moisture retentive plants (see the City's Landscape and Fuel Modification Guidelines for a list of appropriate plants). Zone C is 75' wide and begins at the terminus of Zone B. Zone C consists of natural vegetation thinned 50% and 100% removal of dead and dying vegetation as well as all highly flammable plants (see City's Landscape and Fuel Modification Guidelines). Zone D is 50' wide and consists of 30% thinning with the same principles applied as Zone C.

- 2). What kind of vegetation would be appropriate within the 195' zone?

The City's Landscape and Fuel Modification Guidelines provide a list of acceptable plants for each zone. Natural vegetation should not be closer than 70' to any combustible structure.

13.

3). What level of maintenance is necessary in these zones?

The answer really depends on what is planted in the zones. Zones A and B could require weekly maintenance where zones C and D may only require bi-annual or annual maintenance. All properties that require fuel modification are subject to inspection and verification for adequate maintenance.

4). Would Coastal Sage Scrub and Crownbeard be acceptable planting material if located within 195' of these structures?

Coastal Sage Scrub consists of many native plant species, some of which are considered more fire resistive than others. Buckwheat, California sage and sage are components of Coastal Sage Scrub and are considered highly flammable and mandatory removal is required within the 195 fuel modification zone. Laurel Sumac and Lemonadeberry are more fire resistive components of Coastal Sage Scrub and may remain. The annual grasses would require regular maintenance. Crownbeard is not considered a fire resistive plant, but with the help of a Fire Protection Plan consultant it has been allowed to exist in small quantities in Zones C and D and occasionally in outer 1/3 of Zone B when the structure is engineered to withstand the projected fire behavior.

I hope this letter serves to answers your questions and provide some clarification for the use and intent of the City's Landscape and Fuel Modification Guidelines. Please call me at 949-497-0354 should you have any questions.

Sincerely,

Kris Head

Kris Head, Fire Marshal

Laguna Beach Fire Department

Christopher, Tom FD

From: Head, Kris FD
Sent: Friday, June 29, 2007 2:51 PM
To: Macey, Mike FD; Christopher, Tom FD
Cc: Lardie, Ray FD
Subject: FW: Fuel Modification Status

Importance: High

Chiefs:

FYI. I handed this one off to Ray earlier in the week as it seemed like a fuel mod/weed abatement issue. I haven't talked to Ray about his conversation with Mr. Bartsch. I spoke to Martyn this afternoon and he said that the Athens Group would allow the HOA access to the area for the purposes of fuel mod if the HOA is able to secure the correct permits from all of the required regulatory agencies. It is very doubtful that this project would be approved by the Coastal Commission, Dept of Fish and Game, U.S. Fish and Wildlife, and Army Corps of Engineers before fire season has passed.

From: curt [mailto:ocean.vista@verizon.net]
Sent: Friday, June 29, 2007 1:49 PM
To: 'John Mansour'; 'Martyn Hoffmann'
Cc: Head, Kris FD; 'bill'; bobtursiop@aol.com
Subject: Fuel Modification Status
Importance: High

John & Martyn,

Following our conversation from last Thursday, June 21st, I contacted the Laguna Beach Fire Department this week to request an assessment of the current fuel status on the Athens property behind our residence as well as the Bill Barnise and the Case's residence(s) on Ocean Vista Drive adjacent to the water tower. Many of us were inspired on October 5, 2005 at a neighborhood meeting conducted by Kris Head at Fred Lang Park which outlined the need to evaluate the need for fuel modification action prior to the high fire season. The loss of several hundred homes near Lake Tahoe this week further heightened our awareness in this most severe drought in recent California history.

The three property owners were very appreciative of the significant positive fuel modification steps taken by the Athens Group in 2005 after being ignored by the previous owner for many years. We are all aware of the substantial fine brought against the Athens Group by so-called environmentalists who have a political agenda to stop new home development in the old Driftwood project, now called "Aliso Lots". They could care less when our homes all burn to the ground if a wild fire hits South Laguna under these dry conditions.

Yesterday I received a return phone call from Ray Lardy (sp?) on behalf of my inquiry to Kris Head's office on Wednesday. The Laguna Beach Fire Department declined to assess our fuel modification situation as a result of the previous political action. Unfortunately, their position is that until the Athens Group goes through a projected long permit application process, they choose not to be involved. Frankly, I think a qualified assessment of Zone D (as defined by the Fire Department) should precede the determination to pursue a permit. Based on the Athens Group independent study as outlined in the "Driftwood Estates Fuel Modification Biological Report", the report found that:

- a) fuel modification does not pose a threat to long-term sustainability of the big-leaved crownbeard and southern maritime chaparral, according to PCR Services Corporation
- b) no erosion hazard, per the Geosyntec Consultants memo.

So where does that leave the homeowner citizens of Laguna Beach? The Fire Department apparently refuses to become proactively involved and we are at the mercy of a potential long permit process, if the Athens Group chooses to pursue. It would appear that at some point this critical issue will need to be addressed, if for no other reason to protect the property of the proposed new residential zoned "Aliso Lots". In the meantime, we appear to be "held hostage" in the middle of a political action at the risk of our property during a well documented high fire hazard season. We are open to your thoughts and suggestions and appreciate your efforts in the past to step up and do the right thing.

Regards,

Curt & Jan Bartsch
21617 Ocean Vista Drive
Laguna Beach, CA 92651
949-499-0820

p.s. Like some of our neighborhood activists, I am also a member of the Sierra Club: # 43770093

cc: Bill Barnise
Robert and Gwenne Case

Macey, Mike FD

From: Montgomery, John CD
Sent: Tuesday, August 07, 2007 6:04 PM
To: 'Ryan Todaro'
Cc: Frank, Ken CM; Macey, Mike FD; Larson, Ann CD
Subject: Laguna beach LCP Amendment - LGB-MAJ-2-06

Ryan,

This is a follow-up confirmation email to our discussion this afternoon (8/7/07).

The City objects to the Coastal staff's proposed additions and deletions in the last three lines of Suggested Modification No. 2 starting with "and any other . . ."


We are not going to put the City residents at risk by altering the City's long standing annual weed abatement program and already approved fuel modification programs. We also strongly maintain that those programs have adequate protocols established to protect ESHA.

John Montgomery
Community Development Director
City of Laguna Beach
(949) 497-0361; FAX (949) 497-0771
505 Forest Avenue, Laguna Beach, CA 92651
jmontgomery@lagunabeachcity.net
www.lagunabeachcity.net

MEMORANDUM

DATE: August 10, 2007

TO: Philip Kohn, City Attorney
Mike Macey, Fire Chief
John Montgomery, Director of Community Development ✓

FROM:  Kenneth Frank, City Manager

SUBJECT: NUISANCE ABATEMENT FUEL MODIFICATION

One of the Athens Group employees put together the attached analysis of the City's right to do weed abatement. What is interesting are the comments about the Coastal Act. We are in a battle with the Coastal Commission and its staff and they are trying to reign in or require permits for the annual weed abatement program and fuel modification. If, in fact, this Coastal Act section specifically allows the City to define a nuisance and doesn't allow the Coastal Commission to override a City action to declare, prohibit and abate nuisances, this would go a long way to resolving our problem with the Coastal Commission.

My thought is that we contact the attorney who was previously with the Attorney General's office and have him look at the Coastal Act along with our LCP and see how much leeway we have. If there is no objection, I will contact him in a couple of weeks when I return from vacation.

Please let me know your thoughts. Thanks.



Attachment

Frank, Ken CM

From: Montgomery, John CD
Sent: Tuesday, August 07, 2007 9:12 AM
To: Frank, Ken CM
Subject: FW: Nuisance Abatement/Fuel Mod

FYI

John Montgomery
 Community Development Director
 City of Laguna Beach
 (949) 497-0361; FAX (949) 497-0771
 505 Forest Avenue, Laguna Beach, CA 92651
jmontgomery@lagunabeachcity.net
www.lagunabeachcity.net

From: Martyn Hoffmann [mailto:mhoffmann@athensdevco.com]
Sent: Tuesday, August 07, 2007 9:06 AM
To: Montgomery, John CD
Subject: Nuisance Abatement/Fuel Mod

"Under the police power granted by the Constitution, counties and cities have plenary authority to govern, subject only to the limitation that they exercise this power within their territorial limit as and subordinate to state law. . . . Apart from this limitation, the 'police power [of a county or city under this provision] . . . is as broad as the police power exercisable by the Legislature itself.'" (*Candid Enters., Inc. v. Grossmont Union High Sch. Dist.* (1985) 39 Cal.3d 878, 885 [citing Cal. Const. art. XI, § 7]).

Coastal Act section 30005(b) explicitly recognizes the City's police power in this area, specifically providing that the Coastal Act shall not limit "the power of any city or county or city and county to declare, prohibit, and abate nuisances." (Pub. Resources Code § 30005(b)). Civil Code section 3479 defines nuisance as "[a]nything which is injurious to health, including, but not limited to, . . . an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property" (Civ. Code § 3479). The City's Municipal Code defines "nuisance" as "[a]ny public nuisance known at common law . . .," "[a]ny condition or use of premises . . . which is detrimental to the property of others," "[a]ny condition of vegetation overgrowth, dirt or land erosion which encroaches into, over or upon any public right-of-way, including, but not limited to, streets, alleys, or sidewalks, so as to constitute either a danger to the public safety or an impediment to public travel," and "[a]ny dangerous land conditions or land instability on private property." (Mun. Code § 7.24.010 (1), (9), (10), and (11)).

The City can exercise its police power to abate nuisances in a variety of ways. (See e.g., Mun. Code §§ 7.24.020, 7.24.080, 7.24.100, 7.24.110, 16.01.090(B)(1)–(5), (11)–(12)). As an initial matter, however, the City must inform the property owner that the City is concerned about the nuisance.

Martyn Hoffmann | *The Athens Group* | 31106 Coast Highway - Laguna Beach, CA 92651
 Office: 949.499.4794 | Fax: 949.499.4174

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Curt Brunson

716.277.1111

From: Martyn Hoffmann [mailto:mhoffmann@athensdevco.com]
Sent: Monday, September 10, 2007 8:11 AM
To: curt; Christopher, Tom FD
Cc: Macey, Mike FD; John Mansour; jmontgomery@lagunabeachcity.net
Subject: RE: Fuel Modification at Ocean Vista Drive Water Tank

Gentlemen,

I too am glad that the goats have been given the go ahead to do their duty! Congratulations. As it relates specifically to Athens property behind Ocean Vista avenue however, I am concerned that while City approval is in place, Coastal approval is not. That property is under the direct jurisdiction of the Coastal Commission, so approval from both the City and the Coastal Commission appear to be necessary to conduct fuel modification through grazing. I have cc'ed John Montgomery to get his insight into this as well.

As always, The Athens Group wants to see forward progress and cooperation on fuel mod on our property, but cannot place our ownership at liability with the resource agencies that control these matters. If the Coastal Commission issues a CDP, or agrees that one is not necessary, we would be supportive of moving forward with the goats under an approved plan.

Please feel free to give me a call to discuss this further if necessary,

Regards,

Martyn Hoffmann | *The Athens Group* | 31106 Coast Highway - Laguna Beach, CA 92651
Office: 949.499.4794 | Fax: 949.499.4174

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From: curt [mailto:ocean.vista@verizon.net]
Sent: Sunday, September 09, 2007 1:02 PM
To: 'Christopher, Tom FD'
Cc: 'Macey, Mike FD'; Martyn Hoffmann
Subject: RE: Fuel Modification at Ocean Vista Drive Water Tank
Importance: High

Tom & Mike,

I read the headlines in the local press that "goats get the go-ahead to graze". Congratulations, Mike, for your presentation and well founded "pro's". As Tom, Martyn and I discussed in walking the hillside behind our house on August 10th, there is no way a ground crew could effectively fuel modify the steep slopes of our terrain.

Now, the next obvious question, it's September 9th, when do we start? I would argue that since the City has consciously avoided using the goats in South Laguna for many years (over seven, since we have lived here) in order to avoid perceived concerns from local environmentalists; we should be put at the Top of the List!

Public Comment Letters
Dated 6/28 - 7/24

Exhibit 18 Page 58 of 83

45

Frank, Ken CM

Confidential

From: Steven H. Kaufmann [SKaufmann@rwglaw.com]
Sent: Thursday, September 20, 2007 3:33 PM
To: Frank, Ken CM; KFrank@CityHall.CLB.com
Subject: Fuel Modification Program

Ken:

I have reviewed your September 13, 2007 letter outlining the history of the City's fuel modification program. Here are my thoughts:

1. Under the Coastal Act, "development" requires a Coastal Development Permit (CDP). Grazing per se is not "development." However, "development" does include "the removal or harvesting of major vegetation other than for agricultural purposes" The question, then, is whether grazing by goats involves removal or harvesting of major vegetation. If the vegetation is, for example, coastal sage scrub or native grasses, the Coastal Commission considers that to be ESHA, so in that instance it could be argued that a CDP is required.
2. If the grazing involves the removal or harvesting of major vegetation but predates the effective date of the Coastal Act (1-1-77) or the 1972 Coastal Act (2-1-73), then no CDP is required to continue within the scope of the grazing in effect at that time. The use would be considered ongoing, and the City would have a vested right to continue it without first obtaining a CDP.
3. If the grazing qualifies as "development" but commenced after the effective date of the Coastal Act, a CDP would be required. However, Section 30005 of the Coastal Act, noted in Martyn Hoffman's August 2007 e-mail to John Montgomery, does provide that nothing in the Coastal Act shall limit "the power of any city or county or city and county to declare, prohibit, and abate nuisances." I agree with the analysis in Martyn's e-mail. The City's Code defines "nuisance" as including "[a]ny condition of vegetation overgrowth." Clearly, the City has the power to order, e.g., weed abatement. That would qualify under Section 30005 of the Coastal Act as an activity or development that falls outside the Coastal Act and jurisdiction of the Commission. The same is true of the type of grazing described in your letter, undertaken for the purpose of fuel modification. The better practice is for the City each year (1) to adopt a resolution declaring, prohibiting, and abating the nuisance under Section 30005, (2) to require the grazing as part of an essential fuel modification program, (3) to specify and limit the scope and precise area covered, and (4) adopt findings that explain why the vegetation removal through grazing is necessary to abate the nuisance.
4. Although Section 30005 is in the Coastal Act, Coastal staff will often ignore it or try to limit its application. Therefore, it is always better to make a solid paper record for why grazing is necessary to abate the nuisance.


Does this answer your issue? Let me know if you need any further input on this. Thanks.

~ Steve

Steven H. Kaufmann
Richards / Watson / Gershon
355 S. Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
Tel: (213) 626-8484
Fax: (213) 626-0078

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MEMORANDUM

DATE: October 4, 2007
TO: City Council
FROM:  Kenneth Frank, City Manager
SUBJECT: FIRE BREAKS/GOATS

This week, our staff from Community Development and the Fire Department met with about four staff members from the Coastal Commission including the Director of the Southern California region. The Coastal staff had previously advised us that the City needs to get a Coastal Development Permit to continue the goat grazing.

We have strongly objected to that notion and believe that the grazing is allowed without a Coastal Development Permit for the following reasons:

1. Most of the fuel break around the City has been grazed for many years and/or has been a hand-cleared fuel break. An example is the Irvine Company grazing along the City boundary in North Laguna which occurred for decades. Our best photo is from 1956 showing the hillsides above South Laguna which is clearly a complete fire break. There is absolutely no question that a fuel break has existed in South Laguna for at least 50 years, long before the Coastal Commission started business in about 1980.
2. Since the only way that removal of vegetation is defined as "development" in the Coastal Act, is because there would be environmentally sensitive plants like coastal sage scrub on the site. We have had biological studies for many years indicating that there have been no valuable plants damaged. The biologist used by the City attended the meeting and summarized his reports for the Coastal staff.
3. There is a nuisance provision of the Coastal Act which allows cities to take steps to prevent hazards. While we haven't formally called for the deployment of the goats as nuisance abatement, there is no question that it is the same thing. There have been public hearings and properties have been identified. If necessary, the Council could have a noticed nuisance abatement hearing and determine the area of fuel break and nuisance which would force private property owners to clear the area or the City could do it.

Prior to meeting with the Coastal Commission staff, we consulted with Steve Kaufmann who is an attorney who formally served as the legal counsel to the Coastal Commission. Steve is helping guide us through the Coastal Commission's latest attempt to wrestle any bit of local control away from cities and counties.

At the end of the meeting we agreed that the City staff would put in writing our position with supporting documentation about the history of fuel breaks in the City and send it up to the Coastal staff for their review.

cc: City Attorney
Director of Community Development ✓
Fire Chief
Assistant City Manager



October 15, 2007

Sherilyn Sarb
Deputy Director
California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

Dear Sherilyn:

Thank you for coming to Laguna Beach to meet with City staff, including the Fire Chief and the Director of Community Development. Please pass on our appreciation to your staff for taking the time out of their busy schedules to discuss the City's firebreak program.

In your letter of September 12, 2007, you stated that the use of goats to maintain the firebreak is inconsistent with currently certified regulations. As you probably expected, we strongly disagree with that assertion for three major reasons.

First, as we briefly discussed in our meeting, much of the firebreak was in existence before the Coastal Act was enacted. Attachments 1 and 2 are aerial photos of the South Laguna hillside which were taken in 1956 and 1970. It is obvious that the entire slope above that portion of South Laguna was a firebreak more than 20 years before the Coastal Commission was created.

As we mentioned during our meeting, cattle were used for decades by the Irvine Company to eliminate vegetation adjacent to the entire northern perimeter of Laguna Beach, i.e., everything north of Laguna Canyon Road. After the cattle were removed – maybe 20 years ago – the company allowed the City to maintain the firebreak in North Laguna with our goat herd. In short, there has been a continuous firebreak in North Laguna for 50 years. The attached letter from the Irvine Company describes this history.

Likewise, in the property previously owned by the Mission Viejo Company – which comprises all of the property abutting the City from the north end of Alta Laguna Boulevard to the south end of Moulton Meadows Park, cattle grazed a firebreak until the City, with permission from the Mission Viejo Company, constructed a fire access road between the Top of the World and Arch Beach Heights neighborhoods. Once the cattle were relocated from the area of the road, the City used mechanical disking and then goats to maintain the firebreak. Attachment 4 is a 1979 contract for mechanical clearance of the firebreak areas.



Moreover, for many decades, the City has had an annual weed abatement program in which private property owners are mandated to clear their parcels of vegetation. This program has been used to create internal fuelbreaks in some interior canyons. You saw one of those areas in the distance when we toured the fire road.

In short, most of the area which is now a firebreak has been maintained as such for many years prior to and subsequent to the Coastal Act. No permit is needed for those areas.

Secondly, under the Coastal Act, “development” only occurs when there is the removal of major vegetation other than for agricultural purposes. Since these firebreak areas have been cleaned on a periodic basis for decades, there is no significant vegetation, such as endangered plants, native grasses or coastal sage scrub which is being removed. The City retains a biologist to monitor the goat grazing program to ensure that sensitive plants are protected.

Thirdly, Section 3005(b) of the Coastal Act explicitly recognizes the power of a city “to declare, prohibit, and abate nuisances.” At various times in the last 25 years during which goats have been utilized to maintain the firebreak, the City Council has examined the need and location of the firebreak, the methods for maintaining the firebreak, ways to protect sensitive plants, and other aspects of the City’s fire safety efforts. In fact, in an extensive review after the 1993 firestorm destroyed about 270 homes in Laguna Beach, the City utilized Federal funding to expand the firebreak. Attachment 5 is a few of the agenda bills and minutes indicating that this issue has been discussed at length by the Council and that the Council has specifically acted to abate the nuisance and create a fuelbreak. Only after the Council received updated biological studies was the expansion ordered to abate the nuisance, i.e., brush that constituted a fire hazard. While the City could have required many of the individual property owners to abate the nuisances at their cost, the City offered to perform the abatement at City expense using the goats. In fact, each year the City Council formally approves an allocation for maintaining the fuelbreak. Attached is an excerpt from our current budget which depicts the separate allowance for that purpose.

While it is clear that the City’s existing firebreak is not subject to a Coastal Development Permit, we agree with you that any new development – whether it is a new subdivision or a single family house adjacent to the wildland interface – needs a Coastal Development Permit. In that case, the fuel modification program as delineated in the City’s certified LCP would be applied. If biological studies show that the fuel modification zone would damage sensitive habitat, the City can require the builder or subdivider to utilize alternative materials and methods in lieu of thinning for fuel modification. The Council has required alternative methods on several cases in order to protect coastal resources while affording the owner of the house a reasonable level of safety.

Again, we appreciate your site visit. We have enclosed a package of background materials, but let me know if you would like additional information.

Sincerely,



Kenneth Frank
City Manager

Attachments:

1. Color photo of South Laguna hillside (1956)
2. Black/white photo of South Laguna hillside (1970)
3. Irvine Company letter of May 14, 2004
4. Firebreak contract from 1979
5. Agenda bills and minutes of Council meetings
6. Excerpt from FY 2007-08 Fire Department budget

cc: Director of Community Development
Fire Chief
City Attorney
Special Counsel



October 23, 2007

Martyn Hoffmann
Driftwood Properties, LLC
Sent via email: mhoffmann@athensdevco.com

Dear Martyn:

As you know, Southern California is in the midst of extreme wild fires. We have received several complaints and concerns from neighbors adjacent to the property owned by Driftwood Properties, LLC in South Laguna. They are afraid that there has been inadequate preparation if a fire starts in the hillside above their homes. It is my understanding that Driftwood Properties, LLC previously brought in hand crews and started to reduce the overgrown brush as part of a fuel modification program requested by the Fire Department, but stopped at the request of the California Coastal Commission.

For many years, the City maintained a firebreak on this property. Attached is a photo from 1956 which depicts a portion of the firebreak in South Laguna. Also included is a diagram showing Zones 10 and 11 of the City's fuelbreak program. These areas have been grazed by goats repeatedly in the past. However, the goats have not been assigned to these areas for some time, apparently because of concerns for protection of certain sensitive plant species in the area.

City staff recently met with representatives of the Coastal Commission to discuss maintenance of the firebreak and informed Coastal Staff that the City's staff position is that the firebreak clearly predates the Coastal Act and does not need a Coastal Development Permit. Additionally, we have notified Sherilyn Sarb from the Coastal Commission today of the City's intent to proceed with fuel modification activities given the imminent fire hazard that exists due to Santa Ana wind weather conditions and regional fire outbreaks.

The California Constitution grants cities broad police powers to abate nuisances such as in this situation. (*Candid Enters., Inc. v. Grossmont Union High Sch. Dist.* (1985) 39 Cal.3d 878, 885). In addition, Coastal Act section 30005(b) explicitly grants the City police power to declare, prohibit, and abate nuisances. (Pub. Resources Code § 30005(b)). The City's Municipal Code defines "nuisance" as "[a]ny public nuisance known at common law . . .," and "[a]ny condition or use of premises . . . which is detrimental to the property of others," (Mun. Code § 7.24.010).

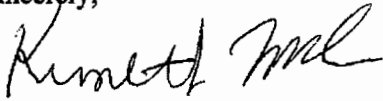
Pursuant to the City's nuisance abatement authority embodied in Municipal Code sections 7.24.020, 7.24.080, 7.24.100, 7.24.110, 16.01.090 and section 1103.2.4 of the 2001 California Fire Code (adopted by the City of Laguna Beach), based on the extreme fire hazard in the community, coupled with the high fuel load on the property, the Fire Chief has determined that the combustible vegetation in the areas of your property known as

Zone 10 and Zone 11 constitute a nuisance and a fire hazard. Therefore, the combustible vegetation, as directed by the Fire Chief, must be abated as soon as possible. Attached is a copy of the Chief's determination. This letter provides you notice that the City of Laguna Beach will conduct the work necessary to abate the hazard as soon as possible. In order to protect sensitive plant species, the City will also retain a biological consultant who will carefully check the areas so that any sensitive plants are protected.

To assist in abating this hazard in a timely manner, the City will redeploy its herd of goats to perform part of the abatement.

Our Fire Marshal, Chief Tom Christopher, will be contacting you to determine a mutually agreeable schedule for abating this nuisance.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth Frank".

Kenneth Frank
City Manager


Attachments

cc: Fire Chief



DATE: October 23, 2007

TO: Sherilyn Sarb, Deputy Director, California Coastal Commission
Teresa Henry, District Manager, California Coastal Commission

FROM:  Kenneth Frank, City Manager

SUBJECT: CITY OF LAGUNA BEACH FIREBREAK

I left a phone message at Sherilyn's San Diego Office to let you know that we will be working on a firebreak in South Laguna starting this week. There will be a combination of goats and hand crews. We will focus on the area that is part of Zones 10 and 11 of the City's firebreak program.

The Fire Chief has made a determination that the area in question is a hazard and that vegetation must be removed. The City has directed the Athens Group, which is the owner of most of the property, to clear the area immediately. We will have a biologist go through the area to mark any sensitive plants before the clearing is done.

If you have any questions, let me know.

Head, Kris FD

From: LaTendresse, Jeff FD
Sent: Wednesday, October 24, 2007 12:18 PM
To: Frank, Ken CM
Cc: Pietig, John CM; Sellers, Michael PD; Macey, Mike FD; Head, Kris FD; Christopher, Tom FD
Subject: Update

Ken,

I just wanted to give you an update of the current situation. Kris Head was released from the Santiago Fire last night and is here working today. He states his experiences at the Fire were incredible and extremely valuable. The ability to get that kind of experience is a one in a lifetime opportunity. As such, I was able to get the same opportunity for Tom Christopher today and he has been assigned to the Santiago Fire with the same understanding that he is immediately available to return to the City within 20 to 30 minutes. Additionally, we have been rotating our crews, with the exception of the OES engine, and thus are providing fresh crews and increasing the experience to more of our personnel.

I also met with Ray Lardie today out at the old Esslinger property on Driftwood and progress has started. Driftwood Properties LLC has contracted with Natures Images for part of the creation of the fuelbreak on their property in the areas known as "zone 10 and 11." Their work has begun with approximately one dozen workers utilizing weed whackers, chain saws, and hand tools to trim up bushes and clear some of the vegetation. Also on site was a biologist from Glenn Lukos who was working to identify sensitive habitat in the area with flags. Ray Lardie will be working with the biologist to ensure that both the goat herder and Natures Images personnel are aware to stay away from these areas. I should note that Mark Slymen, of the Montage, was on site and was coordinating the activities on behalf of Driftwood Properties LLC.

Finally, I met up with Andrew Willis from the California Coastal Commission on site. Andrew was interested in the activity we were doing and wanted to take pictures of the work being done to send to his colleagues throughout the State. He inquired how we determined this area to be a "fire hazard" and how large the "fuelbreak" would be. Between myself, Ray Lardie, and Steven Reihoehl (Natures Images) we explained that the fuelbreak would extend approximately 200' from the property line of adjacent structures that were located on the Driftwood Properties. Additionally, the areas identified by the biologist would be secured with "electric" fencing to keep the goats clear of sensitive habitat. I inquired if Andrew and the Coastal Commission were comfortable with our process and plan, and he (Andrew) stated that based on the emergency designation as a "fire hazard" that they could not interfere with the operations of the Fire Department. He was concerned with the sensitive habitat and I attempted to assure him that we were too and would do all we could to preserve the habitat. As for the goats, Ray will be fencing the area tomorrow and should have the goats moved by Friday.

If you have any questions please feel free to give me a call.

Jeff

Christopher, Tom FD

From: LaTendresse, Jeff FD
Sent: Thursday, October 25, 2007 8:39 AM
To: Frank, Ken CM
Cc: Macey, Mike FD; Head, Kris FD; Christopher, Tom FD; Lardie, Ray FD
Subject: Update on Driftwood Properties

Ken,

I wanted to provide an update on the progress being made for the creation of a fuelbreak at the Driftwood Properties. Ray Lardie has been working on site with the various agencies and the goat herder. Due to the amount of sensitive habitat in the area, it is going to take a little longer to fence off the posted areas to keep the goats out and the plants are protected. As such, the goats are now schedule to move to the site on Saturday and not Friday. Also, as stated above, large areas are going to be fenced off due to the number of plants that have been identified. This will result in a larger reliance on the use of hand crews to create the required fuelbreak on site. Ray will be working with representatives from Driftwood Properties LLC to accomplish this task. Finally, Ann Larson forwarded a call to me today from Meredith Osborne, Department of Fish and Game, who wanted to schedule a meeting on site to observe the work being done. I have asked Ann to schedule the meeting and I will meet with her on site. Again, I just wanted to provide an update so if you have any questions please feel free to give me a call.

jeff

Macey, Mike FD

From: Frank, Ken CM
Sent: Tuesday, November 06, 2007 2:51 PM
To: Christopher, Tom FD; Macey, Mike FD
Subject: RE: Modification to Emergency Sandbag Placement at Driftwood Estates

Tom and Mike, our position is very clear. First, the fire break in question preceeded the Coastal Act and is legal without a coastal development permit.

However, just as a backup, in case any portion was not done before the Coastal Act, there is a nuisance order by the Fire Chief under the Municipal Code which adopts the State fire code.

We will continue to maintain the fire break on a regular basis, maybe each year, maybe every other year, maybe every third year, depending upon the level of growth. We do not need a coastal permit for this ongoing maintenance and I don't believe we need an annual written directive from the Fire Chief as long as the city is willing to pay for the work. If we expect the private property owner to pay, then we need a formal declaration by the Fire Chief.

From: Christopher, Tom FD
Sent: Tuesday, November 06, 2007 1:57 PM
To: Macey, Mike FD; Frank, Ken CM
Subject: FW: Modification to Emergency Sandbag Placement at Driftwood Estates

FYI for the below email chain, see the highlighted red sentence...maybe we should meet to discuss the maintenance cycle for the fuel break and what might be the involvement of the Coastal Commission.

*Tom Christopher
Laguna Beach Fire Department
Fire Prevention
Office 949-497-0791
Fax 949-497-0784
tchristopher@lagunabeachcity.net*

From: Thienan Ly [mailto:tly@wetlandpermitting.com]
Sent: Thursday, November 01, 2007 10:13 AM
To: 'Andrew Willis'
Cc: Christopher, Tom FD
Subject: RE: Modification to Emergency Sandbag Placement at Driftwood Estates

Hi Andrew,

I took Martyn and Greg off the email chain and included Tom Christopher from the City. At this time, I do not have any direction from the City to continue maintaining the area or to conduct any additional work beyond what you've already seen/been advised. Additional future work to keep this zone routinely thinned is a discussion that I believe is ongoing between the City and Commission. My comment about maintaining a thinned environment was intended only to state the goal of the fire break, not to indicate that any ongoing maintenance is planned to occur. Sorry for the confusion.

Thanks,
Thienan

From: Andrew Willis [mailto:awillis@coastal.ca.gov]
Sent: Thursday, November 01, 2007 9:46 AM
To: tly@wetlandpermitting.com

Cc: Martyn Hoffmann; Greg Vail

Subject: RE: Modification to Emergency Sandbag Placement at Driftwood Estates

Hi Thienan, thanks for your thoughts on the cut veg in place, I'll pass that along to John Dixon. Not to drag this out any more than necessary, but the Commission is working with the City on the creation of this fuel break in response to the city manager's and fire department's specific declaration that a fire hazard existed on the property, "maintaining a thinned environment" could trigger further Commission review. Andrew

-----Original Message-----

From: Thienan Ly [mailto:tly@wetlandpermitting.com]

Sent: Wednesday, October 31, 2007 11:09 AM

To: Andrew Willis

Cc: 'Martyn Hoffmann'; 'Greg Vail'

Subject: RE: Modification to Emergency Sandbag Placement at Driftwood Estates

Thanks, Andrew. Comment noted on the emergency CDP issuance timeframe.

Regarding the thinning of vegetation, the City (fire department) is trying to establish a fire break where the chaparral occurs; therefore, maintaining a thinned environment is the goal. Although regrowth is not desired, the cut vegetation on the ground still provides some light penetration for regrowth to eventually occur. The taller woody vegetation was only limbed-up, so these trees and shrubs will still continue to grow and deposit seed. As you know, the understory in this area is already primarily bare. By leaving the cut vegetation on the ground, it helps reduce the potential for natural erosion.

If your biologist (Jonna?) still has questions, please have him/her contact me.

Thanks,
Thienan

From: Andrew Willis [mailto:awillis@coastal.ca.gov]

Sent: Wednesday, October 31, 2007 11:18 AM

To: Thienan Ly

Cc: Martyn Hoffmann; Greg Vail

Subject: RE: Modification to Emergency Sandbag Placement at Driftwood Estates

Thanks Thienan. And just a general note, emergency CDPs can be issued within 24 hours, but that's assuming staff agrees an emergency is imminent and the requirements in the regulations have been met.

Also, our biologist is still concerned about the effect that leaving cut vegetation in place in areas where dense chaparral was thinned could have on chaparral regrowth. Do you think there is some merit to that concern?

Thanks, Andrew

-----Original Message-----

From: Thienan Ly [mailto:tly@wetlandpermitting.com]

Sent: Tuesday, October 30, 2007 5:03 PM

To: Andrew Willis

Cc: Martyn Hoffmann; Greg Vail

Subject: Modification to Emergency Sandbag Placement at Driftwood Estates

Hi Andrew,

Per our site visit with you and Lisa Haage on October 12, 2007, please find attached a brief memo stating that The Athens Group will not conduct any emergency sandbag placement without an emergency CDP from the Commission.

Let me know if you have any questions.

Public Comment Letters
Dated 6/28 - 7/24

Thanks,

Thienan Ly
Regulatory Specialist
Glenn Lukos Associates
29 Orchard
Lake Forest, CA 92630
T: 949.837.0404 x34
F: 949.837.5834
<<0396-2g1.mem.pdf>>



November 19, 2007

Sara Wan, Commissioner
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Dear Commissioner Wan:

At last week's Coastal Commission hearing, you raised several excellent questions regarding a firebreak which is maintained by the City of Laguna Beach.

First you asked whether the emergency abatement order was only for one specific area. The answer is yes because most of the perimeter of the City has already been cleared of all brush this year. The only reason this particular segment on the South Laguna hillside had not already been cleared was that we were in discussions with your staff over the issue of the City's authority to conduct the fuel modification and the best way to reduce the fuel. Given the highly extraordinary weather conditions, I finally authorized the Fire Department to direct that the work be done on an emergency basis. In retrospect, I should have authorized the Fire Department to have the work done months ago, but we were trying to reach a consensus with the Commission staff.

Secondly you asked why there was a total clearance rather than a gradual thinning after a 50 feet clearance zone. Actually, for the firebreak around the perimeter of the City, we have a 150 to 200 foot clear zone. Some native shrubs and trees are allowed to remain in the zone, but all of the ground cover is cleared. Because of the sensitive habitat within this one area of our firebreak, we did not clear it for the entire 200 feet in some spots and we allowed additional plants to remain as recommended by the biologist.

You also questioned why the brush was left on the site. All of the abatement work was done under the direction of a biologist who was on site at all times during the removal. The biologist ensured that sensitive plants were protected. The biologist recommended that the debris be chipped into small pieces and left onsite as a layer of mulch to prevent erosion during the winter and to retard future growth. While the Fire Department preferred to haul off the brush, we acceded to the biologist's recommendation.

One of your enforcement staff was notified prior to the work being done and he was invited to visit the site, which he did, to observe both the clearing by hand crews and the grazing by the goats. In addition, because the State Department of Fish and Game had some concerns about the maintenance, we invited a representative of that department who also visited the site during the clearing. While I do not want to speak for representatives of other agencies, I believe that these individuals were reasonably satisfied with the way in which the City conducted the abatement.

Sincerely,



Kenneth Frank
City Manager

cc: Executive Director, California Coastal Commission
South Coast Deputy Director, California Coastal Commission
Fire Chief

MEMORANDUM

GLENN LUKOS ASSOCIATES

Regulatory Services



PROJECT NUMBER: 01850011FM10
TO: Ray Lardie
FROM: Paul Schwartz
DATE: December 20, 2007
SUBJECT: Plans to graze goats within Fuel Modification Zone 10

On November 29th 2007, an on-site meeting was held at the City of Laguna Beach Fuel Modification Zone 10 with Glenn Lukos Associates (GLA) representative Paul Schwartz, California Coastal Commission representative Andrew Willis, Athens Group representative Greg Vail, and Laguna Beach Fire Department (LBFD) representatives Ray Lardie and Tom Christopher. Per the request of Andrew Willis, it was agreed that fuel modification activities (i.e. the grazing and hand clearing of vegetation) would only be conducted within 200 feet from *existing structures*.

On December 19th 2007, GLA representative Paul Schwartz met onsite with LBFD representatives Ray Lardie and Tom Christopher, where LBFD expressed concerns regarding the previously agreed upon limits of fuel modification activities (200 feet from existing structures) due to plans to begin development of portions of the site in the near future (grading of pads has already occurred). In order to comply with Section 1103.2.4 of the 2001 California Fire Code, LBFD notified GLA that they plan to conduct fuel modification activities within 200 feet of the *property line*. This will allow for the fuel modification of lands within 200 feet of the future structures.

On December 19th, 2007 GLA left a voice message for Andrew Willis informing him of the new plans to conduct fuel modification activities within 200 feet of the existing property boundary, rather than the existing structures. At this time, no response has been given by Andrew Willis.

Currently, fuel modification has only occurred within 200 feet of the existing structures. Per the directive from the LBFD, GLA will coordinate the removal of additional vegetation to meet the requirements of the LBFD. This removal will take place in the form of goat grazing and should take place within the next two weeks.

Please let me know if you have any questions.

s:0185-11a.mem.doc

Christopher, Tom FD

From: Andrew Willis [awillis@coastal.ca.gov]
Sent: Thursday, January 24, 2008 4:13 PM
To: Christopher, Tom FD
Subject: RE: Zone 10

Hey Tom, it's staff opinion that the City's nuisance abatement order contemplated a fuel break around existing development only, as stated in the October 22 letter from Jeffrey LaTendresse to Martyn Hoffmann. The coastal development permit process for construction of a home on the undeveloped lots off Baracuda would be the proper forum to weigh environmental concerns and fuel modification needs. We haven't received notice of pending local action on this property, so it's apparently fairly early in the planning process. At the planning stage, the home could be sited and designed and adequate fuel modification plans adopted to avoid the need for a measure like a fuel break, which is potentially disruptive of the habitat of endangered species in Zone 10. Please let me know if you want to discuss this further with our staff and I'll see what I can arrange. Thanks, Andrew

-----Original Message-----

From: Christopher, Tom FD [mailto:tchristopher@lagunabeachcity.net]
Sent: Friday, January 18, 2008 1:27 PM
To: Andrew Willis
Cc: Macey, Mike FD
Subject: RE: Zone 10

Hi Andrew,

On our last conversation we talked about the area that was not grazed in our Zone 10 behind the two residential lots...you were going to get back to me regarding the grazing in that area...do you have anything to report back?, thanks Andrew and have a good weekend.

*Tom Christopher
Laguna Beach Fire Department
Fire Prevention
Office 949-497-0791
Fax 949-497-0784
tchristopher@lagunabeachcity.net*

From: Andrew Willis [mailto:awillis@coastal.ca.gov]
Sent: Monday, January 14, 2008 11:09 AM
To: Christopher, Tom FD
Subject: RE: Zone 10

Hey Tom, just an update, our Orange County supervisor, Karl Schwing, has been trading voice messages with Mark Denny to discuss putting the goats on County property. Andrew

-----Original Message-----

From: Christopher, Tom FD [mailto:tchristopher@lagunabeachcity.net]
Sent: Tuesday, January 08, 2008 11:51 AM
To: Andrew Willis
Subject: FW: Zone 10

Hi Andrew,

The contact info is Mark Denny, mark.denny@rdmd.ocgov.com. Phone is office 949-923-3743, cell 714-552-2726.

Tom Christopher

Lardie, Ray FD

From: Macey, Mike FD
Sent: Tuesday, July 29, 2008 2:16 PM
To: Christopher, Tom FD
Cc: Lardie, Ray FD
Subject: FW: Zone 11
Attachments: Zone 11 7.24.08.JPG

Tom:
Would you have Ray place those palm trees on the weed abatement list?
Thanks,
Mike

From: Christopher, Tom FD
Sent: Tuesday, July 29, 2008 1:54 PM
To: Macey, Mike FD
Cc: LaTendresse, Jeff FD; Head, Kris FD
Subject: Zone 11

Mike,

This is the grow back in Zone 11, I imagine Zone 10 is similar, just have not had time to check it...I talked to Greg Vail, they are OK with the clearing using the "imminent threat" again which as you can see it already is without winds...

*Tom Christopher
Laguna Beach Fire Department
Fire Prevention
505 Forest Ave.
Laguna Beach, CA 92651
Office - 949-497-0791
Fax - 949-497-0784
tchristopher@lagunabeachcity.net*

LaTendresse, Jeff FD

From: Macey, Mike FD
Sent: Wednesday, August 06, 2008 11:24 AM
To: Christopher, Tom FD
Cc: 'Greg Vail'; Frank, Ken CM; LaTendresse, Jeff FD; Head, Kris FD
Subject: Fuel Modification

Tom:

I spoke with Greg Vail today and provided an update on our status regarding fuel modification in Zones 10 and 11. In short, I affirmed the following:

1. The Fire Department has conducted a site survey and the general impression is that Zone 11 would benefit from fuel modification. The extent and nature of the mitigation has not been determined.
2. The Fire Department is researching what options, if any, are available to require the property owner to conduct fuel modification.
3. Once the Fire Department has confirmed the basis of enforcement the property owner/s of Zone 10 and Zone 11 will be notified.
4. You will be the contact person for the project, and over the next several weeks you will be working with City Staff on defining the regulations that influence fuel modification requirements in Zone 10 and Zone 11.

Thank you,
Mike Macey
Fire Chief

LaTendresse, Jeff FD

From: Christopher, Tom FD
Sent: Tuesday, August 19, 2008 10:47 AM
To: Macey, Mike FD
Cc: LaTendresse, Jeff FD; Head, Kris FD
Subject: RE: Attorney

Ok that is a good start, Kris would you like you sit in on this meeting? Mike also I would like the attorney's opinion on Dr Stricks situation and the interpretation of the PRC and GC.

*Tom Christopher
Laguna Beach Fire Department
Fire Prevention
505 Forest Ave.
Laguna Beach, CA 92651
Office - 949-497-0791
Fax - 949-497-0784
tchristopher@lagunabeachcity.net*

From: Macey, Mike FD
Sent: Tuesday, August 19, 2008 10:37 AM
To: Christopher, Tom FD
Cc: LaTendresse, Jeff FD; Head, Kris FD
Subject: Attorney

Tom:

Ken has given the approval to speak with Steve Kufman the attorney that specializes in permits (e.g., LCP and its relationship to fuel modification). Let Mr. Kufman know that Ken has provided the approval and to submit the invoice to the City. Please make sure you have a good idea of what it is we need clarified (i.e., in relation to Driftwood) before you call. Let me know what you learn and I will pass it on to Ken. Finally, could you forward the language you sent Bunting regarding the exceptions to the permit process?

Thanks,
Mike

October 15, 2008



Ruben D. Grijalva, Chief
CAL FIRE State Headquarters
PO Box 944246
Sacramento, CA 94244-2460

Dear Chief Grijalva:

Subject: Senate Bill 1595

The purpose of this letter is to request some clarification on the application of Senate Bill 1595. It is understood that this is early in the process and CAL FIRE will be providing a guidance document. However, it is hoped that some specific concerns can be addressed.

1. The City of Laguna Beach and other municipalities use goats for fuel management. It is noted that "fuel management" is defined as controlling fuels through the use of mechanical, chemical, biological, manual, or fire activities. However, the list does not address bovid or other grazing opportunities. The guidance document should clarify that grazing is an acceptable technique for fuel management.
2. As used in the Government Code, §51182, what is the definition of the term "average weather conditions"?
3. The new law defines defensible space as being *no greater than 100'*. What criteria was used in establishing the 100' ruling?
4. The City of Laguna Beach is under the influence of the California Coastal Commission, and creating new areas of defensible space involves their input. Are there any conditions where a property owner could obtain compliance with the law without the input of the California Coastal Commission?

Mitigating wildland urban interface issues is a daily objective in our community, and collectively we thank you for your global efforts in addressing interface concerns. It is hoped that your answers to the questions above will help us stay in the forefront of knowledge and understand how best to prepare our community to implement the new law.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Macey".

Mike Macey
Fire Chief

LAGUNA BEACH COASTLINE PILOT

Published Thursday, October 30, 2008 10:19 PM PDT

Some areas have not been grazed by the goats because of concerns expressed by members of the public and the California Coastal Commission, City Manager Ken Frank said. Last year, during the rampaging fires in Orange County, the city took emergency steps to permit hand crews to clear brush on privately owned property, formerly known as Driftwood Estates in South Laguna.

"The Coastal Commission didn't like it, but they didn't fight us," Frank said. "And the landowner is doing it again. Fortunately they have deep pockets."

Christopher, Tom FD

From: Sherilyn Sarb [ssarb@coastal.ca.gov]
Sent: Thursday, November 20, 2008 4:17 PM
To: Macey, Mike FD; Christopher, Tom FD
Cc: Andrew Willis; Aaron McLendon; Lisa Haage
Subject: RE: [Possible Spam] RE: voicemail - fire clearance at Athens site

Mike and Tom,

Thank you for getting back to me re: the anticipated fuel modification on the Driftwood Aliso Lots site. This email is back-up to the voice message I left on Tom's machine today. After talking with Mike yesterday, I discussed last year's plan with Andrew Willis our enforcement staff in the Long Beach office.

He indicated there is a follow-up plan dated 11/13/07 from Glen Lukos that shows where thinning took place and methodology used last year. That plan should be a good starting point to determine what additional work is necessary this year to meet your requirements, after reviewing the existing conditions in the field. He is able to meet on-site to discuss a potential plan prior to any work being done. Our goal is to minimize thinning or impact in the areas identified as sensitive and that the work not conflict with our efforts toward restoration of sensitive areas. We are interested in pursuing the concept of planting fire retardant natives as opposed to removal or thinning of vegetation if that can meet your goals of reducing fuel load. Please contact Andrew at 562-590-5071 to discuss the plan and a site meeting. Also, let me know if you have any questions or concerns regarding this approach and thank you for your cooperation.

Sherilyn Sarb
District Director
South Coast District, Orange County 562-590-5071
San Diego District 619-767-2370

-----Original Message-----

From: Macey, Mike FD [mailto:mmacey@lagunabeachcity.net]
Sent: Monday, November 17, 2008 11:08 AM
To: Sherilyn Sarb
Cc: Christopher, Tom FD
Subject: RE: [Possible Spam] RE: voicemail - fire clearance at Athens site

Sherilyn:

Our Fire Marshal, Tom Christopher is out of the office and due back tomorrow (11-18-2008). Upon his return he will call you and give you an update, or you can reach Tom at 949.497.0791.

Thank you,
Mike Macey
Laguna Beach Fire Department

From: Sherilyn Sarb [mailto:ssarb@coastal.ca.gov]
Sent: Friday, November 14, 2008 2:27 PM
To: Macey, Mike FD
Subject: RE: [Possible Spam] RE: voicemail - fire clearance at Athens site

Hi Mike,
I am leaving the office now, but will give you a call on Monday. If possible, pls let me know your availability for a phone conversation with you or your designee. Thanks, Sherilyn My San Diego number is 619-767-2370

-----Original Message-----

From: Sherilyn Sarb
Sent: Friday, November 14, 2008 11:19 AM
To: 'Macey, Mike FD'; Christopher, Tom FD

Pls Comment Letters
Dated 6/28 - 7/24

Exhibit 18 Page 81 of 83

Cc: Pietig, John CM

Subject: RE: [Possible Spam] RE: voicemail - fire clearance at Athens site

Hello everyone,

Mike and I had a conversation last month re: the potential for fuel modification at the Driftwood Aliso Lots site and, at that time, you had indicated you did not plan to do any fuel mod the remainder of this year and would reassess after the first of the year. We have just heard from the Athen's Group representative that they have talked to the City and they are planning to do fuel mod this year. Please confirm whether or not you have asked the Driftwood Aliso Lots property owner to conduct fuel modification at the site and if so, the scope of work and methodology. Please let me know the status or if you would like to have a meeting or a conference call to discuss. I am in the Long Beach office today 562-590-5071

-----Original Message-----

From: Macey, Mike FD [mailto:mmacey@lagunabeachcity.net]

Sent: Monday, August 11, 2008 1:34 PM

To: Christopher, Tom FD

Cc: Sherilyn Sarb; Pietig, John CM

Subject: [Possible Spam] RE: voicemail - fire clearance at Athens site

Importance: Low

Tom:

I had a brief conversation with Sherilyn and Karl, and both are interested in being notified of future fuel modification plans for Zone 10 and Zone 11. I told Sherilyn that we would notify her or Karl once we have determined the plan of action and scope of work. Additionally, I let them know that you are working on establishing the basis for requiring the fuel modification.

Thank you,
Mike

From: Sherilyn Sarb [mailto:ssarb@coastal.ca.gov]

Sent: Monday, August 11, 2008 1:00 PM

To: Macey, Mike FD

Cc: Karl Schwing

Subject: voicemail - fire clearance at Athens site

Hi Mike,

I just left a voicemail asking if we could talk this afternoon re: any clearance of vegetation required at the Driftwood Estates site in Laguna Beach. Karl Schwing of the Long Beach office would also like to join in the conversation. Pls let us know if you are available this afternoon. My only time I am not available is 2:30 -3:30. Pls call or email to let me know when you might be able to talk. 619-767-2370 Thank you

December 5, 2008



Greg Vail
Director of Forward Planning and Sustained Development
The Athens Group
31106 Coast Highway Suite 44
Laguna Beach, CA 92651

Dear Greg:

The City has received complaints and concerns from neighbors adjacent to the property owned by Driftwood Properties, LLC in South Laguna. Their concerns are related to securing adequate defensible space between their homes and the open space. The City's Fire Marshal, Tom Christopher, has reviewed the area and agrees that enhanced fire and community safety will be obtained through re-establishing the defensible space last established in November 2007. The areas are delineated on the attached maps and are known as Fuel Modification Zone 10 (Portofino) and Fuel Modification Zone 11 (Driftwood).

Section 304.1.2 of the 2007 California Fire Code states: "Weeds, grass, vines or other growth that is capable of being ignited and endangering property, shall be cut down and removed by the owner or occupant of the premises." Therefore, the Laguna Beach Fire Department is issuing this notice to abate the hazard in the above mentioned properties (i.e., Zone 10 and Zone 11). The City of Laguna Beach will retain and use the regulatory services of Glenn Lukos Associates to complete the needed fuel modification.

Fire Marshal, Tom Christopher, will be the City's liaison on this project and he is prepared to assist in working with your staff throughout the mitigation process. The consultants from Glenn Lukos Associates will use the mitigation practices agreed to as a result of the on-site meeting that was held on December 2, 2008, and attended by Tom Christopher, Andrew Willis, and yourself. The biological oversight should maximize the opportunities to protect sensitive plant species while meeting the City's fuel modification objectives.

Our Fire Marshal, Tom Christopher, will be contacting you to determine a mutually agreeable schedule for abating this hazard.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Macey".

Mike Macey
Fire Chief

Attachments

Cc: Ken Frank, City Manager
Tom Christopher, Fire Marshal



CITY OF NEWPORT BEACH

CITY ATTORNEY'S OFFICE

Aaron C. Harp, City Attorney

Th11c

July 9, 2012

Via Electronic and Overnight Mail

Mary K. Shallenberger, Chair
Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 91405

RE: Sunset Ridge Park Project – 4850 West Coast Highway, Newport Beach, California (City of Newport Beach); CDP Application No. 5-11-302

Dear Chair Shallenberger and Members of the Commission:

The City of Newport Beach ("City") submits this letter specifically to address legal issues raised by the Staff Report on the City's proposed Sunset Ridge Park Project ("Project"). This letter is in addition to materials from Schmitz & Associates, Inc., which explain why the Project is fully consistent with the Coastal Act.

As the Coastal Commission ("Commission") is aware, the Project is the product of years of City and community planning efforts, and is designed to serve the community's critical need for active recreational facilities in the coastal zone while providing significant coastal access and substantial habitat enhancement. The recreational component of the City's Project includes a playground, picnic areas, a youth baseball field, two youth soccer fields, passive recreational amenities, pedestrian paths, an overlook area with a shade structure and seating, a one-story restroom and storage facility, landscaping and planting.

HISTORY OF THE SUNSET RIDGE PROPERTY

The City began investing and expending resources to plan, design, and obtain permits for the Sunset Ridge Park after Senate Bill 124 was passed in 2001 ("SB 124") (Reg. Session 2001). SB 124 was signed into law by Governor Davis thanks, in part, to the support of the Commission's legislative unit. In SB 124, the Legislature required that the Sunset Ridge Park property, which was then commonly referred to as the CalTrans West property, be transferred to the California Parks and Recreation

California Coastal Commission

July 9, 2012

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Department upon the payment of \$1.3 million dollars by the City. SB 124 further contemplated that the City and the California Parks and Recreation Department would enter into an operating agreement whereby the City would construct, operate, and maintain an active park and its recreation improvements on the CalTrans West property.¹

During negotiations over the operating agreement, however, and likely due to economic conditions associated with the State budget, the City began conferring with CalTrans, the California Transportation Commission, the California Department of Parks and Recreation, Governor Schwarzenegger's administration, and the Department of General Services to have the City purchase the property, rather than enter into an operating agreement, so that the much-needed recreational facilities could be constructed and brought to fruition. All of the City's effort culminated in a 2006 Purchase Agreement whereby the State of California received over \$5.2 million dollars from the City and the City in turn received a Grant Deed from the State vesting title to the CalTrans West property with the City. Under the contract between the State and the City, the property acquisition was made subject to the following conditions: (1) the use of the property was restricted to active recreational land uses;² (2) there would be no right of the City to access West Coast Highway from the property; (3) the establishment of a 197,920 square foot scenic view and open space easement over a portion of the property in which the placement of pavement and permanent structures were prohibited; and (4) a 35'-wide storm drain easement and a 30'-wide sewer easement were conveyed by the State of California to the Newport Crest Homeowners Association in 1991.

After paying the State \$5.2 million, the City turned its attention and resources to planning, designing and entitling the Sunset Ridge Park to accommodate the above noted restrictions.

¹ It is worth noting that the supporters of SB 124 included the Orange County Coastkeeper, Orange County Coastal Coalition, California Park and Recreation Society, Endangered Habitats League, Surfrider Foundation, and the Newport Crest Home Owners Association.

² The Staff Report for Agenda Item 16a for the Commission's November 2011 meeting states that the "Open Space – Active" zoning designation was eliminated from the City's Zoning Code. However, this is of no import to effectiveness of the deed restriction, as the language of the deed sets forth a restriction which cannot be modified or amended by action of the City vis-à-vis a Zoning Ordinance amendment. If Commission Staff is suggesting that the State requirement for active recreation facilities has been eliminated, such suggestion is both legally unsupportable and factually incorrect.

HISTORY OF THE CITY'S COASTAL DEVELOPMENT APPLICATION

Twelve years after the enactment of SB 124, the City is now in the final stage of permitting the construction of Sunset Ridge Park by requesting that the Commission issue a Coastal Development Permit ("CDP") authorizing the recreational facilities. Given the long history of this Project, the Purchase Agreement and extraordinary payment made by the City to acquire the property, the Legislative intent for active recreational land uses on the property, and the amount of time and resources expended to date by the City and the community, the Commission Staff's recommendation to deny Application No. 5-11-302 is disappointing. In fact, it is disingenuous, since it appears to now be based on a Staff preference that the CalTrans West property be developed exclusively for passive park purposes in direct contravention of the legislative intent to provide active recreational facilities in the Coastal zone.

In the initial Staff Report prepared for the Commission's November 2011 meeting, Staff suggested two alternatives: (1) a passive park; or (2) an active park with alternative access. In an effort to address the Commission's concern, the City removed the planned access from West Coast Highway and submitted new Application No. 5-11-302. Surprisingly, Commission Staff now suggests that only a passive park should be approved, ignoring its earlier alternative of an active park with alternative access (i.e., the Project now proposed).

Specifically, the Staff Report now identifies four alternatives: (1) passive park; (2) reduced number of sports fields as suggested by the Banning Ranch Conservancy ("BRC"); (3) alternative site north of the Newport Crest Condominium complex; and, (4) "No Project." Of these suggestions, however, only a passive park is actually feasible. First, relocating the park to north of the Newport Crest Condominiums would require the City to acquire property from Newport Banning Ranch. It defies reason to now suggest that the City purchase other property when it has already expended millions of dollars in land acquisition and development costs and waited twelve years to build the park facilities on the CalTrans West property. Also, the "No Project" alternative is inconsistent with the legislative intent of SB 124, the Purchase Agreement and the Grant Deed. Finally, the BRC has presented Commission staff with two alternative designs that involve the relocation of ball fields away from the disturbed vegetation area. These include:

- Laying the soccer fields out length-wise along the northern portion of the land, right below the Newport Crest homeowners' decks and porches; and
- Not constructing any baseball or softball fields at Sunset Ridge Park; instead putting those facilities off until a decision is reached regarding the Newport Banning Ranch's final land use.

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Please forgive our gentle cynicism about the BRC's suggestions. These suggestions come late in the planning process, with little or no communication with the City and no evidence that BRC has have consulted with park planners qualified to make these suggested modifications. Also, the BRC has not provided any environmental analysis to support these suggestions – implying these are not serious proposals.

More specifically, as to the first suggestion, putting fields lengthwise (and adding the parents, siblings, referees and kids that come with each field) is a recipe for angry resident opposition. The BRC's plan maximizes the sound and visual impacts to the backyards, porches and decks of dozens of homes. Many people who reside in this same development are the core supporters of BRC's opposition to an active park at Sunset Ridge. It is not serious to assume these same residents will not balk (loudly) at this field layout.

As to the second suggestion, we would offer one observation. When the City proposed an active park in 2001, families were excited about the possibility of an active park at Sunset Ridge. The City told the boys and girls (ages 10-13) who might play at Sunset Ridge, "There will be ball fields – finally within walking distance of your home." Eleven years later, some of those same children are now in their mid-twenties and their baseball and soccer days are long gone. BRC is asking us to tell the next generation of youth – also now 10-13 years old – to wait again. How long? 5 years? 10 years? It doesn't matter. It means that hundreds more kids will grow up playing somewhere else; on a cramped field competing with other teams for limited recreational opportunities. Additionally, it is also irresponsible to suggest that the City should expend in excess of \$20 million in taxpayer funds to develop two soccer fields, and not build the other recreational opportunities, such as a baseball and softball field.

In sum, the City removed the planned access from West Coast Highway, which was the expressed concern of the Commission. Yet, Commission Staff continues to promote the notion that only a passive park should be approved by the Commission. Staff now bases its recommendation for denial on the acknowledged long standing practice of CalTrans and the City to mow the property for fire safety reasons. As we explain below, we believe that the Commission should approve the City's CDP application as it is consistent with the Coastal Act given the particular history and circumstance of the CalTrans West property.

COMMISSION STAFF'S RECOMMENDATION FOR DENIAL BASED ON MOWING ACTIVITIES

Commission staff has recommended denial of the Project based on an argument that the Project will eliminate a 3.3-acre patch of disturbed vegetation located on the southern half of the property.³ The Commission's staff biologist has opined that if the mowing is legal, the disturbed vegetation would not be ESHA; however, if the mowing is not legal, the area would be ESHA. (Memo, Jonna D. Engel to John Del Arroz dated September 22, 2011, p. 7.)⁴ In essence, Staff's position is that because Encelia scrub is a type of coastal sage scrub community that could serve as habitat for the federally threatened California gnatcatcher (but does not now), the City's application should be denied. The City submits that the record demonstrates that both the Project and the actions of both CalTrans and City to date are legal and consistent with the Coastal Act.

THE CITY'S ONGOING MAINTENANCE ACTIVITIES PRE-DATE THE COASTAL ACT AND, IN ANY EVENT, THE CITY HAS A VESTED RIGHT TO CONTINUE THAT ONGOING PRE-COASTAL ACT USE

The Staff Report acknowledges the site activities of the City as well as CalTrans pre-date the Coastal Act. Therefore, we contend that they are not subject to the permit requirements of the Act. The City has already provided the Commission with ample photographic documentation of the ongoing annual historic mowing and grading activities conducted by CalTrans since as far back as the 1960s, and continued by the City subsequent to its purchase of the property from the State of California. The photographic evidence documents that this site is not and has not been in its natural state for many years pre-dating the Coastal Act. Indeed, the property was graded by CalTrans to one day become an off-ramp for the 55 Freeway.

Further, the Grant Deed conveying the property to the City provided that the City was responsible for continuing the ongoing maintenance performed by CalTrans. The City has met this obligation annually, and in some cases more often, by periodic mowing. The City's continued mowing and related maintenance has occurred at least once a year, typically twice a year, starting in the spring of 2007 immediately after

³ In 2009, the City circulated and certified EIR No. 2009051036 which concluded that the impacted area consisted of disturbed vegetation, not ESHA. During the EIR review process, the City did not receive any comments from the Commission relating to the adequacy of EIR No. 2009051036 prior to certification. As a responsible agency, the Commission was required to advise the City, and pursue a court action, if necessary, if it believed that this ESHA determination made as part of the certification of the EIR, was inadequate. (See, Public Resources Code §§ 21083, 21080.4, 21002.1(d); 14 CCR §§ 15050, 15096.) This responsibility could not have been overlooked as concurrent with the receipt of the Sunset Ridge Park EIR in 2009, the Commission Staff forwarded comments on the Draft EIR for Marina Park.

⁴ As more fully set forth on page 9, the opinions of Dr. Engel as to the disturbed vegetation, its growth cycle, and clustered growth pattern fully support the determination of the City's Fire Department that the property must be regularly mowed for fire safety purposes.

California Coastal Commission

July 9, 2012

Page: 6

CalTrans transferred the property to the City. Thus, as far back as 1966, this particular property, in its entirety, has been continually mowed on at least an annual basis by both the State of California and the City.

The Staff Report's conclusion that the ongoing mowing activities constitute unpermitted development is based on Staff's opinion that the mowed vegetation could be utilized by the California gnatcatcher. Importantly, however, this is not based on any actual use by the gnatcatcher. Rather, staff reasons the disturbed vegetation is ESHA because "it is reasonable to infer" that the gnatcatcher utilizes the disturbed vegetation due to surveys that have identified gnatcatchers on adjacent habitat, and photographic evidence which Staff asserts shows that the vegetation meets the species habitat requirements. (Staff Report, p.19) Staff's conclusion that the disturbed vegetation is ESHA is based on its opinion that the disturbed vegetation "serves as habitat for a federally listed species and plays a special role in the ecosystem which could easily be degraded by human activity" (Staff Report, p. 26) – an assertion which, given the present and past state of the property, is simply unsupported by any facts. The disturbed vegetation has not supported the gnatcatcher and it has been continually mowed and maintained for fire safety reasons.

Based on staff's unsupported premise, the Staff Report deems the mowing unpermitted development requiring a permit unless the City has a vested right to mow the property. This misses the mark. This is not a case which involves a vested right, but rather a valid ongoing use that pre-dates the Coastal Act. Even assuming that this was not an ongoing use, however, the City plainly has a vested right to continue that use.

Specifically, it bears emphasis that this is not the situation where structures were commenced and partially constructed prior to the effective date of either the 1972 or 1976 Coastal Acts. (Former Pub. Res. Code, § 27404; Pub. Res. Code, § 30608.) In that instance, the question is whether the landowner has performed substantial work and incurred substantial liabilities such that a vested right exists to permit the development to be completed without the need to apply for a permit. (*Avco Community Developers Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785.) Instead, the property at issue is vacant land that has been mowed annually since as far back as 1966; an ongoing use established before the 1972 or 1976 Coastal Act.

The Attorney General addressed a similar vested rights issue under the 1972 Coastal Act. The Attorney General opined that no coastal permit was required for the conduct of continued operations, while a permit would be required for any new facilities or intensification of use. (56 Ops.Cal.Atty.Gen. 85 (1973) at 91-92.) Further, the Attorney General concluded that the Coastal Act permit requirement did not "in any sense prohibit the continued present management or use of existing structures or facilities" and was "not designed to stop present use or to allow present use to deteriorate." (*Monterey Sand Company, Inc. v. California Coastal Commission* (1987)

191 Cal.App.3d 169, 175 fn 3.) The Court of Appeal in *Monterey Sand* has referred to this as the "continuing use of a past allocation of coastal resources" theory. (*Id.*) Thus, no permit is required for the continuation of the ongoing mowing activities on the Sunset Ridge Park property. This is no different than a house completed prior to the effective date of the Coastal Act, or a commercial use established before the Act, or continued operations in an oil well field which does not include new facilities or an intensification of use. In none of these examples is a permit required or an effort by the property owner to go through the motions of seeking a vested rights determination from the Commission. Staff's apparent suggestion to the contrary would have sweeping implications for CalTrans, counties, cities, and special districts that, since well before the Coastal Act, have routinely performed exactly the same kind of maintenance as CalTrans and the City have consistently done here.

Even assuming this was properly cast as a vested rights issue, the requisite thresholds identified by Commission staff have been met. First, viewing this application as functionally a request for a vested rights determination, CalTrans' pre-Coastal Act mowing activities did not require a permit. Second, since 1966, there has been substantial work performed and substantial liabilities incurred in good faith reliance on CalTrans' approval of this activity. This includes but is not limited to: CalTrans' purchase of the property in 1966 for the never-built 55 Freeway off-ramp; major grading of the property undertaken thereafter by CalTrans; the removal of thousands of cubic yards of dirt from the property; regular annual maintenance of the property through mowing; and the City's continued mowing of the property. Finally, it bears emphasis again that the continued mowing of the City's property does not involve a development partially constructed or undertaken at the time either the 1972 or 1976 Coastal Act took effect. It concerns development ongoing at the time both Acts became effective and has been regularly performed since. Hence, even if this was a vested rights issue, the City plainly has a vested right to continue this use.

**THE CITY'S ON-GOING MAINTENANCE ACTIVITIES ARE LEGAL BECAUSE
THEY CONSTITUTE NUISANCE ABATEMENT WHICH IS NOT SUBJECT TO
COASTAL DEVELOPMENT PERMIT REQUIREMENT**

Mowing activities are also exempt from the permit requirements of the Coastal Act under the abatement exemption for vegetation/brush clearance in the coastal zone determined necessary by the local fire authority to abate a nuisance. This is not a new issue. The Commission has previously acknowledged that because the failure to comply with the directives to provide a defensible space results in a nuisance, a coastal

development permit is not required. This is based on Coastal Act Section 30005, which expressly provides:

"No provision of this division [the Coastal Act] is a limitation on any of the following: . . . (b) On the power of any city or county or city and county to declare, prohibit, and abate nuisances."

This has been the position of the Commission throughout the County and State. For instance, in March 2009, Commission staff wrote the Orange County Fire Authority, responding to an inquiry regarding vegetation/brush clearance related activities in the City of San Clemente's coastal canyons - all seven of which were deemed ESHA in the City's certified LUP. Staff advised:

"The course of action that OCFA requires of San Clemente coastal canyon property owners (i.e., provide a 'defensible space' on the canyonward portion of the property that meets the minimum fire safety standards) is consistent with the course of action that is statutorily mandated under Government Code Section 51182 and Public Resources Code 4291. Moreover, failure to comply with the statutory mandate in Government Code § 51182 'may be considered a nuisance pursuant to Section 38773' Cal. Government Code § 51187. Thus, the failure to comply is, in effect, declared a nuisance by the statutes. Because the Coastal Act expressly states that it does not create any limitation on 'the power of any city or county or city and county to declare, prohibit, and abate nuisances,' Cal. Public Resources Code § 30005(b), the recommendations in your notices to San Clemente canyon property owners are beyond the Commission's jurisdiction in this case." (See, Attachment No. 1, Letter from Liliana Roman, Coastal Program Analyst, CCC, to Bryan Healey, Assistant Fire Marshall OCFA, March 3, 2009 (emphasis added).)

Pursuant to Newport Beach Municipal Code (hereinafter "NBMC") Section 2.12.050, the City's Fire Department is mandated to identify and prevent hazards to life, health, property and the environment. The City's Fire Code is codified within Chapter 9.04 of the NBMC. The intent of Chapter 9.04 is to coordinate its requirements along with the International Fire Code ("IFC"), 2009 Edition, and the California Fire Code ("CFC"), 2010 Edition.⁵ As a result, the City's Fire Code incorporates by reference all of

⁵ During the hearing in November 2011 of this matter, it was suggested that the 1991 Edition of the IFC provided guidance or restrictions on the City's mowing activities. Specifically, Section 11.302(d) of the 1991 IFC reads: "Combustible Vegetation. Cut or uncut weeds, grass, vines and other vegetation shall be removed when determined by the chief to be a fire hazard. When the chief determines that the total removal of growth is impractical due to its size or environmental factors, approved fuel breaks shall be established." Thus, it was suggested that the Fire Official's determination to require more than 100 feet of brush clearance was subject to an analysis of environmental factors. However, the 1991 IFC cannot provide guidance as it is not the law in California. Rather, the 2009 Uniform Fire Code is applicable to the City and the State and that is relied upon in this analysis.

the provisions of the CFC and the 2009 IFC unless the City adopts specific amendments thereto.

Pertinent to the mowing of Sunset Ridge Park are the local amendments to Chapter 49 that have been adopted by the City, and which are set forth in NBMC Section 9.04.120. The City's local ordinance included Chapter 49 of the CFC and, in particular, Section 4903.2, which is a requirement for the clearance of shrubs and brushes located within 100 feet of any structures. The NBMC also includes Section 4903 of Chapter 49, which provides that the Fire Chief may require more than the 100 feet when the Fire Chief determines that conditions exist, which necessitate greater fire protection measures.

This is the case as to the Sunset Ridge Park property, and it is why the entire property was mowed on a regular basis by CalTrans and it is why the City has continued to do so. Specifically, the Fire Official has determined that the site specific conditions of the property warrant removal of more than 100 feet (from Newport Crest) of vegetation. The Fire Official's determination is based on the known accumulation of light flashy fuel that dries quickly during the summer months; the bowl shape of the property; the 30 foot embankments limiting emergency access; the history of fire and transient use; and, prevailing winds. (See, Attachment No. 2, Correspondence from City's Fire Department dated January 31, 2012 and June 8, 2012.) Specifically, the Fire Division Chief of the City's Fire Prevention Unit has advised that the light flashy fuels in this area could cause the structures in the adjacent condominium complex to ignite with either radiant or direct flame contact and the flowing embers could ignite other structures a few blocks in the development when the firebrands contact roofs, attic vents, decks or other combustible fuels in the fire's path. As a result, the City has eliminated this life safety and property hazard through weed abatement.

Notably, the Fire Chief's directives are fully supported by the Commission's biologist in that she acknowledges that the Encelia scrub is a fast growing shrub and that the disturbed vegetation would reach heights of two to three feet over one growing season. (Memo, Jonna D. Engel to John Del Arroz dated September 22, 2011, p. 7). Dr. Engel further states that but for the City's mowing, the disturbed vegetation would be closely spaced and include highly flammable and undesirable plant species, such as black mustard and thistle. Dr. Engel's description of the disturbed vegetation perfectly describes the target vegetation of both the local and State fire hazard reduction efforts. (See, Attachment No. 3, Vegetation Management Technical Design Guidelines, Undesirable Plant Species (Target Species), Orange County Fire Authority, January 1, 2011.) For instance, the California Department of Forestry and Fire Protection (CalFire) has concluded the following:

"If enough heat is present almost any plant will burn. The objective of fire resistive landscaping is to reduce the heat available and reduce the change of ignition. Fire resistive

landscaping combines natives or ornamental plants with proper placement and proper maintenance. The key is separating plants vertically and horizontally to prevent fire spread and extension." (See, Cal. Dept. of Forestry and Fire Protection, Structural Fire Prevention Field Guide for Mitigation of Wildland Fires, (April 2000) p. 55.)

The mowing activity by the City here has been for the sole purpose of conducting necessary weed abatement on a parcel that is difficult to access, adjacent to residences and without any irrigation system. As to CalTrans, this is and always has been an essential function in its maintenance of the State highway system and its adjacent properties, both within and outside the coastal zone. As to the City -- as those Commissioners who represent cities and counties well know, weed abatement is an essential municipal function, especially for unimproved properties with ruderal vegetation immediately adjacent to existing residential development, as here. This need is driven by safety concerns, such as minimizing fire potential by reducing vegetative biomass. Moreover, the necessity here for regular and ongoing weed abatement cannot be overstated. A vegetative fire actually occurred on the property in 1988 and spread to the adjacent condominiums causing significant damage to structures. (See, Attachment No. 4, Orange County Register article, July 11, 1988.)

As a result, the property has been subject to the City's weed abatement schedule for many years. Numerous complaints are received every summer advising the City of the vegetation growth, requesting mowing, and putting the City on notice of a perceived dangerous condition. (See, Attachment No. 5, Complaint Reports and related correspondence.) Given this notice, the City has continually maintained the property in an effort to help avoid risk to the health and safety of the City residents. Under Section 30005, so long as the scope of the City's activity is narrow and carefully tailored to address only the specific weed abatement nuisance on this property, that necessary municipal activity may continue without the need to obtain a CDP. (See, *Citizens for a Better Eureka v. California Coastal Com.* (2011) 196 Cal.App.4th 1577.)

That has been the case here, where the City's Fire Official has determined that the site specific conditions -- the known accumulation of light flashy fuel that dries quickly during the summer months; the bowl shape of the property; the 30 foot embankments limiting emergency access; and significant prevailing winds which blow inland from the ocean -- warrant removal of the vegetation on the property.

THE STAFF'S RECOMMENDATION WOULD WORK A "TAKING" AND A BREACH OF THE PURCHASE AGREEMENT BETWEEN THE STATE AND THE CITY

Finally, in recommending that the Sunset Ridge Park property be relegated to "passive park" and basically open space, the Staff Report would have the unfortunate effect of working a regulatory taking of the City's property. Under the circumstances,

California Coastal Commission

July 9, 2012

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the Commission's decision would deny the City all reasonable use of its property and lack the "essential nexus" and "rough proportionality" required, in violation of *Nollan v. California Coastal Commission* (1987) 483 U.S. 825, and *Dolan v. City of Tigard* (1994) 512 U.S. 374.

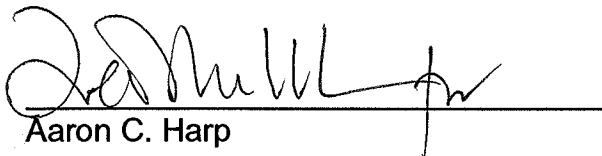
Further, as explained above, under the Purchase Agreement negotiated between the State of California and the City, the City acquired the property for active recreational purposes, consistent with the intent of the Legislature, and paid \$5.2 million of its precious taxpayer dollars for the right to undertake precisely that improvement of the property. If the Commission were to accept Staff's recommendation, it would unnecessarily place the State in breach of its contractual obligation. Having now modified the Project to respond to the concerns expressed by certain Commissioners last November, the City respectfully submits that the better, more prudent and fair course is for the Commission to approve the Project so that the significant public access, public recreation and habitat benefits resulting from the Sunset Ridge Park Project can now be realized.

Sunset Ridge Park is a wonderful and well-planned dream right now. The people in cities like Newport Beach – as lucky as we are to live, work, and play by the ocean – still need active parks, ball fields and soccer fields.

It was the people of Newport Beach who – in the 1970s when Ronald Reagan was Governor – looked at this same parcel and said it's too valuable to be cemented over for the 55 Freeway. It was the people of Newport Beach who – in the 1990s when Pete Wilson was Governor – fought to keep CalTrans from selling the property to the highest bidder, one who would put dozens of multi-family and single family homes all over the land, blocking and making private the beautiful views of Sunset Ridge. It was the people of Newport Beach who – in 2001 when Gray Davis was Governor – worked hard to wrest the land away from CalTrans using the California Constitution's special vision for coastal properties. Now, it is also the people of Newport Beach who are simply asking the Commission to allow us to finish the job by building a much-needed and long-awaited active community park on a site where a freeway or homes would have been, but for the determination of the people of Newport Beach

In conclusion, we beseech you to let us build the park – a simple park.

CITY ATTORNEY'S OFFICE



Aaron C. Harp

City Attorney
LM:emg

California Coastal Commission

July 9, 2012

Page: 12

cc: Dr. Charles Lester, Director
Sherilyn Sarb, Deputy Director
John Del Arroz, Coastal Program Analyst
Mayor and City Council
Dave Kiff, City Manager
Dana Smith, Assistant City Manager

[A10-00630

ATTACHMENT 1

STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceanside, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

ARNOLD SCHWARZENEGGER, Governor



March 3, 2009

Bryan Healey, Assistant Fire Marshall OCFA
1 Fire Authority Road, Building A
Irvine, CA 92602

Dear Mr. Healey,

This letter is in response to your inquiry regarding the requirement for homeowners to obtain a coastal development permit (CDP) from the California Coastal Commission prior to vegetation/brush clearance and related activities in the City of San Clemente coastal canyons. The City has identified all seven of its coastal canyons as environmentally sensitive habitat in its certified Land Use Plan.

Pursuant to Section 30106 of the Coastal Act (Cal. Public Resources Code § 30106), except in certain situations relating to agriculture, kelp harvesting, and timber operations, "removal or harvesting of major vegetation" constitutes "development" for purposes of the Coastal Act, and thus requires a CDP unless exempt. However, a CDP is not required in the instance that OCFA finds that vegetation clearance is necessary to abate a nuisance.

The course of action that OCFA requires of San Clemente coastal canyon property owners (i.e., provide a "defensible space" on the canyonward portion of the property that meets the minimum fire safety standards) is consistent with the course of action that is statutorily mandated under Government Code Section 51182 and Public Resources Code 4291.¹ Moreover, failure to comply with the statutory mandate in Government Code § 51182 "may be considered a nuisance pursuant to Section 38773" Cal. Government Code § 51187. Thus, the failure to comply is, in effect, declared a nuisance by the statutes. Because the Coastal Act expressly states that it does not create any limitation on "the power of any city or county or city and county to declare, prohibit, and abate nuisances," Cal. Public Resources Code § 30005(b), the recommendations in your notices to San Clemente canyon property owners are beyond the Coastal Commission's jurisdiction in this case.

To ensure proper protection of the coastal canyon resources, homeowners should be encouraged to trim, prune, remove dead/dry plant litter and overall maintain vegetation on canyon slopes to avoid removal of major vegetation.

Sincerely,

Lillana Roman
Coastal Program Analyst

¹ Although we have not verified that the requirements are identical, they are clearly substantially the same.

ATTACHMENT 2



NEWPORT BEACH FIRE DEPARTMENT

P.O. Box 1768, 3300 NEWPORT BLVD., NEWPORT BEACH, CA 92658-8915

January 31, 2012

Owner

City of Newport Beach

3300 Newport Blvd

Newport Beach, CA 92663

Re: Property located at the NW corner of W. Coast Hwy and Superior Avenue

APN 424-041-10, 424-041-08

Dear Owner:

According to California Fire Code Section 305.5, "Ignition Sources" you are required to clear your premises of all weeds, grass, vines and other growth that is capable of being ignited and endangering property. This regulation is separate and distinct from the Hazard Reduction and Fuel Modification regulations enforced City wide by the designation of Special Fire Protection Areas in that Section 305.5 focus is on weed abatement as a general precaution against fires and not wildland fuels.

In accordance with this regulation, the Fire Department has identified this property as having a flammable vegetation hazard and has consistently included this property within the City's weed abatement program administered by the Fire Department. Such properties are required to be abated at least annually to protect nearby structures. In some extreme cases or when the amount of rainfall during the year has caused a growth increase of weeds and dry, light, and flashy fuel, weed abatement may be required to be removed bi-annually.

The above-referenced property consists of an undeveloped 13.6 acre parcel located on the north/west corner of West Coast Highway and Superior Avenue and is identified as having a flammable vegetation hazard. Historically, the flammable vegetation hazard on this parcel has been cleared annually since the 1970's and in some years even more frequently. This parcel is known to have an accumulation of light flashy fuel that dries quickly during the summer months.

It is the Fire Department's opinion that this fuel poses a serious threat to the Newport Crest Condominiums located directly to the north and abutting the parcel. . This bowl shaped open land is surrounded by 30 foot embankments off of West Coast Highway and access for emergency responders is limited to a gated maintenance road. Prevailing west winds would quickly send a fire originating from

this parcel towards the wood sided condominiums and unprotected open balconies causing a life safety hazard. As a result of these enumerated conditions, and pursuant to the authority of California Fire Code Section 4903, the Fire Department has determined that conditions exist, which necessitate greater fire protection measures. Specifically, these specified conditions require abatement of the entire undeveloped parcel because fire brands or embers created by unmaintained vegetation could ignite multiple homes prior to the Fire Department's arrival and limit its ability to attack the fire.

As owner of this property, please continue to maintain the property such that it is abated of weeds and flammable vegetation at least once a year to remove the threat of ignition to the adjacent structures.

A handwritten signature in black ink, appearing to read 'Ron Gamble', with a stylized, flowing script.

Ron Gamble
Newport Beach Fire Marshal



SCOTT L. POSTER
FIRE CHIEF

NEWPORT BEACH FIRE DEPARTMENT

P.O. Box 1768, 3300 NEWPORT BLVD., NEWPORT BEACH, CA 92658-8915
PHONE: (949) 644-3104 FAX: (949) 644-3120 WEB: WWW.NBFD.NET

File: C-3449

June 8, 2012

Notice of Nuisance

Parcel Number: 424 041 10
Address: 4850 W Coast Hwy (Sunset Ridge Park property)
Newport Beach, CA

Dear Property Owner:

This notice is sent to inform you of the start of the City of Newport Beach 2012 Weed and Nuisance Abatement Program.

Based on the results of a recent weed and nuisance inspection conducted by the Newport Beach Fire Department, the referenced property is not in compliance with the City's guidelines as set forth in Newport Beach Municipal Code Chapter 10.48. Therefore, the property will need to be cleaned of all dry grass, stubble, brush, garden refuse, litter, or other flammable material that constitutes a fire hazard or that will when dry.

The field inspector provided the following narrative describing the nature and extent of the violation noted: Remove light, flashy fuels (weeds).

This notice of non-compliance requires you to abate the fire hazard. If the hazard is not abated, the City will take further action that can include:

- 1) The City, or its contractor, may enter upon the parcel of land and remove or otherwise eliminate or abate the hazard,
- 2) That upon completion of such work the cost thereof, including Nuisance Abatement Services, will be billed to the property owner and can become a special assessment against that parcel, and
- 3) That upon City Council confirmation of the assessment and recordation of that order, a lien may be attached to the parcel to be collected on the next regular property tax bill levied against the parcel.

A second weed and nuisance inspection will be conducted on or after July 9, 2012. If as a result of the second inspection it is determined that the property is still not in compliance with the guidelines, the property will be subject to cleaning by the City's contractor. Actual cleaning by the City's contractor will start on or after August 13, 2012.

June 8, 2012
Notice of Nuisance
Page 2

All property owners may appeal the decision requiring the abatement of the nuisance by sending a written appeal to the Fire Chief requesting a hearing with the City Manager within ten (10) days of this notice.

Thank you for your attention to this very important matter. If you have any questions or require further assistance, I can be reached at (949) 644-3108 or smichael@nbfed.net.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Michael", with a large, stylized loop at the end.

Steve Michael
Fire Inspector

ATTACHMENT 3

ORANGE COUNTY FIRE AUTHORITY

Planning & Development Services Section

1 Fire Authority Road, Building A, Irvine, CA 92602 714-573-6100 www.ocfa.org

Vegetation Management Technical Design Guideline



Approved and Authorized by

Guideline C-05

Laura Blaul
Fire Marshal / Assistant Chief

Date: January 1, 2011

Serving the Cities of: Aliso Viejo • Buena Park • Cypress • Dana Point • Irvine • Laguna Hills • Laguna Niguel • Laguna Woods • Lake Forest • La Palma • Los Alamitos • Mission Viejo • Placentia • Rancho Santa Margarita • San Clemente • San Juan Capistrano • Santa Ana • Seal Beach • Stanton • Tustin • Villa Park • Westminster • Yorba Linda • and Unincorporated Areas of Orange County

Attachment 7

UNDESIRABLE PLANT SPECIES (Target Species)

Certain plants are considered to be undesirable in the landscape due to characteristics that make them highly flammable. These characteristics can be either physical or chemical. Physical properties that would contribute to high flammability include large amounts of dead material retained within the plant, rough or peeling bark, and the production of copious amounts of litter. Chemical properties include the presence of volatile substances such as oils, resins, wax, and pitch. Certain native plants are notorious for containing these volatile substances.

Plants with these characteristics shall not be planted in any of the fuel modification zones. Should these species already exist within these areas, they shall be removed because of the potential threat they pose to any structures. They are referred to as target species since their complete removal is a critical part of hazard reduction. These fire-prone plant species include (but not limited to):

FIRE PRONE PLANT SPECIES (MANDATORY REMOVAL)

<u>Botanical Name</u>	<u>Common Name</u>
Cynara Cardunculus	Artichoke Thistle
Ricinus Communis	Castor Bean Plant
Cirsium Vulgare	Wild Artichoke
Brassica Nigra	Black Mustard
Silybum Marianum	Milk Thistle
Sacsola Austails	Russian Thistle/Tumblewood
Nicotiana Bigelevil	Indian Tobacco
Nicotiana Glauca	Tree Tobacco
Lactuca Serriola	Prickly Lettuce
Conyza Canadensis	Horseweed
Heterothaca Grandiflora	Telegraph Plant
Anthemix Cotula	Mayweed
Urtica Urens	Burning Nettle
Cardaria Draba	Noary Cress, Perennial Peppergrass
Brassica Rapa	Wild Turnip, Yellow Mustard, Field Mustard
Adenostoma Fasciculatum	Chamise
Adenostoma Sparsifolium	Red Shanks
Cortaderia Selloana	Pampas Grass
Artemisia Californica	California Sagebrush
Eriogonum Fasciculatum	Common Buckwheat
Salvia Mellifera	Black Sage
 Ornamental:	
Cortaderia	Pampas Grass
Cupressus sp	Cypress
Eucalyptus sp	Eucalyptus
Juniperus sp	Juniper
Pinus sp	Pine

ATTACHMENT 4

Firecrackers suspected in grass fire Newport blaze hits condo, causing \$50,000 damage

July 11, 1988

Byline: Jeff D. Opdyke

The Register

Firecrackers are believed to have caused a grass fire Sunday that spread to a \$270,000 condominium, officials said. Firefighters and police officials on the scene found four M-80 casings and the casing to what appeared to be a homemade firecracker in a field adjacent to the blackened condominium at No. 6 Landfall Court on the cliffs overlooking the Coast Highway.

"We are pretty sure this one was started by the firecrackers," said battalion chief Tom Arnold.

The fire caused an estimated \$50,000 damage and scorched the patio, kitchen and upstairs bedroom, fire officials said.

No injuries were reported, and the condominium owners were in Los Angeles, according to friends.

The fire was reported at 2 p.m. after condominium tenant Louis Vignes heard two firecrackers explode, then smelled smoke. It took firefighters about 1 1/2 hours to control the blaze.

"I was in my garage and I went outside to look around," Vignes said. "I, along with another neighbor, got some garden hoses and tried to fight the fire."

Vignes said they had the fire contained, but a gust of wind sent sparks into pampas grass bordering the condominium.

"That's all it took. After that it was history," Vignes said. "The pampas grass went up like a torch and set the balcony on fire. We couldn't do much from then on."

Arnold said the fire spread between the inner and outer walls of the condominium.

"That's what made it tough to get to. We had to tear down walls to find the fire," Arnold said.

Residents in neighboring condominiums were temporarily evacuated from their homes as a precaution.

"We're lucky it didn't spread to additional units," Arnold said.

The patio and bedroom suffered the most extensive damage. Both areas were completely burned.

Newport Crest resident Mike Lombardi said the field had been bulldozed last week to prevent such fires.

No arrests had been made Sunday in connection with the fire.

Story appeared in METRO section

on page b05

ID: OCR118326

Illustration: BLACK & WHITE PHOTO

Edition: EVENING

Correction:

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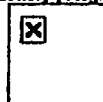
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Freedom Communications, Inc.

ATTACHMENT 5



NEWPORT BEACH FIRE DEPARTMENT

P.O. BOX 1768, NEWPORT BEACH, CA 92658-8915
(714) 644-3103

Timothy Riley
Fire Chief

Newport Crest
201 Intrepid St

September 12, 1996

Robert Mendoza
Department of Transportation
2501 Pullman Street
Santa Ana, CA 92705

Dear Mr. Mendoza,

Thank you for investigating the lots located adjacent to West Coast Highway and Superior. The parcel numbers are AP 424-041-07 and AP 424-041-03. As we discussed in our phone conversation these lots are overgrown with light grassy fuels which present a fire hazard to the homes located within Newport Crest. This fuel needs to be cut to a height of approximately three inches. The Newport Beach Fire and Marine Department appreciates the spirit of cooperation in mitigating this problem. If you need additional information please call me at (714) 644-3108.

Mike Macey
Deputy Fire Marshal

LOTS cleared
OCT. 1996
Macey

3300 Newport Boulevard, Newport Beach

Attachments to City of NB Letter dated 7/9/12

Exhibit 19 Page 26 of 36

NEWPORT BEACH FIRE AND MARINE DEPARTMENT
COMPLAINT REPORT

Company Assignment:
(if applicable)

Legal Description: 201 Intrepid

Location: _____

Owner/Tenant: Caltrans West

Complaint: overgrown, dead brush & weeds.

Concerned for the H/O's in the
Area who all have wood roofs.

Complainant Name: Georgia

Complainant Address: (H/O's Assoc.)

Complainant Phone #: 650-6720

☐ Remain Anonymous

Received by: Name: Nadine

Date: 5-7-97

Time: 1:10 pm

↓ LFT. MESSAGE
5-14-97

✓ TALKED TO
GEORGIA

Conditions Found: WEEDS

Disposition: FORWARDED TO ALAN KATO AT CALTRANS
724-2607

Inspection date: 5-14-97

Inspected by: 173



NEWPORT BEACH FIRE AND MARINE DEPARTMENT

June 24, 1997

Robert Mendoza

Caltrans

2501 Pullman Street R/W Bldg. C

Santa Ana, CA 92705

Mr. Mendoza,

The purpose of this letter is to serve as written documentation to our phone conversation held on June 24, 1997. During that conversation we discussed the parcel of land located near the intersection of Superior and East Coast Highway (see attached map). In the past, Caltrans has cleared the entire lot; however, this year a 20-foot firebreak was cut. The Newport Beach Fire and Marine Department request that the entire lot be cleared of all dry grass, stubble, brush, garden refuse, litter, or other flammable material which constitutes a fire hazard. This action will bring the lot into compliance with the requirements of the Municipal Code, Chapter 10.48. This parcel is especially sensitive due to the size of the lot and its proximity to the structures. The adjoining structures are condominium style residential units built of type V construction and contain wood shake roofs.

The Newport Beach Fire and Marine Department thanks you for your cooperation and expedient mitigation of this weed abatement issue. Please call me at 644-3108 if I can be of any assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Mike Macey".

Mike Macey

Deputy Fire Marshal

NEWPORT BEACH FIRE AND MARINE DEPARTMENT
COMPLAINT REPORT

Company Assignment:
(if applicable)

Legal Description: _____

Location: Coast Hwy / Superior

Owner/Tenant: CAL TRANS property.

Complaint: Caller feels the lot is a
fire hazard - high weeds present.
Believes the lot was cleared earlier this
year, but needs it again. Call her and
advise if this is not so

Complainant Name: Vivian Cellini

Complainant Address: 8 Tribute Ct.

Complainant Phone #: (949) 1045-6003

☐ Remain Anonymous

Received by: Name: Nadine

Date: 8-10-99

Time: 12:00

Conditions Found: Re-growth Present -

Disposition: Spoke to Robert Mendoza (Cal Trans) He will visit
the site on Monday (8-16-99) & make appropriate contacts

9-2-99 site cleared

Inspection date: 8-12-99

Inspected by: 173



NEWPORT BEACH FIRE AND MARINE DEPARTMENT

June 23, 1998

Robert Mendoza
Cal Trans
2501 Pullman Street R/W Bldg. C
Santa Ana, CA 92705

(949)
→ 724-2665

Timothy Riley
Fire and Marine Chief

3300 Newport Blvd.
P.O. Box 1768
Newport Beach, CA 92658-8915

Dear Mr. Mendoza,

I am writing to address the issue of weed abatement on the "excess land" adjacent to the Newport Crest complex located in Newport Beach. This property is located in the area surrounded by West Coast Highway, Superior, and Ticonderoga. I ask that you please schedule this property for weed abatement and advise me of the projected completion date. This will allow me to notify the Homeowner's Association who will in turn notify the residence. In the past Cal Trans has used a disc to cut the field, thus meeting the City standard of three-inch weed height. If you have any questions or concerns please call me at 644-3108.

Sincerely,

Mike Macey
Deputy Fire Marshal

6-26-98 MR. MENDOZA STATED The lot will
be cleared prior to July 4th

7-1-98 called LFT. MSG. re: Follow up w/A

7-10-98 SLATER CALLED LEONARD ANDERSON to ABATE WEEDS
ON ARMSTRONG PETROLEUM PROPERTY + WE GAVE
HIM TILL 7/28 to ABATE (2 weeks) 631-1100 2244 WPC#200

g:/Mendoza-Cal Trans



NEWPORT BEACH FIRE AND MARINE DEPARTMENT

May 12, 1999

Robert Mendoza
Cal Trans
2501 Pullman Street R/W Bldg. C
Santa Ana, CA 92705

Dear Mr. Mendoza,

I am writing to address the issue of weed abatement on the "excess land" adjacent to the Newport Crest complex located in Newport Beach. This property is located in the area surrounded by West Coast Highway, Superior, and Ticonderoga. I ask that you please schedule this property for weed abatement and advise me of the projected completion date. This will allow me to notify the Homeowner's Association who will in turn notify the residence. In the past Cal Trans has used a disc to cut the field, thus meeting the City standard of three-inch weed height. If you have any questions or concerns please call me at 644-3108.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Macey".

Mike Macey
Deputy Fire Marshal

g:/Mendoza-Cal Trans



NEWPORT BEACH FIRE AND MARINE DEPARTMENT

May 30, 2001

Robert Mendoza
Cal Trans
2501 Pullman Street R/W Bldg. C
Santa Ana, CA 92705

Subject: Assessor Parcel No. 424 041 08 and 424 041 10

The purpose of this letter is to serve as written documentation to our phone conversation held on May 18, 2001. During that conversation we discussed the parcel of land surrounding Coast Hwy. West, Superior Avenue, Ticonderoga Street, and Monrovia Avenue.

The Newport Beach Fire Department requests that this property be scheduled for weed abatement and inform our office of the projected completion date. The entire lot needs to be cleared of all dry grass, stubble, brush, garden refuse, litter, or other flammable material that constitutes a fire hazard. This action will bring the lot into compliance with the requirements of the Newport Beach Municipal Code Chapter 10.48.

The Newport Beach Fire Department thanks you for your cooperation and expedient mitigation of this weed abatement issue. If we can be of further assistance, please call (949) 644-3106.

Sincerely,

A handwritten signature in cursive script that reads "Nadine Morris".

Nadine Morris
Fire Inspector

W X
Y Z



4421

4520

4521

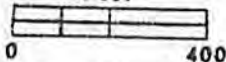
4522

4621

4521

NEWPORT

Feet



Jul/1996

#2

NEWPORT BEACH
IL FIELD

West Newport
Oil Co HQ

COAST HWY WEST

SUPERIOR

dashboard requests projects

home create new request case worker notices reports

QuestRequests

>> Admin Home

>> Print View

>> Recreate Request Type

Customer Information [hide detail](#)

Name: GARY GARBER

Phone #: 949-650-6661

Address: 8 LANDFALL COURT

Email: GARBERGARY@YAHOO.COM

Share (0)

NEWPORT BEACH, CA 92663

Request Details[enter edit mode](#)

reQuest: Fire Code Complaint - 8 Landfall Court, Newport B.

Type: Fire Code Complaint

Case #: 1010479610

Location Type: Address

Compl. Date: 6/8/2010

Location: 8 Landfall Court, Newport B.

Status: Completed [\[hist\]](#)[map it!](#)

Case Worker: Ronald Larson

Orig. Dept.: FALSE

Budget No:

Name of Caller: Gary Garber

Fault: --Select--

Phone: 949-650-6661

Division:

Complaint Date: 6/8/2010

Property Owner:

First Insp. Date: 6/8/2010

Tenant:

Re-Insp. Date:

Resolution Target:

Resolution Date: 6/8/2010

Citation Date:

Time Tracking[+ Time](#)

Date	Time In	Time Out	Crew	#	MH		
6/8/2010	09:00 AM	09:45 AM	Ron Larson	1	0.75	edit	delete

Total Manhours: 0.75

File Attachments[+ Attachment](#)**Add Comments:****Comments/History**

By: Ronald Larson (cnb) 6/8/2010 10:14:59 AM

Visibility: Requestor

[edit](#) [delete](#)

Type: Comments

Met with complainant to discuss the fire danger of the rotten deck material. The structural members have been double joisted for support and the wood is not a fire hazard at this time.

By: Gary(user) 6/8/2010 7:29:26 AM

Visibility: Requestor

[edit](#) [delete](#)

Type: Details

This is a follow up to Mr. Larson's 9/17/09 inspection of my lower rear balcony, at 8 Landfall Court, for potential fire hazard. The inspection was due to my 9/16/09 Fire Code Complaint (Case# 385009092). The original complaint indicated my concern that dry rotted floor joists are not painted where damage is and appears to be highly flammable. I have repeatedly request that the Newport Crest Homeowner Association make necessary repairs. As of this date no repairs have been done and condition is worst then when you inspected the balcony on 9/17/09. As you can see from the photographs I submitted by email to Mr. Larson yesterday the floor joists directly under the balcony flooring are decomposing into kindling. We are entering the fire season and my property backs up to Sunset Ridge where the high grass and weeds are drying out. It only will take a small spark from a grill or cigarette to start a fire. With July 4th coming up there is additional concerns due to fireworks. During the last inspection it was indicated if the necessary repair work was not completed in a timely manner contact the Fire Department again. Please call me before any inspection. My phone number is 949-650-6661.

☒ Make Comments Private[Spell](#)[Add -->](#)

Search Tags:

Attachments to City of NB Letter dated 7/9/12

Exhibit 19 Page 35 of 36

Need Help? Call IT x3091

Michael, Steve

From: Kearns, Randy
Sent: Tuesday, May 19, 2009 8:25 AM
To: Michael, Steve
Subject: FW: Sunset Ridge Park fire abatement clearing

Southland has begun the fire abatement work at Sunset Ridge.

From: Michael, Steve
Sent: Monday, May 11, 2009 4:08 PM
To: Kearns, Randy
Subject: Sunset Park

Randy,

We received a complaint about the weeds in the upper section of Sunset Park from a caller that lives on Tribute Ct. I went out today and confirmed that the weeds are about four feet tall on city property, the callers name is Ken Larson (425-503-9582). Is that area on Barron's list to cut back? The attached picture shows the area in question.

Thanks, Steve

Steve Michael
Newport Beach Fire Department
Office 949-644-3108



CITY OF NEWPORT BEACH

CITY ATTORNEY'S OFFICE

Aaron C. Harp, City Attorney

Th11c

July 11, 2012

Via Electronic Mail

Mary K. Shallenberger, Chair
Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 91405

RE: Sunset Ridge Park Project – 4850 West Coast Highway, Newport Beach, California (City of Newport Beach); CDP Application No. 5-11-302

Dear Chair Shallenberger and Members of the Commission:

We note that the Addendum posted on July 11, 2012, for the above-referenced application references the Purchase and Sale Agreement – Real Property for DD 040733-01-01. However, the Addendum did not include a copy of the referenced document. We respectfully request that a copy of the Purchase and Sale Agreement, which is attached hereto, be included in the record of proceedings.

CITY ATTORNEY'S OFFICE

A handwritten signature in blue ink, appearing to read "Leonie Mulvihill", is written over a horizontal line.

Leonie Mulvihill
Assistant City Attorney

LM:emg
Enclosure

cc: Dr. Charles Lester, Director
Sherilyn Sarb, Deputy Director
John Del Arroz, Coastal Program Analyst

[A10-00630]

DEPARTMENT OF TRANSPORTATION**SOUTHERN RIGHT OF WAY REGION**21073 PATHFINDER ROAD, SUITE 100
DIAMOND BAR, CA 91765PHONE (909) 468-1500
FAX (909) 468-1501
TDD (800) 735-2929

December 5, 2006

Dave Kiff
City of Newport Managers Office
3300 Newport Blvd.
Newport Beach, CA 92663-3816

Dear Mr. Kiff:

Attached are the signed Purchase and Sale Agreement -Real Property for DD 040766-01-01 and a copy of the recorded Director's Deed. When the original Director's Deed is mailed back to me, I will send it to you.

If you have any questions please don't hesitate to call me at (909)444-0119 or e-mail me at Vince_Lundblad@dot.ca.gov.

VINCENT LUNDBLAD
Associate Right of Way Agent
Southern Right of Way Region
(909)444-0119

District 07 R/W Field Office
801 South Grand Ave., 17th Floor
Los Angeles, CA 90017
Phone: (213) 897-1773
Fax: (213) 897-6603

District 08 R/W Field Office
484 W. 4th Street, 12th Floor
San Bernardino, CA 92401
Phone: (909) 383-6211
Fax: (909) 383-6877

District 12 R/W Field Office
3337 Michelson Drive, Suite 380
Irvine, CA 92612-1692
Phone: (949) 724-2308
Fax: (949) 724-2411

Letters from City of NPB
dated July 11, 2012

Exhibit 20 Page 2 of 13

PURCHASE AND SALE AGREEMENT – REAL PROPERTY DD040766-01-01

In this Agreement dated September 26, 2006 by and between CITY OF NEWPORT BEACH hereinafter known as "BUYER" and STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, hereinafter known as "SELLER", the parties agree as follows:

For the sum of Five Million Dollars (\$5,000,000) and no cents, Buyer hereby agrees to purchase and Seller hereby agrees to sell the vacant and unimproved real property located in the City of Newport Beach, Orange County, California, and legally described in Director's Deed # 040766-01-01 (hereinafter referred to as the "property").

Subject to the following conditions:

I

Buyer agrees to pay for the said real property to State the principal sum of Five Million Dollars (\$5,000,000). A series of three payments shall be made to the State of California, Department of Transportation, and delivered to the State of California, Department of Transportation, Southern Right of Way Region, Excess Land Sales, 21073 Pathfinder Road, Suite 100, Diamond Bar, CA 91765. Interest will begin on January 1, 2007. Principal and interest to be due and payable in annual installments as follows:

1. Principal payment of \$2.0 million by December 31, 2006;
2. Principal payment of \$1.5 million plus interest of \$142,500 by December 31, 2007; and
3. Principal payment of \$1.5 million plus interest of \$71,250 by December 31, 2008.

(a) Each annual installment shall be credited first on interest then due and the remainder on principal so credited.

(b) Buyer may make additional payments on the principal at any time before final installment, and interest shall thereupon cease upon said principal so credited.

(c) If Buyer should default in the payment of any annual installment, or any part thereof, when due as herein provided, and such default should continue for thirty (30) days after notice thereof in writing to Buyer, the whole of said purchase price shall at the option of the State become forthwith due and payable.

(d) If the Buyer shall default on any of the payments, title, at the option of the State, will revert back to the State.

(e) It is understood and agreed that the term of this agreement shall end on December 31, 2008 and the buyer shall make payment in full including principal and interest by that date.

(f) The Deed shall record after receiving CTC approval and the 1st payment of \$2.0 million, no later than December 31, 2006.

II

All sales made subject to the approval of the California Transportation Commission. In the event that the California Transportation Commission fails to approve this sale, all monies heretofore paid by the Buyer will be refunded without interest. The CTC meeting is October 12th, 2006.

III

The Seller is willing to process this sale at no charge to the Buyer, except for the items set forth in paragraph IV below. Buyer, at his option, may open an escrow at its own expense. The Seller will pay no escrow fees.

PURCHASE AND SALE AGREEMENT – REAL PROPERTY DD040766-01-01

IV

The Buyer agrees to pay any and all recording fees, documentary transfer tax and monumentation fees chargeable by the County Recorder. At a later date, the Seller will request the fees forwarded, and buyer shall submit to the seller upon demand.

V

The Buyer expressly understands that the right, title and interest in the property to be conveyed shall not exceed that vested in the State of California and that the Seller will furnish no policy of title insurance. If a policy of title insurance is desired, the Seller will obtain one, upon request, at the Buyer's expense.

VI

The property is being sold "as is" and is being conveyed subject to any special assessments, restrictions, reservations or easements of record and subject to any reservations or restrictions contained in the Director's Deed. Buyer has read and understands other information the Seller has relative to these matters.

VII

In the event suit is brought by either party to enforce the terms and provisions of this Agreement or to secure the performance hereof, each party shall bear its own attorney's fees. The Buyer agrees that the title of the property being conveyed shall not pass until the Director's Deed has been recorded. The Buyer shall not take possession of the property until the director's Deed is recorded

VIII

Buyer shall defend, indemnify, and hold seller and seller's elected and appointed officers agents and employees free and harmless from and against any and all liabilities, damages, claims, costs and expenses (including without limitation, attorney's fees, legal expenses and consultant's fees, and investigation and remediation costs) arising in whole or in part from the existence of hazardous substance, or hazardous substance conditions. This indemnity is intended to address that liability for which seller may be responsible arising solely out of its mere ownership of said real property. This provision shall survive transfer of title of the said real property and any rescission of the said transfer.

"Hazardous Substance" shall mean any substance whose nature and / or quantity of existence, use, manufacture, disposal of effect, render it subject to federal, state or local regulation, investigation, remediation or removal as potentially injurious to public health or welfare, including the comprehensive Environmental Response Compensation and Liability Act or Resource Conservation and Recovery Acts as now in effect.

"Hazardous Substance Condition" shall mean the existence on or under, said property of a hazardous substance that requires remediation and / or removal and / or to be otherwise mitigated pursuant to applicable law.

STATE OF CALIFORNIA

DEPARTMENT OF TRANSPORTATION

PURCHASE AND SALE AGREEMENT - REAL PROPERTY DD040766-01-01

IX

This New Purchase Agreement supercedes and replaces any and all previous agreements of any kind.

The terms and conditions of the above agreement are hereby accepted, subject to the approval of the California Transportation Commission.

Please indicate exactly how the title should be vested:

City of Newport Beach, California

Buyer: 

MAYOR

(Signature)

Date: 11/16/06

DON WEBB

(Print Name)

Buyer: _____

(Signature)

Date: _____

(Print Name)

STATE OF CALIFORNIA

DEPARTMENT OF TRANSPORTATION

By: 

C. Paul LaMond, Acting Chief

Excess Land, Southern Right of Way Region

Date: 11/30/06



CITY OF NEWPORT BEACH

CITY ATTORNEY'S OFFICE

Aaron C. Harp, City Attorney

Th11c

July 11, 2012

*Rec'd at hearing
7/12/12
from L. Mulvihill*

Via Electronic Mail

Mary K. Shallenberger, Chair
Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 91405

RE: Sunset Ridge Park Project – 4850 West Coast Highway, Newport Beach, California (City of Newport Beach); CDP Application No. 5-11-302

Dear Chair Shallenberger and Members of the Commission:

The City received the Commission Staff's Addendum this afternoon. The City apologizes for the late letter, but we believe a response to the Addendum is required because it contains a number of factual and legal errors. In summary, the City believes the Sunset Ridge Park Project is fully consistent with the Coastal Act. We again respectfully ask that the Commission allow us to complete the job of building this much-needed and long-awaited active community park.

SB 124 and the Director's Deed

The Addendum argues neither SB 124 nor the Director's Deed that conveyed the Sunset Ridge Park property to the City evidences a legislative intent that the property be used for an active park. This is incorrect.

SB 124 stated in Section 2 that execution of the property transfer was contingent "upon the execution of an agreement between the Department of Parks and Recreation and the City of Newport Beach that requires the city to accept and perform all of the responsibilities relating to, and to assume the liability for, the construction, operation, and maintenance of the park and its improvements." (Emphasis added.)

It is abundantly from the Bill itself that it contemplated that the City assume the responsibilities relating to, and to assume the liability for, the construction, operation and maintenance of the park and its improvements. That language did not contemplate

a passive park or open space. Rather, it contemplated an active park, as the City now proposes.

While the Addendum asserts that there is no legislative intent which supports the City's interpretation of SB 124, the very committee reports that Staff has attached as Exhibit 16 to the Addendum make this legislative intent unmistakably clear. The report prepared for the Assembly Committee of Appropriations explained:

The City of Newport Beach intends to build baseball and soccer fields, restroom facilities and parking on the site and include walking/bike trails linked to the proposed 1000 acre Orange Coast River Park adjacent to the nearby Santa Ana River. (Exhibit 16, p. 3.)

This is repeated in the report prepared for the Senate Committee on Governmental Organization:

The City of Newport Beach intends to build baseball and soccer fields, restroom facilities and parking on the site and include walking/bike trails linked to the proposed 1000 acre Orange Coast River Park adjacent to the nearby Santa Ana River. (Exhibit 16, p. 5.)

This report, however, went further to explain:

The City of Newport Beach and Caltrans had been negotiating the city's purchase of the property, however, the city recently determined that because of budget constraints (the city's general fund annual expenditures for all capital projects is about \$ 4million), it could not pay market value (about \$4-6 million) for the 15-acre parcel and still commit \$5-6 million in additional funds for construction of a park on the property. (*Id.* (emphasis added).)

Therefore, the Addendum has not fairly or accurately represented the legislative intent underlying the Bill and the acquisition of the property by the City. The Legislature well understood that the whole point of this Bill, followed by the Director's Deed, was to commit this property to an active park.

As to the Director's Deed, the Addendum also incorrectly characterizes the language and intent embodied in the purchase and sale agreement between the State and the City. The Director's Deed provides:

Grantee's use of said easement area shall be limited to those "permitted" uses under Grantee's zoning designation open space – active as defined under Title 20 of Grantee's Zoning Code as it existed on October 12, 2006. (Exh. 14, p. 3 (emphasis added).)

The Addendum conspicuously omits the underscored language and states that the OS-A designation is no longer part of the City's zoning code, so presumably the City cannot rely upon it. That obviously is erroneous, and the Addendum's conclusion based on selectively omitting the controlling language. It says "as defined under Title 20 of the Grantees Zoning Code "as it existed on October 12, 2006."

The Addendum explains that in 2006, before the purchase, the Commission certified a land use plan amendment with the designation of the site going from Medium Density Residential to Open Space. However, the zoning for the property – as referred to in the Director's Deed – remained unchanged, and it remains unchanged today for one reason – there is no certified LCP, and therefore the change in designation in the land use plan not is not currently effective. The Addendum also erroneously states that "it is illogical that the City agreed to a condition in the purchase and sale agreement contrary to the existing zoning at the time." In fact, it was not contrary to the existing zoning at the time – and it is not contrary to the zoning currently in effect.

The Addendum further argues that Commission was not a party to the Purchase and Sale Agreement and is not bound by its terms. The State of California, however, is bound by the terms of the Agreement. The State of California negotiated the City's purchase of the Sunset Ridge Park property for \$5.2 million for purpose of creating a badly needed coastal active park. That said, the City does not contend that the Commission lacks authority to review the City's application under the Coastal Act. But, the Staff's recommendation that the application be denied, or that the property remain as passive park, or open space, does have consequences for the State, as noted in the City Attorney's July 9, 2012 letter to the Commission.

The Addendum further argues that the City's claim that it must build an active park fails because "parties to a contract may be excused from performing under the terms of the contract where the performance is prevented by operation of law." "Operation of law," however, does mean that the State or its agencies may renege on a contract and then label that as "impossible" and therefore that they need not comply with it. The applicable principle is estoppel, and that would be result of following the Staff recommendation.

Mowing as a Continuing Lawful Use

The Addendum mischaracterizes the City's position with respect to mowing and its continued lawful use. It asserts that a vested rights exemption is not available because no such exemption was applied for and, assuming it was, it would not be granted in any event.

The City's position is that the mowing of this property – a use which the Staff Report acknowledges pre-dates the Coastal Act – is a lawful ongoing use. This is not a case of a residence or a commercial or other structure or development in the process of being constructed when the law changes. That would involve a vested rights issue. By contrast, the ongoing mowing here is no different than a house completed prior to the effective date of the Coastal Act, or a commercial use established and ongoing before the Coastal Act, or continued operations in an oil well field which does not include new facilities or an intensification of use. The latter example comes from the Commission's counsel, the Attorney General, in a formal opinion (56 Ops. Cal.Atty.Gen. 85 (1973)), where the Attorney General rightly concluded that the permit requirements of the Coastal Act did not "in any sense prohibit the continued present management or use of existing structures or facilities" and was "not designed to stop present use or to allow present use to deteriorate. (*Id.*; *Monterey Sand Company, Inc. v. California Coastal Com.* (1987) 191 Cal.App.3d 169, 175, fn. 3.) *Monterey Sand Co.* referred to this as the "continuing use of a past allocation of coastal resources" theory. (*Id.*) The Addendum seeks to distinguish the latter case on the basis that, there, a vested rights exemption was sought. The real point, however, is the vast bulk of activities fully established or ongoing before the Coastal Act may continue without any need to apply to the Commission for a permit. If the residence is half-built when the Coastal Act became effective, then discussion of a vested right becomes relevant. That is not the case here.

The Addendum also erroneously states that *Monterey Sand Co.* is not applicable because there, "the State had approved a lease prior to enactment of the Coastal Act and the mining company had made significant investments in reliance on that lease," and the City here "has not identified any past promises by the state regarding the mowing activity nor has it identified any significant investments that it made in order to continue the mowing activity." In fact, the evidence is uncontradicted that Caltrans has mowed this property since at least 1965, that SB 124 required the "the city to accept and perform all of the responsibilities relating to, and to assume the liability for, the construction, operation, and maintenance of the park and its improvements," and that the Director's Deed required that the "Grantee shall be responsibility for all maintenance within the easement area." (Exhibits 14, 15.)

Simply put, the Addendum has stretched the concept of vested rights beyond its proper application. It does not apply here.

The Addendum further notes the City's position is that its mowing activities are maintenance activities which pre-date the Coastal Act; and that they also are exempt

ongoing maintenance. The Addendum argues that that the use of mechanized equipment "within an ESHA" does not qualify as exempt maintenance. The problem is that the area in question is not presently ESHA. The staff position is that if not maintained and mowed, *Encelia californica*, would recolonize and that additionally it would be used by the gnatcatcher. But that is not the current state of the property mowed. There is no mature *Encelia* that has colonized as ESHA and, moreover, there is no evidence of any use of this area by the gnatcatcher. In other words, the argument is "it could be," not that it currently is.

Lawful Nuisance Abatement Under Coastal Act Section 30005

The Addendum states that the Fire Marshal failed to include qualifying language as to the "reasonable probability" of a fire hazard. Indeed, the Fire Department's notices do not discuss the reasonable probability of a fire hazard. Rather, the Fire Department specifically identifies the property as a flammable vegetation hazard! (Exhibit 16, pp. 16-19.)

The Addendum further argues that if abatement exceeds more than 100 feet from any structure, it necessarily goes too far and requires a permit. The Addendum, however, completely ignores the provision which explains when and how the Fire Chief may determine that more than 100 feet is necessary. This was set forth in the City's recent letter to the Commission (Exhibit 16, p. 9), but was not addressed by the Addendum. The Newport Beach Municipal Codes includes Section 4903 of Chapter 49, which provides that the Fire Chief may require more than the 100 feet when the Fire Chief determines that conditions exist which necessitate greater fire protection measures." Specifically, that section states:

"Nothing contained in this Section shall be deemed to preclude the Fire Code official from requiring more than the minimum specific requirements set forth above when the Fire Code official determines that conditions exist which necessitate greater fire protection measures." (Emphasis added.)

As explained in the City Attorney's July 9, 2012 letter to the Commission (at page 9):

"Specifically, the Fire Official has determined that the site specific conditions of the property warrant removal of more than 100 feet (from Newport Crest) of vegetation. The Fire Official's determination is based on the known accumulation of light flashy fuel that dries quickly during the summer months; the bowl shape of the property; the 30 foot embankments limiting emergency access; the history or fire and transient use; and, prevailing winds (see Attachment

No. 2, Correspondence from City's Fire Department dated January 31, 2012 and June 8, 2012.) Specifically, the Fire Division Chief of the City's Fire Prevention Unit has advised that the light flashy fuels in this area could cause the structures in the adjacent condominium complex to ignite with either radiant or direct flame contact and the flowing embers could ignite other structures a few blocks in the development when the firebrands contact roofs, attic vents, decks or other combustible fuels in the fire's path. As a result, the City has eliminated this life safety and property hazard through weed abatement."

The Addendum suggests that the fire hazard is diminished by the classification of *Encelia californica* as fire resistant completely overlooks the point made by the City in its correspondence dated July 9, 2012, which is supported by the California Department of Forestry and Fire Protection. Specifically:

If enough heat is present almost any plant will burn. The objective of fire resistive landscaping is to reduce the heat available and reduce the change of ignition. Fire resistive landscaping combines natives or ornamental plants with proper placement and proper maintenance. The key is separating plants vertically and horizontally to prevent fire spread and extension. (See, Cal. Dept. of Forestry and Fire Protection, Structural Fire Prevention Field Guide for Mitigation of Wildland Fires, (April 2000) p. 55.)

In addition to missing this point, the Addendum also unfairly accuses the City of stating erroneous facts. This accusation fails to appreciate the statements actually included in the Staff Report. For instance, Commission staff has concluded:

[I]n the absence of routine mowing, the areas identified as 'Disturbed *Encelia* Scrub' would become dense stands of robust, nearly pure, California sunflower. California sunflower is a fast growing shrub and if it wasn't mowed it would reach heights of two to three feet over one growing season. (Memo, Jonna D. Engel to John Del Arroz dated September 22, 2011, p. 7).

Dr. Engel also confirmed her observations that the mowed vegetation consists of closely spaced plants (Memo, Jonna D. Engel to John Del Arroz dated September 22, 2011, p. 8). Finally, the Commission's Staff Report states:

California Coastal Commission

July 11, 2012

Page: 7

The Park Site's Disturbed Encelia Scrub vegetation is dominated by California encelia but also includes both other native species such as deerweed as well as non-native species such as black mustard and thistle as described in the project EIR. (Staff Report, p. 18 (emphasis added).)

Both black mustard and thistle are included in the list of highly flammable plant species identified by the Orange County Fire Authority in the Vegetation Management Technical Design Guideline which was cited in the Addendum and relied upon by the City in its July 9, 2012, correspondence.

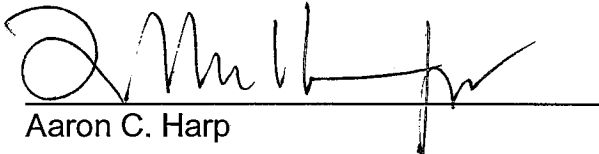
Thus, the opinions and conclusions of Commission staff do indeed support the Fire Department's prior determinations. More importantly, this is not an abstract issue. This property previously burned and resulted in significant fire damage to one of the adjacent condominiums.

Takings, Impairment of Contract, and Breach of Contract

In the City's correspondence dated July 9, 2012, we noted that the City acquired the property from the State of California for \$5.2 million for the purpose of constructing, operating and maintenance an active park. The Addendum suggests that when a charter city, like Newport, enters into a contract with the State, it may be breached and contract rights may be abrogated without consequences. For that reason, we noted that the Staff recommendation to deny the application, or to limit the property essentially to open space, raises a takings issue, a constitutional impairment of contracts issue, and a breach of contract issue.

We bring these issues to your attention just so that you are aware of the issues, but the City wishes to emphasize that we believe the project, as proposed, is fully consistent with the Coastal Act, and we ask for your approval.

CITY ATTORNEY'S OFFICE

A handwritten signature in black ink, appearing to read 'A. Harp', is written over a horizontal line.

Aaron C. Harp

City Attorney
LM:emg

California Coastal Commission

July 11, 2012

Page: 8

cc: Dr. Charles Lester, Director
Sherilyn Sarb, Deputy Director
John Del Arroz, Coastal Program Analyst
Mayor and City Council
Dave Kiff, City Manager
Dana Smith, Assistant City Manager

[A10-00630



NEWPORT BEACH FIRE DEPARTMENT

P.O. Box 1768, 3300 NEWPORT BLVD., NEWPORT BEACH, CA 92658-8915
PHONE: (949) 644-3104 FAX: (949) 644-3120 WEB: WWW.NBFD.NET

SCOTT L. POSTER
FIRE CHIEF

Via Electronic and Overnight Mail

July 17, 2012

Mary K. Shallenberger, Chair
Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 91405

RE: Sunset Ridge Park Project – 4850 West Coast Highway, Newport Beach,
California (City of Newport Beach); CDP Application No. 5-11-302

Dear Chair Shallenberger and Members of the Commission:

On behalf of the City of Newport Beach Fire Department, we appreciate the opportunity to summarize our comments at the public hearing on July 12, 2012 relating to the above-referenced application.

Fire and the resulting products of combustion are a continual threat to the community. Preventing and minimizing the risk of uncontrolled fire protects public safety and is a core principal of a modern fire department. Whether property is developed or not, it is the responsibility of the Fire Chief to prevent and suppress fires. With appropriate planning, along with prudent and reasonable mitigation measures, buildings and surrounding areas can be made safer, regardless of the occupancy or other activities at and around the site. The primary focus of the requirements set forth in the fire code is public safety, such as preventing fire. The removal of heat, oxygen, and fuel are means by which fires can be prevented, or the impact reduced and lessened.

The 13.7 acres of vacant land in Newport Beach, which is commonly referred to as the Sunset Ridge Park property, presents several challenges from a fire and life safety perspective. The first challenge is life safety. Although a vegetation fire in the proposed park area may be confined to the parcel of origin, the products of combustion (smoke) will not. The smoke plume will travel with the wind and presents potentially critical life safety issues on a larger scale than one may assume from a 13.7 acre vegetation fire in a different area. Within close proximity of the Sunset Ridge Park property is Hoag Hospital, a regional asset and primary receiving hospital for Newport Beach and Costa Mesa. Also located on or adjacent to the Hoag campus and near Sunset Ridge Park, is a large child care facility, three surgery centers (in addition to the numerous surgical activities at Hoag) as well as a Cancer Center. There are also five elderly care facilities

in the immediate area. According to Hoag's staff, large volumes of smoke will cause all surgical activities to cease due to the requirement for clean, outside air. The two populations most at risk for exposure to smoke are the children and the elderly, both of whom are located within the immediate area of Sunset Ridge Park. (Attachment A).

The second challenge is firefighter access. The Sunset Ridge Park property is surrounded on three sides by steep and limited access; there is no direct manner for fire apparatus to access the site. All fire suppression activities would likely be conducted on foot thereby increasing the time and resources required to contain a fire. The hose lines used to fight fires from apparatus are 150 feet long and pre-connected, which would require time to extend and reach a fire that could be as far as 400 to 500 feet away. Water supplies to support suppression efforts are also limited with no onsite fire hydrants or irrigation, increasing the time and resources required to contain such an event. The north side of the parcel boundary is unincorporated county area, outside of the jurisdictional authority of the City of Newport Beach and provides no site or water access.

The third challenge is the proposed park's location adjacent to Pacific Coast Highway and directly adjacent to mass transit facilities. There is a high level of human activity in the area, and this directly translates into a higher probability of ignition sources as human activities and ignition sources are highly correlated. The 1988 Sunset Ridge Park incendiary fire caused over \$50,000.00 in property damage even with the strict vegetation management requirements in force. Recently, nearby on the County land, youths ignited a vacant structure causing a total loss.

To protect life and property is the Fire Chief's responsibility and requires good planning measures combined with common sense code enforcement designed to make buildings, premises, and surrounding areas safer for all occupants and the public. Appropriately, it should also be noted that the California State Health and Safety Codes mandates a higher level of protection for the elderly, those unable to assist themselves (surgical patients), and children relative to the general population.

Furthermore, the Fire Chief is authorized and is duty bound to enforce the provisions of the Fire Codes and has the authority to render interpretations of these codes, and to adopt policies, procedures, rules and regulations in order to clarify the application of its provisions. The City of Newport Beach has adopted the 2009 edition of the International Fire Code. A few of the applicable excerpts from this code are as follows:

Section 101.2.2 Scope:

The code establishes regulations affecting or relating to structures, processes, premises and safeguards regarding conditions, hazardous to life, property, or public welfare in the occupancy of structures or premises.

Section 101.3 Intent:

The purpose of this code is to establish the minimum requirements consistent with nationally recognized good practice for providing a reasonable level of life safety and property protection from the hazards of fire, explosion or dangerous conditions in new and existing buildings, structures, and premises and to provide safety to fire fighters and emergency responders during emergency operations.

Section 102.1.4 Applicability:

The construction and design provisions of this code shall apply to existing structures, facilities and conditions which, in the opinion of the fire code official, constitute a distinct hazard to life or property.

The prevention or lessening of the occurrence of fire and the production of smoke and the byproducts of combustion is focused on eliminating or minimizing the occurrence of heat sources, removing or eliminating fuel sources, and/or the removal of oxygen.

A careful and reasonable assessment of the fire and life safety profile of the area in and around the proposed Sunset Ridge Park project confirms that the removal of oxygen is not possible and that effective elimination of ignition sources is also difficult. Reducing the fuel source, however, is an industry best practice and has been, and continues to be, an achievable and highly effective interpretation of the locally adopted codes designed to reduce the occurrence and impacts of uncontrolled fires.

Furthermore, the policies, procedures, rules and regulations that the City of Newport Beach has implemented for this area are in the best interests of the community. These policies meet, and will continue to meet, a reasonable level of life safety and property protection from the hazards of fire, and dangerous conditions in new and existing buildings, structures and premises consistent with local and state adopted fire, and health and safety codes.

The Newport Beach Fire Department has required the 13.7 acres of vacant land on Sunset Ridge Park to be maintained with minimal flammable vegetation and has caused the area to be treated on an annual basis to mitigate the fire hazard. This area is not irrigated and during the winter and spring vegetation grows while water is abundant; summer comes and if untreated the vegetation will cure, turn brown with extremely low fuel moisture and become an explosive fuel bed with tons of flammable fuel. Therefore, until onsite conditions change, to protect safety and critical infrastructure I will continue to require the flammable vegetation by code or regulation to be treated until such time flammable vegetation does not exist on the site.

Sincerely,

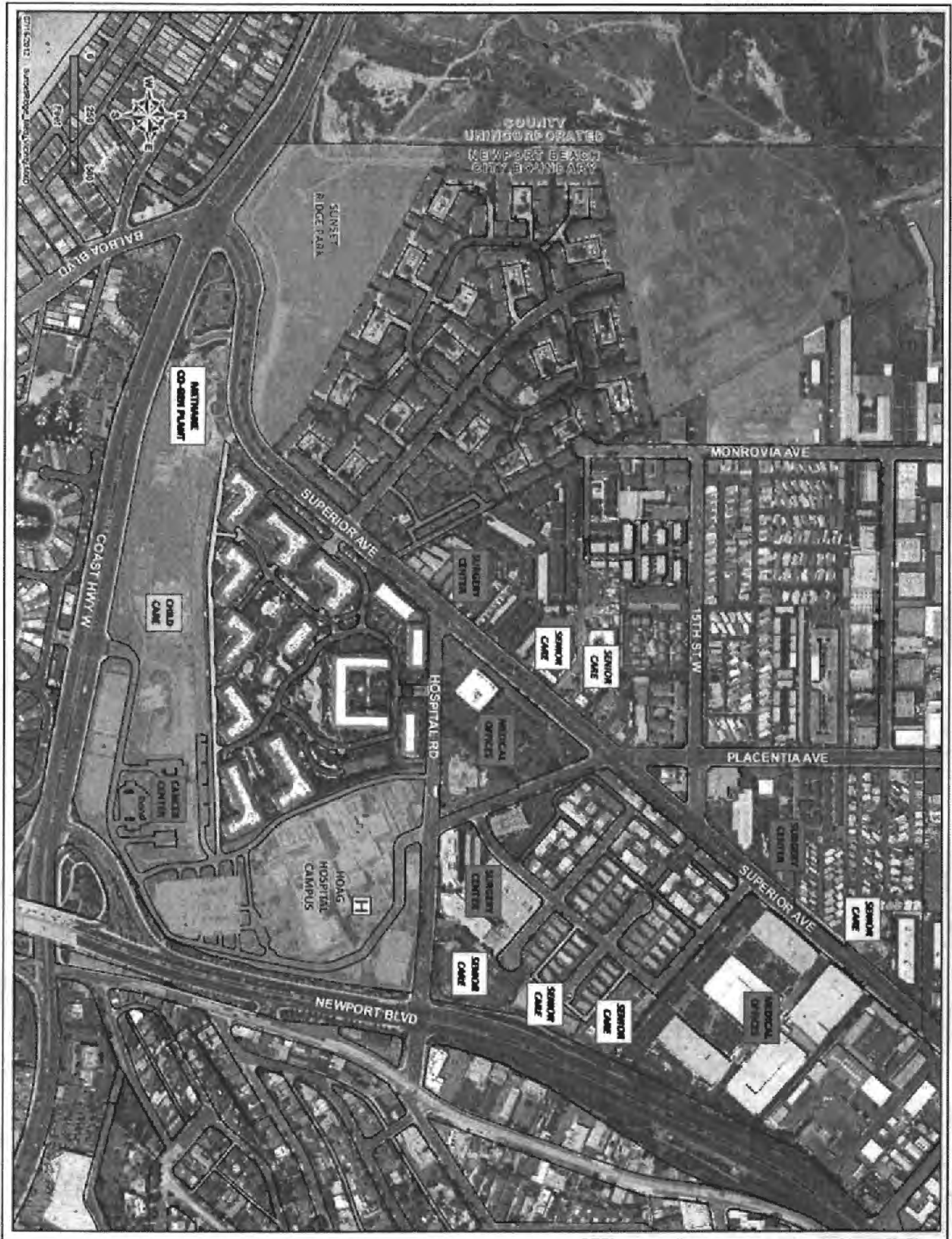
A handwritten signature in black ink, appearing to be "Scott L. Poster", with a long horizontal line extending to the right.

Scott L. Poster
Fire Chief

SLP:cg

Attachments: Attachment A

Attachment A





CITY OF NEWPORT BEACH

RECREATION & SENIOR SERVICES

July 20, 2012

RECEIVED
South Coast Region

JUL 24 2012

CALIFORNIA
COASTAL COMMISSION

Mr. John Del Arroz
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

RE: Sunset Ridge Park – CDP Application No. 5-11-302

Dear Mr. Del Arroz:

This letter is in reference and response to the California Coastal Commission meeting held on Thursday, July 12 in Chula Vista. During the hearing on Sunset Ridge Park, discussion among the Commissioners ensued regarding the Superior parking lot and its usage during the 4th of July and summer months in general. The concern was that there would not be parking available to accommodate beach parking and the scheduled youth sports activities simultaneously.

The sports field allocation periods for youth sports groups run from the first week of February through mid June and from September to mid December. The majority of the leagues usage is completed by Memorial Day weekend and Thanksgiving weekend respectively. The sports field allocation periods naturally fall outside of the heavy summer beach usage eliminating any parking demand conflicts at the Superior parking lot. Additionally, it is our Department's policy to not allocate or rent any facilities on holidays leaving them open for general public usage on a year round basis.

Sincerely,

L.D.

Laura Detweiler, Director
Recreation and Senior Services
City of Newport Beach



CITY OF NEWPORT BEACH

July 23, 2012

Ms. Mary Shallenberger, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RE: City of Newport Beach: Sunset Ridge Park – CDP Application # 5-11-302

Dear Chair Shallenberger and Commissioners:

Please allow me to thank you and your staff for the extensive amount of time you have put into reviewing our application for Sunset Ridge Park. Having sat there with you, we understand how challenging an issue this is for the Commission as a whole. Indeed, we very much respect the thought that has gone into your deliberations.

With respect to the present CDP Application, we have had several meetings, discussions, and written communications with staff between November 2011 and July 2012 (as recently as July 19, 2012) and worked to develop a strong and resource-protective park plan. I know that they have struggled with this project as we have, looking at it from a variety of angles out of respect for the City's public recreation goal, as well as the Coastal Act's resource protection policies. Ms. Sarb has been particularly accessible and helpful to me, and we have indeed discussed the project several times following the November 2011 CCC hearing on our previous project iteration. She has consistently said that the "mowing issue" remained the barrier for staff to move further into discussing Conditions of Approval, and we have respected that and striven to address it.

Given that we will again soon return to you with our proposed active park project, I did want to take this time to clear up some misconceptions you or the audience members may have about this project. We believe these clarifications and corrections are important, and are determinative of some of the issues over which the Commission has struggled. I will try to be as concise as possible.

CLUP Land Use Designation for Sunset Ridge Park

- The City's certified Coastal Land Use Plan (CLUP) land use designation for the property is Parks and Recreation (PR) not Open Space (OS) as suggested by Coastal staff during the hearing on July 12, 2012. The PR category includes active public or private recreational use. While permitted uses include both active and passive parks, this land use designation is separate and distinct from the CLUP's OS designation, which category is

intended to provide areas to protect and maintain natural resources. The permitted uses under the applicable PR designation include golf courses, tennis clubs and private recreation facilities. In summary, the Sunset Ridge Park is designated by the CLUP as PR, not OS, and is not a Deferred Certification Area.

Banning Ranch is a Deferred Certification Area Outside the City's Boundaries

- As you are aware, a Deferred Certification Area (DCA) refers to an area which has not incorporated into a land use plan. As noted above, the Sunset Ridge Park was included in the CLUP's land use designation and is not a Deferred Certification Area. However, the adjacent Banning Ranch property is a DCA. It is inaccurate to refer to the Sunset Ridge Park property as a DCA.
- In addition to being a DCA, Banning Ranch is outside of the City's jurisdictional boundaries and is part of the unincorporated territory of Orange County. Therefore, the City does not issue nuisance and abatement orders to the Banning Ranch property. In the past, the City has informally advised the owners of complaints when citizens contact the City advising of fire concerns related to Banning Ranch.

Mowing – photos, years missed, records.

- Coastal staff asked us to prove that we have mowed the area at least annually since we've owned the property. We did that, providing copies of our contractor receipts and photos since early 2007.
- As to the Caltrans' ownership period, you can imagine how difficult it is to venture into Caltrans' archives to find old maintenance records on one parcel in Newport Beach. We have made personal calls, tried to contact old acquaintances there, and have made a California Public Records Act request. A complicating factor for our records search is that during the 40+ years of Caltrans' ownership of the site, the Caltrans District that once encompassed Los Angeles and Orange Counties physically split into a separate Caltrans district for Orange County. Many years of records went one place, others went elsewhere. We have given staff all we have found. However, after producing aerial photographs for most of the years since the original freeway grading was done by the State, we feel confident that the record overwhelmingly supports that the vegetation on the site was continually and annually disc-ed or mowed.
- As to the resident who once resided in Newport Crest who said the property was not mowed every year because she didn't see it being mowed, I don't doubt her eyesight, but I do doubt her conclusion. During dry years, vegetation can be sparse. The mowing could have been at different times of the year. We only know what we know, and that is after months of trying to find more. We have not found or identified a period when the property was NOT mowed, nor has Coastal staff. Additionally, I believe you heard different public testimony at the November 2011 hearing on our original proposal from other long time residents of the condominiums to the north that said they witnessed the vegetation maintenance every year.

Use of Other Sports Fields

- In response to the person who said that Newport Beach should look first to having a "Joint Use Agreement" with our local school district (Newport-Mesa USD), we do have one and have had one since 1987. Even with the use of school properties, we still run far short on fields.
- The same person suggested it would be easy to go "1.5 miles" to Lions Park in neighboring Costa Mesa. For most places in West Newport Beach, it's double that. But more importantly, those are time-consuming miles trying to get to practice at 4:30 p.m. on an October afternoon, when this same park can be half an hour's carpool away.
- Moreover, Lions Park is in another city. We are not a place that shifts our park needs to other cities. Especially when our neighboring City of Costa Mesa faces even greater needs for additional fields to meet their community's demand for their children to play sports. It's unfair and infeasible to ask them to accommodate our shortfall.

Banning Ranch Conservancy (BRC)

- We recognize that the members of BRC are passionate people who very sincerely want the Newport Banning Ranch property preserved as passive open space and parkland. However, we believe that BRC sees Sunset Ridge Park as a dress rehearsal for Newport Banning Ranch's proposal.
- We feel like we have repeatedly gone the extra mile with BRC. First, they wanted the City to defer processing the Sunset Ridge Park project until after the Commission reviews the Banning Ranch project. If you recall, last year, they also proposed an alternative access road off PCH right through the disturbed *Encelia* that they now want staff to call ESHA. They also suggested we come up with a plan to provide parking across Superior Avenue to access the active park, which the Commission also preferred to see and is now before you for your approval. For our first application (CDP App. No. 5-10-168), by their own public testimony our proposed active park as presently configured was satisfactory to BRC (provided we eliminated the on-site access road and parking lot) - yet now it is not. Then they came up with their own alternative plan, which went to you with just an e-mail "cc" to us. We feel like Charlie Brown facing Lucy and her football each time we interact with them.
- We did a fairly extensive review of the BRC park alternative (see **Attachment B** for more of our comments). In short, their proposal to align two soccer fields lengthwise along the northerly side of the park makes us see Lucy again. The most vocal opposition to an active park at Sunset Ridge comes from some of the Newport Crest condominium residents - and BRC's proposal puts fields, parents, coaches, refs, chairs and whistles right below the maximum possible amount of Newport Crest porches.
- BRC's alternative ball fields proposal also eliminates a critical youth baseball field - instead, it puts this baseball field on the Newport Banning Ranch property - i.e. currently within a project BRC so strongly opposes. Is that ball field five years into the future? Ten? Will it ever happen? Eleven years ago, in 2001, we told community kids they'd soon have ballfields at Sunset Ridge. Those kids are out of college now.

- We currently have 4,000 kids listed on soccer, baseball and lacrosse rosters that are waiting in the wings to use Sunset Ridge Park in particular. Most go without much needed practice due to shortage of fields. These numbers do not include the moms, dads, siblings and grandparents that accompany these little athletes who will also enjoy sporting events and the more passive areas of the park that include the viewpoints, walkways, picnic facilities and playground. This park will achieve so much for so many and advance the important Coastal Act policy of providing low cost visitor-serving and recreational opportunities.

Landscape Design/Planting Plan

- Back when we were discussing options with Ms. Sarb and her staff (after the November 2011 CCC hearing), we talked about a variety of possible measures that could improve our application. At the suggestion of CCC staff, we re-worked the landscape/planting plan twice since our original submittal, so that it now is a predominately California-native plan, including increased areas of Coastal Sage Scrub (CSS). We also discussed planting additional CSS elsewhere off-site, not as mitigation, but just to be a good steward and help alleviate concerns. This planting could occur in degraded habitat along Upper Newport Bay or to replace the invasive species in Upper Buck Gully. I think all of those things seemed reasonable and beneficial to staff and Ms. Sarb; nevertheless, she would always politely and respectfully note that, "you still have to address the mowing issue first." **We remain very open and willing to do additional off-site plantings at a place agreeable to Coastal staff and the City.** We can easily identify sites, timelines, and planting plans in a Condition of Approval.
- We do have, and did submit, complete and detailed landscaping/planting plans as part of our pending application. You had it with you as you considered this item. As noted, we have modified it to address your staff's feedback/desires. Although we remain willing to consider further changes to it, we think it is quite good now.

Encelia californica

- To reiterate Dr. Dixon's clarification after the lunch break on July 12, 2012, *Encelia californica* is not an endangered or threatened species. *Encelia californica* can be part of a Coastal Sage Scrub community. A CSS community can potentially serve as host habitat for the endangered California Gnatcatcher (CAGN). We know of no protocol-surveyed CAGN sightings on the Sunset Ridge Park property.
- Comments from the audience and Commission staff noted that *Encelia californica* is a species appropriate for fire-sensitive areas. Indeed, we proposed planting it near the Newport Crest condominiums in an irrigated zone. *Encelia californica* is on the Fuel Modification Zone Plant List in OCFA's Vegetation Management Technical Design Guidelines, which states on page 6 of 37:

"New plant species introduced outside of the irrigated zones must be from Attachment 8 ... **All plants including species from Attachment 8 will burn given sufficient heat and low moisture content** (our emphasis added). Vegetative fire resistance may be enhanced through adequate irrigation rates or precipitation."

- Therefore, although *Encelia californica* is a fire resistive plant, there remains a fire hazard associated with it especially when there is no irrigation. You have seen photos of bright green *Encelia* in spring or late winter, shortly after (or during) a healthy rainy season. But it doesn't always look that way. Attachment A shows two photos of *Encelia californica* (some green, but some brown or grey, dry and quite brittle) in non-irrigated spots in central Orange County (one in the Coastal Zone, one about 500' away) from July 2012.

City of Newport Beach's Demonstrated Commitment to Advancing and Protecting Coastal Resources

I think it is important to share with you the following, in case you are unaware of it:

- In May 2012, the City (working with a State Parks grant) opened up 254 acres of coastal land via improvements to Upper Buck Gully, including an \$180,000 trail improvement (consistent with an approved Resource and Recreation Management Plan).
- Lower Buck Gully – following a \$2 million restoration project coordinated by the City – is seeing egrets and herons return (see attached web information – **Attachment C**).
- Our City Council has stepped up and dedicated upwards of \$7 million to dredge Lower Newport Bay - work that the Federal government is responsible for but will not fully fund. The current Lower Newport Bay Dredging project will restore navigability and water quality in the Lower Bay to the extent not seen in 30+ years.
- Other dredging work includes addressing the Santa Ana Regional Water Quality Control Board's #1 Water Quality "Toxic Hot Spot" in all of our Region, the Rhine Channel. \$4 million of City money later, the Rhine Channel is now clean.
- As to water quality:
 - In **Heal the Bay's** 2011-12 Annual Beach Report Card, we received "honor roll" status for five of our ocean and bay beaches. Newport Beach received all "A" and "A+" grades (and one "B") for every one of our ocean and bay beaches for the 2011 summer.
 - In the **Natural Resources Defense Council's** 2012 Beach Report, two of Newport's beaches were named NRDC "5-Star" beaches, a recognition limited to just 13 locations nationwide.

Neither of these designations is by chance – it is thanks to aggressive City educational and enforcement efforts that other governments have had to scale back during the recession.

- While we did not cause nor agree with the problem, we agreed to address Caltrans' contractor's problems in the Southeast Polygon near Sunset Ridge Park and have completed a \$47,000 habitat improvement project in John Wayne Gulch near Upper Newport Bay; and
- In possibly the best news I could ever give your staff, our City Council, in June 2012, approved funding via the City's FY 2012-13 Budget to complete our Implementation Plan (IP) to our Coastal Land Use Plan, the first time that the Council has ever allocated funds to complete our Local Coastal Plan.

In closing, given the time constraints associated with public hearings, I regret that we were unable to share more of this with you during the July 12 hearing, but we appreciate how the structure of your meetings does not allow people to pop up and down answering questions and responding to suggestions. Please know that there were about 10 of us in attendance from the City, ready and willing to clarify any questions or concerns you had. We anticipate having a similar group of representatives at the upcoming hearing and would welcome the opportunity to answer any questions you might have for us.

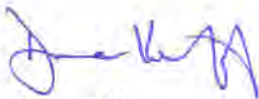
Forgive me to conclude with a more personal note, but we really struggle with the situation we find ourselves in. This land could easily be under yards of cement as the **Coast Freeway**. The City and community stopped that in the 1970s. Then we entered an era when Caltrans kept rejecting our offers to buy the property, as Caltrans tried to sell Sunset Ridge multiple times in the 1980s and 1990s to the highest bidder for **apartments** or **homes**. The City worked to stop that effort via State legislation (SB 124) in 2001.

Were we in the clear then? No. Because even as City and State Parks staff worked on language for an Operating Agreement allowing us to build and manage an active park here, the California Department of General Services (DGS) wasn't on board. DGS sponsored legislation to repeal SB 124 **without even telling us**. DGS did, however, tell State Parks to cease working on the park agreement with us (additionally, DGS told us we'd have to pay nearly \$800,000 annually in "rent" to have a park there – on top of our park construction and maintenance costs). With others here, we scrambled, fought DGS, and "won" by agreeing to buy the land outright at a **price nearly four (4) times** the price authorized under SB 124.

A six-lane freeway. Then homes. Or apartments. Now, finally a park. But yes, one with fields. This dream of an active park at Sunset Ridge has been through many twists and turns, and yet is still alive.

Please approve our project.

Sincerely,



Dave Kiff
City Manager
City of Newport Beach

Attachments: A – *Encelia* – July 18 and 21, 2012
B – Concerns with BRC's proposed park plan
C – Lower Buck Gully story in CDMtoday – July 20, 2012

cc: Coastal Commissioners
Charles Lester, Executive Director, CA Coastal Commission
Sherilyn Sarb, Deputy Director, CA Coastal Commission

Attachment A
Encelia – Coastal Orange County – July 18, 2012



Encelia – Coastal Orange County – July 21, 2012



Attachment B


Alternate SRP Design as proposed by Banning Ranch Conservancy

Upon review of the recently proposed alternate SRP design by BRC, City staff concluded that this alternate design does not meet the City's needs and objectives as described below:

1. Elimination of the proposed Pony baseball field is not acceptable. The City currently only has one Pony baseball field. The proposed Pony baseball field was identified by NHBA (Newport Beach and Costa Mesa) as their greatest need back in 2005.
2. No restrooms – a completely unworkable thought. Elimination of restrooms, picnic area, warm-up area, tot lot and pedestrian/bicycle path around park make the park significantly less desirable and attractive to the general public.
3. Lack required setback from existing disturbed *Encelia* scrub.
4. Increased noise level to Newport Crest residents due to close proximity of soccer fields.
5. No visitor access from Coast Hwy to park; vehicular or pedestrian. Existing vegetation must be removed to accommodate grading for walkway.
6. With the highly active fields, will not be able to monitor or keep kids/people out of the sensitive vegetation (cut pathways, build forts, chase balls, use it as a restroom) without putting a 6 foot fence around it. The fence itself becomes a hazard for ballfield users.
7. Existing sewer easement (approx. 10,500 SF) still exists across *Encelia* scrub zone
8. Existing storm drain easement (approx. 2,500 SF) still exists across *Encelia* scrub zone
9. If *Encelia* area is ESHA, soccer field construction may be restricted or near impossible to grade/fill for level fields and provide proper drainage, because doing so will impact *Encelia* area. Per Coastal staff, we are not allowed to grade in ESHA or buffer areas.
10. With the other constraints that have been imposed to protect existing vegetation on the slopes along Superior Ave, the closest pedestrian access point to the site would now be approximately 900 feet from the Superior Ave / Coast Hwy intersection where users would be crossing from the existing parking lot. Portions of Superior Ave are at 11% grade which makes this a non-accessible path of travel, especially when carrying sports gear to the fields.
11. Pedestrians from the existing parking lot entrance will be tempted to illegally and unsafely cross Superior Ave 900 feet from the Superior / Coast Hwy intersection to avoid having to walk down to the crosswalk and then back up the 11% grade. Having everyone walk down and then up Superior Ave in order to access the site creates a greater risk for accidents (i.e. kids, balls, etc. falling into vehicular travel path).
12. Having all of the program elements hidden between the natural vegetation area and Newport Crest could have impacts on Police visibility and safety for the fields.
13. The City has been conducting official public meetings since 2006 (approximately 8 meetings total) that have resulted in the originally submitted design. Much thought, discussion, time and funding have been put into the City's design. The plan also accomplished balancing the needs of the sports groups and the neighbors as evidenced by the Newport Crest HOA board voting to approve the plan that first went forward to the CCC back in October 2011.

Attachment C

Buck Gully Wildlife Returning to Normal

POSTED: JULY 20TH, 2012 11:33 AM |  [No Comments](#)



Baby egrets and herons were spotted Friday morning in Lower Buck Gully — a sight some say hasn't occurred in years and could be attributed to a recent restoration and erosion project.

"I haven't see egrets or herons before in Buck Gully, and I've been tromping around there for over five years," said Robert Stein, assistant city engineer, in an email.



Stein oversaw the Lower Buck Gully erosion project, which began in September 2011 and was completed early this year. The \$2 million project's goal was to slow water flowing toward the ocean by adding metal cages filled with rocks. The project also included removal of non-native vegetation and [trapping of non-native cowbirds](#). The cowbird trap was removed recently at the end of the nesting season, but no data was immediately available on the number of cowbirds caught and relocated.

Stein said a biologist would monitor the area for the next five years and would be quantifying the changes in birdlife.

"I expect/hope that next year when there is complete ground cover, raptors will find this a good place to hang out also," Stein said in an email.

The Coastal Commission, which granted approval of the erosion project in August 2011, issued a report that outlined the area's ecological history and the advantages of the project, [read our story here](#).



CITY OF NEWPORT BEACH

CITY ATTORNEY'S OFFICE

Aaron C. Harp, City Attorney

June 11, 2012

Via Overnight Mail and Electronic Mail
idalarroz@coastal.ca.gov

John Del Arroz
California Coastal Commission
200 OceanGate, 10th Floor
Long Beach, CA 90802

RE: City of Newport Beach – Sunset Ridge Park [CDP Application No. 5-11-302]
Matter No.: A10-00630

Dear Mr. Del Arroz:

We have reviewed Coastal Commission (CCC) Staff's report for CDP No. 5-11-302 that was made available on the CCC's website on Friday, June 1, 2012. The City of Newport Beach is timely requesting a postponement of this project's hearing pursuant to California Coastal Commission Regulations section 13073(a). This postponement is requested so that the City has adequate time to respond to the points raised in your staff report.

We note that CCC staff has indicated on the Staff Report for No. 5-11-302 that the subject application was deemed filed on December 16, 2011, which was the date that the subject CDP application was submitted to your office. You have incorrectly noted on the Staff Report that the "180th Day," for the purposes of the California Permit Streamlining Act, is June 13, 2012. This position is inconsistent with your letter dated January 18, 2012, entitled "Notice of Incomplete Application," a copy of which is attached hereto for your reference.

Please be advised that it is the City's position that pursuant to California Government Code section 65943(a), the application was deemed complete on Jan. 15, 2012 (i.e. 30 days after the CDP application was submitted on Dec. 16, 2011). As such, and pursuant to California Government Code Section 65952, the "180th Day" is July 13, 2012. Therefore, our request for a postponement to the Commission's July meeting pursuant to California Coastal Commission Regulations section 13073(a) provides sufficient time under the applicable deadlines for action on the application.

Sincerely,

CITY ATTORNEY'S OFFICE

Leonie Mulvihill
Assistant City Attorney

John Del Arroz
June 11, 2012
Page: 2

cc: Dave Kiff, City Manager
Aaron Harp, City Attorney
Dave Webb, Deputy Public Works Director
Don Schmitz
Mayor Nancy Gardener
City Council
Dr. Charles Lester, Executive Director
Sherilyn Sarb, Deputy Director
Karl Schwing, Supervisor

[A10-00630]

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceanplace, Suite 1000
Long Beach, CA 90802-4302
(562) 680-5071



1/18/2012

Schmitz & Associates, Inc.
Attn: Don Schmitz & Donna Tripp
5234 Chesebro Rd, Ste. 200
Agoura Hills, CA 91301

Re: NOTICE OF INCOMPLETE APPLICATION
Application No. 5-11-302 (Sunset Ridge Park)
Site Address: 4850 West Coast Highway, Newport Beach, Orange County

Dear Mr. Schmitz and Ms. Donna Tripp:

On December 19, 2011, our office received the subject coastal development permit application. The proposed project is the construction of an active recreational park. We have reviewed all of the materials you have submitted and have concluded that additional information needs to be submitted in order to complete your application and schedule it for a public hearing. Please accept this letter as notification that your application is incomplete pending receipt of additional information necessary for a thorough analysis of your project by Commission staff. In order to complete your application please submit the following:

- **Buffers.** Much of the discussion in the staff report and hearing for Permit 5-10-168 concerned the width of buffers on the site. Although the revised application, which was just submitted, has eliminated much of the interface between development and Environmentally Sensitive Habitat Area (ESHA) through the elimination of the access road, the project still involves development adjacent to ESHA.
- The width of buffers to ESHA varies depending on the proposed intensity of development and the sensitivity of the adjacent resource, but has typically required a minimum of 100 feet between development and gnatcatcher occupied ESHA. The biological memorandum by Dr. Jonna Engel for permit application 5-10-168 also recommends a buffer distance of 100 feet for areas on the western boundary of the City property. These buffers may also be required to be vegetated with appropriate native vegetation where necessary to protect habitat. In certain cases these buffers have been reduced to accommodate unusual circumstances on the project site; however it should be stressed that these reductions in buffers have been exceptions to the typically applied distance. In order to assure adequate protection to ESHA, projects should maximize the buffer width, and only request a reduction in buffer width where the maximum cannot be provided and where the buffer proposed will be amply protective of the resource.

The current project includes buffers between approximately 0 and 11 feet. Please submit an alternative plan showing a 100 foot buffer between ESHA areas and all development, including grading. The alternative plan should be consistent with requirements within the City of Newport Beach Land Use Plan. Please also submit a description of the effects on the proposed project that would result from usage of the alternative plan utilizing a 100 foot buffer on the subject site.

- **Preliminary Habitat Management Plan.** The project site includes areas of ESHA occupied by gnatcatchers and areas adjacent to gnatcatcher occupied ESHA. As described in the biological memorandum for Coastal Development Permit 5-10-168, development of a park at the project site may have impacts on adjacent ESHA. Therefore, please submit a preliminary Habitat Maintenance and Management Plan outlining the

Notice of Incomplete Application
Page 2 of 4

procedures that will be taken to ensure that native habitat stays healthy and robust in perpetuity for the preserved or restored areas on the site.

- **Proposed maintenance access road.** The project proposes to allow emergency and maintenance vehicles to access the park site through the NOV area on the lower portion of the subject site. The access road then continues north, and eventually reaches the boundary of the Newport Crest condominium complex. Please answer the following questions regarding the maintenance access road:
 - a. The NOV areas were declared as ESHA as a result of previous Commission action. What steps will be taken to ensure that maintenance and emergency vehicles do not result in impacts to ESHA? Please indicate such measures on the project plans.
 - b. Are any improvements proposed to the existing maintenance road between the NOV areas on the western boundary of the park site? What materials will compose the maintenance road there and at elsewhere on the site?
 - c. What is the purpose of the planned linkage between the Newport Crest condominium complex and the access road? Could the required emergency and maintenance vehicle access be handled through this proposed linkage instead of through the NOV area?
- **Fencing.** The submitted plans indicate that fencing is proposed on the western portion of the project site. Please submit a fencing plan indicating the proposed fencing design, whether measures are proposed to allow the crossing of wildlife to the park site, and an analysis by a qualified biologist on the effect that the proposed fencing plan will have on the circulation of wildlife in the area.
- **Landscaping.** Thank you for the submittal of the proposed landscaping plan. Please provide the following information required for a complete review of the proposed project:
 - a. The Commission has typically required that landscaping consist of native plants and/or non-native plants provided they are drought tolerant and non-invasive. The submitted plans include landscaping categories, but it is unclear what specific species are proposed for each landscaping area. Please provide a list of species for each landscaping category, and identify whether the species are: non-invasive, native, or drought tolerant.
 - b. On page 24 of the biological memo for permit application 5-10-168, the Commission's staff ecologist writes that irrigation practices can lead to the proliferation of invasive species, such as the Argentinian ant, a species that has been documented to predate gnatcatcher chicks. Please submit a written description of proposed irrigation practices, including proposed irrigation measures (such as sprinklers or driplines), frequency of irrigation, and measures that are proposed to ensure that only the required irrigation amounts are delivered.
 - c. The proposed landscaping plan would result in the elimination of areas composed of disturbed native habitat on the edges of the park site and their replacement with what appears to be ornamental vegetation. The California Coastal Gnatcatcher has been identified in some of these areas, and the areas likely provide foraging habitat for the gnatcatcher. Replacement of areas of disturbed native scrub vegetation with other non-scrub vegetation may result in a reduction of available foraging habitat for the gnatcatcher. Additionally, the development of the proposed project would result in an intensification of use at the site which may result in other impacts to ESHA areas. Therefore, please submit an alternative landscaping plan which provides

Notice of Incomplete Application
Page 3 of 4

expanded habitat suitable for use by gnatcatchers. Where possible, these areas should be contiguous with areas of ESHA.

Please note that the following is a comment that is advisory in nature, and is not a filing requirement: In the creation of the alternative landscaping plan, the City may wish to consider including the slopes along West Coast Highway and/or the slopes along Superior Avenue into the expanded habitat areas. The factors that staff views are in favor of expansion of habitat in this area include: expansion would not disturb the active recreational components of the park project, expansion would seem to fit with the more passive recreational opportunities provided by the proposed access paths to the park site, and expansion here would provide habitat contiguous with existing ESHA which would maximize habitat value.

- d. The proposed landscaping plan includes areas designated as 'not to be disturbed.' Please provide additional information regarding these areas. Specifically, please clarify the extent of activities proposed within these areas, what would be required to restore these areas, and the reasons these areas have been designated as 'not to be disturbed'.
- e. Please describe the purpose of the 'water infiltration area,' and state what substrata and vegetation species are planned in this area.

- **Biological Surveys.** A total of three years have passed since focused (protocol) surveys for California gnatcatcher and burrowing owls were last conducted on the project site. The site supports habitat suitable for both of these sensitive species that is immediately adjacent to or near identified environmentally sensitive habitat. Additionally, the site supports habitat suitable for raptor foraging, and a number of raptor species, including Cooper's Hawks, a species on the CDFG's watch list, were observed on the proposed project site in 2009. Therefore, please submit new focused, protocol, 2012 survey reports for California gnatcatcher and burrowing owls, and a 2012 raptor foraging survey report. Raptor foraging surveys must consist of a minimum of three sampling days that are designed (timing and duration) to best assess the foraging patterns/behavior of the raptor species known and expected to utilize the proposed project site.
- **Water Quality.** What are the proposed water quality measures for the proposed project and where would they be located? What changes are necessary for the preliminary water quality management plan submitted in the EIR? Have the water quality measures for the proposed site been adequately sized to address the impacts associated with construction of the park project?
- **Geologic Stability.** Please submit a letter by a qualified professional answering the following questions: a) Has the geologic stability of constructed slopes on the site been addressed? b) Do the constructed slopes meet the standard factor of safety? If not, why not?
- **Parking/Access.** The EIR for the project estimates a parking requirement of 96 spaces. The submitted application states that 64 spaces will be provided at the existing parking lot at Superior Avenue. Does the proposed project include adequate parking? Are shuttles or other parking management features proposed? What measures are proposed to ensure that the proposed use of the Superior Avenue does not conflict with visitors using the lot to access the beach during the peak summer period? What measures are proposed to improve pedestrian accessibility to the site from the Superior Avenue parking lot? Does the City wish to incorporate these improvements into the CDP application?

Notice of Incomplete Application
Page 4 of 4

- **Mowing Activities.** Commission staff is still reviewing the submitted information regarding vegetation clearing/mowing activities on the subject site and may have additional questions on this issue in the future.
- **Noticing.** Significant numbers of hearing notices were returned to the Commission's office for hearings for permit number 5-10-168. Some of the notices indicated that they were returned because the one year forwarding service with the US Postal Service has expired. To ensure that all interested parties, including owners and current occupants, receive notice of the project, please review the submitted mailing list to ensure that the mailing list is up to date.

Please do not limit your submittal to the above mentioned items. You may submit any information which you feel may help Commission staff gain a clear understanding of the scope of your project. Upon receipt of the requested materials we will proceed with determining the completeness of your application.

Thank you for your attention to these matters. If you wish to discuss the requirements above, I can be contacted at (562) 590-5071.

Sincerely,



John Del Arroz
Coastal Program Analyst

cc: Dave Webb and Andy Tran, City of Newport Beach



CITY OF NEWPORT BEACH

CITY ATTORNEY'S OFFICE

Aaron C. Harp, City Attorney

June 12, 2012

Via Overnight Mail and Electronic Mail

ldelarroz@coastal.ca.gov

John Del Arroz
California Coastal Commission
200 OceanGate, 10th Floor
Long Beach, CA 90802

**RE: City of Newport Beach – Sunset Ridge Park [CDP Application No. 5-11-302]
Matter No.: A10-00630**

Dear Mr. Del Arroz:

Pursuant to your request, please see the attached executed Agreement for Extension of Time For Decision on Coastal Development Permit ("Agreement"). Please return a copy of the Agreement executed by Coastal staff at your soonest convenience.

As you and I discussed yesterday, this has been executed notwithstanding the City's position that the Staff Report inaccurately references the 180th day as being June 13, 2012. Pursuant to the Permit Streamlining Act, and specifically California Government Code Sections 65943(a) and 65952, the "180th Day" is July 13, 2012, which entitles the City to a postponement of our application from June 13, 2012, to the Commission's July meeting pursuant to California Coastal Commission Regulations Section 13073(a).

Notwithstanding this reservation, we greatly appreciate your time yesterday to discuss this issue and thank you for your assistance.

Sincerely,

CITY ATTORNEY'S OFFICE

Leonie Mulvihill
Assistant City Attorney

Encl.

John Del Amoz
June 12, 2012
Page: 2

cc: Dave Kiff, City Manager
Aaron Harp, City Attorney
Dave Webb, Deputy Public Works Director
Don Schmitz
Mayor Nancy Gardener
City Council
Dr. Charles Lester, Executive Director
Sherilyn Sarb, Deputy Director
Karl Schwing, Supervisor

[A10-00630]

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 OceanGate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



AGREEMENT FOR EXTENSION OF TIME
FOR DECISION ON COASTAL DEVELOPMENT PERMIT

Pursuant to Government Code Section 65957, the applicant and Coastal Commission staff hereby irrevocably agree that: 1) the time limits for a decision on permit application # 5-11-302 established by Government Code Section 65952 shall be extended by 90 days (extension request ordinarily to be 90 days, and in no event more than 90 days for a total period for Commission action not to exceed 270 days); and 2) the effective date of this extension is 6/13/12 [fill in 180 day deadline].

Accordingly, the deadline for Commission decision on this permit application is extended from 6/13/12 [insert 180th day deadline] to 9/11/12 [insert 270th day deadline].

6-11-12
Date

David Webb
☒ Applicant or ☐ Authorized Representative (Print)
(check one)

David Webb
Applicant or Authorized Representative (Signature)

6-12-12
Date

John DeArroz
CCC Staff Name (Print)

John DeArroz
CCC Staff Name (Signature)

Del Arroz, John@Coastal

From: Sarb, Sherilyn@Coastal
Sent: Tuesday, July 03, 2012 2:53 PM
To: Del Arroz, John@Coastal
Cc: Schwing, Karl@Coastal
Subject: FW: Schmitz re: Ex Parte for Sunset Ridge Park CDP 5-11-302
Attachments: 2012 June NB-SRP Ex Parte Dec for Mitchell.doc

For the file and addendum

Sherilyn Sarb, Deputy Director
California Coastal Commission
San Diego District (619)787-2370
South Coast District, Orange County (562)590-5071
ssarb@coastal.ca.gov

From: Miller, Vanessa@Coastal
Sent: Tuesday, July 03, 2012 2:49 PM
To: Staben, Jeff@Coastal; Sarb, Sherilyn@Coastal
Cc: Parker, Holly@Coastal
Subject: FW: Schmitz re: Ex Parte for Sunset Ridge Park CDP 5-11-302

From: Wendy Mitchell
Sent: Tuesday, July 03, 2012 2:43 PM
To: Miller, Vanessa@Coastal
Subject: FW: Schmitz re: Ex Parte for Sunset Ridge Park CDP 5-11-302

For the file.

All the Best,

Wendy Mitchell

From: Lauren Smith
To: Wendy Mitchell
Subject: FW: Schmitz re: Ex Parte for Sunset Ridge Park CDP 5-11-302

----- Forwarded Message

From: Kris Graves <kgraves@schmitzandassociates.net>
Date: Mon, 2 Jul 2012 18:20:55 -0500
To: Lauren Smith
Subject: Schmitz re: Ex Parte for Sunset Ridge Park CDP 5-11-302

Hi Lauren,

Please find attached the Ex Parte letter for Wendy's meeting with Don Schmitz regarding the Sunset Ridge Park CDP 5-11-302. Also, Don greatly appreciates the time she took to meet with him.

Ex-Parte
Page 1

Please contact me at your convenience if you have any questions.

Have a great 4th of July.

Kris Graves

Schmitz & Associates, Inc.

5234 Chesebro Road Ste 200

Agoura Hills, CA 91301

Phone: 818-338-3636

Email: kgraves@schmitzandassociates.net <<mailto:kgraves@schmitzandassociates.net>>

----- End of Forwarded Message

Ex Parte
Page 2

California Coastal Commission
[CDP Application No. 5-11-302]

Applicant: City of Newport Beach

Agent: Schmitz & Associates, Inc.

Project Site/Property Address: 4850 West Coast Hwy, Newport Beach, CA

Project Description: Sunset Ridge Park:

- Youth baseball field and two youth soccer fields
- Playground ("tot lot") and picnic areas
- Memorial garden, pedestrian paths, overlook area with shade structure and seating
- 1300 s.f. one-story restroom and storage facility (20 ft. max height)
- Habitat enhancement plan

I, Commissioner Wendy Mitchell, had ex parte communication with Don Schmitz, agent for the above-referenced project, on June 27, 2012 at 1:30 pm in Sherman Oaks, CA. Mr. Schmitz reviewed with me the Park project as it has been revised from the previous iteration (per CDP 5-10-168), specifically the utilization of off-site existing parking and the elimination of any on-site parking and any visitor-serving access road to the Park site. Mr. Schmitz also reviewed with me the historical site disturbance of the property dating back to the 1960s when Caltrans owned the property, graded it down, and conducted regular site clearance/maintenance activities until 2006 when the City of Newport Beach acquired the property. Mr. Schmitz discussed with me the fact that the City continued Caltrans' annual weed abatement activity on site as required by the City Fire Department.

We also reviewed the April 2012 US Fish & Wildlife letter in which this federal agency concluded that the proposed project will have no impacts to CA gnatcatchers and will enhance habitat when the planting plan is implemented.

Commissioner Mitchell

Date

Ex-Parte
Page 3

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

5.11.302

Received at Commission
Meeting

JUN 13 AMSD

Date and time of communication:

6/7/12 4pm

From: _____

Location of communication:

(If communication was sent by mail or
facsimile, indicate the means of transmission.)

my office

Identity of person(s) initiating communication:

Steve Ray / Penny Elia

Identity of person(s) receiving communication:

D. Boockco

Name or description of project:

Willc City of Newport Beach -

Description of content of communication:

Sunset Ridge

(If communication included written material, attach a copy of the complete text of the written material.)

see attached

Date

6/7/12

Signature of Commissioner

If communication occurred seven (7) or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director **within** seven (7) days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven (7) days of the hearing, **complete** this form, provide the information **orally** on the record of the proceeding **and** provide the Executive Director with a copy of any written material that was part of the communication.

APPENDIX 2

Mr. Ray agrees with the staff report in denying the permit. His group has proferred the alternate sports field scenario. We talked about the previous meeting in which the application was withdrawn and how the present plan differed from that. We talked about the granite covered access road that goes through ESHA. He said that if it is used infrequently as an emergency road, it should be fine. But worried about the mention of its use "by shuttles" which could imply a much more intense use.

Del Arroz, John@Coastal

From: Kris Graves [kgraves@schmitzandassociates.net]
Sent: Wednesday, July 11, 2012 4:46 PM
To: Schwing, Karl@Coastal; Del Arroz, John@Coastal
Subject: Don Schmitz email to Commissioner Zimmer re: Sunset Ridge Park CDP 5-11-302

Good afternoon,

Following is the email Don Schmitz sent to Commissioner Jana Zimmer regarding Sunset Ridge Park CDP 5-11-302.

If you have any questions, please contact me at your convenience.

Best regards,

Kris Graves

Schmitz and Associates Inc.

From: Don Schmitz
Sent: Tuesday, July 10, 2012 4:41 PM
To: 'zimmerccc@gmail.com'
Cc: Don Schmitz

Good afternoon Jana;

I hope that you are feeling better.

I have included below a synopsis of what I had hoped to discuss with you on the phone yesterday. If you have any questions or comments please don't hesitate to contact me.

Sincerely;

Don



Donald W. Schmitz II / President / A.I.C.P.

Headquarters:

29350 West Pacific Coast Highway, Suite 12
 Malibu, CA 90265

Cell: (310) 617-0773 | Office: (310) 589-0773 | Fax: (310) 589-0353

Conjo Valley Office:

5234 Chesebro Road, Suite 200
 Agoura Hills, CA 91301

Cell: (310) 617-0773 | Office: (818) 338-3636 | Fax: (818) 338-3423

DonS@schmitzandassociates.net | www.schmitzandassociates.com | www.facebook.com

-
- Sunset Ridge Park is a much needed community/regional active park.
 - The Park was modified from its previous iteration (considered by the CCC in November 2011) to eliminate the on-site parking lot and access road off of West Coast Highway; Park visitors will now utilize an existing public parking lot across Superior Ave. The present project was a specific alternative that CCC staff referenced in their Nov. 2011 staff report as a superior alternative to the previous Park proposal.
 - The Park site was owned by Caltrans from the mid-1960s to late-2005. During that time, Caltrans graded down the property, stockpiled dirt on site, conducted regular vegetation clearance and weed abatement activities annually for 40 years. The City acquired the property in late-2006 and resumed the annual weed abatement activities commencing Spring 2007 to present. CCC Staff in its staff report does not dispute the fact that this property has been the subject of regular site

disturbance since the 1960s.

- CCC staff find in their staff report (pg. 19) the following:

5-11-302 (Sunset Ridge Park)

temporarily eliminates the habitat value of the Disturbed Encelia Scrub, the Disturbed Encelia Scrub still provides an important ecological role in the time in which it is present.

The site has been subject to large amounts of disturbance, including grading of thousands of cubic yards of export material from the site, and a history of recurrent mowing activities. Although neither Caltrans nor the City of Newport Beach requested a determination from staff, it is likely that, prior to the designation of the gnatcatcher as a species threatened by extinction, Commission staff would have determined that no CDP would be required for the clearance of vegetation due to the disturbed nature of the site. However, the gnatcatcher is now a listed species and more is now known regarding its habitat requirements. The available information shows that the vegetation on the site meets its habitat requirements. Although no gnatcatcher has been sighted within the vegetation, it is reasonable to infer that the gnatcatcher utilizes the Disturbed Encelia Scrub due to protocol surveys and non-protocol sightings which have identified gnatcatchers in directly adjacent

- The California gnatcatcher (CAGN) was designed as threatened by the US Fish & Wildlife Service (USFWS) in 1993; however, it was not until the year 2000 that USFWS published its "Unit 7" critical habitat for the CAGN map. Unit 7 principally encompasses the Newport Banning Ranch (NBR) property; due to its proximity to the NBR property, the Sunset Ridge Park site was included in the mapped area, despite the fact that no CAGN has historically been surveyed to occur on the Park site. Indeed, USFWS acknowledges that the critical habitat mapping process is done with broad paint strokes and did not entail site specific analysis at the time; please see below excerpt from their website:

[excerpts from a USFWS document on *Critical Habitat* (source:

http://www.fs.fed.us/r9/wildlife/tet/docs/esa_references/critical_habitat.pdf)]

The areas shown on critical habitat maps are often large. Are all the areas within the mapped boundaries considered critical habitat?

No. Our rules normally exclude by text developed areas such as buildings, roads, airports, parking lots, piers and other such facilities.

Why are large areas shown on critical habitat maps if the entire area is not actually considered critical habitat?

In such cases, precisely mapping critical habitat boundaries is impractical or impossible, because the legal descriptions for these precise boundaries would be to unwieldy (sic).

- Although the Park site was included in the USFWS critical habitat map, the California Coastal Commission did not raise issues with the property containing ESHA during any of the following opportunities:
 - In 2005 when CCC certified an updated LUP for the City of Newport Beach; this LUP included a land use designation of the Park site of RM-B which would have permitted up to 132 residential units on site.
 - In 2006 when CCC approved a LUP Amendment for the rezoning of the Park property from RM-B to open space active.
 - In 2009 when the City circulated its DEIR for an active park project and specifically referenced the annual weed abatement activity and noted no ESHA/no jurisdictional habitat on the City's Park property, CCC did not provide any comments on this DEIR.
- California Fire Code Section 1103.2.4 (Combustible Vegetation) requires "cut or uncut weeds, grass, vines and other vegetation shall be removed when determined by the chief to be a fire hazard. Designated areas shall be cleared of combustible vegetation to establish the fuel breaks." Moreover, Section 30005 of the Coastal Act provides: "No provision of this division [the Coastal Act] is a limitation on any of the following: . . . (b) On the power of any city or county or city and county to declare, prohibit, and abate nuisances." The City has Fire Department records and testimony that show that it directed Caltrans to conduct annual weed abatement of the Park site since the early 1970s.
- CCC staff's argument in support of a recommendation of denial (as laid out in its staff report) appears to go as follows:
 - According to Dr. Engel, if the mowing is legal, then it's not ESHA; if the mowing is illegal, then it's ESHA.
 - As such, despite the statement referenced above from Pg. 19 of the CDP staff report, due to the inclusion of the Park property as USFWS mapped critical habitat, CCC staff concludes that the annual weed abatement constitutes removal of major vegetation requiring a CDP. Since no CDP was ever obtained by Caltrans nor the City for the annual weed abatement, then the site disturbance must be treated as if it had never occurred, and thus it's ESHA.
 - The City's response to this is as follows: The historical significant site disturbance and annual weed abatement over 47 years constitutes a legal and vested activity which did not require a CDP. Despite the critical habitat mapping in 2000 by USFWS, no protocol survey spanning nearly three decades has yielded any CAGN occurrences on the Park property.

Thus, there is not nor has there ever been any ESHA on the property.

- In an April 2012 determination letter, USFWS concluded that the Park project will not have any impacts to CAGN and that the project will actually result in better and more habitat for CAGN once completed.

California Coastal Commission
[CDP Application No. 5-11-302]

Applicant: City of Newport Beach

Agent: Schmitz & Associates, Inc.

Project Site/Property Address: 4850 West Coast Hwy, Newport Beach, CA

Project Description: Sunset Ridge Park:

- ☐ Youth baseball field and two youth soccer fields
- ☐ Playground ("tot lot") and picnic areas
- ☐ Memorial garden, pedestrian paths, overlook area with shade structure and seating
- ☐ 1300 s.f. one-story restroom and storage facility (20 ft. max height)
- ☐ Habitat enhancement plan

I, Commissioner Brian Brennan, had ex parte communication with Don Schmitz, agent for the above-referenced project, on Tuesday, July 24, 2012 in Ventura, CA. Mr. Schmitz reiterated the City's position on the property's historical site disturbance and legality of the Fire Department-mandated annual weed abatement activity. Mr. Schmitz also advised me of the City's proposed off-site habitat enhancement proposal totaling 1.5 acres to be located within either John Wayne Gulch, Buck Gully of Big Canyon in the City of Newport Beach.



Commissioner Brennan

7/25/12

Date

Del Arroz, John@Coastal

From: Schwing, Karl@Coastal
Sent: Thursday, July 26, 2012 1:24 PM
To: Del Arroz, John@Coastal
Subject: FW: Schmitz re: Ex Parte for Sunset Ridge Park
Attachments: 2012 July 20 NB-SRP Ex Parte Dec for Mitchell.doc; ATT00001.htm
For the file, and attachment as exhibit to staff report

*Karl Schwing
California Coastal Commission
South Coast Area Office/Long Beach
KARL.SCHWING@COASTAL.CA.GOV*

From: Miller, Vanessa@Coastal
Sent: Thursday, July 26, 2012 1:05 PM
To: Sarb, Sherilyn@Coastal; Schwing, Karl@Coastal
Cc: Staben, Jeff@Coastal
Subject: FW: Schmitz re: Ex Parte for Sunset Ridge Park

From: Wendy Mitchell
Sent: Thursday, July 26, 2012 1:04 PM
To: Miller, Vanessa@Coastal
Subject: Fwd: Schmitz re: Ex Parte for Sunset Ridge Park

For the file.

Sent from my iPhone

Begin forwarded message:

From: Lauren Smith
Date: July 26, 2012 12:51:30 PM PDT
To: Wendy Mitchell
Subject: FW: Schmitz re: Ex Parte for Sunset Ridge Park

----- Forwarded Message

From: Kris Graves <kgraves@schmitzandassociates.net>
Date: Thu, 26 Jul 2012 10:55:28 -0500
To: Lauren Smith
Subject: Schmitz re: Ex Parte for Sunset Ridge Park

Hi Lauren,

I have attached Commissioner Mitchell's Ex Parte communication with Don Schmitz on July 20, 2012.

After your review should you have any questions, please contact me at your

California Coastal Commission
[CDP Application No. 5-11-302]

Applicant: City of Newport Beach

Agent: Schmitz & Associates, Inc.

Project Site/Property Address: 4850 West Coast Hwy, Newport Beach, CA

Project Description: Sunset Ridge Park:

- ☐ Youth baseball field and two youth soccer fields
- ☐ Playground ("tot lot") and picnic areas
- ☐ Memorial garden, pedestrian paths, overlook area with shade structure and seating
- ☐ 1300 s.f. one-story restroom and storage facility (20 ft. max height)
- ☐ Habitat enhancement plan

I, Commissioner Wendy Mitchell, had ex parte communication with Don Schmitz, agent for the above-referenced project, on Friday, July 20, 2012. Mr. Schmitz reiterated the City's position on the property's historical site disturbance and legality of the Fire Department-mandated annual weed abatement activity. Mr. Schmitz also advised me of the City's proposed off-site habitat enhancement proposal totaling 1.5 acres to be located within either John Wayne Gulch, Buck Gully of Big Canyon in the City of Newport Beach.

Commissioner Mitchell

Date

Exhibit 26
List of Potential Special Conditions of Approval

These potential special conditions of approval of the Sunset Ridge Park project were developed by Commission staff at the request of the Commission. However, the staff's denial recommendation of the proposed project remains unchanged. Should the Commission approve, or conditionally approve, the proposed project, revised findings will be subsequently prepared and adopted by the Commission.

1. Open Space Restriction

A. No development, as defined in section 30106 of the Coastal Act shall occur in Environmentally Sensitive Habitat Areas and 50-ft. buffers to Environmentally Sensitive Habitat Areas located on the subject site as described and depicted in the Memorandum by Dr. Jonna Engel attached as Exhibit 7 to the staff report dated July 27, 2012 except for the following development as described and shown on the final plans approved by the Executive Director pursuant to Special Condition 6:

1. Restoration activities, including removal of non-native vegetation, installation of native vegetation, installation and removal of temporary irrigation devices;
2. One-time and temporary grading activities within buffers necessary for the proposed construction of the water infiltration trench and underground drainage culvert;
3. Removal of non-native species, in accordance with Special Condition 2;
4. The one-time installation of gravel and low treated wooden curb to the existing maintenance access road, as shown on Exhibit 4 to the staff report dated July 27, 2012
5. The following development, if approved by the Coastal Commission as an amendment to this coastal development permit:

Activities necessary for restoration of native habitat, maintenance or repair of water quality management features or drainage devices, in-kind repair or replacement of existing maintenance access road, or construction of pedestrian paths.

B. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOTICE OF INTENT TO ISSUE PERMIT (NOI) FOR THIS PERMIT, the permittee shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected

by this condition, as generally described above and shown on Exhibit 7 attached to the staff report.

C. PRIOR TO ANY CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the “Standard and Special Conditions”); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The restriction shall include a legal description of the applicant’s entire parcel or parcels. It shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the Standard and Special Conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes – or any part, modification or amendment thereof - remains in existence on or with respect to the subject property.

2. Landscaping Plan.

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, in a form and content acceptable to the Executive Director, two (2) full size sets of revised final landscaping plans prepared by an appropriately licensed professional that meet the following requirements:

- (1) The plan shall demonstrate that:
 - (a) The revised final landscaping plans shall be in substantial conformance with the plan received in the Commission’s office on March 13, 2012, but shall have been modified to 1) Remove invasive species (e.g., *Cortaderia* sp., *Carpobrotus edulis*) from all areas on the subject site, including those areas outside the grading limits (i.e. those marked as Existing - Not to Be Disturbed on the landscaping plan attached to the staff report); 2) 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; 3) Remove non-native species from the planting list that have a propensity for dispersal (e.g., *Acacia* sp.); 4) Remove the area known as the Southeast Polygon, which was subject to Commission Cease and Desist Order CCC-11-CD-03 and Restoration Order CCC-11-RO-02, from the landscaping plan, as such landscaping has already been authorized by such orders. The applicant shall comply with the requirements of the Cease and Desist and Restoration Orders in those areas.

- (b) All planting shall provide 85 percent coverage within 90 days and shall be repeated if necessary to provide such coverage, unless the Executive Director determines that such a requirement would result in adverse impacts to areas of native habitat on the site and establishes a different coverage requirement.
- (c) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan.
- (d) Each landscaped area on the site, except for the area designated as Turf Area on the landscaping plan submitted to the Commission's office on March 13, 2012, shall be suitable to provide foraging habitat for the California gnatcatcher. The majority of the species used shall be consistent with the Coastal Sage Scrub vegetation community type.
- (e) No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. With the exception of the proposed Turf Area, all plants shall be native to coastal Orange County and appropriate to the habitat type and be low water use plants as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>). The Turf Area shall consist of either artificial turf or a species that minimizes the amount of irrigation required.
- (f) No irrigation, except for temporary irrigation necessary to establish plantings, shall occur within ESHA and 50 foot buffers to ESHA. Temporary irrigation lines within ESHA and buffers to ESHA shall be either removed or capped in place once plants have been established. Irrigation on areas of the site other than ESHA and buffers to ESHA shall be limited to the minimum amount necessary to maintain active growth of plant species while preventing creation of a severe fire hazard.

- (2) The plan shall include, at a minimum, the following components:
- (a) A map showing the type, size, quantity and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features
 - (b) A schedule for installation of plants.
- (3) The landscaping plan shall include the following requirements printed on the plans:
- (a) The permittee shall be responsible for ensuring that non-native landscaping within the park is maintained to prevent spill-over into ESHA or buffers to ESHA.
 - (b) The permittee shall be responsible for ensuring that no non-native or invasive species persist within ESHA or buffers to ESHA. Within the first 5 years since commencement of use of the park facility by the public, the permittee shall be authorized to remove non-native or invasive species from ESHA and buffers to ESHA. Such removal shall occur a minimum of once per year. After this period, the permittee shall submit an application for an amendment to this permit or for a new Coastal Development Permit for the removal of vegetation within ESHA.
 - (c) After 5 years since the public has been allowed access to park facilities, the removal or trimming of vegetation within buffers to ESHA or ESHA, including but not limited to removal or trimming for fire hazard management purposes, shall require an amendment to this coastal development permit or a new coastal development permit.
 - (d) No removal, pruning or other maintenance of vegetation, other than in the proposed "Turf" area, shall occur during the breeding season of the California gnatcatcher, which is between February 15 and August 31.
 - (e) Five years from since commencement of use of the park facility by the public the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified

in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

- B.** The permittees shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Parking Management Plan

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit, for the review and approval of the Executive Director, two (2) full sized copies of a Parking Management Plan. The plan shall be prepared by a qualified professional and shall include the following:
- (1) A schedule for management of games/use of the ball fields, to ensure that adequate parking is provided for the park use and for the existing uses of the public parking lot. Games shall be scheduled to avoid peak beach use periods such as summers and holidays to the extent possible as proposed in City of Newport Beach letter dated July 20, 2012, attached as Exhibit 22 to the staff report.
 - (2) Provision of a signage plan that shall include, at a minimum, the following components: a sample of each sign and/or stencil and a site plan depicting the location of each sign and/or stencil. Signage shall be posted that specifies allowable use of each parking space (including day and time of availability) and applicable restrictions.
 - (4) Provisions to limit the usage of the maintenance access road to only City maintenance vehicles and City operated shuttles as a reasonable accommodation for members of the public with impaired mobility consistent with applicable ADA requirements.
 - (5) Provisions to reduce the number of shuttle trips to the park site to the minimum necessary to allow members of the public with impaired mobility to access the park site.

- B. The permittees shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan, including any change in the intensity of use of the access road, shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Lighting

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, revised plans to protect landscaped and habitat areas from light generated by the project. The lighting plan to be submitted to the Executive Director shall be accompanied by an analysis of the lighting plan prepared by a qualified biologist which documents that the lighting plan is effective at preventing lighting impacts upon adjacent environmentally sensitive habitat. The proposed lighting plan shall include, but not be limited to, the following elements: lighting on the site shall be limited to the minimum amount necessary to light accessways and for security and be designed to avoid impacts to native habitat areas on the site; lighting will be limited to 3.5 foot bollards within areas of walkways with cut-off louvers and will be positioned, directed or shielded so as to minimize artificial lighting from reflecting into native habitat; no skyward-casting lighting or portable light generators shall be used on the site; the lowest intensity lighting shall be used that is appropriate to the intended use of the lighting.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Fencing and Signage Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a final fencing and signage plan showing the location, design, height and materials of all walls, fences, gates, safety devices and boundary treatments for the review and approval of the Executive Director. The fencing and signage plan shall incorporate the following requirements:

A. Fencing on the project site shall be located where it will not result in adverse impacts to ESHA.

B. To the maximum extent feasible, all fencing on the site shall be designed to allow the unimpeded ingress, egress and traversal of wildlife, including the coyote.

C. If state requirements regarding oil field security prevent traversal of wildlife, including the coyote, across the proposed Security Fence separating the park site from Newport Banning Ranch, the permittee shall enact measures to exclude nest predators from the subject site, specified in Special Condition 7.

D. The proposed Oil Field Security Fence between the park site and Newport Banning Ranch shall be removed at the time the fencing is no longer required by state law.

E. The fencing plan shall include provisions for signing and fencing to discourage human intrusion into ESHA and buffers to ESHA. The fencing shall be designed in a manner that creates a delineation between areas of native habitat and the public areas of the park.

F. Signs prohibiting entrance of the public into the native habitat areas and identifying their sensitive nature shall be posted at reasonable intervals and likely points of entry along the west side of the park. The plan shall include samples of such signage.

G. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- 6. Final Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director, two (2) copies of final project plans. The final set of plans shall include:
- a) Final Grading and Site plans which are in substantial conformance with the plans received in the Commission's office on March 13, 2012, but which have been revised to comply with a 50 foot buffer from areas of ESHA which excludes grading activities, except in areas where the applicant has demonstrated to the Executive Director's satisfaction that such grading is necessary for the construction of the proposed water infiltration swale and undergrounded drainage culvert.
 - b) Final detailed planting plans, consistent with the requirements of Special Condition 2
 - c) All locations of utilities on the project site
 - d) Plans showing park improvements, such as the public restroom, benches, tables, walkways, ball field and associated structures
 - e) Drainage Plans, which show flow lines and the water quality management features required on the site, as required in Special Conditions 8
 - f) Fencing and Signage Plan, as required in Special Condition 5

- g) Plans showing areas subject to Open Space Restriction as required in Special Condition 1
- h) Construction Staging and Fencing Plans as required in Special Condition 10

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

7. Habitat Impact Management Plan

A. Avoidance of Listed Species. The permittee shall staff a qualified monitoring biologist on-site during all CSS clearing and any other project-related work with the potential to impact sensitive species. The biologist must be knowledgeable of the biology and ecology of sensitive species with the potential to occur on the project site and wetland ecology. The following measures shall be taken prior to and during construction:

- (1) Pre-construction surveys shall be conducted within 10 days of the start of construction by a qualified biologist to determine the presence of any sensitive species with the potential to occur on the project site.
- (2) A qualified biologist shall be present daily during construction in locations with the potential to support sensitive species, and to monitor for these species. The biologist will be authorized to stop work if threats to any sensitive species are identified during monitoring.
- (3) Construction shall be scheduled to avoid the breeding seasons of special status species that are found to be present in the construction area, including, but not limited to, the California gnatcatcher.
- (4) If any burrowing owls, cactus wrens, or other federally or state listed species are discovered on or near the project site, all work in the area shall cease and Fish and Wildlife and the Executive Director of the Commission shall be contacted to assess any potential risk of significant adverse effects to listed species and the possible need for further coordination. No construction shall continue until both Fish and Wildlife and the Executive Director of the Commission have determined that further coordination of construction activities are sufficient to avoid potential effects to listed species. If the Executive Director of the Commission determines that an amendment to this coastal development permit is legally required to address the potential risk of significant adverse effects to listed species, the permittee agrees, by acceptance of this permit, to comply with the

Executive Director's determination and apply for an amendment to this coastal development permit.

- (5) Prior to and during the clearing of any CSS or other suitable gnatcatcher habitats outside the gnatcatcher breeding season, the biologist shall locate any individual gnatcatchers on-site and direct clearing to begin in an area away from birds. In addition, the biologist shall walk ahead of clearing equipment to flush birds towards areas of habitat that will be avoided. It shall be the responsibility of the permittee to assure that gnatcatchers shall not be directly injured or killed by the clearing of CSS.
- (6) Prior to initiating clearing and/or project construction during the gnatcatcher breeding season, the biological monitor shall meet on-site with the construction manager and/or other individual(s) with oversight and management responsibility for the day-to-day activities on the construction site to discuss implementation of the relevant avoidance/minimization/mitigation measures for gnatcatcher. The biologist shall meet as needed with the construction manager (e.g., when new crews are employed) to discuss implementation of these measures.
- (7) The permittee shall submit weekly reports (including photographs of impact areas) to the Executive Director and the Wildlife Agencies during initial clearing of CSS and/or project construction within 100 feet of avoided CSS during the gnatcatcher breeding season. The weekly reports shall document that authorized CSS impacts were not exceeded, work did not occur within the 100-foot setback during the gnatcatcher breeding season except as approved by the Executive Director, and general compliance with all conditions. The reports shall also outline the duration of gnatcatcher monitoring, the location of construction activities, the type of construction which occurred, and equipment used. These reports shall specify numbers, locations, and sex of gnatcatchers (if present), observed gnatcatcher behavior (especially in relation to construction activities), and remedial measures employed to avoid, minimize, and mitigate impacts to gnatcatchers. Raw field notes shall be available upon request by the Executive Director. If the Executive Director of the Commission determines that the report indicates the construction activities are causing a potential risk of significant adverse effects on the environment and determines that an amendment to this coastal development permit is legally required to address these effects, the permittee agrees, by acceptance of this permit, to comply with the Executive Director's determinations and apply for an amendment to this coastal development permit.
- (8) 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.

B. Park Operations.

- 1) Trash cans located in the park shall contain closed lids sufficient to prevent trash from escaping due to wind or animal dispersion.
- 2) No human intrusion into habitat areas shall occur within the breeding season of the California gnatcatcher.
- 2) Access Road. No impacts to ESHA resulting from usage of the maintenance access road are authorized by this Coastal Development Permit. It is the City's responsibility to ensure that usage of the maintenance access road does not result in impacts to ESHA areas. The City shall monitor usage of the maintenance access road to ensure that no impacts occur as a result of usage of the access road. Upon discovery of any impacts to ESHA, the City shall submit an application for a new Coastal Development Permit or an amendment to this Coastal Development Permit for restoration of the affected area.
- 3) Special Events. The only development authorized by this permit is the use of the park for ball fields. Any other use of the park, such as the use of the park for temporary special events, may require a Coastal Development Permit. At least 180 days in advance of a temporary special event which is planned to occur on the site, the permittee shall submit a written letter with a description of the proposed temporary event to inquire whether a Coastal Development Permit is required.
- 4) No amplified speakers shall be allowed on the site.

D. Monitoring Plan. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the permittee shall develop, in consultation with the California Department of Fish and Game and U.S. Fish and Wildlife Service as appropriate, and submit for review and written approval of the Executive Director, a final monitoring plan which includes, but is not limited to, the following requirements:

- 1) During the first five years since commencement of use of the park facility by the public, human intrusion into habitat areas shall be assessed on a regular basis. If the sign and fencing plan approved by the Executive Director is not effective at preventing human intrusion into sensitive habitat areas, the permittee shall submit a request for amendment to this Coastal Development Permit proposing additional measures to prevent intrusion into sensitive areas. The amendment request shall include a report by a qualified biologist describing the assessments performed, the problems encountered, and whether the suggested strategies will be effective at preventing human intrusion. A copy of this report shall also be sent to the Carlsbad office of the US Fish and Wildlife Service. Six years after commencement of use of the park facility by the public, the permittee shall submit a summary of the assessments performed and a

record of their implementation to the Executive Director and the Carlsbad office of the US Fish and Wildlife Service.

- 2) Provisions for monitoring of the impact of predation by domestic pets on the California gnatcatcher. A qualified biologist shall monitor the presence of domestic and feral cats on the subject site, and submit annual monitoring reports for 5 years after completion of grading documenting the degree of usage of the site by domestic and feral cats.
- 3) Provisions for implementation of a Cowbird monitoring and eradication program. The site shall be surveyed annually for the presence of the brown-headed cowbird (*Molothrus ater*) on the project site.

E. Nest Predator Exclusion Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, a program for the removal of nest predators, including the brown-headed cowbird and domestic and feral cats from the project site shall be submitted for the review and approval of the Executive Director. A qualified biologist shall design the eradication program. The program shall be designed to reduce the prevalence of nest predators on the project site to reduce potential impacts to the California gnatcatcher. The program shall include, but shall not be limited to, provisions for trapping, public education, and installation of additional fencing, if consistent with the Fencing and Signage Condition, above. Any development, as defined in Section 30106 of the Coastal Act, which is required to enact the Nest Predator Exclusion Program shall require an amendment to this Coastal Development Permit, unless the executive director determines that no permit is required.

The Nest Predator Exclusion Program shall be enacted if either:

- 1) upon review of the final fencing plan, the Executive Director determines that fencing on the site will not allow wildlife, including the coyote, sufficient mobility to the park site, or:
- 2) Upon review of the reports from the monitoring program, the Executive Director determines that cowbirds or domestic or feral cats are posing a significant risk to the California gnatcatcher or other sensitive species on the project site

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. **Drainage And Polluted Runoff Control Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director, two (2) copies of a final Drainage and Runoff Control Plan for the post-construction project site, prepared by a licensed civil engineer or qualified licensed professional. The Plan shall include detailed drainage and runoff control plans with supporting calculations. The plan shall incorporate Best Management Practices (BMPs) including site design, source control and treatment control measures designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather runoff leaving the developed site. The consulting licensed civil engineer or qualified licensed professional shall certify in writing that the final Drainage and Runoff Control Plan is in substantial conformance with the following minimum requirements:
- 1) The plan shall demonstrate the use of distributed small-scale controls or integrated Best Management Practices (BMPs) that serve to minimize alterations to the natural pre-development hydrologic characteristics and conditions of the site, and effectively address pollutants of concern.
 - 2) Post-development peak runoff rate and average volume from the site shall be maintained at levels similar to pre-development conditions.
 - 3) Selected BMPs shall consist, or primarily consist, of site design elements and/or landscape based systems or features that serve to maintain site permeability, avoid directly connected impervious area and/or retain, infiltrate, or filter runoff from rooftops and hardscape areas, where feasible. Examples of such features include but are not limited to porous pavement, pavers, vegetated swales, infiltration trenches,
 - 4) Landscaping materials shall consist primarily of native or other low-maintenance plant selections which have low water and chemical treatment demands. An efficient irrigation system designed based on hydrozones and utilizing drip emitters or micro-sprays or other efficient design should be utilized for any landscaping requiring water application. To the maximum extent feasible, the irrigation system must be capable of matching the water demand of the vegetation with the quantity of water delivered to the vegetation.
 - 5) All slopes should be stabilized in accordance with provisions contained in the Landscaping and/or Interim Erosion and Sediment Control Condition for this Coastal Development Permit.
 - 6) Runoff shall be discharged from the developed site in a non-erosive manner. Energy dissipating measures shall be installed at the terminus of outflow drains where necessary.

- 7) Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- 8) All BMPs shall be operated, monitored, and maintained in accordance with manufacturer's specifications where applicable, or in accordance with well recognized technical specifications appropriate to the BMP for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired prior to the onset of the storm season (October 15th each year) and at regular intervals as necessary between October 15th and April 15th of each year. Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner.
- 9) For projects located on a hillside, slope, or which may otherwise be prone to instability, final drainage planes should be approved by the project consulting geotechnical engineer.
- 10) Should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the permittee /landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the permittee shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.
- 11) The final Drainage and Runoff Control Plans shall be in conformance with the site/development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans required by the consulting civil engineer/water quality professional or engineering geologist shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

9. **Storage Of Construction Materials, Mechanized Equipment And Removal Of Construction Debris**

- A. The permittee shall comply with the following construction-related requirements:

- (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to water, wind, rain, or dispersion;
- (2) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (3) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
- (4) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
- (5) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

B. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the onset of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:

- (1) The permittee shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;
- (2) The permittee shall develop and implement spill prevention and control measures;
- (3) The permittee shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50-feet away from a storm drain, open ditch or surface water; and

- (4) The permittee shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

10. Construction Staging and Temporary Construction-Fencing Plan:

A. All construction plans and specifications for the project shall indicate that impacts to wetlands and environmentally sensitive habitats shall be avoided and that the California Coastal Commission has not authorized any impact to wetlands or other environmentally sensitive habitat. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a final construction staging and fencing plan for the review and approval of the Executive Director which indicates that the construction in the construction zone, construction staging area(s) and construction corridor(s) shall avoid impacts to wetlands and other sensitive habitat consistent with this approval. The plan shall include the following requirements and elements:

1. Wetlands and any other environmentally sensitive habitats shall not be affected in any way, except as specifically authorized in this permit.
2. Prior to commencement of construction, temporary barriers shall be placed at the limits of grading adjacent to ESHA. The barriers shall be a minimum 8 feet tall and one-inch thick in those areas adjacent to occupied gnatcatcher habitat. Solid physical barriers shall be used at the limits of grading adjacent to all other ESHA. Barriers and other work area demarcations shall be inspected by a qualified biologist to assure that such barriers and/or demarcations are installed consistent with the requirements of this permit. All temporary barriers, staking, fencing shall be removed upon completion of construction.
3. No grading, stockpiling or earth moving with heavy equipment shall occur within ESHA, wetlands or their designated buffers, except as noted in the final habitat management plan approved by the Executive Director.
4. No construction materials, debris, or waste shall be placed or stored where it may enter sensitive upland habitat or wetlands, storm drain, receiving waters, or be subject to wind erosion and dispersion;
5. No construction equipment shall be stored within any ESHA, wetlands or their buffers.
6. The plan shall demonstrate that:
 - a. Construction equipment, materials or activity shall not occur outside the staging area and construction zone and corridors identified on the site plan required by this condition; and
 - b. Construction equipment, materials, or activity shall not be placed in any location which would result in impacts to wetlands or other sensitive habitat;
7. The plan shall include, at a minimum, the following components:
 - a. A site plan that depicts:

- i. limits of the staging area(s)
- ii. construction corridor(s)
- iii. construction site
- iv. location of construction fencing and temporary job trailers with respect to existing wetlands and sensitive habitat

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

11. Final Plans Conforming To Geotechnical Recommendations

A. All final design and construction plans shall be consistent with all recommendations contained in Geotechnical Study For The Proposed Sunset Ridge Park Project For The Environmental Impact Report (EIR), Superior Avenue And Pacific Coast Highway, City Of Newport Beach, California, dated August 19, 2009. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the Executive Director's review and approval, two full sets of plans with evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced report.

C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is legally required.

12. Assumption Of Risk, Waiver Of Liability And Indemnity. By acceptance of this permit, the permittee acknowledges and agrees (i) that the site may be subject to hazards from landslide, erosion, and earth movement; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees

incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards

- 13. Other Agency Approvals.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall provide to the Executive Director a copy of a permit, or letter of permission, or evidence that no permit or permission is required for the project by the following entities:; California Department of Fish and Game; U.S. Fish and Wildlife Service; Regional Water Quality Control Board, City of Newport Beach Fire Authority. The applicant shall comply with the recommendations provided by the USFWS in their April 27, 2012 letter. The permittee shall inform the Executive Director of any changes to the project required by the City of Newport Beach Fire Authority; California Department of Fish and Game; U.S. Fish and Wildlife Service; Regional Water Quality Control Board. Such changes shall not be incorporated into the project until the permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.
- 14. Future Development Restriction.** This permit is only for the development described in Coastal Development Permit No. 5-11-302. Pursuant to Title 14, California Code of Regulations, section 13253(b)(6), the exemptions otherwise provided in Public Resources Code, section 30610(b) shall not apply. Accordingly, any future improvements the proposed park access road, ball fields, grass warm-up field, landscaped areas, children's playground, restroom, and other structures described in this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code, section 30610(d) and Title 14, California Code of Regulations, sections 13252(a)- (b), or the intensification of use of the maintenance access road, shall require an amendment to Permit No. 5-11-302 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government, unless the Executive Director of the Commission determines that no amendment or new permit is required.
- 15. Proof of Legal Ability to Comply With Conditions.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall demonstrate the permittee's legal ability or authority to undertake development located on the adjacent property known as Newport Banning Ranch.
- 16. Liability for Costs and Attorneys Fees.** By acceptance of this permit, the Applicant/Permittee agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Applicant/Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or

issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.