HAMILTON BIOLOGICAL

July 29, 2016

Mr. Jack Ainsworth, Acting Executive Director
California Coastal Commission
45 Fremont Street, Suite 1900
San Francisco, CA 94105

## SUBJECT: REVIEW OF CURRENT BIOLOGICAL ISSUES, PROPOSED BANNING RANCH PROJECT APPLICATION NO. 5-15-2097

Dear Mr. Ainsworth,

Since 2008, on behalf of the Banning Ranch Conservancy, Hamilton Biological, Inc. has been reviewing biological resource issues pertinent to a proposed residential, commercial, and consolidated oil extraction project at Banning Ranch in Newport Beach. This letter evaluates most recent staff's recommendation that you approve the proposed project with conditions. My analysis focuses on (1) the memorandum prepared by Drs. John Dixon and Jonna Engel, dated April 29, 2016, which was incorporated into the staff report as Exhibit 12B; (2) a submission from the applicant (NBR) dated July 10, 2016, entitled, "NBR Project Description – Revised," including exhibits; (3) another submission from NBR, dated July 10, 2016, under the heading, "Re: Newport Banning Ranch, Coastal Development Permit Application No. 5-15-2097."

## EXECUTIVE SUMMARY

As briefly reviewed in this Executive Summary, and discussed at length in this letter, the Banning Ranch Conservancy believes that all development proposals submitted to date would violate multiple resource-protection provisions of the Coastal Act. Each of these points is discussed in greater detail in the main body of this letter.

- **History of Coastal Act Violations.** Banning Ranch has been subjected to extensive and purposeful violations of the Coastal Act violations over a period of decades, with sensitive natural resources cleared from many parts of the site now proposed for development. The areas subjected to violations should be treated in accordance with the process that staff described during the ESHA workshop held in Santa Rosa in April 2016. That is, where unpermitted actions removed the natural habitat, staff and the Commission should evaluate the resources that would have been present in the absence of the unpermitted actions.
- **Short-term Drought Effects on Native Grasslands.** Native grasslands disturbed by grazing, mowing, scraping, etc. often require decades to recover. The five-

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year drought in southern California has not been conducive to spontaneous recovery of needlegrass since illegal disturbances ceased in 2012, so there can be no reasonable expectation that grasslands would exhibit spontaneous recovery. Staff and the Commission appear to be evaluating the illegally disturbed grasslands as if they had *not* been subject to Coastal Act violations. Such an approach effectively rewards the applicant for having removed the sensitive resources, and appears to violate legal precedents that prohibit destroying ESHA and then mitigating the impact in a more convenient location.

- **"Disturbed" and "Degraded" ESHA.** Despite decades of unpermitted disturbances, Banning Ranch still supports roughly twice as many special-status wildlife species, and four times as many listed wildlife species, than does the Del Monte Forest in Monterey County. Therefore, statements of commissioners dismissing the property as merely a "brown field" or "oil field," and arguing that its resources warrant a lower level of Coastal Act protection compared with protections provided to the Del Monte Forest, lack factual basis and are inconsistent with the wording and intent of the Coastal Act.

- **Application of the "Balancing" Provision of the Coastal Act.** No policy of the Coastal Act encourages building an oversized, sprawling, highly destructive residential/commercial development project within a largely natural area known to support numerous special-status species and other sensitive coastal resources. Thus no "conflict" among Coastal Act policies exists that would enable the applicant to raise the balancing provision in the first place. Furthermore, no credible analysis would lead to a conclusion that the type of massive development project proposed by NBR, or staff's most recent alternative, would resolve any possible Coastal Act conflicts "in a manner which on balance is the most protective of significant coastal resources." Furthermore, the suggestion that commissioners might adopt a looser approach to employing "balancing" to facilitate development in areas with "poor quality" ESHA would intensify efforts already underway to mischaracterize inconvenient patches of habitat as being of "poor quality." This approach would be inconsistent with findings in the *Bolsa Chica* case.

- **Requirements to Preserve ESHA and ESHA Buffers Intact.** NBR now proposes that fuel modification zones broadly overlap with ESHA buffers, which would open those buffers up, in perpetuity, to the ongoing maintenance and disturbance mandated by the Fire Department. This would conflict with long-standing Coastal Commission precedent. For example, Policy LU-9 in the 2014 Land Use Plan for the Santa Monica Mountains prohibits any subdivision of land that would result in fuel modification being established within buffers around designated sensitive resource areas (i.e., H1 and H2 "High Scrutiny" habitats).

- **Recovery of Natural Communities Following Illegal Clearing.** Despite a record five-year drought, substantial areas of native Brittlebush Scrub have begun to vigorously recolonize areas that were cleared. This natural recolonization of illegally cleared habitat stands in contrast to suggestions made by some commis-

sioners, at last October's hearing, that disturbed areas would inevitably be overtaken by exotic weeds found in some parts of Banning Ranch. Similarly, NBR and their consultants continually repeat the demonstrably false assertion that only their restoration plans, which would be implemented in concert with their massive development, would be able to halt the slide of Banning Ranch toward becoming one giant weed patch. Beyond these considerations, it is completely unacceptable that some commissioners seem to accept the applicant's argument that the Commission has a duty to approve a sprawling development project in exchange for the applicant restoring areas that the applicant and/or their lessee disturbed illegally.

- **Biological Value of California Brittlebush Scrub.** NBR and Dudek have adopted a strategy of characterizing California Brittlebush Scrub (a form of Southern Coastal Bluff Scrub) as being of "poor quality." Please refer to the attached letter, in which the most widely recognized authority on the California Gnatcatcher, Dr. Jonathan Atwood, "completely rejects" Dudek's claims based on his own review of the data collected on Banning Ranch by numerous biologists over a period of decades.

- **Plans to "Restore" Banning Ranch with Generic Scrub.** Southern Coastal Bluff Scrub, and the form of this community that the CNDDB currently recognizes as the "*Encelia californica* (California Brittlebush Scrub) Alliance," are unique and ecologically sensitive communities that occur in very limited parts of Orange County and elsewhere in the region — they are adapted to local conditions and not interchangeable with other scrub types. NBR's plan to introduce generic sagebrush-buckwheat scrub that does not occur on Banning Ranch naturally is ecologically inappropriate and entirely unnecessary. At nearby Sunset Ridge Park, planting of sagebrush-dominated scrub by the City of Newport Beach has been largely unsuccessful to date.

- **Staff's Revised Designation of ESHA.** Staff's most recent permissible alternative identifies five times more impacts associated with the residential/commercial component than staff identified in October 2015. To achieve this, staff has turned a blind eye to the best available science, including relevant studies in the scientific literature and the ESHA recommendations made by the attached memorandum from the California Department of Fish and Wildlife (CDFW), dated October 5, 2015. The revised development proposal outlined by NBR in July 2016 simply takes staff's most recent map one step further, calling for more impacts to ESHA, fuel modification within ESHA buffers, and more fragmentation of the habitats that would remain.

- **Vernal Pools and Wetlands.** The April 2016 staff report identifies "10 pools on the site, 8 of which that [*sic*] support the endangered San Diego fairy shrimp, a diagnostic vernal pool species." Only these eight pools are identified as ESHA. Specialist Dale Ritenour of ICF International has evaluated these issues on behalf

of the Banning Ranch Conservancy, and concluded (1) surveys for the fairy shrimp have been are incomplete, and that this endangered species may be more widespread on Banning Ranch than is currently reported; (2) surveys for vernal pool indicator plant species have under-reported vernal pool plant presence, but the extent to which this has occurred is uncertain; (3) the vernal pool/grassland complex, evaluated as a whole rather than as isolated elements in an ecological vacuum, satisfies the Coastal Act's criteria for ESHA; and (4) incomplete survey information makes it impossible to properly assess the true extent and full sensitivity of the on-site resources. The attached memorandum from the California Department of Fish and Wildlife recommended that all 39 vernal pools on the site be designated as ESHA, and also recommends that surveys be conducted to determine presence/absence of the Western Spadefoot Toad, but staff has not followed these recommendations. Finally, the record drought that started in 2011/2012 has, for the past five years, drastically altered the typical winter/spring appearance of the pools at Banning Ranch. The vegetation composition of the pools should have been properly evaluated in late winter/early spring of 2010/2011, the last year of normal rainfall in our area. Every year since, rainfall has been insufficient to result in normal pooling, foiling any potential effort to ascertain the flora of the pools during and immediately after normal periods of prolonged inundation. The result has been floral determinations that skew toward the annual upland plants that predictably invade pools during dry periods (including late spring/summer of even wet years). For this reason, there is every reason to believe that staff's evaluation of the pools would have been rather different, and more prone toward appropriate recognition of additional vernal pool ESHA, had the required surveys been completed under the requisite, if ephemeral, environmental conditions. An inability to detect typical indicator species during periods of prolonged drought does not mean that those species are absent.

- **Grossly Inadequate Burrowing Owl ESHA.** As detailed in a letter to Dr. John Dixon dated June 24, 2016, Dr. Peter H. Bloom demonstrated that staff has failed to cite or incorporate the best available scientific information in its designation of Burrowing Owl ESHA. Staff has identified only 1.17 acre of Burrowing Owl ESHA, but this does not represents a valid conservation strategy for a species known to require dozens or even hundreds of acres of grasslands or similarly open habitats for nocturnal foraging. Rather than identifying and preserving a large, minimally fragmented area of grassland/vernal pool ecosystem — an area capable of supporting Burrowing Owls and other species with similar habitat requirements — both the applicant and staff have chosen to focus on evaluating individual components of the ecosystem, as if each component exists in an ecological vacuum. It is simply not valid, ecologically, to preserve a limited patch of native grassland as ESHA, groupings of vernal pools as another kind of ESHA, and an area of burrows as a third type of ESHA, but then develop the annual grasslands that occur between the pools, native grasslands, and burrow complexes and argue that this will effectively conserve the ecosystem. Clearly, such

an approach will fatally compromise the ability of the ecosystem to support Burrowing Owls. This approach is analogous to concluding that the heart, lungs, and kidneys are the most important organs and then removing everything else in the chest and expecting the patient to survive. The only way to allow for the potential for a wintering population of Burrowing Owls to persist on Banning Ranch would be to identify an area of grassland/vernal pool ecosystem of sufficient size and proper configuration to satisfy the habitat requirements of Burrowing Owls, as determined through review of the best available scientific information. The Commission took such an approach with the Brightwater project at Bolsa Chica, which had similarities to the project being proposed at Banning Ranch. For reasons explained here, and in Dr. Bloom's letter, the current approach to identifying ESHA for the Burrowing Owl at Banning Ranch falls far short of providing the species' known habitat requirements, and is therefore inconsistent with the Coastal Act.

- **California Gnatcatcher ESHA.** The April 2016 staff report reflects an approach to identifying ESHA for the California Gnatcatcher that differentiates between native scrub communities documented as having been used by gnatcatchers (those areas receive 100-foot buffers) and native scrub communities that have *not* been documented as being used by gnatcatchers (which receive 50-foot buffers). Since no territory mapping surveys have been conducted that could legitimately distinguish between "occupied" and "unoccupied" patches of native scrub, the default assumption must be that all native scrub located in the general vicinity of gnatcatcher observations is utilized by gnatcatchers. In general, staff has made this recommendation, but has excluded three patches of suitable habitat that lie within the proposed alignment of Bluff Road. In those particular areas, staff has characterized gnatcatcher use of Mulefat and Quailbush as "extra-territorial foraging" that occurs "especially during the non-breeding season," but all objective evidence leads to the conclusion that gnatcatchers that occupy the southeastern corner of Banning Ranch regularly use all of the available native shrubs as normal parts of their territories. Furthermore, Glenn Lukos Associates recently remapped some areas of native scrub in this area invalid methods unrelated to the rest of the mapping of Banning Ranch. My letter provides recent photos that demonstrate the problems with this mapping. In its most recent submission, NBR accuses staff of identifying too much gnatcatcher-occupied habitat, apparently hoping to provide the cover needed for a "compromise" position that leaves Bluff Road on the plans. Had NBR wanted to demonstrate "site-specific" usage of Southern Coastal Bluff Scrub by California Gnatcatchers on Banning Ranch, they could have conducted standard habitat-usage surveys. Perhaps out of fear for what the results of such a study would have revealed about the actual extent of habitat usage by gnatcatchers, NBR chose not to do this. Any qualified biologist knows that, in the absence of negative results of a legitimate and credible habitat-usage study, birds must be assumed to be using all of the suitable habitat available to them. It is for this reason that the USFWS and other agencies

rely upon the extent of suitable scrub habitat as their standard basis for determining the extent of occupied habitat in areas known to support gnatcatchers.

- **Inadequate Space for Construction West of Vernal Pool 1.** Exhibit 13 in the latest staff report shows staff proposing to allow road access west of Vernal Pool 1 ("VP1"within the upper red circle) and west of Vernal Pool CC ("CC" within the lower red circle). This is another part of the site where staff appears to be attempting to shoehorn in development by manipulating the extent of ESHA buffers. Polygons of "CBBS Coastal Sage Scrub" west and north of Vernal Pool 1, and directly east of documented gnatcatcher ESHA, are not considered to be "Coastal California Gnatcatcher Habitat." As in other parts of the site, it is fallacious to suggest that gnatcatchers go only as far as the extent of staff's orange screen, but not into the adjacent pale green area of equally suitable habitat. Also, a band of native "Mulefat Thicket" encircling Vernal Pool 1 is given no buffer at all, despite being a wetland habitat type associated with a vernal pool. Finally, it seems likely that a narrow band of "potential development" just east of Vernal Pool "CC." would require grading and/or fuel modification into ESHA buffer.

- **Proposed Disposition of ESHA.** NBR and their consultants invoke the putative power of their proposed Habitat Conservation and Conceptual Mitigation Plan to counteract all of the proposed project's adverse effects, but this approach is fundamentally inconsistent with the Coastal Act. Restoration of the habitats remaining around the edges of the new settlements could never fully offset the radical changes to the existing landscape being proposed by staff and NBR. The natural communities in this area would not be able to continue functioning at the levels they currently do. Fortunately, the Coastal Act does not allow for the destroy-and-mitigate approach to ESHA proposed by staff and by NBR.

The rest of this letter discusses in greater detail the topics touched upon in the Executive Summary.

## HISTORY OF COASTAL ACT VIOLATIONS

Over a period of decades, the owners of Banning Ranch undertook various forms of development and removal of major vegetation, actions not authorized under the Coastal Act or any valid form of exemption. Between 1992 and 2012, the U.S. Fish & Wildlife Service (USFWS) documented loss of 7.31 acres of native coastal bluff scrub from Banning Ranch, from 59.41 to 52.10 acres.[1]

In a letter dated May 18, 2012, enforcement officer Andrew Willis notified the West Newport Oil Company that vegetation removal had been occurring at Banning Ranch

[1] U.S. Fish & Wildlife Service. 2014. Letter from G. Mendel Stewart, Field Supervisor, to Michael Mohler, Newport Banning Ranch, LLC, and Tom McClosky, West Newport Oil Company. Subject: Oil Field Operations and Maintenance, Newport Banning Ranch, City of Newport Beach, California.

in apparent violation of the Coastal Act. The impacts were not addressed under either a valid coastal development permit or the explicitly limited Resolution of Exemption (No. E-7-27-73-144) from 1973.

Mr. Willis further observed:

1. No application for vested rights to expand oil operations or to mow extensive areas of vegetation on the property, as required in Section 30608 of the Coastal Act, had ever been applied for by the land owner or the oil operator.
2. Mowing of the property included various areas outside of the mapped area of oil operations contained in the 2011 DEIR for the proposed Newport Banning Ranch project.
3. The DEIR mapped oil operations as occurring in areas that the Commission determined to be ESHA.

On August 19, 2014, former Executive Director Charles Lester issued to West Newport Oil Company and Newport Banning Ranch LLC an 11-page Notification of Intent to Commence Cease and Desist Order and Restoration Order Proceedings and Notification of Intent to Record a Notice of Violation. Page 2 of that document stated:

> Based upon the information that staff has reviewed to date, it has become abundantly clear to staff that a number of sensitive and native plant communities and wildlife species thrive on the properties. Accordingly, the potential that development activities on the site, particularly unpermitted development activities, could have impacted and could be continuing to impact sensitive habitats and species, including ecologically significant vegetation, became more salient.

In 2015, the Commission issued Consent Cease and Desist No. CCC-15-CD-01 and Consent Restoration Order No. CCC-15-RO-01, which covered drilling and operation of new wells; removal of major vegetation, in part through the mowing of extensive portions of the site; grading; installation of pads and wells; construction of structures, roads and pipelines; placement of solid material; discharge or disposal of dredged material or liquid waste; removing, mining, or extraction of material; and change in intensity of use of the land that had occurred on the site. Clearly, these extensive violations have had widespread adverse effects upon the biological resources now present on the property. As summarized on Pages 83–84 of the staff report dated September 25, 2015:

> Commission Ecologist Dr. Jonna Engel conducted a site-specific analysis to assess the likely status, prior to the unpermitted development that was the subject of the 2015 Consent Orders, of the biological resources in areas impacted by the unpermitted development that remain disturbed as a result of those activities. According to the Dr. Engel's analysis, some of the vegetative communities immediately adjacent to areas on the site impacted by the unpermitted development consist of various native plant communities and wildlife habitats that the Commission has consistently treated as ESHA. Dr. Engel determined that several of the areas impacted by the unpermitted development contained or were immediately adjacent to coastal scrub and/or grassland habitat prior to the development at issue, and those areas therefore met the definition of ESHA under the Coastal Act or were adjacent to areas that met that definition at the time they were affected by the Subject Activities. The Commission concurred with Dr. Engel's general conclusion that at least some of the areas that were affected by unpermitted development constituted ESHA.

The figure below shows the extent of unpermitted habitat clearance and mowing.


The areas subjected to unpermitted mowing and clearing of native vegetation largely coincide with the areas now proposed for residential/commercial development. Source: Coastal Commission Cease & Desist Order CCC-15-CD-01.

Mowing and scraping near the eastern site boundary on October 11, 2012. This mowing was taking place within 100 feet of existing residences, as permitted and required, but similar actions that were not permitted took place across a much larger area (see map on previous page). Source: Banning Ranch Conservancy.

This photo, dated October 11, 2012 shows that grassland habitat near the eastern site boundary was taken down to bare dirt. The one plant allowed to remain, visible at the top-left edge of the photo, is Pampas Grass, an invasive, exotic species that is highly flammable. Source: Banning Ranch Conservancy.

Repeated illegal mowing and clearing of the site's uplands over a period of decades undoubtedly resulted in widespread degradation of natural resources. For example:


The photos above show the same patch of Coastal Prickly-Pear before and after unpermitted clearing. Note that only the native cactus was removed, leaving the exotic Myoporum, even though the cactus appeared to be healthy whereas the background Myoporum appeared to have been in poor condition. This indicates intent to remove potential ESHA versus random removal of unhealthy vegetation. Source: Banning Ranch Conservancy.


The photos above show the same patch of California Brittlebush Scrub before and after unpermitted clearing. California Brittlebush (*Encelia californica*), a plant that the Orange County Fire Authority expressly allows to remain in all fuel modification zones.[2] Source: Banning Ranch Conservancy.

These photos demonstrate the extensive and purposeful nature of the Coastal Act violations undertaken by the applicant ahead of their plans to convert Banning Ranch into a massive residential/commercial development.

[2] www.ocfa.org/Uploads/CommunityRiskReduction/OCFA%20Guide-C05-Fuel%20Modification.pdf

## ILLEGAL DISTURBANCE OF ESHA

At the first hearing of this project, on October 7, 2015, most commissioners spoke of "disturbance" of large expanses of Banning Ranch as if it just *happened* through some mysterious process, without any human thought or intent, or any legal requirements to avoid it under the Coastal Act. **But it was the applicant, and other operators at Banning Ranch, who purposefully and illegally disturbed and degraded large swaths of the site, in direct violation of the Coastal Act, as recently as October 2012.**

**The applicant is responsible for one of the most extensive and prolonged violations in the history of the Coastal Act.** Natural habitats were repeatedly and unnecessarily mowed and cleared over a period of decades, across large areas now proposed for residential/commercial development. **Habitat restoration conducted to compensate for the violations *did not occur in the areas that were actually disturbed*, but rather was carried out in parts of the site not proposed for development.** Per the settlement agreement reached between the Commission and NBR, restoration of those areas did not satisfy any State or Coastal Commission requirement for restoration or mitigation. The Coastal Act's mechanism for dealing with such situations was explained by Dr. Engel during the ESHA workshop that the CCC held in Santa Rosa on April 14, 2016 (time stamp 1:38:45 in the archived video[3]):

> Where disturbance results from unpermitted development, we consider what the site supported, in the absence of the unpermitted development, to be the 'on-the-ground' conditions. [Shows slide with before/after photos of *Encelia californica* recovering after cessation of mowing.] As you can see in this slide of the photos of before mowing ended and after mowing stopped, habitat can be very resilient.

As discussed on Page 6 of the Dixon/Engel memorandum on Banning Ranch:

> Large areas on Banning Ranch support healthy stands of CSS ESHA (Figure 4). Of these, the most abundant and widely distributed is California brittlebush scrub. This vegetation type is dominated (≥ 30% cover) by California bush sunflower, *Encelia californica*, which often appears as a monoculture, especially after colonizing previously disturbed areas. This drought-adapted species has recruited and is thriving in many parts of Banning Ranch where it was previously absent or in low abundance, including in areas where routine mowing has ceased`. During our March 2016 site visit, most of the slopes and canyons were painted yellow with blossoms. We recommend a 50-foot development setback around CSS ESHA to prevent impacts that would significantly degrade the ESHA.

California Brittlebush (a.k.a. California Bush Sunflower, *Encelia californica*) happens to be a disturbance-adapted species capable of recovering quickly from repeated mowing and scraping, even under drought conditions. Native grasslands, however, generally require more than a few years to recover from severe disturbance. Eric Seabloom and

[3] http://www.cal-span.org/cgi-bin/archive.php?owner=CCC&date=2016-04-14&player=jwplayer

colleagues[4] investigated the process of grassland recovery at the Sedgwick Reserve in the Santa Ynez Valley, Santa Barbara County.

Page 13384 of their study states:

> . . . the mechanisms underlying the invasion of a native perennial California grassland by annual grasses and forbs introduced from the Mediterranean region. Overgrazing and drought during the 19th century are thought to have caused 9.2 million hectares (ha) of California grasslands to become dominated by exotic species. Although this conversion is often attributed to grazing, exotic annuals have maintained their dominance in many areas that have now been excluded from livestock grazing for decades.

Page 13387 states:

> We found that native perennials reduced soil moisture, soil nitrogen, and light to lower levels than did exotic annuals. This differential pattern of resource reduction means that native perennials should be able to increase in abundance on the levels of nitrate, water, and light left unconsumed by established stands of exotic annuals and, in so doing, competitively suppress the exotic annuals. Our invasion experiments supported these predictions, thus suggesting that the current rarity of native perennials at our site is caused by natives being recruitment-limited and not by exotic annuals being superior resource competitors.

Page 13388 states:

> At our site, dominance by annual grasses seems best explained as a transient state with a long persistence due to recruitment limitation of locally rare native perennial grasses. Although little is known about the initial invasion and spread of exotic annuals in California grasslands, it has been attributed to heavy grazing and drought. A century or more of heavy grazing may have either extirpated native perennials or have so greatly reduced their abundances from such a large proportion of their range that they no longer provide a significant seed source in many localities, especially when coupled with low rates of seed production, establishment, or dispersal. Although we cannot with certainty discern the original cause of the collapse of California's native perennial grasslands, our results indicate that the decline of the native perennials was not due to the introduction and spread of taxa that are competitively superior to native perennials in the absence of disturbance.

Pages 13388–13389 indicate the time-scales involved in transitioning from disturbed annual grassland to native perennial grassland:

> If a tradeoff between competitive ability and dispersal ability for California grassland plants is proven, superior competitors would be slow to recover from the disturbance once driven to low densities as has been shown elsewhere. For example, at Cedar Creek Natural History Area, the two dominant native perennial bunchgrasses require about 15–20 years before they are observed anywhere in a field abandoned from agriculture, and they require another 25–35 years before they obtain peak abundances, even in fields surrounded by intact native grasslands. Clearly, competitively dominant natives would attain numerical dominance even more slowly at Cedar Creek if they were as rare as native perennial grasses are throughout California.

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[4] Seabloom, E. W., W. S. Harpole, O. J. Reichman, and D. Tilman. 2003. Invasion, competitive dominance, and resource use by exotic and native California grassland species. *Proc. Nat. Acad. Sci.* 100:13384–13389.

At Banning Ranch, the extent of native grasslands appears to have increased substantially since I conducted biological surveys there during the early 1990s, at which time native grasses were less prevalent (pers. obs.). The widespread patches of native grasslands mapped on the site in recent years demonstrate that the perennial native bunchgrasses are, slowly, completing the process studied and described by Seabloom and colleagues. The fact that grassland recovery is not as fast as that of native scrub dominated by California Brittlebush reflects the ecological characteristics of the species and natural communities involved. **The Coastal Act does not contain any clause, or any line of reasoning, indicating that only fast-recovering natural communities should receive warranted ESHA protection following their unpermitted disturbance.**

Again quoting Dr. Engel from the April 2016 ESHA workshop in Santa Rosa:

> Where disturbance results from unpermitted development, we consider what the site supported, in the absence of the unpermitted development, to be the 'on-the-ground' conditions.

Please refer back to the map on Page 8 of this letter, showing a large expanse of Banning Ranch extensively disturbed by unpermitted actions. In many of the disturbed areas area, the native vegetation present before unpermitted development took place was not fast-recovering California Brittlebush Scrub. Many of those areas presumably supported native needlegrass grassland before being repeatedly, and illegally, mowed and scraped. As demonstrated by the Seabrook study, among others, perennial needlegrass grassland is not a community that recovers from this kind of disturbance within a few years. **As explained during the ESHA workshop, staff and the Commission are required to evaluate the environmental conditions that would exist in this area in the absence of known violations of the Coastal Act.**

## SHORT-TERM DROUGHT EFFECTS ON NATIVE GRASSLANDS

Page 7 of the Dixon/Engel memorandum discusses the effects of the ongoing, multi-year drought on purple needlegrass:

> Since 2012 there has been a severe and continuing drought that has resulted in a general reduction in the vegetative cover of purple needlegrass due to a lack of growth, increased herbivory, and death of individual plants.

Since short-term environmental conditions (i.e., drought) have been completely unsuitable to allow spontaneous recovery of needlegrass since 2012, there can be no reasonable expectation on the part of staff or commissioners that grasslands scraped as recently as October 2012 would exhibit the kind of spontaneous recovery shown by California Brittlebush Scrub (which, to reiterate, happens to be dominated by a disturbance-adapted plant species). **As described in the Seabrook et al. study quoted from previously, the recovery of native grasslands after the kind of disturbance shown on Page 9 can be expected to take a period of decades.**

Thus if staff and the Commission now wish to argue that the annual grasslands that remain — after the Coastal Act violations mapped on Page 8 of this letter — represent inferior habitat appropriate for development, **we must ask why the Commission failed to require the violator to restore the illegally cleared areas to the native communities that would have occurred in lieu of the violations.** To comply with the Coastal Act, staff and the Commission should follow the process described in the recent ESHA workshop:

1. Determine "what the site supported, in the absence of the unpermitted development."
2. Treat the pre-violation vegetation as the "on-the-ground" conditions.
3. Designate ESHA according to the known, or most likely, distribution of sensitive resources in the absence of Coastal Act violations.

Alternative approaches that staff and the Commission now appear to be considering at Banning Ranch, in which the illegally disturbed areas would be evaluated as if they had *not* been subject to Coastal Act violations, would violate legal precedents prohibiting the practice of destroying ESHA and then mitigating the impact in a more convenient location. See, for example, Bolsa Chica Land Trust v. Superior Court, 83 Cal. Rptr. 2d 850 (Cal. Ct. App. 1999):

> In this regard we agree with the trust that Commission's interpretation of section 30240 would pose a threat to ESHA's. As the trust points out, if, even though an ESHA meets the requirements of section 30107.5, application of section 30240's otherwise strict limitations also depends on the relative viability of an ESHA, developers will be encouraged to find threats and hazards to all ESHAs located in economically inconvenient locations. **The pursuit of such hazards would in turn only promote the isolation and transfer of ESHA habitat values to more economically convenient locations. Such a system of isolation and transfer based on economic convenience would of course be completely contrary to the goal of the Coastal Act, which is to protect all coastal zone resources and provide heightened protection to ESHA's.** (§§ 30001, subds. (a)-(c), 30001.5, subd. (a); Pygmy Forest, supra, 12 Cal.App.4th at p. 613, 15 Cal.Rptr.2d 779.) [emphasis added]

## "DISTURBED" AND "DEGRADED" ESHA

Quoting again from Bolsa Chica Land Trust v. Superior Court:

> . . . section 30240 does not permit its restrictions to be ignored based on the threatened or deteriorating condition of a particular ESHA. **We do not doubt that in deciding whether a particular area is an ESHA within the meaning of section 30107.5, Commission may consider, among other matters, its viability.** (See Pygmy Forest, supra, 12 Cal.App.4th at pp. 614-615, 15 Cal.Rptr.2d 779.) However, where, as is the case here, Commission has decided that an area is an ESHA, section 30240 does not itself provide Commission power to alter its strict limitations. (Id. at p. 617, 15 Cal.Rptr.2d 779.) There is simply no reference in section 30240 which can be interpreted as diminishing the level of protection an ESHA receives based on its viability. Rather, under the statutory scheme, **ESHA's, whether they are pristine and growing or fouled and threatened, receive uniform treatment and protection.** (See Pygmy Forest, supra, 12 Cal.App.4th at p. 617, 15 Cal.Rptr.2d 779.) [emphasis added]

The relevant determinations, therefore, involve (1) whether areas that staff biologists have identified as ESHA objectively satisfy the criteria specified in Section 30107.5 of the Coastal Act, and (2) whether those areas are ecologically viable. In the case of native grasslands at Banning Ranch, it's clear that the extent of native grasslands has generally increased compared with what was present during the early 1990s, indicating that they are, in fact, viable. Whether grasslands possess visual appeal to the average person, or strike commissioners as being comparable to especially scenic areas that they regard as "true" ESHA, are irrelevant considerations. And yet, several commissioners appear to have developed their own interpretations of the Coastal Act that diverge widely from the wording of the Act, and from legal principles laid out in *Bolsa Chica* and other decisions. For example, at the Banning Ranch hearing in October 2015, one commissioner stated the following (time stamp 9:56:40 in the archived video[5]):

> I want to make one comment about Pebble Beach, and the oil field. And I think [a fellow commissioner] nailed it. That here you were looking at an old growth forest, as opposed to an oil field. You know, and I'm not sure you can… In fact, I don't want us to put those two together, and when we line it up. And so, for me, I would like to see us find a solution to this. Granted, it may not be this project, but I'm really concerned that we're taking a piece of degraded property.

At time-stamp 10:10:00, another commissioner continued with this line of reasoning:

> And I think when I listen to my colleague say, "How can you take an old growth forest and compare it to a significantly disturbed oil field and say they're both ESHA?" We do have the ability to make those determinations and the findings associated with them, and I do believe that in this instance some of this highly disturbed area wouldn't be my definition of ESHA. We have to figure that out as a commission. But as far as I'm concerned, just because it said so on the staff report, or a map, that doesn't in and of itself make it ESHA. I go back to Sunset Ridge Park, which I was very pleased that the Newport community could get, there were arguments that the entire site was ESHA because Encelia was on that site. That site was taken down 40 feet by Caltrans when it wanted to make an interchange.

Given that nearly all land on the California coast shows signs of previous human disturbance, legal or otherwise, any "purity test" would inevitably lead to exclusion of many areas that support populations of listed species. It would also exclude many jurisdictional wetlands, and numerous other important ecological areas that support rare species. Dr. Engel explained this principle at the recent ESHA workshop (video time stamp 1:33:03):

> It is important to point out that this [California brittlebush shrubland alliance], and most other vegetation communities along the coast, are invaded by non-native and invasive species to one degree or another. We look at each site individually, and consider many factors, but in all cases the threshold for invaded rare habitats ***not*** to rise to the level of ESHA is high. [emphasis in the original]

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[5] http://www.cal-span.org/player/jwplayer/embed.php?jw_application=CCC&jw_stream=CCC_15-10-07/CCC_15-10-07.mp4&jw_playback_method=vod&playbackPosition=0&captions=

The test of whether an area satisfies ESHA criteria must be whether that area provides ecological values that objectively satisfy the criteria identified in section 30107.5 of the Coastal Act — or whether it would be expected to satisfy those criteria in the absence of proven Coastal Act violations — not whether that area may have looked or functioned better in its pristine, pre-contact condition.

Furthermore, the test of whether an area satisfies ESHA criteria does not include any reference to its scenic beauty, or to whether a non-biologist would "know it when he or she sees it." Review of two biological reports that Zander Associates prepared for The Pebble Beach Company regarding the Del Monte Forest (2001 and 2010) indicates that the Pebble Beach area, with its unusual soils, supports 19 rare, threatened, or endangered plant species, but only eight special-status wildlife species, one of which is federally listed (the Red-legged Frog). In comparison, the Draft EIR for Banning Ranch confirmed the presence of four special-status plants and 16 special-status wildlife species, including four species listed as threatened or endangered by state and/or federal governments (San Diego Fairy Shrimp, Least Bell's Vireo, California Gnatcatcher, and Belding's Savannah Sparrow). Many other special-status species were identified as having potential to occur, and are known to occur in the adjacent lower Santa Ana River area. **Banning Ranch supports roughly twice as many special-status wildlife species, *and four times as many listed wildlife species*, than does the Del Monte Forest**

Furthermore, Banning Ranch supports the following plant communities that are including the following that are called out by the State of California's Natural Diversity Data Base (CNDDB) "special communities known or believed to be of high priority for inventory":

- California Encelia [California Brittlebush] Scrub (CNDDB element 32.050.00)
- *Opuntia littoralis* – Mixed Coastal Sage Scrub (CNDDB element 32.150.02)
- Purple Needlegrass Grassland (CNDDB element 41.150.00)
- Pickleweed Mats (CNDDB element 52.215.00)
- *Salix lasiolepis* Riparian Woodland (CNDDB element 61.201.01)
- Black Willow Thickets (CNDDB element 61.211.00).

Southern Vernal Pool is not regarded as a special community by the CNDDB, but this community is extremely rare in Orange County (Banning Ranch and nearby Fairview Park are the only coastal vernal pool complexes in Orange County); provides the required habitat of the federally endangered San Diego Fairy Shrimp; serves as a source of fresh water for a variety of other plant and wildlife species; and occurs within a matrix of grassland that provides habitat for the Burrowing Owl and several other grassland-dependent species that are limited to only a small number of locations in the coastal zone of southern California. For these reasons, the Southern Vernal Pool community is also widely regarded as being especially rare and ecologically valuable.

**The unavoidable fact is that virtually every part of Banning Ranch supports populations of species listed as threatened or endangered, or that the State of California otherwise formally recognizes as having special conservation status.** Especially given the documented history of extensive and long-running Coastal Act violations at this site, it is extremely concerning to hear various commissioners dismissing the property as merely a "brown field" or "oil field." These same commissioners then proceed to argue that Banning Ranch warrants a lower level of Coastal Act protection than do areas in central or northern California known to support many fewer listed or otherwise highly sensitive species. This is unacceptable, and inconsistent with the wording and intent of the Coastal Act.

Banning Ranch is an exceptionally rare and irreplaceable piece of the ecologically rich natural landscape that once defined the Los Angeles/Orange County area. **The Coastal Act was created, in large part, to ensure that such areas remain functional and valuable for rare, threatened, and endangered native plants and wildlife that have persisted there over millennia, even as urban sprawl claimed nearly the entire region.** For reasons detailed in this letter, the development configurations set forth by both the applicant and CCC staff would fail to achieve this fundamental goal of the Coastal Act. Therefore, all proposals to date would clearly violate the Coastal Act.

## Application of the "Balancing" Provision of the Coastal Act

The concept of "balancing" is provided for in Coastal Act Section 30007.5 (resolution of policy conflicts):

> 30007.5. The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. In this context, the Legislature declares that broader policies which, for example, serve to concentrate development in close proximity to urban and employment centers may be more protective, overall, than specific wildlife habitat and other similar resource policies.

At the July 13, 2016 hearing for the proposed Mid-Coast Corridor Trolley Line in San Diego County, a commissioner made remarks pertaining to this concept that seem relevant to Banning Ranch and many other projects. Starting at time stamp 7:26:56 of the archived video[6], the commissioner stated:

> I think the point that I'm wanting to make right here is that, when we see a public benefit, we move to find that balancing. And so I think that it's important for this Commission to be aware of how you look at projects, how we look at projects, to see if there is a substantial public benefit that could be derived, and not to necessarily use a black-and-white designation of ESHA to stop or constrain a project. Certainly we want to do that if we consider it to have no particular value or public benefit . . .

[6] http://www.cal-span.org/cgi-bin/archive.php?owner=CCC&date=2016-07-13&player=jwplayer

The Mid-Coast Corridor Trolley Line project may represent a valid use of "balancing," being a project focused tightly on installing a form of public transportation along the coast that furthers important aspects of the Coastal Act, albeit one that conflicts with ESHA protections. It bears noting, however, Section 30007.5 *does not* allow Commissioners to waive ESHA protections so long as they can simultaneously point to a "substantial public benefit" that could be derived from the project. What applicant could not point to some "substantial public benefit" that would derive from their project's implementation? Rather, this section of the Coastal Act recognizes that, in such a wide-ranging policy, conflicts will inevitably arise, and that when they do, they shall be ***"resolved in a manner which on balance is the most protective of significant coastal resources."*** This clear direction should not be interpreted as granting commissioners license to green-light destruction or degradation of ESHA so long as they can point out a "substantial public benefit" of a given project. To do so would undermine the intent of the Coastal Act.

In the case of Banning Ranch, the main purpose of the proposed project is to bring a massive residential, commercial, and resort development to Banning Ranch. Any putative "substantial public benefits" (e.g., from cleaning up the oil fields in compliance with existing laws, restoring habitats, increasing human access to coastal resources, or water-quality improvements) would represent relatively minor by-products of this primary project objective. No policy of the Coastal Act encourages building an oversized, sprawling, highly destructive residential/commercial development project within a largely natural area known to support numerous special-status species and other sensitive coastal resources. **Thus no "conflict" among Coastal Act policies exists that would enable the applicant to raise the balancing provision in the first place. Furthermore, no credible analysis would lead to a conclusion that the type of massive development project proposed by NBR, or staff's most recent alternative, would resolve any possible Coastal Act conflicts "in a manner which on balance is the most protective of significant coastal resources."**

It was suggested that the "substantial public benefit" test might be more appropriate to invoke in cases where the ESHA is of "poor quality." Unfortunately, we find no shortage of consultants willing to argue that an inconvenient patch of ESHA should be judged as "poor quality" ESHA, and that no resources of significance would be lost by destroying it. As discussed in detail on Page 22 of this letter, NBR's consultants repeatedly claim, without factual basis, that California Brittlebush Scrub community represents "poor quality" ESHA, despite its status as a State-identified "special community known or believed to be of high priority for inventory" and despite the demonstrated high value of this community to the federally threatened California Gnatcatcher. Quoting again from *Bolsa Chica*:

> There is simply no reference in section 30240 which can be interpreted as diminishing the level of protection an ESHA receives based on its viability. Rather, under the statutory scheme, **ESHA's, whether they are pristine and growing or fouled and threatened, receive uniform treatment and protection.**"

## REQUIREMENTS TO PRESERVE ESHA AND ESHA BUFFERS INTACT

The Coastal Act requires ESHA and ESHA buffers to be established and preserved without compromise because, on the coast of California, the limited and unique areas that support rare, threatened, and endangered species are under constant pressure to nibble away at their edges, and to increase their level of degradation and fragmentation through siting of fuel modification zones, roads, trails, and other human amenities within the natural setting. At some point, ESHA becomes degraded to the point where it no longer supports rare, threatened, and endangered species. **For example, Banning Ranch supported as many as 14 pairs of Cactus Wrens during the 1990s, but this species has been extirpated from the site within the past seven years, as several acres of the native scrub required by the Cactus Wren were illegally cleared.** Many other sensitive wildlife populations do persist, but they can only do so with proper planning and siting of development.

Rather than establishing and protecting ESHA buffers, as the Commission has consistently required for decades, Page 5 of NBR's new development proposal would essentially turn the entire ESHA buffer into a fuel modification zone:

> 50 ft. to 100 ft.+ wide ESHA buffer, consisting of fire-safe habitat restoration designed and maintained as a mosaic of native grassland, shrub and succulent/cactus habitats to minimize fire risk and provide nesting and foraging habitat for special-status birds, including California gnatcatcher and coastal cactus wren.

The buffers provided around ESHA typically consist of preserved habitat that is not subject to regular landscape maintenance or other human intrusions. Turning ESHA buffers into fuel modification zones – even ones that sound so ecologically benign, or even beneficial – could easily backfire in multiple ways. As a start, the plantings would, presumably, be subject to irrigation. This would allow and encourage invasion of the ESHA buffers by Argentine Ants (*Linepithema humile*), an aggressive, non-native species that preys upon nestlings of scrub-nesting birds in our area. Sean Menke and David Holway at UC San Diego[7] studied this problem. As reported on Page 368 of their publication:

> In controlled and replicated experiments involving drip irrigation, we demonstrate (i) that elevated levels of soil moisture increased both the abundance of Argentine ants and their ability to invade native ant communities and (ii) that cessation of irrigation caused declines in the abundance of Argentine ants and led to their withdrawal from previously occupied areas.

[7] Menke, S. B., and D. A. Holway. 2006. Abiotic factors control invasion by Argentine Ants at the community scale. *Journal of Animal Ecology* 75:368–376.

These authors identified the following "Conservation Implications" on Page 374:

> In seasonally dry environments under threat of invasion by Argentine ants, sensible water use practices should be a more prominent consideration of reserve design and management. Our results illustrate, for example, how the interception and diversion of urban run-off could restrict the Argentine ant's spread into natural areas. **The common use of drip irrigation in habitat restoration projects should also be evaluated carefully for unintended consequences (e.g. encouraging invasive species).** No simple relationship exists between the extent of invasion by Argentine ants and the magnitude of surface water inputs. Our manipulations, however, were modest in terms of volume, duration and spatial scale, yet the abundance of *L. humile* increased or decreased dramatically in response to the presence or absence of added water. These results suggest that even small reductions in urban run-off may act to limit *L. humile* in areas that are otherwise too dry. **Although this study focuses on a single invasive species, our results may be of broader practical significance. Because many of the plants and animals that invade Mediterranean habitats in southern California require mesic conditions, our findings are generally relevant to conservation planning and land management in this biologically rich but compromised region.** [emphasis added]

A further consideration is that allowing fuel modification within ESHA buffers would open those buffers up, in perpetuity, to the ongoing maintenance that the Fire Department requires to maintain the plants at certain heights, certain spacing, and certain branch structure, to remove dead/downed wood (which may be ecologically valuable), and to generally manipulate the vegetation within the ESHA buffers in order to ensure that it serves its primary purpose, **which would be to serve as fire protection for the nearby homes.** All precedent, and common sense, leads to the conclusion that any habitat considerations would be secondary to the Fire Department's unyielding requirements for fuel modification that conforms to their strict guidelines within this area of very high fire danger.

For these types of reasons, the Coastal Commission has, throughout its history, consistently refused the requests of applicants to approve this type of generalized, widespread, ongoing habitat alteration within ESHA buffers. See, for example, Policy LU-9 in the landmark 2014 Land Use Plan (LUP) for the Santa Monica Mountains in Los Angeles County:

> Land divisions shall only be permitted if each new parcel being created contains an identified building site area and any necessary access road that could each be developed consistent with all policies of the LCP and without building in H1 or H2 "High Scrutiny" habitat areas, H1 habitat buffer, **or removing or modifying H1 or H2 "High Scrutiny" habitat for fuel modification.** [emphasis added]

Virtually all of the Banning Ranch property would qualify as H1 or H2 "High Scrutiny" habitat, as those terms are defined in the Santa Monica Mountains LUP. Were the Commission to accede to NBR's demand to allow this at Banning Ranch, what would stop the County of Los Angeles, or other past or future applicants, from demanding comparable treatment? Thus yielding to the demands of NBR in this case could fatally compromise the entire concept of a preserved buffer area to ensure the viability of ESHA.

## RECOVERY OF NATURAL COMMUNITIES FOLLOWING ILLEGAL CLEARING

The following photos were included as Figures 9B and 9C of Dr. Engel's memorandum dated September 25, 2015.

The photos above show an area of Banning Ranch subjected to unpermitted mowing on September 19, 2012 (left) and with scrub regenerating naturally on January 29, 2015 (right). Source: Coastal Commission.

The photos above show an area of Banning Ranch subjected to unpermitted mowing on May 30, 2012 (left) and with scrub regenerating naturally on January 29, 2015 (right). Source: Coastal Commission.

The preceding photos show that, despite a record five-year drought that has not yet broken in our region, substantial areas of California Brittlebush Scrub have begun to vigorously recolonize areas that were cleared. This natural recolonization of illegally cleared habitat stands in contrast to suggestions made by some commissioners, at last October's hearing, that disturbed areas would inevitably be overtaken by ice plant and other exotic weeds found in some parts of Banning Ranch. Similarly, NBR and their consultants continually repeat the demonstrably false assertion that only their restoration plans, which would be implemented in concert with their massive development, would be able to halt the slide of Banning Ranch toward becoming one giant weed patch. **Beyond these considerations, it is completely unacceptable that some commissioners seem to accept the applicant's argument that the Commission has a duty to approve a sprawling development project in exchange for the applicant restoring areas that the applicant and/or their lessee disturbed illegally.**

## BIOLOGICAL VALUE OF CALIFORNIA BRITTLEBUSH SCRUB

The applicant (NBR) and their consultant (Dudek) have adopted a strategy of characterizing California Brittlebush Scrub (a form of Southern Coastal Bluff Scrub) as being of "poor quality." Dudek repeatedly emphasizes the "disturbed" nature of the areas of recovering scrub, and makes numerous bizarre and unsubstantiated claims about the putatively low biological value of *Encelia*-dominated scrub. Typical is the following quote from Page 1 of an unsigned submission to the Coastal Commission from NBR/Dudek dated December 1, 2015, responding to Dr. Engel's September 25, 2015 memorandum:

> We also request that Staff consider the fact that the low-growing monocultural encelia that has colonized some disturbed areas has not contributed to increases of CAGN - suggesting that such areas have little benefit for the CAGN and do not meet the minimum threshold for ESHA.

Also on Page 1:

> On the site, [*Encelia*] functions as a weed and will require some level of control when habitat restoration begins and existing patches are incorporated into those efforts."

Page 10:

> The NBR habitat is of general poor quality for CAGN based on monotypic, Encelia dominated, California sagebrush lacking, patchy and weedy habitat. Much has been discussed in the Memo of the regeneration of high quality Encelia in areas that had formerly been mowed, or the value of grasslands. These areas do not support valuable foraging habitat – in fact it is highly likely that CAGN will not forage in these areas until larger shrubs are present which would provide some cover and stable perch.

These grossly erroneous claims by Dudek are typical of the steady steam of misinformation submitted by NBR's consultants. Please refer to the attached letter, in which the most widely recognized authority on the California Gnatcatcher, Dr. Jonathan Atwood, "completely rejects" Dudek's claims based on his own review of the data collected on Banning Ranch by numerous biologists over a period of decades.

## PLANS TO "RESTORE" BANNING RANCH WITH GENERIC SCRUB

Southern Coastal Bluff Scrub, and the form of this community that the CNDDB currently recognizes as the "*Encelia californica* (California Brittlebush Scrub) Alliance," are unique and ecologically sensitive communities that occur in very limited parts of Orange County and elsewhere in the region — they are adapted to local conditions and not interchangeable with other scrub types. Nevertheless, the applicant plans to restore scrub at Banning Ranch with sagebrush-buckwheat scrub that does not occur there naturally. Page 5 of the December 2015 submission to the CCC (regarding California Gnatcatchers) stated:

> While the current NBR site supports poor, yet occupied CAGN habitat, the ultimate project will restore or enhance all of the sage scrub open space areas to high-quality scrub which will return California sagebrush, California buckwheat, and other appropriate shrubs to the landscape.

The applicant's plan to introduce generic sagebrush-buckwheat scrub that does not occur on Banning Ranch naturally is ecologically inappropriate and entirely unnecessary. Note, for example, that the City of Newport Beach has planted the adjacent Sunset Ridge Park site extensively with California sagebrush, with the poor results shown in the photo below:

Photo, taken on April 7, 2016, showing stunted growth and poor cover of California Sagebrush (*Artemisia californica*) installed on the slopes of Sunset Ridge Park, adjacent to Banning Ranch. California Sagebrush is widespread and generally valuable for gnatcatchers, but does not naturally occur in this area. Perhaps due to elevated soil salinity, most of the sagebrush planted at Sunset Ridge Park has grown to a height of only 8-12 inches and provides sparse cover unsuitable for use by California Gnatcatchers. Nevertheless, Dudek plans to "improve" the Southern Coastal Bluff Scrub at Banning Ranch by introducing California Sagebrush.

## STAFF'S REVISED DESIGNATION OF ESHA

Last fall, when this project was initially submitted for CCC review, staff employed generally sound reasoning and followed widely accepted ecological principals in its designations of ESHA. For the resubmitted version of the project, however, staff's approach to designating ESHA is self-contradictory and, in some ways, baffling. As stated on Page 3 of the April 2016 staff report:

> . . . staff made significant modifications to its previous assessment of site constraints and was able to identify for the applicant approximately 55 acres of semi-contiguous developable area and an additional 11 acres for the proposed oil remainder areas, and an alternative development footprint with zero impacts to ESHA and Wetlands for the residential/commercial development.

The residential/commercial total of 55 acres represents a **five-fold increase** over the total identified by staff in October 2015. To achieve this, staff has turned a blind eye to the

best available science, including relevant studies in the scientific literature and the ESHA recommendations made by the California Department of Fish and Wildlife (CDFW) in their memorandum to Dr. Engel dated October 5, 2015 (attached). The revised development proposal outlined by NBR in July 2016 simply takes staff's most recent map one step further, calling for more impacts to ESHA, fuel modification within ESHA buffers, and more fragmentation of the habitats that would remain.

My letter has already discussed how staff has abandoned its own standard policy of evaluating the proposed actions based on the vegetation that would have been present "in the absence of the unpermitted development," but that's only the tip of the iceberg. For the additional reasons discussed in this letter, if staff's "substantially modified" approach to identifying ESHA continues through the period until this project comes before the Commission in September 2016, and if that approach is later upheld as legally valid, the Coastal Act will have been effectively rewritten.

## VERNAL POOLS AND WETLANDS

The April 2016 staff report identifies "10 pools on the site, 8 of which that [*sic*] support the endangered San Diego fairy shrimp, a diagnostic vernal pool species." Only these eight pools are identified as ESHA. Specialist Dale Ritenour of ICF International has evaluated these issues on behalf of the Banning Ranch Conservancy[8], and concluded:

> 1) Surveys for Federally-listed endangered San Diego fairy shrimp (*Branchinecta sandiegonensis*) are incomplete and San Diego fairy shrimp may be more widespread on NBR than is currently reported. Surveys conducted by biological consultants on behalf of NBR make incorrect assessments that do not follow U.S. Fish and Wildlife Service (USFWS) protocol guidelines, were not comprehensive, and cannot be used to determine absence of this species throughout the Banning Ranch property.
>
> 2) Surveys for vernal pool indicator plant species conducted by biological consultants on behalf of NBR have under-reported vernal pool plant presence, but the extent to which this has occurred is uncertain. It is impossible to discount basins as being vernal pools without a proper and honest accounting of species composition.
>
> 3) The vernal pool/grassland complex on Banning Ranch supports a diversity of vernal pool species, functions, and services, including providing habitat for the listed San Diego fairy shrimp. By any objective measure, the vernal pool/grassland complex is an "area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments", and therefore satisfies the criteria for Environmentally Sensitive Areas (ESHA) identified in Section 30107.5 of the Coastal Act. At this time, incomplete survey information makes it impossible to properly assess the true extent and full sensitivity of the on-site resources.

[8] ICF International. 2016. Letter from Dale Ritenour to Dr. Jonna Engel dated January 12, 2016. Subject: Comments on the "NBR Response to Commission Staff Vernal Pool ESHA Recommendation."

The memorandum from CDFW to Dr. Engel, dated October 5, 2015, contained two recommendations that staff has not followed:

> - The Department recommends all 39 vernal pools be delineated as ESHA. The ESHA should include the entire watershed for each pool or a 100-foot buffer (whichever is greater).
> - The Department recommends surveys for western spadefoot toad (*Spea hammondii*), a California Species of Special Concern (SOC), to determine presence. If spadefoot toad is present, the Department recommends conserving migration corridors between pools and establishing a 950-foot buffer around each pool. This buffer represents the documented median distance commonly used in the life cycle of the spadefoot toad[2].

Vernal pools fill up only for brief periods, and only during years with normal-or-greater rainfall. The record drought that started in 2011/2012 has, for the past five years, drastically altered the typical winter/spring appearance of the pools at Banning Ranch. The vegetation composition of the pools should have been properly evaluated in late winter/early spring of 2010/2011, the last year of normal rainfall in our area. Every year since, rainfall has been insufficient to result in normal pooling, foiling any potential effort to ascertain the flora of the pools during and immediately after normal periods of prolonged inundation. The result has been floral determinations that skew toward the annual upland plants that predictably invade pools during dry periods (including late spring/summer of even wet years). For this reason, there is every reason to believe that staff's evaluation of the pools would have been rather different, and more prone toward appropriate recognition of additional vernal pool ESHA, had the required surveys been completed under the requisite, if ephemeral, environmental conditions. An inability to detect typical indicator species during periods of prolonged drought does not mean that those species are absent.

## GROSSLY INADEQUATE BURROWING OWL ESHA

In a letter dated June 24, 2016, Dr. Peter H. Bloom, a well-respected specialist on the Burrowing Owl and other raptors in California, demonstrated that staff is not using the best scientific information in its designation ESHA necessary to potentially maintain the existing wintering population of up to three Burrowing Owls at Banning Ranch. I am in total agreement with Dr. Bloom, and support his analyses and conclusions, but my letter addresses Burrowing Owl issues from a different perspective.

The initial mishandling of this issue took place last fall, when staff identified an area of approximately 1.17 acre as ESHA for the wintering Burrowing Owl population on Banning Ranch. Page 27 of Dr. Engel's technical memorandum, dated September 25, 2015, describes the basis for identifying such a small area of ESHA:

> Burrowing owls have been observed in winter near vernal pools H, I, J, & K in 2008, 2009, 2010, and 2015. In addition, photographs of a burrowing owl near these pools, taken in January 2013 by a member of the public, were submitted to the Commission. On the other two locations where burrowing owls have been observed, one owl was observed in 2008

near vernal pool W, and one owl was observed in 2008 and another in 2014 in the center of the southern portion of the property. Based on the consistency of wintering burrowing owls near vernal pools H, I, J, & K, Commission ecologists find this area to rise to the level of ESHA because the area supports wintering burrowing owls, a rare species, and because the area is easily disturbed and degraded by human activities and development (Figure 46). The ESHA was delineated by creating the smallest convex polygon that encompassed the documented locations of burrowing owl use. The burrowing owl winter survey data for two southern portions of the property suggest that these areas are not frequently occupied by over-wintering burrowing owls and while they represent sensitive areas there are insufficient data to designate a particular area as ESHA.

The map below shows the locations on Banning Ranch where Burrowing Owls have been documented in recent years, as well as the 1.17-acre Burrowing Owl ESHA identified in the 2015 and 2016 staff reports.

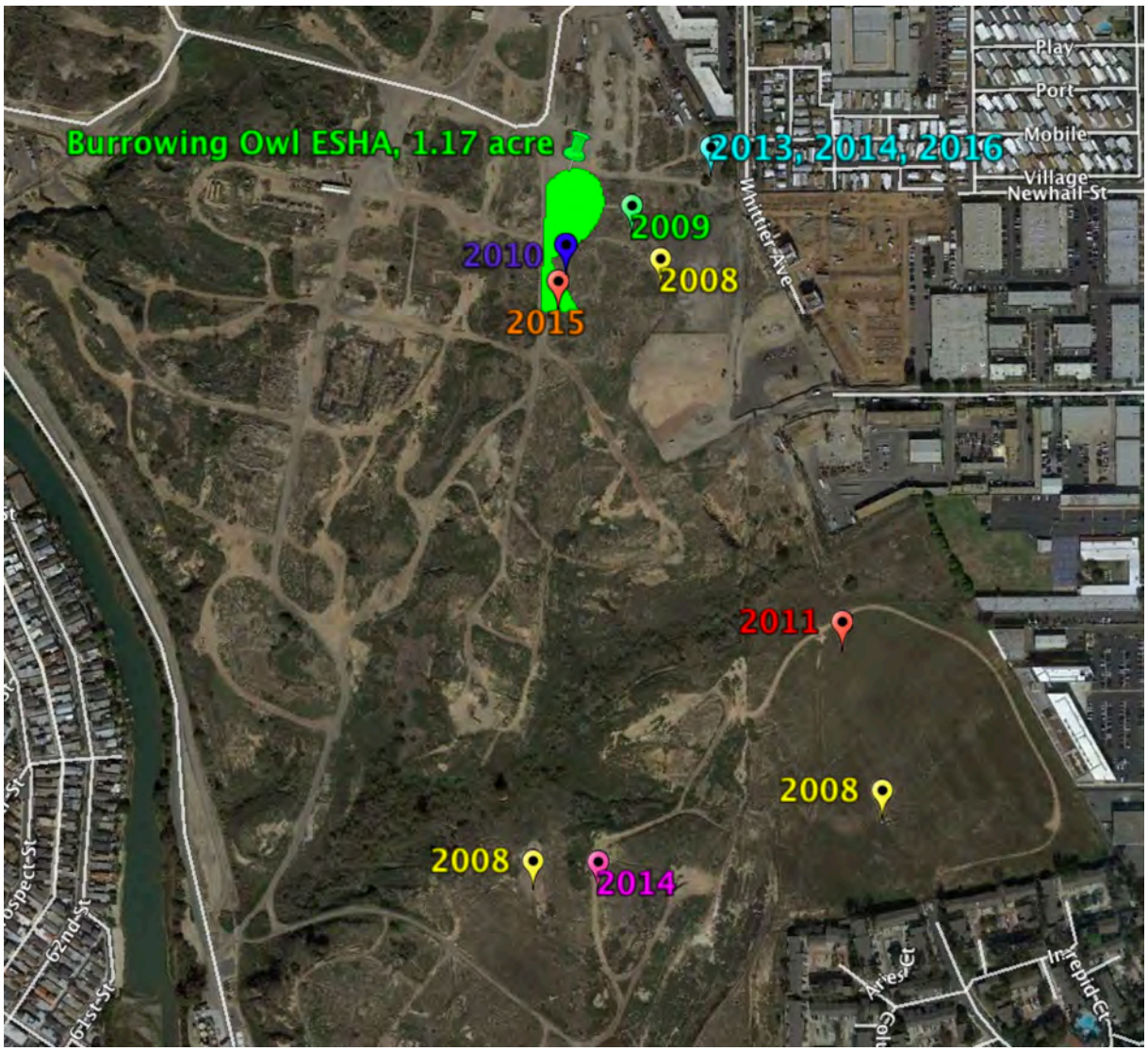


Figure showing (a) locations where Burrowing Owls have been documented wintering on Banning Ranch during certain years between 2008 and 2016, and (b) the 1.17-acre area of Burrowing Owl ESHA identified by staff. The recommended ESHA excludes many areas where owls have been observed during diurnal surveys, and completely fails to account for the owls' nocturnal foraging requirements.

As discussed in Dr. Bloom's letter, Burrowing Owls stand near favored burrows during the day and then move out to seek prey in expansive areas of grasslands, vernal pools, and other sparsely vegetated habitats at night. Therefore, it is not valid for staff to identify a tiny area of ESHA in the vicinity of certain Burrowing Owl sightings and claim that this represents a valid conservation strategy for this species. Furthermore, the exhibit on the previous page shows that, even with the applicant having conducted only limited numbers of daytime surveys during certain years, Burrowing Owls have been recorded across a much wider area than staff has identified as Burrowing Owl ESHA.

Relevant information on Burrowing Owl foraging-area requirements was provided on Page 7 of a memorandum prepared by Dr. Engel, dated February 26, 2015, analyzing the potential effects of an unpermitted fence that the Newport Mesa Unified School District (NMUSD) constructed on the northern boundary of the Banning Ranch property[9]:

> Burrowing owls require large expanses of open space for foraging; a 2012 CDFW report titled *Staff Report on Burrowing Owl Mitigation*[9] states that adult male home ranges have been documented to comprise anywhere from
>
> > *…280 acres in intensively irrigated agroecosystems in Imperial Valley (Rosenberg and Haley 2004) to 450 acres in mixed agricultural lands at Lemoore Naval Air Station, CA (Gervais et al. 2003), to 600 acres in pasture in Saskatchewan, Canada (Haug and Oliphan 1990). But owl home ranges may be much larger, perhaps by an order of magnitude, in non-irrigated grasslands such as at Carrizo Plain, California (Gervaise et al. 2008), based on telemetry studies and distribution of nests. Foraging occurs primarily within 600 m of their nests (within approximately 300 acres, based on a circle with a 600 m radius) during the breeding season.*
>
> Loss of habitat, as mentioned above, is likely the main factor in the decline of burrowing owls given their requirement of large areas of open grassland. On the school district property there is approximately three acres of non-native annual grassland, with more contiguous grasslands on the adjacent property. The installation of the fence dividing the grassland likely disturbed both burrow habitat and foraging habitat for the owls onsite.

The 2012 report cited in Dr. Engel's memorandum is:

California Department of Fish and Game (State of California, Natural Resources Agency). March 7, 2012. Staff Report on Burrowing Owl Mitigation.

Also highly relevant are the following State reports:

California Department of Fish & Game. 2008. *Guidance for Burrowing Owl Conservation*. Report dated April 28, 2008, prepared by the Habitat Conservation Branch, Wildlife Branch, Bay Delta Region, Sacramento.

Gervais, J. A., D .K. Rosenberg, and L. A. Comrack. 2008. Burrowing Owl (*Athene cunicularia*). Pp. 218-226 in: W. D. Shuford and T. Gardali, Editors. California Bird Species of Special Concern, Studies of Western Birds No. 1.

[9] http://documents.coastal.ca.gov/reports/2015/3/th13a-3-2015.pdf.

As discussed in Dr. Bloom's letter, none of these State reports, or any of the other relevant scientific research on Burrowing Owls and their habitat needs, was cited in the April 2016 technical memorandum that Drs. Dixon and Engel prepared for the Banning Ranch project.

Also highly relevant is the following excerpt from Page 20 of the Coastal Commission staff report on the NMUSD fence project:

**Significant Disruption on the Habitat Values of ESHA**
Burrowing owls have been documented wintering on and immediately adjacent to a portion of the NMUSD property, in the area of the unpermitted fence. Burrowing owls require large expanses of open space and open grassland for foraging. On the NMUSD property there is approximately three acres of annual grassland in area 4, with more contiguous grasslands on the adjacent property (400+ acres of varied vegetation). The installation of the fence dividing the grassland likely disturbed both burrow habitat and foraging habitat.

Construction activities associated with the fence project trampled the ground and adjacent vegetation. The installation of the fence resulted in trampling the ground, which has negative impacts on the underground burrows. Impacts have also been caused by the presence of fence posts 2 feet deep into the soil. Additionally, the fence installed over the earthen berm habitat area likely disturbed burrow habitat. These posts remove area for burrows and render any current burrows under or near the fence posts unusable.

Dr. Engel observed that the NMUSD should not have constructed an unpermitted fence along its boundary with Banning Ranch, and that the fence may have had adverse effects on Burrowing Owls. Dr. Engel also observed in that report that "Burrowing owls require large expanses of open space for foraging." **Yet no similar statement is found in staff's analysis of the much more damaging Banning Ranch project.** Page 1 of the State's 2008 *Guidance for Burrowing Owl Conservation* provides the following synopsis of the conservation threats facing Burrowing Owls in California:

> **Additional immediate protection is needed for the Burrowing Owl** (*Athene cunicularia*), a vulnerable California Bird Species of Special Concern (Gervais et al. 2008) and federal Bird of Conservation Concern (U.S. Fish and Wildlife Service 2002), that was the subject of a listing petition to the State of California Fish and Game Commission in 2003. Most Burrowing Owl populations in California still face the same primary threats they did three decades ago (Gervais et al. 2008). Burrowing Owl population declines continue, primarily caused by habitat loss and control of California ground squirrels (*Spermophilus beecheyi*) and other host burrowers.
>
> **Concerted conservation actions are needed to maintain viable burrowing owl populations** in California and to help prevent the need to list this species under the state or federal endangered species acts. [emphasis added]
>
> A comprehensive strategy for its conservation in California is now in progress, which will provide more detailed guidance on measures to protect this species.
>
> Existing legal protection under the California Environmental Quality Act (CEQA), one of the State's principal statutes to address significant environmental impacts, does not substantially

> contribute to burrowing owl conservation because lead agencies have broad discretion in identifying environmental impacts as significant and, even where they do, significant impacts need only be mitigated to the extent feasible. As a result, lead agencies **do not consistently require sufficient or effective habitat mitigation for immediate or cumulative impacts to burrowing owls**. Current conservation activities, except under a few approved regional conservation plans, are usually implemented piece-meal, typically at the level of the individual owl, to avoid take. In addition, prohibitions on take of burrowing owls are often circumvented, and due to buried or transitory evidence, are not easily enforced. [emphasis added]
>
> Suitable conservation areas that could benefit this species through acquisition and management have yet to be identified in most of the State. All these deficiencies remain obstacles to long-term owl conservation, **can lead to local extirpation of resident owl populations, and could cumulatively preclude options for future conservation of this species**. [emphasis added]

Rather than following the State's own conservation guidance, Page 35 of the most recent staff report on Banning Ranch (dated March 1, 2016, but incorporating the analysis contained in the April 2016 technical memorandum from Drs. Dixon and Engel) reaches the following conclusion:

> *Burrowing Owl*
> Western burrowing owls (*Athene cunicularia*) are a California Species of Special Concern that are rare in Orange County due to loss of suitable grasslands to development, especially near the coast. Western burrowing owls are often found in burrows created by ground squirrels, of which there are countless in the project location. Most Western burrowing owls nesting in California remain at their breeding grounds throughout the winter, sometimes staying in the same burrows and sometimes wandering within the region.[3] Burrowing owls were thought to have been extirpated in all of Orange County (and most of coastal Southern California), except for a small breeding population in Seal Beach. Two large earthen berms on the project site provide habitat for the burrowing owls near vernal pools H, I, and J. The Commission finds this area to rise to the level of ESHA because the area supports wintering burrowing owls, a rare species, and because the area is easily disturbed and degraded by human activities and development.
> The burrowing owl winter survey data for the two southern portions of the property (where the public park is proposed) suggest that these areas are not frequently occupied by over-wintering burrowing owls and while they represent sensitive areas they do not rise to the level of ESHA.

First, and most importantly, **the winter surveys made no effort to determine which areas the owls require for nocturnal foraging.** As detailed in Dr. Bloom's letter, the roughly 122 acres of potentially suitable foraging habitat at Banning Ranch are near the low end of the foraging area known to be required by Burrowing Owls, according to the best available science. Everything we know about the owl's habitat requirements lead Dr. Bloom to conclude that preserving 1.17 acre of Burrowing Owl ESHA, together with fragments of grassland vernal pool ecosystems divided by roads and structures, as has been proposed by staff (and expanded upon by NBR in its July 2016 proposed development plan) would lead to anything other than the loss of the Burrowing Owl as a regular wintering species at Banning Ranch.

As discussed in Dr. Bloom's letter, the principal threats to Burrowing Owls from the proposed project at Banning Ranch are:

1. Loss of grasslands, rangelands, and other flat, open, sparsely-vegetated habitats.
2. Fragmentation of remaining habitat by roads and houses.
3. Loss/control of ground squirrel colonies (because the squirrels typically build the burrow complexes that the owls require).
4. Introduction of large numbers of people and pets to existing owl use areas.

Last October, when Dr. Engel originally designated the 1.17 area of Burrowing Owl ESHA, she also called for preserving, as separate forms of ESHA, large, unbroken swaths of vernal pools interspersed with native grasslands. Together, the three forms of ESHA identified in October 2015 (native grasslands, vernal pools, and the owl burrows) might have provided an adequate area of suitable foraging habitat for the existing owl population. Since that time, however, staff has employed different methods for identifying vernal pools/coastal wetlands, and the distribution of purple needlegrass has declined, apparently as a short-term response to drought. The applicant has taken this opportunity to re-map the grassland and vernal pool habitats, and staff has accepted this questionable mapping and used it to substantially reduce the area of grassland and vernal pool ESHA. Just as important, staff now proposes sprawling patterns of development that would severely fragment the 122 acres of suitable Burrowing Owl habitat, and that would also result in substantial reduction of the existing ground squirrel colonies that create the extensive network of burrows that are an essential component of viable Burrowing Owl habitat. The latest submission from NBR would be even more destructive than staff's most recent proposal.

**As observed by Dr. Bloom, any shifts in the vegetative composition of the grassland, and any change in the regulatory status of the seasonal pools, are immaterial to considerations of why wintering Burrowing Owls have persisted on Banning Ranch while declining in almost every other part of the coastal zone.** The best available science tells us that persistence of the owl mainly depends upon maintaining expansive, minimally fragmented areas of grassland or other low-growing habitat, along with a healthy population of ground squirrels or other fossorial mammals capable of providing adequate burrows. Although it is the expansive, unbroken nature of the grassland/vernal pool ecosystem on Banning Ranch that makes this area especially valuable to Burrowing Owls and other open-country birds, both the applicant and staff have consistently ignored or underplayed the adverse effects of introducing roads, structures, trails, and large numbers of people and pets into this area. Rather than identifying and preserving a large, minimally fragmented area of grassland/vernal pool ecosystem — **an area capable of supporting Burrowing Owls and other species with similar habitat requirements** — both the applicant and now staff have chosen to focus on evaluating individual components of the ecosystem, as if each component exists in a vacuum. Staff has identified native grasslands, vernal pools, and a small area of burrows as distinct and separate forms of ESHA, while failing to recognize the intrinsic necessity of

the annual grassland matrix that encompasses each of those specific features of the existing landscape. Burrowing Owls require these large areas for foraging at night, and the best available science does not demonstrate, or suggest, that the owls rely more upon native grasslands (defined as containing at least 10% purple needlegrass) compared with annual grasslands (which contain less than 10% purple needlegrass)[10,11]. The applicant certainly has not provided any observational data, or any other scientifically valid rationale, in support of a conclusion that Burrowing Owls on Banning Ranch forage preferentially within grasslands that contain at least 10% native grasses.

**The central problem with staff's ESHA analysis of Burrowing Owl issues, to date, is that staff has failed to evaluate the important functions and values of the vernal pool/grassland ecosystem that the owls require in order to survive on the site.** This ecosystem consists of native grasslands, non-native grasslands, vernal pools, and areas of ground squirrel burrows intertwined together, ***inextricably***. The vernal pool/grassland ecosystem is relatively large and unfragmented, and it supports a large population of California ground squirrels. As explained in the letter from Dr. Bloom, the best available science tells us that these specific habitat features of the mesas at Banning Ranch allow wintering Burrowing Owls to persist there. It is simply not valid, ecologically, to preserve a limited patch of native grassland as ESHA, groupings of vernal pools as another kind of ESHA, and an area of burrows as a third type of ESHA, but then develop the annual grasslands that occur between the pools, native grasslands, and burrow complexes and argue that this will effectively conserve the ecosystem. **Clearly, such an approach will fatally compromise the ability of the ecosystem to support Burrowing Owls.** This approach is analogous to concluding that the heart, lungs, and kidneys are the most important organs and then removing everything else in the chest and expecting the patient to survive.

In addition to reducing the area available for foraging, we may confidently predict that Burrowing Owls attempting to occupy the fragmented landscape — under either the applicant's plan or staff's alternative — would be hit by cars. Furthermore, ground squirrel colonies would dwindle, either through passive attrition due to habitat fragmentation or due to eventual squirrel-control measures. Street lights and landscape trees would provide perching/nesting habitat for potential owl predators, such as Great Horned Owls and Red-tailed Hawks. Human activity levels would greatly increase — not only cars, but cyclists and walkers —placing new stresses on the owls. Night-lighting would increase. In short, the area would become like the rest of the coastal zone

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[10] Bloom, P. H. 1996. Raptor Status and Management Recommendations for Naval Ordnance Center, Pacific Division, Fallbrook Detachment, and Naval Weapons Station, Seal Beach, 1993/95. Prepared for Department of Defense. 53 pp.

[11] Bloom, P. H., J. W. Kidd, and S. E. Thomas. 2010. Burrowing Owl, Management and Conservation Plan Naval Weapons Station Seal Beach – 2008. Prepared for Department of Defense. 31 pp.

of southern California. We need only observe the lack of wintering Burrowing Owls across nearly the entire coastal zone to understand that sprawling patterns of development, such as those proposed by both the applicant and staff, lead to the extirpation of Burrowing Owls. As concluded by Dr. Bloom, this would almost certainly be true at Banning Ranch, as well.

**The only way to allow for the potential for a wintering population of Burrowing Owls to persist on Banning Ranch would be to identify an area of grassland/vernal pool ecosystem of sufficient size and proper configuration to satisfy the habitat requirements of Burrowing Owls, as determined through review of the best available scientific information.** The Commission took such an approach with the Brightwater project at Bolsa Chica, which had similarities to the project being proposed at Banning Ranch. For reasons explained here, and in Dr. Bloom's letter, the current approach to identifying ESHA for the Burrowing Owl at Banning Ranch falls far short of providing the species' known habitat requirements, and is therefore inconsistent with the Coastal Act.

## CALIFORNIA GNATCATCHER ESHA

The April 2016 staff report reflects an approach to identifying ESHA for the California Gnatcatcher that differentiates between native scrub communities documented as having been used by gnatcatchers (those areas receive 100-foot buffers) and native scrub communities that have *not* been documented as being used by gnatcatchers (which receive 50-foot buffers). The current approach, as explained on Pages 25–28 of the Dixon/Engel technical memorandum, involves examining all of the accumulated data from presence/absence gnatcatcher surveys conducted as far back as 1992, combining the maps of gnatcatcher use areas, and then expanding the use areas out to include the adjacent suitable scrub habitats. This is generally an acceptable method for identifying ESHA for the gnatcatcher, although it does raise some important concerns.

First, the entire Banning Ranch property is designated by the U.S. Fish and Wildlife Service as critical habitat for the gnatcatcher, and all patches of native scrub on the site provide the primary constituent elements of this species' breeding habitat. As reported on Page 27 of the Dixon/Engel memorandum:

> Christine Medak of the U.S. Fish and Wildlife Service thinks that over time gnatcatchers utilize most of the upland areas of Banning Ranch and forage in most native and non-native shrubby vegetation (personal communication April 20, 2016).

Page 23 of the technical memorandum dated September 25, 2015 prepared by Dr. Engel, for the original version of this project last fall, wrote:

> It is important to note that specific observations of gnatcatchers within any particular area are not necessary in order to conclude that the area is "occupied" by gnatcatchers. If gnatcatcher foraging or nesting is observed in the general proximity of a site, it is considered "occupied." Therefore, based on the many observations of gnatcatcher use, the USFWS concluded that all of the Banning Ranch site is occupied by coastal California gnatcatchers.

Page 25 of the same memorandum stated:

> Having nearly 25 years of gnatcatcher survey data makes identifying the boundary of gnatcatcher ESHA straightforward because the overlapping use areas clearly elucidate the habitat that is favorable to gnatcatchers on the project site. Factors that would be used in situations where only one or two years of survey data are available include the gnatcatcher nesting territories, as well as contiguity of coastal scrub habitat, and presence of corridors. These might consist of bare areas, such as roads and oil field development (as is the case on Banning Ranch), or areas vegetated with non-native or non-coastal scrub habitat that provide habitat connectivity and foraging areas. Such areas adjacent to gnatcatcher nesting territory provide connectivity to core coastal scrub habitat and are critical to minimize edge effects. If development such as houses and fuel modification, as well as people, dogs and notably domestic cats, are placed within core gnatcatcher coastal scrub habitat, the impacts would probably extirpate gnatcatchers from the site. In past actions the Commission has found that important connections between core gnatcatcher habitat must be included within the ESHA boundary to reflect the actual area required for gnatcatcher survival and persistence.

There is no legitimate way to use the existing maps of gnatcatcher survey results to distinguish between "occupied" and "unoccupied" patches of native scrub in any of the general areas of Banning Ranch where California Gnatcatchers have been repeatedly observed over a period of decades. The generally accepted standard methodology for mapping passerine bird territories calls for **ten visits** conducted roughly one week apart from the start of breeding through fledging of young[12]. The standard territory mapping method will, inevitably, yield larger and more accurate territory boundaries compared with the limited, non-standard methods employed during a subset of the surveys at Banning Ranch.

Many, if not most, of the California Gnatcatcher surveys conducted on Banning Ranch over the years have mapped the approximate location of each gnatcatcher pair/individual using a single "dot." **During certain survey efforts, some of which I participated in, personnel followed pairs for limited periods on a limited number of days, and thus were able to map some limited portion of the actual area used by gnatcatchers during the breeding season.** No surveys have employed accepted methodology for determining the extent of a territory defended by a pair of California Gnatcatchers, either during the nesting season or during the non-breeding season (when the birds are known to wander much more widely and use non-scrub habitats).

Since no adequate, credible evidentiary basis exists for distinguishing between "occupied" and "unoccupied" native scrub, the default assumption must be that all native scrub located in the general vicinity of gnatcatcher observations is utilized by gnatcatchers. For these reasons, all native scrub occurring in the vicinity of gnatcatcher sightings should be identified as gnatcatcher ESHA and buffered by 100 feet. In general, staff has made this recommendation, and yet **in a few important areas where gnat-**

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[12] International Bird Census Committee. 1969. *Recommendations for an international standard for mapping method in bird census work.* Bird Study 16:248–255

**catchers have been recorded repeatedly over a period of many years, staff has determined for unexplained reasons that native scrub habitat is *not* occupied.**

See, for example, the modified version of Figure 15, from Page 43 of the Dixon/Engel memorandum, below. I have added three green ovals, showing the areas where staff has excluded stands of extant native scrub from its designation of gnatcatcher ESHA.


The figure above shows that California Gnatcatchers have been repeatedly documented in the vicinity of the proposed intersection between "Bluff Road" and Pacific Coast Highway. Although "dots" are used to show locations, the actual use areas of these birds undoubtedly extend to include all areas of native scrub habitat in this general area (as well as non-native habitats). The upper left oval calls out a large patch of Mulefat Scrub, the upper right circle encloses a stand of California Brittlebush Scrub/Coastal Sage Scrub, and the bottom circle is in the location of a 0.1-acre stand of Southern Coastal Bluff Scrub (not shown, because NBR's consultants refuse to map the vegetation in this area correctly).

These three inconvenient patches of native scrub habitat are suitable for use by gnatcatchers and must be presumed to be used by them on a regular basis (as the U.S. Fish and Wildlife Service does). Nevertheless, perhaps because they would serve as impediments to the desired Bluff Road, all three patches are conspicuously excluded from

staff's designated gnatcatcher ESHA. Page 27 of the Dixon/Engel memorandum provides the apparent rationale:

> Scattered areas of non-native species (e.g., black mustard) and common native species (e.g., quailbush or upland patches of mulefat) that are not recommended for protection are known to be used periodically for foraging, especially during the non-breeding season when territory defense is lax and adults commonly forage outside their usual territories. For example, gnatcatchers have been observed in quail bush (*Atriplex lentiformis*) along the Pacific Coast Highway on the adjacent property and no doubt forage in these habitats on Banning Ranch too (Hamilton 2015). Extra-territorial foraging is probably also more common during periods of drought-induced stress when prey are less common.

I possess 26 years of experience as a federally permitted biologist conducting focused surveys for the California Gnatcatcher. Let me state categorically that staff is incorrectly characterizing gnatcatcher use of Mulefat and Quailbush as "extra-territorial foraging" that occurs "especially during the non-breeding season." Gnatcatchers that occupy the southeastern corner of Banning Ranch regularly use these native shrubs as normal parts of their territories. In the limited areas where Quailbush occurs along the coast, it is frequently included in the nesting territories of California Gnatcatchers. For example:

Photograph of an adult male California Gnatcatcher using Quailbush – part of Southern Coastal Bluff Scrub community – at Upper Newport Bay on April 18, 2016. **Such use is not unusual, and does not reflect "extra-territorial foraging."** *Robert A. Hamilton.*

On the following page are three photos of the stand of Southern Coastal Bluff Scrub that was, for several years, erroneously mapped as Myoporum Scrub or "ornamental." Tony Bomkamp of Glenn Lukos Associates (GLA) recently re-mapped this area using invalid and misleading methods, completely unrelated to the rest of the mapping of Banning Ranch, in an effort to call the same type of habitat something different. As I discussed in an e-mail I wrote to Drs. Dixon and Engel dated April 8, 2016, entitled, "Bomkamp/GLA Remapping of Myoporum Scrub," the remapping (a) inappropriately calls out every non-native plant and small spaces between plants, while (b) erroneously mapping substantial patches of native scrub as "bare/disturbed." My e-mail is incorporated into the Dixon/Engel memo by reference. The following photos show the problems with the applicant's most recent mapping effort in this important area.

Photograph, facing northeast, showing "Quailbush Scrub" (a form of Southern Coastal Bluff Scrub) growing near the proposed southern terminus of Bluff Road, April 7, 2016.
*Robert A. Hamilton.*

Photograph, facing northwest, showing "Quailbush Scrub" (a form of Southern Coastal Bluff Scrub) growing near the proposed southern terminus of Bluff Road, April 7, 2016.
*Robert A. Hamilton.*

Photograph, facing northeast, showing "Quailbush Scrub" (a form of Southern Coastal Bluff Scrub) growing near the proposed southern terminus of Bluff Road, April 7, 2016.
*Robert A. Hamilton.*

Several hundred feet to the west, also on the site, comparable scrub growing along on the shoulder of Pacific Coast Highway, is mapped as "Quailbush Scrub" (a form of Southern Coastal Bluff Scrub) and treated as ESHA in the staff report:

Photograph, facing north, showing "Quailbush Scrub" (a form of Southern Coastal Bluff Scrub) growing on the site along Pacific Coast Highway, several hundred feet west of the proposed southern terminus of Bluff Road, April 7, 2016.
*Robert A. Hamilton.*

Photograph, facing northeast, showing "Quailbush Scrub" (a form of Southern Coastal Bluff Scrub) growing on the site along Pacific Coast Highway, several hundred feet west of the proposed southern terminus of Bluff Road, April 7, 2016.
*Robert A. Hamilton.*

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The photos above, and on the previous page, all show "Quailbush Scrub" as it has been defined by NBR's consultants. It is a variable association, and a form of Southern Coastal Bluff Scrub, that is characterized by native Quailbush (*Atriplex lentiformis*) mixed with other native and non-native plants. The scrub shown above includes native California Brittlebush (*Encelia californica*) and native California Buckwheat (*Eriogonum fasciculatum*), as well as mats of non-native Freeway Iceplant (*Carpobrotus edulis*). The scrub shown on the previous page includes native Coast Goldenbush (*Isocoma menziesii*) and native Mulefat (*Baccharis salicifolia*), along with some non-native Pampas Grass (*Cortaderia selloana*) and limited freeway iceplant. Since these forms of Quailbush Scrub are equally suitable as habitat for the California Gnatcatcher, there is simply no valid

rationale for mapping them differently or treating them differently. The only apparent reason why one form of Quailbush Scrub is being treated differently than another is that the habitat shown on the Page 36 is located in the proposed alignment of Bluff Road and the habitat shown on Page 37 is located outside of proposed development areas.

The City of Newport Beach CLUP is being used for guidance on the Banning Ranch project, so it is relevant that the City has concluded that Southern Coastal Bluff Scrub — including examples of this community dominated by Quailbush (which the CLUP calls "saltbush") — growing in areas that are contiguous with other natural areas, and that provides habitat for California Gnatcatchers or other sensitive species, meets the definition of ESHA. Page 4-3 of the CLUP:

> Several of the natural communities that occur in Newport Beach are designated rare by the CDFG and are easily disturbed or degraded by human activity and therefore are presumed to meet the definition of ESHA under the Coastal Act. These include southern dune scrub, southern coastal bluff scrub, maritime succulent scrub, southern maritime chaparral, southern willow scrub, southern cottonwood willow riparian forest, southern arroyo willow forest, southern black willow forest, southern sycamore alder riparian woodland, and southern coastal purple needlegrass grassland.

Referring back to the map on Page 34 of this letter, showing the patches of native scrub that staff regards as not being suitable for use by gnatcatchers, I continue to observe that these areas are functionally indistinguishable from native scrub that staff treats as occupied by California Gnatcatchers in all other parts of the site. **It is only in the area where NBR desires a new intersection of proposed Bluff Road with Pacific Coast Highway where native scrub becomes something other than gnatcatcher habitat.**

NBR must certainly recognize the value of the gift that the Commission seems to be trying to give them, because without Bluff Road the area of potentially feasible development would decrease. It is, therefore, unsurprising that NBR's most recent submission, dated July 11, 2016, sets forth the completely unsupported accusation that staff's determination of gnatcatcher-occupied habitat actually goes too far:

> 2. NBR continues to maintain that the extent of Staff's scrub and Gnatcatcher ESHA determination, particularly in areas that are surrounded by or occur along the edges of existing oil field development, is not supported by site-specific evidence. The combination of low native plant coverage and diversity, non-native invasive plant species, obvious disturbance in the form of dispersed oil structures, roads, well pads, staging and stockpiling areas (See Attachment 4), and the existing and foreseeable level of ongoing disturbance associated with daily operations of the oil field in these areas should be given due consideration in the determination of ESHA for this site.

This is simply another manifestation of the consistent strategy employed by NBR, and by its consultants, to twist the truth and facts in ways intended to put staff and the

Commission on the defensive. By taking even a completely unsupported position, and pushing it repeatedly and aggressively, NBR intends to provide the cover needed for the Coastal Commission to settle on some "compromise" position in the middle ("experts disagreed, so we made a determination").

It should be relevant that the analyses laid out in this letter are thoroughly documented and backed by verifiable facts, photos, and other solid evidence, whereas NBR's is based upon vague generalizations and pointing to the absence of "site-specific evidence" that they easily could have collected using standard methods. Had NBR wanted to demonstrate the "site-specific" usage of Southern Coastal Bluff Scrub by California Gnatcatchers on Banning Ranch, they could have conducted standard habitat-usage surveys. As described previously, this involves **conducting ten visits roughly one week apart from the start of breeding through fledging of young, preferably over the course of multiple seasons, including during the non-drought years when the gnatcatcher population has been shown to increase dramatically over its current, drought-depressed size.** Perhaps out of fear for what the results of such a study would have revealed about the actual extent of habitat usage by gnatcatchers, NBR chose not to do this. This is the same line of reasoning they are using with Burrowing Owls, suggesting that nobody can prove which areas the owls rely upon for foraging, when the impetus was on NBR to provide any such evidence that the birds are not simply using all of the suitable habitat available to them. Any qualified biologist knows that this must be the default assumption in the absence of actual evidence to the contrary.

Following their standard script, NBR is counting on bullying staff and the Commission into accepting the false premise that "experts disagree" on whether California Gnatcatchers can be expected to use all of the available, suitable native scrub habitat located in areas known to be occupied by the species. **They do, and any honest, experienced gnatcatcher biologist would be capable of readily testifying to this fact.** It is for this reason that the USFWS and other agencies rely upon the extent of suitable scrub habitat as their standard basis for determining the extent of occupied habitat in areas known to support gnatcatchers. The unsupported "arguments" set forth by NBR are simply intended to provide cover for staff and commissioners who may favor allowing construction of Bluff Road despite all possible alignments requiring development within ESHA and/or ESHA buffer for Southern Coastal Bluff Scrub occupied by California Gnatcatchers.

## INADEQUATE SPACE FOR CONSTRUCTION WEST OF VERNAL POOL 1

Exhibit 13 in the latest staff report shows staff proposing to allow road access west of Vernal Pool 1 ("VP1"within the upper red circle) and west of Vernal Pool CC ("CC" within the lower red circle). This is another part of the site where staff appears to be attempting to shoehorn in development by manipulating the extent of ESHA buffers.

For example, polygons of "CBBS Coastal Sage Scrub" west and north of Vernal Pool 1, and directly east of documented gnatcatcher ESHA, are not considered to be "Coastal

California Gnatcatcher Habitat." As in other parts of the site, it is fallacious to suggest that gnatcatchers go only as far as the extent of staff's orange screen, but not into the adjacent pale green area of equally suitable habitat.

Second, there is a band of native "Mulefat Thicket" encircling Vernal Pool 1. This native scrub habitat is currently given no buffer at all, despite being a wetland habitat type associated with a vernal pool.

Third, a very narrow area of "potential development" passes just east of Vernal Pool "CC." It seems unlikely that development can be accommodated within that narrow band without having to extend grading or fuel modification into ESHA buffer.

## PROPOSED DISPOSITION OF ESHA

Page 22 of the staff report dated September 25, 2015, describes the applicant's proposed Habitat Conservation and Conceptual Mitigation Plan (HCCMP):

> Most of the impacts to the site would be a result of the proposed remediation plan (RAP) and the mass grading to prepare the site for the housing development. The applicant is proposing compensatory mitigation in another location for most of these impacts, as opposed to restored in place. The plan for the mitigation is the Habitat Conservation and Conceptual Mitigation Plan (HCCMP). The HCCMP presents a program for the onsite compensatory mitigation that is designed to mitigate the biological impacts caused as a result of the proposed project. The HCCMP was prepared as a mitigation proposal and assumes that the underlying impacts to the sensitive resources would be approvable under the Coastal Act.

NBR and their consultants invoke the putative power of the HCCMP to counteract all of the proposed project's adverse effects, but this approach is fundamentally inconsistent with the Coastal Act. Restoration of the habitats remaining around the edges of the new settlements could never fully offset the radical changes to the existing landscape being proposed by staff and NBR. The natural communities in this area would not be able to continue functioning at the levels they currently do. Fortunately, the Coastal Act does not allow for the destroy-and-mitigate approach to ESHA proposed by staff and by NBR.

## SUMMARY AND CONCLUSION

Banning Ranch supports a reasonably intact ecosystem consisting of coastal marsh, riparian, bluff scrub, and grassland/vernal pool communities. The "fragmentation" that people perceive when they focus on areas disturbed by the land owners and oil operators, legally or illegally, generally represents a temporary condition that can heal either (a) through the passage of time, as is occurring with the native scrub and grassland communities, or (b) through targeted restoration efforts. What is important, ecologically, is that Banning Ranch represents a microcosm of the type of integrated, multifaceted wetland/upland ecosystem that has historically characterized this part of the coastal zone. **The reason that Banning Ranch supports so many rare, threatened, and endangered wildlife species (on par with Bolsa Chica or Upper Newport Bay) is that rea-**

**sonably intact upland/wetland ecosystems areas are now virtually nonexistent anywhere in the Los Angeles/Orange County area.** The Coastal Act was enacted, in large part, to ensure that California's preserved coastal landscapes remain functional and valuable for the full range of listed and otherwise "sensitive" native plants and wildlife that rely upon them. Unfortunately, none of the development proposals set forth by either NBR or Coastal Commission staff would fulfill this fundamental objective of the Coastal Act.

In an interview with the San Jose Mercury News published on February 12, 2016, the day after he was dismissed as Executive Director of the Coastal Commission, Dr. Charles Lester stated:

> "Some of this might be wanting to finish the transition away to something different from the legacy of Peter Douglas, and hopefully it's not a fundamental undermining of the program," said Lester, 53. "If this was about a power struggle between the commission and staff -- or me, as the representative of staff -- we still don't know how that power would be used if it shifts in a fundamental way."

The Banning Ranch Conservancy is concerned that a marked shift in staff's approach to this project — as reflected in current plans to shoehorn development into many areas identified as ESHA or ESHA buffer when this project was heard by the Commission in October 2015 — appears to reflect fallout from the "power struggle" described by Dr. Lester. For the specific reasons outlined in this letter, we are not convinced that staff's abrupt reappraisal of ESHA on Banning Ranch represents anyone's best scientific opinion, or staff's decades of experience interpreting the Coastal Act through the prism of relevant precedents and legal interpretations.

We are further concerned by comments made by Commissioners suggesting an eagerness to "work with" the well-defined ESHA protections contained in the Coastal Act, as the intent seems to be to decrease the level of protection granted to "degraded" ESHA (as defined by applicant-funded consultants with a vested interest in developing a keen eye for signs of "degradation"). Until any such changes are actually made to the Coastal Act, we believe that any arbitrary loosening of ESHA protection should be found inconsistent with language and provisions of the Coastal Act, as interpreted through established case law. We further remind the Commission that much of the "degradation" that they now decry resulted from widespread and prolonged violations of the Coastal Act across those portions of Banning Ranch now proposed for development. We are concerned that the Commission seems intent upon rewarding the violator with a large, lucrative development project rather than following the normal procedures for evaluating illegally disturbed areas, as described by your staff earlier this year during the ESHA workshop in Santa Rosa.

At Banning Ranch, planning to maintain the functions and values of the existing natural landscape **must** involve clustering the development around the edges of the site and preserving an intact, ***unfragmented*** area that incorporates the full range of habitats known to support species of high conservation concern. This includes the western, cen-

tral, southern, and eastern parts of the property. The applicant and staff seem have decided that ecosystem-based planning should be pursued in certain parts of the site, but that the central and southeastern parts, consisting mainly of grasslands and vernal pools, should be evaluated as though only selected parts of the ecosystem deemed most valuable (i.e., most vernal pools, native grasslands, and owl burrows) warrant preservation. Extensive roads and structures would be permitted in the interstices. **Such an approach would result in precisely the type of fragmented, low-functioning condition in the preserved area that various commissioners have lamented in their public comments.** Failure to recognize that annual grasslands and robust ground-squirrel colonies play vital roles in the proper functioning of the grassland/vernal pool ecosystem, and instead focusing on each of its components in a vacuum, precludes development of a legitimate land-use plan based on ecological principles. A legitimate and acceptable plan for Banning Ranch would provide for some level of coastal development and coastal access without sacrificing long-term protection of a reasonably complete, minimally fragmented, viable coastal ecosystem, in compliance with the Coastal Act.

The Banning Ranch Conservancy respectfully requests that the Coastal Commission insist upon a development plan that legitimately incorporates basic ecological principles by substantially reducing the loss and fragmentation of large blocks of habitat in the central and southeastern parts of the site. Burrowing Owl ESHA must reflect the known habitat requirements of the species, as discussed in this letter and in the site-specific analysis by specialist Pete Bloom. Patches of Southern Coastal Bluff Scrub located near known California Gnatcatcher observations cannot be found to be "unoccupied" by the gnatcatcher (or as something other than Southern Coastal Bluff Scrub) based upon the unfounded and biased conclusions of NBR's consultants. Fire Department-mandated fuel modification zones must be situated outside of the required ESHA buffers. Only planning that incorporates sound ecological principles can possibly provide for some level of coastal development (albeit one far lower than currently proposed) while also providing for long-term protection of a reasonably complete, minimally fragmented, viable coastal ecosystem, in compliance with the Coastal Act.

Thank you for your time and consideration. If you have questions, please send e-mail to robb@hamiltonbiological.com or call me at (562) 477-2181.

Sincerely,

Robert A. Hamilton
President, Hamilton Biological, Inc.
http://hamiltonbiological.com

attachments : Memorandum from CDFW Regional Manager Edmund Pert dated October 5, 2015.
Letter from Dr. Jonathan Atwood dated October 5, 2015.

cc: Steve Kinsey, Coastal Commission Chair
Dayna Bochco, Coastal Commissioner
Gregory Cox, Coastal Commissioner
Carole Groom, Coastal Commissioner
Erik Howell, Coastal Commissioner
Mary Luévano, Coastal Commissioner
Martha McClure, Coastal Commissioner
Wendy Mitchell, Coastal Commissioner
Mary K. Shallenberger, Coastal Commissioner
Effie Turnbull-Sanders, Coastal Commissioner
Roberto Uranga, Coastal Commissioner
Mark Vargas, Coastal Commissioner
Sherilyn Sarb, CCC
Chris Pederson, CCC
Alex Helperin, CCC
Lisa Haage, CCC
Dr. John Dixon, CCC
Dr. Jonna Engel, CCC
Andrew Willis, CCC
Karl Schwing, CCC
Liliana Roman, CCC
Dr. Laurie Koteen, CCC
Amber Dobson, CCC
Christine Medak, USFWS
Kevin Hupf, CDFW
Erinn Wilson, CDFW
Kelly Schmoker, CDFW
Steve Ray, Banning Ranch Conservancy
Dr. Terry Welsh, Banning Ranch Conservancy

# APPENDIX F

## Supplemental letters received

**State of California • The Resources Agency** **Edmund G. Brown, Jr., *Governor***

**DEPARTMENT OF PARKS AND RECREATION** **Major General Anthony L. Jackson, USMC (Ret.), *Director***
Southern Service Center
NTC at Liberty Station, Barracks 26
2797 Truxtun Road
San Diego, CA 92106
619-221-7060 – Fax: 619-221-7082

July 10, 2013

Rick Mayfield
Wildlife and Lands Programs Supervisor
California Department of Fish and Wildlife
2390 C Las Posas Road #402
Camarillo, CA 93012

Mary Small
Deputy Executive Officer, Coastal Conservancy
1330 Broadway #1300
Oakland, CA 94612

Dear Rick and Mary,

I met with John Tommy Rosas on June 19 and 20, 2013 to discuss the Ballona Wetlands restoration project and review some of the data that Mr. Rosas has obtained over his years of involvement with this area. The meeting was requested by Mr. Rosas to show me some of the documentation and data he has on the project area. This meeting was extremely helpful for me because I have been trying for more than a year to get access to additional background information for this project. I am very grateful for Mr. Rosas' willingness to share this information with me, especially in light of the termination of his contract to provide such data to the Agencies involved in the Ballona Wetlands restoration project. The condition of our meeting and my copying of some of the documentation was that the data was not to be passed on to anyone else without Mr. Rosas' approval due his concerns regarding confidentiality and security of the cultural data. However, Mr. Rosas did agree that I should write this letter to inform the agencies of our meeting and some of the items we discussed, as well as the recommended next steps as Mr. Rosas and I understand them.

**1) Background Data and Research**

Thorough research and a background study should be part of the resources inventory work to be completed prior to the preparation of the EIR/EIS document. Although SRI has done a lot of archaeological work and research on this property, very little of that data has been made available for review, so it is impossible to fully understand and explain the property's cultural history and previous work. SRI has also not been forthcoming with their Playa Vista reports, and when Dr. Grenda was asked for specific previous SRI reports and data he only provided one report and then replied that the others were available at other repositories.

Based on the cultural background report ICF prepared and discussions with Mr. Bever, it does not appear that ICF completed a full background study for their portion of the work, relying on summaries presented in SRI reports and looking at very little primary data. It also

does not appear that the State Agencies involved in this project have their own in-house archaeological/historical reference or background data repositories, or if they do, that information has not been made available for review. Although the State Information Centers managed by OHP are the repositories for all archaeological data within the state, there is a fee for examining or requesting information from their archives and a significant time-cost for review of such materials. Mr. Rosas has also expressed concern that the Information Centers do not have copies of all the reports for previous work done within the project area. This is certainly possible, as they rely on those preparing the work to submit copies of their documents. They do not typically go out and actively pursue acquisition of data and documentation.

Due to questions and controversy surrounding the Ballona Wetlands restoration project, it is vital that a full background study and thorough examination of previous research be completed, including identification and review of the materials necessary to fully understand and explain the history of this property and previous work that has occurred therein, as well as address the issues and concerns that have arisen (also see previous M. Mealey letter to M. Small dated 05/02/2012). Having now seen a portion of Mr. Rosas' gathered information from his long involvement with cultural resources in the area I do believe he has some valuable information that would help in the understanding of the history of and previous work within this property.

**2) Archaeological/Cultural Preservation and Protection**

There are certain areas within the property that have been identified by Archaeologists and Native American representatives as sensitive or potentially sensitive for archaeological and/or cultural resources. There are other areas that are suspected, but additional archaeological testing (see under item 3 below) may be required to help determine cultural/archaeological sensitivity prior to preparation of a sensitivity map.

Some of these sensitive areas may require restricting access and/or placing fencing to ensure site protection. Some will require buffers around them to protect not only the material resources, but the landscape/viewshed associated with the resources. Buffers also help to protect the sites from vandalism.

A Cultural Resources Protection Plan would be useful to identify, manage, and protect the cultural resources within the project area including the Ballona Lagoon Archaeological District (BLAD), sacred sites, and archaeological sites. Additionally, a Public Use Plan, a Development Plan, a Trail Plan, and/or other focused plans can help identify key issues, ensure proper management, and offer ways to protect and preserve the various cultural resources.

**3) Archaeological Testing.**

Archaeological testing would help in answering some of the questions and issues that have arisen during the research, consultation, and project work. Although it was hoped that monitoring of the geotechnical testing would give some sense of subsurface archaeological potential, the testing was conducted in such a way that it was impossible for the monitors to see much of the removed soils, and therefore it was not an acceptable process for determining cultural resource presence or absence within the project area.

A) There are still areas of uncertain cultural sensitivity that should be examined. These include the “shell scatter” sites identified by SRI and the shell scatter site (CA-LAN-1698) that was originally documented as an archaeological site but later removed from “site status” with no apparent testing.

During the archaeological survey of the property, SRI identified four “shell scatter” sites they labeled SR-8, SR-9, SR-10, and SR-11. Although their research design and other plans called for individual examination and analysis of each site, SRI only performed formal testing on SR-10, and the conditions were not ideal due to the inundation of the site at the time of the testing. Due to the inundation of SR-10, no surface collection (called for in the testing plan) was performed, the one test unit that was excavated was placed on the berm along the edge of the canal (an area with the highest level of potential disturbance within the site) instead of in the center of the site, and the site boundaries were not fully identified. The shell recovered as a result of the testing was determined to be of a “natural” and not “cultural” in origin. However, the testing report reiterated that the other similar sites should be evaluated/tested individually, which, according to Dr. Grenda of SRI, did not happen (although he did say that they monitored other locations and did not find any cultural deposits). In addition, the other shell scatter site that was previously recorded within the property (CA-LAN-1698) does not appear to have been tested (Dr. Grenda acknowledged that SRI did not test it), or if it was, no testing reports for the site have, as yet, been made available for review.

B) Location and depth of fill.

Based on what little historical and background evidence that has been available for review, there does appear to have been some fill placed within the property. However, it is still unclear to what extent fill was placed within the project area, where precisely it was placed, if any of the fill contained redeposited archaeological materials, or if there are any cultural sites (besides CA-LAN-54) present below the fill within any areas of the property. Additional background research (see item 1 above) may help address these uncertainties.

i) Area A was apparently used for draining wet soils removed during the construction of the Marina; however, some, if not all of this fill dirt may have also been removed back to the Marina in order to build up areas during its construction. Aerial photos of Area A from before the construction of the Marina show there is some elevation within the area that could have supported small camps or processing sites as well as historic period sites and it is unclear if any of these possibilities have been examined or explored. Additionally, there is definitely evidence of archaeological materials in the vicinity of the Marina prior to its construction. The Admiralty Site (CA-LAN-47), a large village site, was located on the edge of the Marina. It is possible that materials from this site or other associated sites could have been removed during Marina construction and deposited in fill within the current project area.

ii) Area C has documented fill overcovering archaeological site CA-LAN-54. It is recommended that additional testing occur within Area C to determine if there are other sites or loci associated with CA-LAN-54 or with the two drainages that appear from historic maps to have crossed this portion of the property. SR-11, a shell scatter site identified by SRI was recorded on the edge of this area and may represent remnants of a temporary camp or processing location. According to Dr. Grenda, SRI determined through monitoring that SR-11 was a natural shell deposit in fill; however,

based on the available reports, no archaeological testing was ever conducted at the site. It is possible that this or other archaeological deposits in the general area are related to CA-LAN-54.

In addition, it is essential to ensure that any additional fill brought in to the project area for landscape alterations be clean fill, free of archaeological deposits or natural materials that could be mistaken for archaeological materials (such as shell or crushed fine-grained local gravels), to avoid further confusion and/or contamination of CA-LAN-54 and other potentially buried sites.

iii) It is unclear if any fill has been placed within Area B. Although permission was given for the dumping of fill from the Marina construction throughout the Ballona Wetlands property, no direct evidence has been presented showing where the fill dirt was deposited or how much remains. Geotechnical reports may help answer some questions as to depth and location of fill deposits, but these have also not been made available for review.

C) An archaeological testing plan and research design should be developed specifically for the restoration project. The use of the earlier SRI testing plan/research design does not take into account the present project. In addition, it does not appear that SRI followed through on their recommended testing plan as shown by the lack of archaeological testing at sites such as SR-8, SR-9, and SR-11. Because of this, and because of the different purposes of the previous project and the current restoration, the archaeological investigations should be tailored to the current project and focus on proposed areas of potential impact. To do this, a complete project scope (see under item 5 below) needs to be identified.

**4) Freshwater Marsh**

There is still a need to examine the area of the Freshwater Marsh to see if any archaeological materials (or prehistoric human remains) are in the area due to erosion and/or flooding of archaeological sites upstream. Although SRI says there were no archaeological materials affected by the flooding incident and that the flow did not cross the road, there is disagreement over that statement and what occurred. Regardless of what occurred during the SRI work, there is also a possibility of archaeological materials from sites along the stream channel washing down prior to the SRI work in this area. If such materials included human remains, it would be prudent to determine their presence and location to avoid future issues relating to such remains.

One possible way to look at the area without extensive archaeological testing is use of specially trained Historical Human Remains Detection (HHRD) dogs. These dogs are trained to identify archaeological human bone and have been shown to be effective in determining locations of human burials in an archaeological setting. It is possible that they would be able to identify if there are any human remains within the freshwater marsh area (or other areas). I have contacted the Institute for Canine Forensics and was informed that wet and marshy areas are ideal for the HHRD dogs to identify archaeological bone. However, they may not be able to pinpoint the remains, due to diffusion of scents in water over time. Still, they may be able to get a sense of the presence or absence of human bone within the area without extensive archaeological testing. They could also be used in combination with archaeological

testing to more efficiently place testing locations if confirmation of human remains is deemed necessary.

**5) Project scope and timeline**

With the recent addition of the Annenberg-funded visitor center and landscape modifications in Area C, it appears that the project scope has not yet been finalized. In order to identify areas of potential effect and prepare a testing plan, a specific project scope is necessary. In addition, a project timeline needs to be prepared to assist with proper planning and budgeting of time.

I hope that the information in this letter is useful for understanding the issues and determining the next steps. I want to help you to prepare a sound environmental document and try to avoid adverse effects to the cultural resources as a result of the restoration project. I also want to help you address Mr. Rosas' concerns. Please let me know if you have any questions.

Sincerely,

Marla Mealey, Associate State Archaeologist
California State Parks, Southern Service Center

cc: Diana Hurlbert, Santa Monica Bay Restoration Commission
Jim Newland, California State Parks
John Tommy Rosas, Tongva Ancestral Territorial Tribal Nation

# TATTN

## TONGVA ANCESTRAL TERRITORIAL TRIBAL NATION

**A TRIBAL SOVEREIGN NATION UNDER THE UNDRIP AND AS A CALIFORNIA NATIVE AMERICAN TRIBE –VERIFIED BY NAHC - SB18-AB 52-AJR 42 RECOGNIZED BY THE STATE OF CALIFORNIA AS THE ABORIGINAL TRIBE OF THE LOS ANGELES BASIN AND ISLANDS**

August 16, 2016

Mr. Terry Welsh / Mr. Steve Ray-Banning Ranch Conservancy

P.O. Box 15333
Newport Beach, CA 92659-5333

**Re: Steve Ray Comments at August 11, 2016 Coastal Commission Hearing Re: Newport Banning Ranch -CCC ADMINSTRATIVE PERMIT /Native American Monitoring**

Mr. Terry Welsh / Mr. Steve Ray -

The Tongva Ancestral Territorial Tribal Nation demands an immediate written apology and retraction for the untruthful, slanderous, insensitive and racist remarks made by Banning Ranch Conservancy Executive Director Steve Ray at the August 11, 2016 Coastal Commission Hearing, relating to Item TH5d.

At the meeting, Mr. Ray stated that the monitors used by Newport Banning Ranch were not the “proper monitors for this purpose” and inferred that we were chosen by developers because we are not effective. Mr. Ray continued on to say there were other monitors “out there that are much more reliable and have much more integrity”.

This type of behavior is unacceptable in any forum and appears to exhibit evidence of deep disrespectfulness for all Native Americans. Mr. Ray has continually showed contempt for anyone with a point of view other than his own. TATTN is a fully qualified in tribal consultation and monitoring .

Much could be said about the misrepresentations in Mr. Ray’s statements about the NBR sites – including his comments about Ground Penetrating Radar being incapable of identifying graves and human remains. That is categorically untrue. We and the Federal Government have successfully used GPR for that purpose for years.

As to his statements regarding cultural sites - suffice to say – NBR is preserving in place all remaining known sites – and is conducting studies above and beyond those required by the Coastal Act.

**JOHN TOMMY ROSAS**
**TRIBAL ADMINISTRATOR/ TRIBAL LITIGATOR**
**578 WASHINGTON BLVD #384 MARINA DEL REY,CA 90292**
**310-570-6567**
**TATTNLAW@GMAIL.COM**

# TATTN

## TONGVA ANCESTRAL TERRITORIAL TRIBAL NATION

**A TRIBAL SOVEREIGN NATION UNDER THE UNDRIP AND AS A CALIFORNIA NATIVE AMERICAN TRIBE –VERIFIED BY NAHC - SB18-AB 52-AJR 42 RECOGNIZED BY THE STATE OF CALIFORNIA AS THE ABORIGINAL TRIBE OF THE LOS ANGELES BASIN AND ISLANDS**


The Tongva Ancestral Territorial Tribal Nation has been approached by NBR project opponents in the past to be a part of their scheme, which I decided was incompatible with our tribal cultural resources /interests/ rights.

However, in researching Banning Ranch Conservancy's approach, we remained neutral for some time. In June 2016, when NBR hosted an "all tribes" site tour, we learned more about the heart of the developer and their willingness to share some of their project and property will the Native American community. We were afforded respect and dignity – not dismissed as we have been by Mr. Ray and Banning Ranch Conservancy. We found people who wanted to work with us – not use us.

It is apparent to us that for the Executive Director of Banning Ranch Conservancy – the end justifies the means. By association, this speaks volumes about of the true intent of the ''Banning Ranch Conservancy an obvious oxymoron, as they are not a conservancy in any legal terms.

We await your immediate response.

**Tongva Ancestral Territorial Tribal Nation**

*/S/ JOHNTOMMY ROSAS*

John Tommy Rosas

Tribal Administrator/Tribal Litigator

Cc: Coastal Commissioners /Coastal Commission Staff


***JOHN TOMMY ROSAS***

**TRIBAL ADMINISTRATOR/ TRIBAL LITIGATOR**

**578 WASHINGTON BLVD #384 MARINA DEL REY,CA 90292**

**310-570-6567**

**TATTNLAW@GMAIL.COM**

August 17, 2016

To Whom it May Concern,

I am writing this letter in high support for Mr. Andy Salas, Tribal Chair of the Gabrieleño Band of Mission Indians/Kizh Nation. I am a professional archaeologist and have worked directly with Mr. Salas on several projects in Southern California. Mr. Salas is extremely dedicated to his role as Chairman of the Kizh Nation, and during the course of my professional acquaintance with Andy I have found him to have a tireless work ethic, a profound dedication and service to his role as a Native American Tribal representative, and an impressive knowledge of Gabrieleño culture and history.

I recently worked side by side with Mr. Salas on an archaeological project on Santa Catalina Island where he served as a cultural monitor. I found Mr. Salas to maintain the upmost professionalism in his work. Mr. Salas was an active participant on the project, assisted us with our daily work, and provided useful information regarding the prehistory of the Gabrieleño people. He produced extensive and valuable field notes of all of the project activities that were incorporated into our technical report for the project. Mr. Salas's contributions greatly benefitted our project.

I also currently serve with Mr. Salas on the San Gabriel Mountains Community Collaborative (SCMCC), a public advocacy group organized to work with the U.S. Forest Service to represent communities that have interests in the newly designated San Gabriel Mountains National Monument. The mission of the collaborative is to "represent the general public by integrating diverse perspectives to identify, analyze, prioritize and advocate for values, resources, investments, management objectives and implementation practices that sustainably benefit all communities throughout the region, the Angeles National Forest and the San Gabriel Mountains National Monument". Mr. Salas serves as the only Native American representative on the collaborative, and is recognized in high regard by numerous public officials and fellow members in this exclusive group. Andy and his organization are working side-by-side with the U.S. Forest Service to manage and protect archaeological sites within the Monument. His service to the SGMCC is invaluable, and his efforts and contributions to the management of cultural resources in the new San Gabriel Mountains National Monument will be felt for years to come.

Overall, I give Mr. Salas my highest recommendation. Please feel free to contact me should you have any questions.

Sincerely,

Richard B. Guttenberg
Vice President, Cultural Resources
John Minch and Associates, Inc.
714-501-4165
<rguttenberg@jma-ca.com>

Preserving America's Heritage

March 3, 2015

Dr. Daniel P. Swenson
U.S. Army Corps of Engineers
Los Angeles District
P.O. Box 532711
Los Angeles, CA 90053-2325

Ref: *Playa Vista Programmatic Agreement:*
*Ballona Wetlands Restoration Project*
*Los Angeles, California*

Dear Dr. Swenson:

The Advisory Council on Historic Preservation (ACHP) has recently received correspondence from a member of the public, Mr. Johntommy Rosas, about the referenced project. As you know, the ACHP is a signatory to the Playa Vista Programmatic Agreement (PA), and participated in the consultation for the five year extension of the PA in 2011. Mr. Rosas raises concerns that the Ballona Wetlands Restoration Project area, which was once included in the Playa Vista area of potential effect, is not being treated as set forth in the PA.

Mr. Rosas is a member of the Tongva Ancestral Territorial Tribal Nation (TATTN), a State-recognized Indian Tribe in California. He states that there has not been compliance with provisions set forth in the PA to protect Native American cultural resources, nor has the Corps been implementing the provisions of the Playa Vista PA in terms of tribal consultation.

As a signatory party to the Playa Vista PA, the ACHP would appreciate the Corps investigating the issues raised by Mr. Rosas. It is our understanding that there are properties within the project that are considered to be of cultural and religious significance to members of the Gabrieleno Indian tribes (which includes TATTN). Therefore, we would like to see how these concerns have been addressed and how the Corps coordinated with Indian Tribes in its implementation of the Playa Vista PA. The Corps should also clarify how it is complying with the remaining portions of the Ballona Wetlands Restoration Project given recent modifications to the undertaking.

We thank you in advance for your prompt attention to this matter. Should you have questions, please contact Anthony Guy Lopez at (202) 517-0220 or by email at alopez@achp.gov. We look forward to receiving the requested information so that we may respond to Mr. Rosas.

Sincerely,

Charlene Dwin Vaughn, AICP
Assistant Director, FPLAS Section
Office of Federal Agency Programs

ADVISORY COUNCIL ON HISTORIC PRESERVATION
401 F Street NW, Suite 308 • Washington, DC 20001-2637
Phone: 202-517-0200 • Fax: 202-517-6381 • achp@achp.gov • www.achp.gov

August 14, 2016

To Whom It May Concern:

Please accept this letter of strong support for Andy Salas, Tribal Chair of the Gabrieleno Band of Mission Indians. I've had the good fortune to work directly with Mr. Salas in my capacity as Superintendent of the ABC Unified School District in Cerritos, California. After Native American ancestral remains and artifacts were uncovered at a construction site at one of our middle schools in 2011, both Mr. Salas and the Gabrieleno Band of Mission Indians played a crucial role when my school district worked with a variety of governmental agencies to examine, preserve, and honor our discovery.

Due to the sensitive nature and importance of the recovery of Gabrieleno ancestral remains, I personally supervised the coordination of agencies and activities associated with their recovery, disposition, and transmission. During the course of this process, my school district worked with the City of Hawaiian Gardens, the Los Angeles Coroner, the L.A. County Board of Supervisors, and the state of California. In addition, I coordinated the activities of the construction project contractor, the assigned consulting archaeologist, and the Gabrieleno Band of Mission Indians. This was a sensitive project and minor conflicts and competing interests sometimes arose. However, at all times Mr. Salas provided valuable advice and support in his capacity as representative of the Gabrieleno Band of Mission Indians. We developed a productive, reliable, and professional relationship that astutely balanced cultural preservation and community interests.

The ABC Unified School District Board of Education and the City Council of Hawaiian Gardens agreed to sponsor the Gabrieleno Indian Education Trail at the Fedde Middle School Sports Complex after the original construction project was completed in 2012. I worked with WLC Architects, Inc. to create, design, and build this wonderful teaching opportunity. The Gabrieleno Indian Education Trail includes the history and culture of the ancient people who inhabited Southern California. In addition, the Gabrieleno Trail is the site of the reburial of Gabrieleno ancestor remains. At every step of the Gabrieleno Indian Education Trail project, I worked directly with Mr. Salas and the Gabrieleno Band of Mission Indians. This significant educational and cultural project would not exist if it wasn't for the input and support of Andy Salas and the Gabrieleno Band of Mission Indians.

Let me conclude by confirming my strong recommendation for Andy Salas. I found him to be a sensitive, informed, reliable, and professional representative of the Gabrieleno Band of Mission Indians. Please contact me if you desire further information.

Sincerely,

Gary Smuts

Gary Smuts, Ed.D.
Superintendent of the ABC Unified School District (retired)
Instructor, LaFetra College of Education
University of La Verne

Gary Smuts
7312 Bourbon Lane
La Palma, CA 90623
714-521-4885
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SGMRC
SAN GABRIEL MOUNTAINS
REGIONAL CONSERVANCY

TO: CALIFORNIA COASTAL COMMISSION August 15, 2016
MEMBERS OF THE BOARD

**RE: LETTER OF SUPPORT & REFERENCE**
**for the GABRIELENO BAND of MISSION INDIANS, KIZH NATION**

This letter is to provide reference of the authenticity and exemplary character of the Gabrieleno Band of Mission Indians, Kizh Nation, with website and headquarters of operation located in Covina, California.

**Kizh Lands & Culture**.
It should be pointed out that the sphere of land, heritage, culture and influence of the Kizh Nation extends throughout Los Angeles County and beyond: including coastal and interior mountains plus coastal islands. The reaches, evidences, and history of their nation has been verified in numerous historical documents, pictographs, villages, and sacred sites by comparative archeologies, oral histories, certified genealogies, and DNA studies.

**State and Federal Applications/ Publicatio**ns.
SGMRC has been closely associated with Kizh Tribal Council Members as they have carefully, step by step authenticated their history for State and National Recognition through applications, studies and verification of the authenticity of the Kizh Nation. Some of these steps SGMRC helped to facilitate through encouragement of months of data and studies collecting, followed by roundtable scholarly discussions and finalizations of documentation by the Tribal Council Representatives for the Bureau of Indian Affairs (BIA) Federal Application for Tribal Recognition. The astounding compilation of history and scholarship result was hand-carried and presented to the Secretary of the BIA in Washington, D.C., by the team of Tribal Representatives, Archeological Researchers, and Elected Government Representatives. The Federal Application is an outstanding and scholarly example of tribal story, evidences, documentation, and history of the Kizh Nation. The Federal Application is available for review and is one of a number of documents which Kizh Scholars and Tribal Archeologists are in process of copyrighting for further preservation and permanent availability should any questions of credibility or authenticity of the Kizh Nation or its Tribal Representatives. Cultural Resources of the Kizh Nation continue to grow in number and authenticity as the Kizh take their rightful and demonstrated place in the history of Los Angeles County and beyond. Along with the BIA, personnel from the Smithsonian were consulted with for preserving historic evidences of the Kizh.

**Development Pressures and Kizh Research/Scholarship**.
In addition, other scholarly documents have been generated and will be included in the copyrighted package, as encouraged by SGMRC, of evidences of the Kizh Nation and its Tribal Representatives in Los Angeles County and region. Most recently, the Kizh Nation Tribal Archeologist critiqued a consulting group's Cultural Resources Section of a DEIR for a "proposed" Foothills Development, which severely lacked authenticity and scholarship due to the participation by a fictitious tribal group, The fictitious group had no history, nor knowledge of the village location, sacred sites, nor interpretation of cultural relics found on-site and nearby.

**Qualified and Experienced Monitors**.
When we read in the newspapers all too commonly the loss of vital history and cultures of indigenous people by careless or for-profit motives and/or irresponsible overseers or monitors of historic sites, let it be said as demonstrated to SGMRC, there is no greater sensitivity and respect for history than that shown by the Kizh Representatives, including members of the Tribal Council, starting with Chief Ernie Salas and his Son Andrew Salas, Council Chairman.

**Kizh Leadership for the New San Gabriel Mountains National Monument.**
It should also be known that of all indigenous peoples, tribal groups, and representatives surveyed for the **Native American Tribes Chair** to be seated on the **Collaborative of the San Gabriel Mountains for the San Gabriel Mountains National Monument**, it was Andrew Salas, Council Chair of the Gabrieleno Band of Mission Indians/ Kizh Nation who was selected unanimously. One of the first of the priority projects mentioned for implementation in this newest national monument was the safeguarding and mapping of the Gabrieleno Trail in the National Forest and National Monument, as further documented by evidences of artifacts and maps validated by nationally known archeologists associated with the Kizh Nation.

**Come and See for Yourself.**
Should you be interested in further verification of the vital leadership and contributions of Andrew Salas, and other Members of the Tribal Council of the Kizh Nation, let us know. We can take you there to see for yourself what can be lost forever through eyes of ignorance. The Kizh even now are making important contributions to the Cultural Resources of the Indians of the State of California and to the Nation. Please feel free to contact us to take you to sites that exist and that we are associated with which may be lost forever without Andrew and the Tribal Council to step into the gap of need for protecting a history that still lives.

Members of the Tribal Council have teamed with our long-time environmental conservation and education programs by providing heritage and cultural programs through public outreach and education programs. Included have been heritage, ethnobotany, plus newer native harvest/health workshops, including university level presentations and training. You are invited to come and see for yourself the continuing high regard that myself and my husband, professors emeriti, and the college and university programs and partnerships hold for these remarkable and authentic representatives of the first peoples of Los Angeles County.

Thank you for this opportunity to share from our firsthand experience and observation our value and support of Andrew Salas, the Tribal Council, and the Kizh Nation. Feel free to contact me for any clarifications needed.

Sincerely,

Ann Croissant, Ph.D.
President/ Board of Directors

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August 12, 2016

Mr. Andrew Salas, Chairman
Gabrieleno Band of Mission Indians – Kizh Nation
507 South Cedar Drive
Covina, CA 91723

Dear Mr. Salas:

This letter is to personally acknowledge and thank you for your contribution on the Alameda Corridor East, San Gabriel Trench Project. Your broad knowledge of oral history and artifacts of the area have been an invaluable resource. Additionally, you have provided over one hundred volunteer hours contributing your knowledge of Native American monitoring and preservation of cultural resources to the project.

You have proven to be a positive resource bringing forth a wealth of knowledge and it has been a pleasure working with you.

Sincerely,

John R. Harrington
City Council Member
City of San Gabriel

**NATIVE AMERICAN HERITAGE COMMISSION**
1550 Harbor Blvd., Suite 100
West Sacramento, CA 95691
(916) 373-3710
Fax (916) 373-5471

Terrie L. Robinson, General Counsel
(916) 373-3716
Terrie.Robinson@nahc.ca.gov

February 9, 2015

John Killeen, Staff Archaeologist
CESPL-PD-RL
U.S. Army Corps of Engineers
Los Angeles District
Planning Division
915 Wilshire Blvd.
Los Angeles, CA 90017

Jeffrey H. Altschul, Ph.D., RPA
Principal
Statistical Research, Inc.
6009 E. Speedway Blvd.
P.O. Box 31865
Tucson, AZ 85751-1865

Re: Playa Vista Project and Concerns of the Tongva Ancestral Territorial Tribal Nation

Dear Mr. Killeen and Mr. Altschul,

The Native American Heritage Commission (NAHC) has received several calls and emails from John Tommy Rosas voicing concerns on behalf of the Tongva Ancestral Territorial Tribal Nation (TATTN) regarding the Playa Vista Project. NAHC Program Analyst Katy Sanchez has shared a copy of your most recent annual report withy me. I would like to work with your organizations to resolve Mr. Rosas' concerns if you have not yet done so. Specifically, Mr. Rosas' concerns are as follows:

1. There has not been compliance with obligations under the Programmatic Agreement and court orders to protect Native American cultural resources;
2. TATTN has not be kept apprised of any amendments to the Programmatic Agreement nor received the annual reports; and
3. There has not been ongoing consultation with interested Native American stakeholders.

The September 2013-September 2014 Annual Report indicates that inventory for the Playa Vista Archaeological and Historical Project has been completed and that all non-burial related artifacts and all project notes of work conducted prior to the report have been delivered to the project curatorial facility at the University of California, Los Angeles. I would like to know if there were any Native American remains and funerary objects discovered since December 2008 and what became of them.

I would welcome the opportunity to have a conference call with you both and Mr. Rosas to discuss TATTN's concerns and resolve them as expeditiously as possible. I am new to this project and am still getting up to speed, so I would greatly appreciate the opportunity to speak with you about the progress on the project. I can be reached at (916) 373-3716, or by email, terrie.robinson@nahc.ca.gov.

Yours very truly,

Terrie L. Robinson
General Counsel

cc: Cynthia Gomez, Executive Secretary, NAHC
John Tommy Rosas, Tribal Administrator and Litigator, TATTN

*From the Office of*
*Lorraine "Rain Cloud" Escobar, CG/NAL℠*
*Certified Lineage Specialist/Native American Lineages*
*Inam Mec Tanotc*

**The Kizh Gabrieleño Lineage of Andrew Salas**

By Lorraine Escobar, CG/NAL
July 15, 2010
Revised August 16, 2013

***Introduction***

The purpose of this report is to establish, without mistake and with as much certainty that is possible from the written record, that Mr. Andrew Salas, born April 30, 1968:

1. Possesses an Indian ancestry from villages aboriginal to Mission San Gabriel, California, and therefore qualifies to participate as a Kizh Gabrieleño Indian in the repatriation process as overseen by the Native American Heritage Commission, as a Most Likely Descendant; and,
2. Has a fully documented lineage sufficient to meet the 25 CFR 83.7(e) evidentiary requirements for federal acknowledgment as a descendent from the historic tribe at Mission San Gabriel.

All of the reviewed evidence was evaluated according to genealogical proof standards and is cited in this report as appropriate. Photocopies of the evidence were arranged in separate files which are included in the submission of this report. However, as directed by Andrew Salas, the cited evidence was submitted to the Gabrieleño Enrollment Committee for their use in meeting 25 CFR 83.7(e) for their tribal petition for federal acknowledgment. Additional copies of this evidence are available upon request directly from Andrew Salas.

As a result of the research, Andrew is verified as a direct descendant of Maria Momicubibam (from the village of Atongai/Tamet), and her husband, Palajai (from the village of Tameobit and Najayabit), and of Nicolas Joseph (from the village of Sibapet), his wife, Maria Candelaria (from the village of Tujubit), and their son, Joaquin Joseph [aka Gradias] (from the village of Sibapet).

Use of Acronyms in the Report and Citations:
In the footnotes, the first citation for each referenced document is as complete as necessary to evaluate the source of the document. However, in the interest of brevity, the following acronyms are applied to the mission and church records:

abt. = about
aft. = after
b. = Born
B = Baptism
bef. = before

**1313 Celeste Drive, #67, Modesto, CA 95355**
**Cell: (209) 985-9282**

C = Confirmation
CME = California Mission Extracts compiled by Temple, Buglio, Northrop, et al.
D = Burial
M = Marriage
SG = Mission San Gabriel, San Gabriel, Ca

A Note about the Resources
For the most part, every effort was made to view an original document or photocopy thereof (photograph or microfilm of original documents). All such documents are cited as thoroughly as needed to allow independent evaluation of the source authenticity.

In some instances, the original record could not be consulted and secondary sources were used such as the compilation of California Mission extractions as collected by Thomas Temple II, Ann Buglio, and Marie Northrop, et al.). 1) These extractions were derived as a result of a personal investigation into the mission registers done by the compilation team, and as such, bear a fair degree of credibility. 2) The version this author used is an electronic file which contains a scanned version of the microfilm of that work.

Another instance in where the original source was not directly consulted was where research results were produced by consulting the on-line Early California Population Project database [ECPP], as owned by The Huntington Library, in California. The author acknowledges this database is not considered as evidence but only as an index. It does, however, bear an added element which allows the researcher to investigate if relationships could be determined to other individuals so mentioned in the same set of records. Because the data-entry workers were allowed to view the microfilms of the original registers, this index bears the same type of reliability as does the mission extraction compilation as mentioned above.

## *The Genealogy of Andrew Salas*

### **Andrew Salas (1968-present)**
Andrew Salas was born on April 30, 1968, to *Virginia Murrieta* and *Ernest Perez Salas*, in Monterey Park, California.[1]

### **Ernest Salas (1932-present)**
Ernest Salas was born on March 24, 1932, the third child to *Ernest Salas* (Sr.) and *Josephine Perez*, in Los Alamitos, California.[2] According to his baptism record, Ernest's parents were identified as *Ernesto Teutimies or Salas* and *Josefina Perez*.[3] His godparents were named as *Francisco Ruiz* and *Adelaida F. de Rivera.*

[1] Birth certificate, Andrew Salas (1968), Los Angeles County, CA; photocopy provided by Andrew Salas.

[2] Birth certificate, Ernest Salas (1932), [long form] no. 821686 (1932), State of California, County of Orange, Division of Vital Records, Santa Ana, California. Photocopy provided by Andrew Salas but data was also confirmed on California Birth Index 1905-1995, located at www.Ancestry.com.
[3] Baptism certificate, Ernest Teutimies ó Salas (1933), Los Alamitos Catholic Church, Los Alamitos, California. Photocopy provided by Andrew Salas.

**Josephine Veronica Perez-Salas-Aguilar (1912-2008)**

Josephine Veronica Perez was born to *Jose Eusebio Perez* and *Isabel Valenzuela* on January 20, 1912, in San Gabriel, California.[4] She was baptized on April 15, 1912, at San Gabriel Mission. Her godparents were named as *Librado Manriquez* and *Josefa Andrade.*

In 1920, *Josephine Perez* was enumerated at eight (8) years old, in the town of San Gabriel, California, with her parents – *Jose Perez* and *Isabel* – and her siblings – *Joe, Jr.* (age 16), *Margaret* (age 14), *Jesus* (age 11), and *Alfonso* (10).[5]

In 1930, *Josephine Perez* was enumerated at eighteen (18) years old, in the town of San Gabriel, with her parents – *Joe Perez* and *Isabel* – three brothers – *Joe Jr.* (age 27), *Alphonse* (age 20), and *Andrew* (age 9) – and three other children. One of these children was the daughter of Josephine and Ernest Salas – *Virginia Salas* (age 7 months). Josephine's age, at her first marriage was given as seventeen (17) years old.[6]

In 1932, *Josephine* and *Ernest* Salas became parents to *Ernest Salas* (Jr.), in Los Alamitos, California. At that time, she was identified as living in Los Alamitos but born in San Gabriel, California.[7]

Apparently, *Josephine (Perez) Salas* registered in the California Indian Judgment Act (CIJA) enrollment process in 1972 and was subsequently issued a Certification of Degree of Indian Blood [CDIB] indicating her mother – *Isabel Valenzuela Perez* – was a full-blood *Gabrieleño* Indian.[8] However, because CDIB's are based on information gathered in the original 1928-33 California Indian Jurisdictional Act and subsequent enrollment processes, and are not considered as reliable documentation, this certificate serves no genealogical purpose.[9] And without corroborative evidence, this certificate does not serve as identification as a descendant

[4] Baptism certificate, Josefina Veronica Perez (1912), San Gabriel Mission, issued 1 Feb 2010. Photocopy provided by Andrew Salas.

[5] Joe Perez household, 1920 U.S. census, CA, Los Angeles Co., San Gabriel Precinct, supervisor's district [SD] 8, enumeration distraction [ED] 582, sheet 22B, 518 Pearl Street, dwelling 580, family 497; online at www.Ancestry.com, image 43.

[6] Joe Perez household, 1930 U.S. census, CA, Los Angeles Co., San Gabriel City; SD 18, ED 19-1430, sheet 24A, 518 Pearl Avenue, dwelling 454, family 454; online at www.Ancestry.com, image 47.

[7] Birth certificate, Ernest Salas (1932), Orange County, California.

[8] Certificate of Degree of Indian Blood, Josephine (Perez) Salas, issued 3 May 1994, by U.S. Department of the Interior, Bureau of Indian Affairs, Southern California Agency, Riverside, California. Photocopy provided by Andrew Salas.

[9] Office of Federal Acknowledgment, Proposed Finding Against Federal Acknowledgment for the Juaneño Band of Mission Indians, Petitioner 84A, p. 185, "A previous Federal acknowledgment decision, on the Muwekma petitioner, stated, "appearance on the 1933 California Indian judgment roll is acceptable evidence of Indian ancestry under 83.7(e)(1)(i)," although the 1933 Census Roll by itself did not provide evidence of descent from the historical band in that case (Muwekma PF 2001,48). However the other evidence in the Muwekma record corroborated the claims made on their 1928 Applications."

of a Native American lineage. However, this certificate does serve as evidence that *Josephine (Perez) Salas* had enrolled in the 1972 CIJA enrollment process and did so by making a biological connection to *Isabel Valenzuela Perez*, who had enrolled in 1950 CIJA enrollment process.

As independent research has borne out, Isabel Valenzuela Perez was not of Native American Ancestry but her husband – Jose Perez – ***was*** of Gabrieleño ancestry. Therefore, any reliance on the CDIB for claim of Native American ancestry should be disregarded because the actual Gabrieleño Indian lineage is validated through Josephine's father – Jose Eusebio Perez.

Apparently, Josephine remarried to a man with the surname of *Aguilar* as her death record indicated *Josephine Veronica Aguilar* died on October 2, 2008. Her *aka* name was given as *Josephine Veronica Salas*. Her parents were identified as *Jose Perez* and *Isabel Valenzuela*. Her regular residence was at the town of San Gabriel, California.[10]

**Jose Eusebio Perez (1877-after 1930)**

*Jose Eusebio Perez* was baptized at Mission San Gabriel, California, on December 15, 1877.[11] His parents were identified as *Jesus Perez* and *Angustias Ochoa*. His godparents were named as *Edward Calleghan* and *Maria Antonia Silvas*.

In 1880, in the town of San Gabriel, California, *José Perez* was enumerated, at age 3, with his parents – *Jesus Perez* and *Augusta* – and his siblings – *Bernardo* (age 10), and *Thomas* (age 6).[12]

On April 15, 1915, *Jose Perez* married *Isabel Valenzuela*, at Mission San Gabriel.[13] [The marriage certificate, although issued by Mission San Gabriel, did not identify the names of the parents.]

In 1920, in the town of San Gabriel, *Jose Perez* was enumerated at age 43, with his wife, *Isabel*, and five children – *Joe, Jr.* (age 16), *Margaret* (age 14), *Jesus* (age 11), *Josephine* (age 8), and *Alfonso* (10).[14]

In 1930, again in the town of San Gabriel, *Jose Perez* was counted at age 54, with his wife, *Isabel*, four of their children – *Joe Jr.* (age 27), *Alphonse* (age 20), and *Andrew* (age 9) – and three grandchildren – *Charlie Valenzuela* (age 7), *Ruth Hernandez* (age 5), and *Virginia Salas* (age 7 months).[15]

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[10] Death certificate, Josephine Veronica Aguilar (2008), Los Angeles County, CA, 2 pages. Photocopy provided by Andrew Salas.

[11] SG-B entry 1564 (12 Dec 1877), Jose Eusebio Perez; FHL microfilm 2644.

[12] Jesus Perez household, 1880 U.S. census, CA, Los Angeles Co., San Gabriel Township, SD 4, ED 34-13[?], page 5, family 53; online at www.Ancestry.com, image 20.

[13] Marriage certificate, Jose Perez & Isabel Valenzuela (1916), Mission San Gabriel. Photocopy provided by Andrew Salas.

[14] Joe Perez household, 1920 U.S. census, CA, Los Angeles Co., San Gabriel Precinct.

No information was gathered for the death of Jose Eusebio Perez.

**Maria Angustias Gradias (1848-after 1880)**

*Maria Angustias* was baptized on July 26, 1848, at Mission San Gabriel.[16] Her parents were identified as *Neofito Juaquin* and *Maria Saturnina.* Her godparents were *Ramon* and *Maria Valencia*. Although only Joaquin was referenced as a neophyte, both parents were Indian. The indication in the margin was *de la misión* [from the mission], an origin designation given only to Indians. Further, another significant factor is that this designation also meant she was from Mission San Gabriel.

On August 29, 1850, *Maria Angustias Gradias* was confirmed in the Catholic Church, also at Mission San Gabriel.[17] Her parents were then identified as *Joaquin [Gradias]* and *Saturnina Serrano*.

On January 12, 1862, at the age of 14, *Maria Angustias Gradias* married *Jesus Perez* (age 17), at Mission San Gabriel.[18] Her parents were identified as *Joaquin [Gradias inferred] dfo* [deceased] and *Saturnina Serrano*. *Jose de Jesus Perez* was baptized at Mission San Gabriel as well but he was a descendant of Mexican-born ancestors.[19]

Together, *Jose de Jesus Perez* and *Maria Angustias* had at least seven children. Where available, the mother's full name is extracted from the record to illustrate the surname transition:

1. Adelina Perez – born about 1863, confirmed 1875 – *Maria Angustias Ochoa*[20]
2. Jose Luciano Perez – born 1864 – *Agustias Gradias*[21]
3. Jesus Perez (Jr.) – born about 1865, confirmed 1875 – *Angustias Gradias*[22]
4. Bernardo Perez – born about 1870[23]
5. Juan Norberto Perez – born & baptized 1873 – A*ngustias Gradias*[24]
6. Tomas Perez – born & baptized 1875 – *Angustias Gradias*[25]

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[15] Joe Perez household, 1930 U.S. census, CA, Los Angeles Co., San Gabriel City.

[16] SG-B entry 8971 (26 Jul 1848), Maria Angustias; FHL microfilm 2644.

[17] SG-C entry 3438 (29 Aug 1850), Maria Angustias Gradias; CME.

[18] SG-M entry 57 (12 January 1862), Jesus Perez & Maria Angustias Gradias; CME.

[19] SG-B entry 8712 (29 Oct 1844), Jose de Jesus Perez; CME. Record not copied for this report. Additional research on this lineage is not part of this report's scope of work.

[20] SG-C entry 407 & 482 (23 May 1875), Jesus Perez and Adelina Perez; CME.

[21] SG-B entry 10315 (10 Jan 1864), Jose Luciano Perez; CME.

[22] SG-C entry 407 & 482 (23 May 1875), Jesus Perez and Adelina Perez.

[23] Jesus Perez household, 1880 U.S. census, CA, Los Angeles Co., San Gabriel Township.

[24] SG-B entry 228 (6 Jul 1873), Juan Norberto Perez; FHL microfilm 2644.

[25] SG-B entry 1174 (28 Mar 1875), Tomas Perez; FHL microfilm 2644.

7. Jose Eusebio Perez – born & baptized 1877 – *Angustias Ochoa*[26]

If these dates of each of the baptism and confirmation records, for this family, are arranged chronically, it is possible to reveal the turning point in the transition of Angustias's family's surname:

1848, July 26 – Maria Angustias (no surname at baptism)
1850, August 29 – Maria Angustias *Gradias* (father's surname at confirmation)
1862, January 12 – Maria Angustias *Grarias* [Gradias] (father's surname at marriage)
1864, January 10 – *Gradias* (Jose Luciano's baptism)
1873, July 6 – *Gradias* (Juan Noberto's baptism)
1875, March 28 – *Gradias* (Tomas's baptism)
1875, May 23 – *Gradias* (Jesus's confirmation)
1875, May 23 – ***Ochoa*** (Adelina's confirmation)
1877, Dec 16 – ***Ochoa*** (Jose Eusebio's baptism)

Certainly, the period for this family's adoption of the surname *Gradias* began in 1850. This name was continually in use for Angustias until May 23, 1875 – the day that she was referred to as both *Gradias* and then *Ochoa* on the same day. A study of all of the children's records reveals the recording priest was Joaquin Bot, who did not baptized Angustias and did not conduct her marriage in 1862. Evidently, over the years, he may have been confused because her mother – Saturnina – had remarried to Juan ***Ochoa*** and had several children by him. [For a full discussion of all of Saturnina's children, see section, "Joaquin Gradias (about 1810-abt 1850) & Saturnina Serrano (1810-after 1862)."]

In 1880, in the town of San Gabriel, California, *Angustias* was enumerated, at age 25, with her husband – *Jesus Perez* – and three children – *Bernardo* (age 10), *Thomas* (age 6), and *José* (age 3).[27] Also living in the household was Angustias's half-brother – *Nicolas* ***Ochoa***.

No death information was found for Maria Angustias Gradias/Ochoa/Perez.

**Joaquin Gradias (about 1810-abt 1850) & Saturnina Serrano (1810-after 1862)**
In an effort to full describe all of the evidence surrounding these two persons, the discussion will initially focus on Saturnina and then on Joaquin.

**Saturnina Serrano [SG-B 5073]**
A process of elimination search was conducted within the ECPP database for any individual named ***Saturnina***, baptized at Mission San Gabriel. While four candidates resulted, only one was an Indian who had no matched death record beyond 1850. This ***Saturnina*** [SG-B # 5073] was born about September 1810, in the village of ***Tameobit*** and was baptized on September 14, 1811.[28] Her parents were identified as ***Palajai*** and ***Momicubibam*** in her

[26] SG-B entry 1564 (12 Dec 1877), Jose Eusebio Perez.

[27] Jesus Perez household, 1880 U.S. census, Los Angeles County, California, San Gabriel Township.

[28] SG-B entry 5073 (14 Sep 1811), Saturnina; FHL microfilm 2643.

Mission San Gabriel baptism record. Her parents were described as associated with two villages – ***Tameobit*** and ***Attongai***.

In the baptism of Maria Antonia Placida Ochoa, her parents were identified as married and named as ***Juan Ochoa*** and ***Saturnina, an Indian***.[29] In her confirmation record, ***Saturnina*** was identified as a ***neofita*** with the surname of ***Feliz***.[30] A search was conducted within the ECPP database for a marriage record for any *Juan Ochoa* and any *Saturnina*, at any California mission or the La Plaza Church, prior to 1850; no marriages resulted for this query in this database. Also no results were produced from a search conducted in the Mission San Gabriel marriage register.

However, when a search was conducted for any marriage for an Indian, by the name of *Saturnina***,** in a period previous to 1857 at Mission San Gabriel, one such marriage was found – entry 1861b (21 June 1837), ***Juaquin*** and ***Saturnina***. This marriage record lacked any specific identifiers such as a baptism number or a specific declaration of origin but it identified both parties as ***neophytes***:

> SG-M entry 1861 (21 June 1837), *Juaquin* & Saturnina[31]
> Transcription:
> [Margin] 1861, Juauquin con Saturnina
> [Text] Dia 23 de Junio de 1837, en la Yglesia de esta Mision de S[a]n Gabriel de Arcangel, ... case ... a los Neofitos Juaquin, Viudo, y Saturnina, soltera, ... fueron testigos Benigno y Br[?]o, ... y para conste lo firme [signed] Fr. Estenaga
>
> Translation:
> 1861, Joaquin with Saturnina
> On the 23rd of June, 1837, in the church of this Mission San Gabriel Archangel … I joined in matrimony … the ***neophytes*** Joaquin, widow, and Saturnina, single, … the witnesses were Benigno and Br[?]o, … and I signed below, Fr. Estenaga

Another search was conducted through the ECPP database, and the Mission San Gabriel baptism and confirmation registers, to find any more children of any Saturnina linked to either *Joaquin Gradias* or *Juan Ochoa*. That search produced records for seven children:

1. Jose Joaquin [Gradias] – b. 1838 (married to Josepha Leonora Duarte in 1902)[32]
2. Jose Antonio [Gradias] – b. 1845[33]

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[29] SG-B entry 9653 (22 Feb 1857), Maria Antonia Placida Ochoa; photo provided by Ryan Acuña, courtesy of the Archdiocese of Los Angeles Archives, CA.

[30] SG-C entry 237 (24 Apr 1866), Maria Antonia Ochoa; CME.

[31] SG-M entry 1861(b) (21 Jun 1837), Juaquin & Saturnina; photo provided by Ryan Acuna, courtesy of the Archdiocese of Los Angeles Archives, CA.

[32] 1) SG-B entry 8219 (28 Feb 1838), Jose Juaquin; FHL microfilm 2644; and 2) SG-M entry 349 (18 Jun 1902), Joaquin Gradias & Leonor Duarte; CME.

[33] SG-B entry 8763 (8 May 1845), Jose Antonio, FHL microfilm 2644.

3. Maria Angustias Gradias – b. 1848 (married to Jesus Perez in 1862)[34]
4. Ramona Ochoa – b. between 1850 & 1854[35]
5. Nicholas Ochoa – b. 1854/1855[36]
6. Maria Manuela Ochoa (twin) – b. February 2, 1857[37]
7. Maria Antonia Placida Ochoa (twin) – b. February 2, 1857[38]

Without a marriage record for *Juan Ochoa* and *Saturnina***,** it might appear that there is no real connection between the children of both unions. However, the 1880 federal census for San Gabriel makes an unmistakable connection between Maria Angustias Gradias (then married to Perez) and Nicolas Ochoa:

> 1880 census, San Gabriel, Dwelling/Family 53[39]
> ***Perez, Jesus***, White, male, age: 38, Laborer, born California, parents born in California
> ---, ***Angusta***, White, female, age: 25, Wife, Keeping house, born in California, parents born in California
> ---, Berardo, White, male, age: 10, Son, At-home, born in California, parents born in California
> ---, Thomas, White, male, age: 6, Son, At-home, born in California, parents born in California
> ---, José, White, male, age: 3, Son, At-home, born in California, parents born in California
> ***Ochoa, Nicolas***, White, male, age: 24, ***Brother-in-Law***, Laborer, born in California, father born in Mexico, mother born in California
> [Emphasis added]

This association clearly demonstrates there was a biological relationship between Angustias (nee: Gradias) Perez and Nicolas Ochoa. And, knowing more about Saturnina's second family helps to clarify they were half-siblings.

Secondly, *Ramona Ochoa* was godmother to one of Maria Angustias's children – Jesus Perez – at his confirmation.[40] It was customary for aunts and uncles to serve as godparents to their nieces and nephews. Thus, this second event also demonstrates the biological relationship between the Gradias children and the Ochoa children.

---

[34] 1) SG-B entry 8971 (26 Jul 1848), Maria Angustias; and, 2) SG-M entry 57 (12 Jan 1862), Jose Perez & Maria Angustias Grarias [Gradias].

[35] SG-C entry 147 (6 Jan 1856), Ramona Ochoa; CME;

[36] 1) SG-C entry 124 (6 Jan 1856), Nicholas Ochoa; CME.; 2) Jesus Perez household, 1880 U.S. census, CA, Los Angeles Co., San Gabriel Township.

[37] SG-B entry 9650 (22 Feb 1857), Maria Manuela Ochoa; photo provided by Ryan Acuña, courtesy of the Archdiocese of Los Angeles Archives, CA.

[38] SG-B entry 9653 (22 Feb 1857), Maria Antonia Placida Ochoa.

[39] Jesus Perez household, 1880 U.S. census, CA, Los Angeles Co., San Gabriel Township.

[40] SG-C entry 407 (23 May 1875), Jesus Perez.

According to Maria Angustias Gradias's marriage record, in 1862, her father – ***Joaquin Grarias*** [Gradias] – was already deceased. And, according to the births of children by Juan Ochoa, it certainly appears Joaquin was deceased before Saturnina began having children by Juan Ochoa (after 1848, the birth of Maria Angustias). Thus, it appears Saturnina had two husbands – Joaquin Gradias and Juan Ochoa. And, although she was a full-blooded Indian, Saturnina was referenced with two different surnames – *Serrano* and *Feliz***.** But, despite the use of various surnames**,** a review of record of marriage, baptism and confirmation records for her children will illustrate how Saturnina was perceived as a religiously converted Native American Indian (neophyte) by the church during the period from 1837 through 1874:

| **Record Reference** | **Names** | **Descriptions** |
|---|---|---|
| SG-M 1861b (1837) | ***Juaquin*** & Saturnina | Groom: ***[Indio],*** no mission link, Bride: ***[India]***, no mission link |
| SG-B 8219 (1838) | Jose Joaquin, ***Parvulo de la mision*** | Parents: ***Neofitos Juaqin y Saturnina*** |
| SG-B 8763 (1845) | Jose Antonio, ***Neofito*** | Parents: ***Neofito Joaquin y Saturnina*** |
| SG-B 8971 (1848) | Maria Angustias, ***de la Mision*** | Parents: ***Neofito Juaqin, y Maria Saturnina*** |
| SG-C 3438 (1850) | Maria Angustias Gradias | Parents: ***Joaquin Gradias y Saturnina Serrano*** |
| SG-C 124 (1856) | Nicolas Ochoa | Parents: ***Juan Ochoa y Saturnina Feliz (Serrano)***[41] |
| SG-C 147 (1856) | Ramona Ochoa | Parents: ***Juan Ochoa y Saturnina Feliz*** |
| SG-B 9650 (1857) | Maria Manuela Ochoa | Parents: ***Juan Ochoa y de la Indian Saturnina*** |
| SG-B 9653 (1857) | Maria Antonia Placida Ochoa | Parents: ***Juan Ochoa y Saturnina, India*** |
| SG-M 57 (1862) | bride: Maria Angustias Gradias | Parents: ***Joaquin Gradias difunto y Saturnina Serrano*** |
| SG-C 237 (1866) | MARIA ANTONIA OCHOA, 8 (years old) | Parents: ***Juan Ochoa y Saturnina Feliz, neofita*** |
| SG-M 331 (1874) | bride: [Maria] Antonia [Placida] Ochoa | Parents: ***Juan Ochoa y Saturnina Serrano*** |
| SG-M 349 (1902) | Joaquin Gradias | Parents: ***Joaquin [Gradias]*** & ***Saturnina Serrano*** |

[41] This particular transcription was taken by Temple, et al. It is likely the data found within the parenthesis was added and is not found in the original manuscript.

A Brief Discussion of "Saturnina Feliz"

So as to not confuse the identity of the mother of the aforementioned children with another individual known as Saturnina Feliz, the following information is provided:

***Maria Saturnina Feliz*** was baptized at Mission San Gabriel, on November 30, 1825.[42] Her father was unknown but her mother was identified as Maria Marcelina Feliz. The child was identified as a *razon* [non-Indian]. This Saturnina Feliz later married ***Jose Villalobos***, on June 8, 1836, also at Mission San Gabriel. From 1837 through 1853, they had several children. This family appears intact in the 1850 federal census (Los Angeles County). In fact, this particular ***Maria Saturnina Feliz*** was discussed by the Office of Federal Acknowledgment in the case of the Proposed Findings Against the Juaneño Band of Mission Indians:

> "The Saturnina Feliz who married Juan Jose Cecilio Villalobo in April 1836 was Maria Saturnina Feliz, baptized in 1820 at Mission San Gabriel, the daughter of Joseph Francisco Feliz and Maria Josefa de Cota (San Gabriel Marriages [no#], 6/4/1836). Maria Saturnina Feliz' baptism record identifying these same parents is also recorded at San Gabriel Mission. There is no evidence at this time that Juan Jose Cecilio Villalobo or his wife, Maria Josefa de Cota, were SJC Indians (San Gabriel Baptisms #7372, 9/30/1820)."[43]

To correct OFA's details, this individual (SG-B 7372) was not baptized in 1820 but in 1825. Also her father was not named in that baptism record. The record actually states that Saturnina's mother – Marcelina Feliz – was actually the ***hija*** [daughter] ***de Francisco Feliz***. And, the marriage for Jose Villalobo and Saturnina Feliz actually was assigned a number – entry 1828. Finally, OFA misread the marriage information – the names given for the bride (Saturnina Feliz) were not her parents' names but her grandparents' names (SG-B 2721 (1796), Marcelina Feliz). Nonetheless, despite OFA's clerical and research errors, this author concurs with its findings that this Saturnina Feliz was not an Indian. ***And, since the Saturnina, shown as the mother of the seven children previously mentioned, was most often identified as an Indian or neophyte, it is clear that these two women were not the same individual.***

A Discussion of the Confusion between "Feliz" and "Serrano"

There is no doubt among California Mission scholars that the recording priests made mistakes in their record-keeping. The list of obvious errors is far too long to discuss within this report but suffice it to say, every time a new priest was introduced to a parish, the familiarity-learning curve was manifested in the mission record. As the fastidiousness of their record-keeping practices dwindled close to, and during, the mission secularization, less and less reference was being made to previous books, i.e. the baptism numbers of the marriage participants were no longer being researched and added to the record, the baptism numbers of the parents of baptized children were no longer being researched and added to the records as well. The record-keeping practice became less and less detailed. And, to make matters even more

[42] SG-B entry 7372 (30 Nov 1825), Maria Saturnina Feliz; *The Huntington Library, Early California Population Project, 2006.* Photocopy not collected.

[43] Office of Federal Acknowledgement, Department of the Interior, Proposed Finding Against Juaneño Band of Mission Indians, Acjachemen Nation (Petitioner 84A), 2007; p. 216.

difficult, Indians began adopting Spanish surnames, even trying on more than one in a given lifetime.[44] So, it comes as no surprise that the use of a surname for this Indian Saturnina can be confusing without the incorporation of historical context.

The Real Saturnina "Serrano"

Thomas Workman Temple, II, and his team undertook the arduous task of transcribing records from the actual mission registers. During that process, the team no doubt collected enough information to enable them to make annotations whenever they saw a need to correct or augment the written record. Such is the case for the confirmation record that exists for Nicolas and Ramona Ochoa. As can be seen in the abstracted record, the team acknowledged the original text but added a different surname in a set of parenthesis:[45]

> SG-C 124) NICOLAS OCHOA, of Juan Ochoa y Saturnina Feliz (Serrano); Felipe Lopez, pad.

However, that annotation was not made for Ramona Ochoa:

> SG-C 147) [6 Jan 1856] RAMONA OCHOA, of Juan y Saturnina Feliz; Lopez¨ mad.

This type of annotation is a common characteristic with that group of abstracts. More often than not, the abstract team did not insert any reference for the additional information. As disappointing as that is, in this case, the collection of records for all of Saturnina's children makes it clear that the annotation for Nicolas was correct.

As the three records – baptism, confirmation and marriage – are compared for Maria Antonia Placida Ochoa, her mother is referred to as ***Saturnina, India***, then ***Saturina Feliz, neofita***, and lastly as ***Saturnina Serrano***. Of that group, only the confirmation record and marriage record were collected by the extraction team. And, only the confirmation record was annotated.

Having studied the records for this entire family, this author concludes the references in Ramona Ochoa's record as *Saturnina Feliz***,** the Indian (or neophyte), should have been corrected to *Saturnina Serrano* and that the use of the name *Feliz* was an error on the part of the recording priest. It is likely a lack of unfamiliarity with the parish population (introduction of new priests) caused the confusion with the family surnames.

While it is highly likely the Indian Saturnina was becoming known with a surname – Serrano – the clerical errors (*Feliz)* do not negate the identification of the mother of Jose Joaquin, Jose Antonio and Maria Angustias Gradias as the same mother of Nicolas, Ramona, Maria Manuela and Maria Antonia Placida Ochoa. ***It is through the contextual comparison of all the records that we can know, despite those errors, the mother of all of those children was the same Indian woman – known early as merely Saturnina and later as Saturnina Serrano***.

[44] Such is the story of Mission San Carlos Indian, Pasqual Quittit who was known by Soto and finally, Cantua. According to his grandson, he had been known by "many names." For more on this individual, please provide a request to the author of this report.

[45] SG-C 124 (6 Jan 1856), Nicolas Ochoa.

When one examines the records that were created closest to the time of Saturnina's lifetime events, the record is clear that she was a Native American Indian associated with Mission San Gabriel:

1. The baptism record of her first three children, with Joaquin (aka Gradias), identified them as having ***neophyte*** parents;[46]
2. The baptism record of her fourth child, with Juan Ochoa – Maria Angustias Gradias – identified the child as being the child of ***neofitos*** and being ***de la Mision*** [from the mission], and that mission was none other than Mission San Gabriel;
3. In the baptism records of her twins – Maria Manuela & Maria Antonia Placida Ochoa – Saturnina was identified as ***India***; and,
4. In the marriage record of her daughter – Maria Antonia Placida Ochoa – Saturnina was identified as a ***neofita***.

A Different Indian Saturnina

After the process of elimination was done in the ECPP database, it was discovered that yet another Saturnina (baptism #6405, born 1820) was listed on the 1824 Mission San Gabriel padrone, who also fit the profile for the Saturnina who married Joaquin in 1837.[47] Her name and data were not entered into the ECPP database because those pages were missing out of the original register.[48] However, further research indicates the family of this Saturnina likely relocated to San Bernardino prior to her mother and sister's death and burial on December 12, 1827.[49] Those death records, as annotated in the ECPP database, indicate her mother and sister were buried in San Bernardino, not at Mission San Gabriel. And, in 1827, this Saturnina would have been only 7 years old and likely living with her mother in San Bernardino.

Secondly, the 1824 Mission San Gabriel *padrone* appears to bear updates that were created ***after*** its creation in 1824. For example, subsequent entries were made for children born after 1824. [For example, Maria Soledad's baptism (done in 1835) was added to the page for Salvador and Maria Cristovala).][50] Although three siblings of Saturnina (#6405) were annotated as married (after 1824), her entry lacks any such annotation. However, it is unknown how late that document was in use. Yet, without a clear indication she was ever married in that padrone, it is reasonable to suspect a lack of an annotation of marriage is a indicator she was likely ***not*** the same Saturnina who married Joaquin in 1837. However,

[46] The term - *Neophytes* - was used to describe Indians who were converted to Christianity.

[47] SG 1824 *padrones* (exact citation not provided); entry for family of Saturnino; photocopy provided by Ryan Acuña, courtesy of Los Angeles Archives.

[48] Dr. John Johnson, of the Santa Barbara Museum of Natural History, a co-founder of the ECPP informed me, personally, that these padrones were not entered into the database.

[49] SG-D entries 5248 (12 Dec 1827), Saturnina, and 5251 (12 Dec 1827), Margarita; scan provided by Doreen Packard; citation given as microfilm copy held by Mission Santa Barbara Archives (Santa Barbara, CA).

[50] 1824 SG padrones (exact citation not provided); entry for family of Salvador Maria; photocopy provided by Ryan Acuña, courtesy of Los Angeles Archives.

further examination of the 1824 padrone is merited in this case before such a conclusion can be achieved.

***Based on the padrone and death evidence, Saturnino's family likely moved away from Mission San Gabriel. Therefore, this Saturnina*** (SG-B 6405) ***is eliminated from the pool of possible matches***.

In conclusion for Saturnina (SG-B 5073), no death record was found for her in the San Gabriel burial records [some of the records were illegible]. And, an analysis of the available evidence sufficiently substantiates that she was the one who married Joaquin in 1837.

**Joaquin Josef [aka Gradias] [SG-B 1034]**

Although no evidence was found which externally identified Angustias as an Indian, her father was referenced as such in her marriage record. But, in her baptism record, neither parent was referenced with surnames – a clear indication that they were not considered as *gente de razon* [non-Indian] but as Native American Indians.[51]

In order to identify the groom in the marriage record for *Juaquin* and *Saturnina*, a process of elimination was conducted within the records input into the ECPP database.

Process of Elimination for any Joaquin Baptized at Mission San Gabriel

The data used in the process of elimination was the data entered in the ECPP database. The applied collection and elimination criteria follow:

1. The first query pass was to find all males who possessed the first given name of *Joaquin* or *Juaquin* or who were given the first two given names as *Jose* [or *Joseph*] *Joaquin* [or *Juaqin*];
2. The second pass was to eliminate all feminine names;

Each record was added to the following chart. Then death, birth, and race data was entered in the fourth column of the same chart. The elimination criteria (shown as shaded areas) were applied as follows:

3. If the individual was identified as any race other than Indian or neophyte;
4. If the individual was born any later than 1821;
5. If there was no SG marriage link found for the matching SG baptismal number;
6. If the individual was likely too old to survive until 1848 (the year of Angustias Gradias' birth); and,
7. If the individual was married to anyone other than Saturnina ***and*** having children from 1837 forward.

| Msn | Bat# | Name/s | Notes |
|---|---|---|---|
| SG | 1879 | [Joaquin] | D. 1815 |

[51] Actually, *gente de razon* literally means people of reason. This term was applied to all persons who were not of Indian ethnicity.

| | | | |
|---|---|---|---|
| SG | 3041 | Joaquin | D. 1799 |
| SG | 3773 | Joaquin | D. 1806 |
| SG | 4026 | Joaquin | D. 1805 |
| SG | 5590 | Joaquin | D. 1814 |
| SG | 5620 | Joaquin | D. 1815 |
| SG | 5710 | Joaquin | Diegueño, 1 yr old in 1815, no death data, no link for any marriage |
| SG | 8558 | Joaquin | RAZON |
| SG | 5069 | Joaquin Antonio | RAZON |
| SG | 590 | Joaquin Antonio Castro | D. 1795 |
| SG | 726 | Joaquin de Neve | Indio, SG-B 726, b. 1769, m: Humiliana de Jesus (SG-B 309, D: 1816), would have been 79 years old in 1848, when Angustias was born |
| SG | 1184 | Joaquin de Santa Anna | D. 1786 |
| SG | 1034 | Joaquin Joseph | Indio, 3 dys @ 1784, no death data, marriages in 1804 & 1809, both wives died before 1837 (see marriage charts for SG marriages) |
| SG | 1332 | Joaquin Juan | D. 1790 |
| SG | 6193 | Joaquin Maria | Indio, 1 dy @ 1818, no death data, no link for any marriage |
| SG | 6681 | Joaquin Maria | Indio, 12 dys @ 1821, no death data, no link for any marriage |
| SG | 5754 | Joaquin Ramon | RAZON |
| SG | 1154 | Joaquin Simon | RAZON |
| SG | 4617 | Jose Joaquin | RAZON |
| SG | 7736 | José Joaquin de Jesus | YNGLES |
| SG | 7765 | Jose Joaquin Juan Pedro | RAZON |
| SG | 2815 | Joseph Joaquin | RAZON |
| SG | 826 | Joseph Joaquin | RAZON |
| SG | 1793 | Joseph Joaquin | D. 1790 |
| SG | 3123 | Joseph Joaquin Leon | D. 1800 |
| SG | 6059 | [Juaquin] | Indio, rec'd taken from relative, no death, baptism number dates between 1816 & 1818, no link for any marriage |
| SG | 6777 | Jose Juaquin | RAZON |
| SG | 8219 | Jose Juaquin | B. 1838 |
| SG | 7748 | Jose Juaquin | RAZON |
| SG | 7319 | Jose Juaquin Mamerto Francisco | RAZON |
| SG | 8037 | Juaquin | B. 1835 |

| | | | |
|---|---|---|---|
| SG | 3400 | Juaquin | D. 1804 |
| SG | 4910 | Juaquin | D. 1823 |
| SG | 5165 | Juaquin | D. 1813 |
| SG | 5293 | Juaquin | D. 1820 |
| SG | 5467 | Juaquin | Indio, b. 1813, parents 1034 & 2701, no death data, married in 1831, having children with Antonia (SG-B 5765) in 1838 (SG-B 8216) |
| SG | 2562 | Juaquin Atanasio | D. 1800 |
| SG | 5574 | Juaquin Maria | D. 1814 |
| SG | 6264 | Juaquin Maria | RAZON |
| SG | 6059 | [Juaquin] | Indio, rec'd taken from relative, no death, baptism number dates between 1816 & 1818, no link for any marriage |
| SG | 5710 | Joaquin | Diegueño, 1 yr old in 1815, no death data, no link for any marriage |

After eliminating the obvious entries, the list was reduced to only one possible candidate:

| | | | |
|---|---|---|---|
| SG | 1034 | Joaquin Joseph | Indio, 3 dys @ 1784, no death data, marriages in 1804 & 1809, both wives died before 1837 (see charts for SG marriages) |

At this point, there is one possible match. But, to provide a greater means of confirming this match, the same methodology was applied for marriages that occurred at Mission San Gabriel prior to June 1837.

<u>The Process of Elimination for any Joaquin Married at San Gabriel Mission Previous to 1837</u>
In the marriage of Joaquin and Saturnina, marriage entry #1861 (21 Jun 1837), at Mission San Gabriel, the groom is identified by two distinct characteristics: 1) He was a neophyte, and 2) he was a widow (but his deceased spouse was not mentioned).[52] Through the records of his children, we also learn that he was later known as ***Joaquin Gradias*** although he was an Indian.[53] And, finally, we know he likely died sometime after 1848 and before 1855 through the baptism record of his last child (Maria Angustias) and the birth of the first known child of his widow (Nicolas Ochoa).[54]

Again the ECPP index/database was used as the means to identify for this Joaquin who married in 1837. In sorting out the clues that may be useful, there were a number of logical deductions:

[52] SG-M entry 1861(b) (21 Jun 1837), Juaquin & Saturnina.

[53] Compare SG-B entry 8219 (28 Feb 1838), Jose Juaqin and SG-M entry 349 (18 Jun 1902), Joaquin Gradias & Leonor Duarte. Also compare SG-B entry 8971 (26 Jul 1848), Maria Angustias, SG-C entry 3438 (29 Aug 1850), Maria Angustias Gradias, and SG-M entry 57 (12 January 1862), Jesus Perez & Maria Angustias Gradias.

[54] 1) SG-B entry 8971 (26 Jul 1848), Maria Angustias; 2) SG-C entry 124 (6 Jan 1856), Nicolas Ochoa; and 3) Jesus Perez household, 1880 U.S. census, CA, Los Angeles Co., San Gabriel Township.

1) He was married previous to June, 1837 – therefore, he would have been married previous to June, 1837 to someone else and his former wife would have died previous to that date; and,
2) He was not considered as a *razon* – therefore, the classification as *Indio*, *neofito*, or *unstated* would fit the profile;

In addition, there are other considerations that were included in the process of elimination:

3) Like other Indians during the pre-secularization period, he likely had not adopted a Spanish surname (or was given one) previous to 1837 (the phenomenon of Indian adopting surnames generally appears around 1850 in the California Mission record);
4) Although he might have had a multiple set of given names, i.e. *Joaquin Joseph*, it would not be unusual for one given name, or even the first given name, to be left off or added, i.e. *Maria Antonia Placida* Ochoa was baptized with three given names and her confirmation record only gave her first two given names – *Maria Antonia* Ochoa;[55]
5) He was likely old enough for his life to expire in the period following 1848 through 1855; and,
6) He was likely previously married at Mission San Gabriel because there was no indication he had been from anywhere else or that he was married anywhere else. There was no clear indication the 1837 Joaquin was from another area or another mission. Further, that record did not vary in style for that period from other Indians from the same Mission. And, even as early as 1830, the priests became less fastidious in their record-keeping practices when they left off researching the baptism numbers for the marriage participants.

Following these parameters, the process of elimination was conducted as follows:

1) Using the ECPP index/database, a search was conducted to produce a list of marriages for any groom by the first name of *Joaquin* or *Juaquin* who were married at Mission San Gabriel. Secondly, ethnic/race, birth, spouse, and death data was collected and entered into the fourth column.

2) Then, from this list, all marriages that occurred after June, 1837 were eliminated as possible matches based on the following criteria (the shaded areas represented those events that were eliminated):

   - If the groom was clearly stated as Razon;
   - If the marriage occurred after June 1837;
   - If the groom died prior to June 1837;
   - If the marriage is the 1837 record for Joaquin and Saturnina;
   - If the groom had a Spanish surname and an unstated ethnicity or origin;
   - If there is no death record prior to 1850 for the spouse in that marriage;

[55] Compare 1) SG-B entry 9653 (22 Feb 1857), Maria Antonia Placida Ochoa; and, 2) SG-C entry 237 (24 Apr 1866), Maria Antonia Ochoa.

- If the age of the groom indicates he was likely too old to have survived to 1848 (the time of birth for Angustias Gradias), and,
- If the groom was still having children with his wife after June 1837 or was still married to his previous wife in 1837 (i.e. having children).

The list with eliminations follows:

| # | Year | Name | Notes |
|---|---|---|---|
| 707 | 1801 | Joaquin Verdugo | Razon |
| 820 | 1804 | Joaquin | SG-B 1034, m: Maria Candelaria, SG-B 2201, she died 1807 |
| 859 | 1804 | Joaquin | Razon |
| 1820a | 1835 | Joaquin | Race unstated, m: Alejandra, SG-B 5217 (she died in 1838) |
| 1839a | 1832 | Joaquin | Razon |
| 1878 | 1831 | Joaquin | Race unstated, SG-B 5467, m: Antonia (SG-B 5765), having children in 1838 (SG-B 8216) |
| 954 | 1806 | Joaquin | Race unstated, SG-B 1879, D. 1815 |
| 872 | 1804 | Joaquin | SG-B 3773, D. 1806 |
| 616 | 1798 | Joaquin Verdugo | Razon |
| 149 | 1783 | Joaquin Higuera | Razon |
| 916 | 1805 | Joaquin | Race unstated, single, m: Barbara, widow, no record of death for groom or bride |
| 409 | 1791 | Joaquin Antonio | Indio, SG-B 590, D: 1795 |
| 638 | 1799 | Joaquin Athanasio | SG-B 2562, died 1800 |
| 125 | 1780 | Joaquin Orosco | Indio, SG-B 32, D: 1782 |
| 236 | 1785 | Joseph Joaquin | Indio, SG-B 1154, D: 1791 |
| 1314 | 1814 | Joseph Joaquin | Razon |
| 157 | 1783 | Joseph Joaquin Moraga | Indio, SG-B 255, D: 1794 |
| 491 | 1793 | Joseph Joaquin Moraga | Indio, SG-B 255, D: 1794 |
| 1861b | 1837 | Juaqin | Neofito, m: Saturnina (marriage under analysis) |
| 1901 | 1840 | Juaquin Lopez | Unstated |
| 1067 | 1809 | Juaquin | Neofito, SG-B 1034, no death record, m: Nemesia, SG-B 2701 (she died 1823) |
| 1280 | 1813 | Juaquin | Neofito, SG-B 5293, D: 1820 |
| 1703 | 1824 | Juaquin Sanchez | Razon |
| 142 | 1851 | Juaquin Chavoya | Espanole |
| 1184 | 1811 | Juaquin | Indio, SG-B 4910, D: 1823 |
| 124 | 1850 | Juaquin Jose | Race unstated |
| 231 | 1785 | Juachin de Neve | Indio, SG-B 726, b. 1769, m: Humiliana de Jesus (SG-B 309, D: 1816), would have been 79 years old in 1848, when Angustias was born |

The remaining marriages that fit the profile follow:

| # | Year | Name | Notes |
|---|---|---|---|
| 820 | 1804 | Joaquin | SG-B 1034, m: Maria Candelaria, SG-B 2201, she died 1807 |
| 1067 | 1809 | Juaquin | Neofito, SG-B 1034, no death record, m: Nemesia, SG-B 2701 (she died 1823) |

The Mission San Gabriel marriages #820 (in 1804) and #1067 (in 1809) are obviously the marriages of one man – Joaquin [SG-B 1034 (1784)]. He was shown as single in his first marriage [SG-M 820 (1804). He had one child by that marriage [Joaquin SG-B 4026 (1805), who died at 10 days old, in 1805, and SG-D 2451 (1805)]. His first wife died two years later, in 1807 [SG-B 2201 (1792) and SG-D 2779 (1807)]. In his second marriage, he was shown as a widow [SG-M 1067 (1809). Two children were born of this union – *Juaquin* [SG-B 5467 (1813)], who married in 1831 [SG-M 1878], and Valentin [born 1817, but died sometime before 1835].[56] And, his second wife died in 1823 [SG-B 2701 (1796) and SG-D 4652 (1823)]. There is no entry for a death record for this individual prior to 1850.

*Joaquin Joseph* (SG-B 1034) was born *September 22, 1784*, and was from the *Sibapet* Rancheria (village).[57] In 1837, he would have been 52 years old at the time of the marriage. And, Saturnina would have been 27 years old. This age difference was within the cultural norm of that time where older men often married younger women. Therefore, his age does not automatically exclude him as a possible match.

Considering this candidate as a match for the 1837 Joaquin, he would have been 64 years old when he sired his last known child in 1848, Maria Angustias Gradias. Of course, men were capable of siring children in their old age, which is no different than today. In terms of biological possibilities, this age does not exclude the Joaquin at SG-B1034 as the most likely match to the profile of the 1837 Joaquin who married Saturnina.

According to the ECPP database, *Joaquin Joseph's* father was Nicolas Joseph (SG-B 87, baptized 10 years prior (1774) and from the village of Sibapet) and his mother was Maria Candelaria (SG-B 953). No death record was matched or found for this individual prior to 1850 and no death record could be located in the microfilmed records of the Mission San Gabriel burials, which ends at 1855. Because Saturnina had her first child with Juan Ochoa in the early 1850's, it is assumed the man known as *Joaquin Gradias* likely died sometime between the conception of the first Ochoa child and the birth of his child, Angustias Gradias (1848). Knowing what we now know about *Joaquin Joseph*, he likely died anywhere from 64 to 70 years old. Thus this individual fits the profile for the man known as *Joaquin Gradias*.

[56] 1) SG-B 5467 (15 Dec 1813), Joaquin; The Huntington Library, The Early California Population Project, 2006; and, 2)1824 SG padrones (exact citation not provided); entry for family of Joaquin & Nemesia Ana; photocopy provided by Ryan Acuña, courtesy of the Archdiocese of the Los Angeles Archives.

[57] SG-B 1034 (25 Sep 1784), Joaquin Joseph; *The Huntington Library, Early California Population Project, 2006*.

In summarizing Joaquin's story, his mother died giving birth to him. His father quickly remarried and no doubt raised him to adulthood. He first married in 1804, had a child, and lost both his wife and child. He married again in 1809 and had two children by his second wife; one lived to adulthood but the other did not. His father died in 1820 and his step-mother died soon after. By that time, Joaquin was 35 years old. He lost his second wife in 1823. Then, at age 52, he married Saturnina in 1837 and had three children with her in his older years. Considering the virility of his father in his old age, it should come as no surprise Joaquin could do so as well. [See section, "Nicolas Joseph (1754-1820) & Maria Candelaria (1758-1784)."] Joaquin likely died around 1850.

***Therefore, a comparison of the available evidence establishes a reasonable likelihood that Joaquin Joseph, at SG-B 1034, was the same person who became known as Joaquin Gradias.***

**Nicolas Joseph (1754-1820) & Maria Candelaria (1758-1784)**

Due to lack of time to fully verify all records, the following information was taken from the ECPP database. [If verification is necessary, steps should be taken to, at least, consult the microfilm of the original documents.]

*Nicolas Joseph* was estimated to be 20 years old when he was baptized at Mission San Gabriel, on September 27, 1774.[58] He was identified as being from the *Sibapet Rancheria* [village]. As was with renewal marriages, he likely renewed his marriage to *Agustina Maria*, his tribal wife, immediately after baptism.[59] Nicolas and Agustina had at least two children during this marriage.

1. Cosme Maria – b. 1775, d. 1775[60]
2. Adriano Maria – b. 1777, d. 1806[61]

Between those children, Nicolas apparently had an affair with a single woman, Sebastiana de Jesus, and had one more son:

3. Tomas – b. 1776, d. 1800[62]

Agustina Maria later died in 1783.[63]

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[58] SG-B 87 (27 Sep 1774), Nicolas Joseph; *The Huntington Library, Early California Population Project, 2006*.

[59] SG-M 6 (no date), Nicolas Joseph & Agustina Maria; *The Huntington Library, Early California Population Project, 2006*.

[60] SG-B 161 (13 Jul 1775), Cosme Maria; *The Huntington Library, Early California Population Project, 2006*. Photocopy not collected.

[61] SG-B 307 (6 Jan 1777), Adriano Maria; *The Huntington Library, Early California Population Project, 2006*. Photocopy not collected.

[62] SG-B 305 (21 Dec 1776), Thomas; *The Huntington Library, Early California Population Project, 2006*. Photocopy not collected.

*Maria Candelaria* was estimated to be 26 years old when she was baptized, on January 2, 1784.[64] She, too, was from the *Tujubit Rancheria*. One month later, on February 3, 1784, she married the widowed *Nicolas Joseph***.**[65] Seven months later, she died one day after giving birth to her one and only child, on September 23, 1784:[66]

4. Joaquin Joseph [aka Gradias] – b. Sestember 22, 1784[67]

Then on July 3, 1785, the two-time widowed *Nicolas Joseph* married *Lugarda Maria***.**[68] With her, he had seven more children:

5. Cathalina Maria – b. 1786[69]
6. Gaudioso – b. abt 1788, d. 1798[70]
7. Felicula – b. 1798, d. 1821[71]
8. Pacifica Maria – b. 1801[72]
9. Nicolasa – b. 1803, d. 1805[73]
10. Juan Jose de la Cruz – b. 1807[74]
11. Nicolasa – b. 1810, d. 1829[75]

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[63] SG-D 247 (5 Jun 1783), Agustina Maria; *The Huntington Library, Early California Population Project, 2006*. Photocopy not collected.

[64] SG-B 953 (2 Jan 1784), Maria Candelaria; *The Huntington Library, Early California Population Project, 2006*.

[65] SG-M 192 (3 Feb 1784), Nicolas Joseph & Maria Candelaria; *The Huntington Library, Early California Population Project, 2006*.

[66] SG-D 323 (23 Sep 1784), Maria Candelaria; *The Huntington Library, Early California Population Project, 2006*.

[67] SG-B 1034 (25 Sep 1784), Joaquin Joseph; *The Huntington Library, Early California Population Project, 2006*.

[68] SG-M 248 (3 Jul 1785), Nicolas Joseph & Lugarda Maria; *The Huntington Library, Early California Population Project, 2006*.

[69] SG-B 1324 (2 May 1786), Cathalina Maria; *The Huntington Library, Early California Population Project, 2006*. Photocopy not collected.

[70] SG-B 2523 (no date), Gaudioso; *The Huntington Library, Early California Population Project, 2006*. Photocopy not collected.

[71] SG-B 2922 (22 Arp 1798), Felicula; *The Huntington Library, Early California Population Project, 2006*. No photocopy collected.

[72] SG-B 3303 (25 Sep 1801), Pacifica Maria; *The Huntington Library, Early California Population Project, 2006*. Photocopy not collected.

[73] SG-B 3603 (17 Dec 1803), Nicolasa; *The Huntington Library, Early California Population Project, 2006*. Photocopy not collected.

[74] SG-B 4113 (5 Mar 1807), Juan Jose de la Cruz; *The Huntington Library, Early California Population Project, 2006*. Photocopy not collected.

[75] SG-B 4153 (22 Apr 1810), Nicolasa; *The Huntington Library, Early California Population Project, 2006*. Photocopy not collected.

Nicolas's last child was sired when he was approximately 56 years old. [He may have been older; his age could have been underestimated at the time of his baptism.] Finally, *Nicolas* died, at the very least, at 66 years old, and was buried on June 26, 1820, at Mission San Gabriel.[76] His wife, Maria Lugarda, died eight months later.[77]

**Palajai (bef. 1789-aft. 1810) & Maria Momicubibam (about 1789-1813)**

No additional information was discovered about *Palajai*. However, ***Maria*** *Momicubibam* was baptized out of "necessity" on November 11, 1811, at Mission San Gabriel.[78] At that time, she was given the Christian name, Maria. Her age was stated as 22, her Indian husband was identified as *Palajay*, and her village was identified as *Tamet*. She was also identified as the mother of *Santiago*.

***Maria*** Momicubibam had at least two children with *Palajai* who were baptized at the mission:

1. Santiago – born about 1806 (baptized at 3 years old, on November 1, 1809)[79]
2. Saturnina – born about 1810 (baptized at 1 year old, on September 14, 1811)[80]

Santiago's baptism stated that he was born in the village of *Najayabit* but his father is also clearly identified as *Palajay* which connects Santiago and Saturnina as siblings to the same parents. And, it is Saturnina's baptism record that provides her aboriginal name and village origins.

***Maria*** Momicubibam died and was buried December 14, 1813, at Mission San Gabriel.[81]

**Conclusion**

The villages of Tameobit (aka Tamet), Attongai, Najayabit, Sibapet, and Tujubit are associated with the aboriginal Indians that were brought into the mission system at Mission San Gabriel. And, as history reveals, those Indians were called *Kizh Gabrieleños*, meaning Indians associated with that mission. Therefore, as the research and attached evidence reveals, Andrew Salas is a direct descendant of Kizh Gabrieleño Indians.

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[76] SG-D 4296 (26 Jun 1820), Nicolas; *The Huntington Library, Early California Population Project, 2006*.

[77] SG-D 4385 (19 Feb 1821), Lugarda Maria; *The Huntington Library, Early California Population Project, 2006*. Photocopy not collected.

[78] SG-B entry 5085 (21 Nov 1811), Maria; FHL microfilm 2643. Note: when individuals were sick or in danger of dying, the baptismal record usually indicated such circumstances with terms like *de necessidad* or *en peligro del muerte* [in danger of dying].

[79] SG-B entry 4454 (1 Nov 1809), Santiago; FHL microfilm 2643.

[80] SG-B entry 5073 (14 Sep 1811), Saturnina.

[81] SG-D; entry 3406 (14 Dec 1813), Maria; FHL microfilm 2646.

**NATIVE AMERICAN HERITAGE COMMISSION**
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August 18, 2008

Mr. Charles L. Lindsay, Chief
Hearings Unit
**State of California Water Resources Control Board**
1001 "I" Street
Sacramento, CA 95814

Re: Tribal Consultation Provisions Pursuant to the California Environmental Quality Act (CEQA), National Environmental Policy Act (NEPA), Section 106 of the National Historic Preservation Act and other state and federal statutes requiring consultation with California tribes and eligible Native American individuals; Request for Consultation by John Tommy Rosas, Tribal Administrator of the Tongva Ancestral Territorial Tribal Nation

Dear Mr. Lindsey:

I am in receipt of e-mail correspondence of August 13, 2008, in reference to the legal status of the Tongva Ancestral Territorial Tribal Nation and its staff person, John Tommy Rosas. Presumably, this is in reference to Mr. Rosas' desired to be included for tribal consultation purposes with regard to project on the Santa Ana River. I am responding to clarify Mr. Rosas' eligibility to consult on projects that might be carried out and require consultation with Native American tribes or Native American interested individuals under the jurisdiction of the California Environmental Quality Act, (CEQA) the National Environmental Policy Act (NEPA) or the National Historic Preservation Act, Section 106. For the purposes of consultation under the above-referenced statutes, Mr. Rosas of the Tongva Ancestral Territorial Nation is eligible for consultation and is included on the *Native American Contacts* list of the Native American Heritage Commission (NAHC). California State American tribes, whether federally-recognized or non-federally recognized are also included on the *Native American Tribal Consultation* list, pursuant to California Government Code §65352.3.

The California Native American Heritage Commission (NAHC), created by the California Legislature in 1976 (AB 4239) is the state's 'trustee agency' (c.f. Public Resources Code 21070; !70 Cal App. 3d 604; *Environmental Protection Information Center v. Johnson* (1985) for the protection and preservation of Native American cultural resources, sacred sites on public land and Native American burial sites. The authority is pursuant to Public Resources Code §5097.9, as amended. In fulfilling its legislative mandate, the NAHC facilitates consultation between California tribal governments, Indian organizations and Tribal Elders with local, state and federal agencies as dictated by federal and state tribal or Native American consultation requirements. This activity is carried out on a daily basis through the environmental review and related processes required by the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), The National Historic Preservation Act Section 106, CA Public Resources Code Div. 15, §25330 (for State Energy Projects) and other federal and state tribal or Native American consultation provisions. Public Resources Code §5097.94 (h) authorizes the NAHC to utilize the advice of all federal, state, local and regional agencies in its work, and PRC §5097.95 requires "each state and local agency ...to cooperate with commission (e.g. NAHC) in carrying out its duties...."

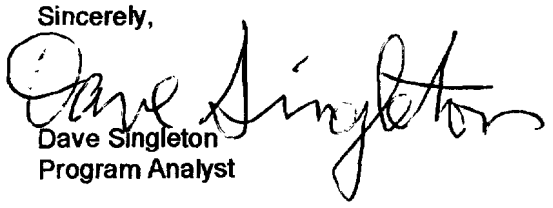
Now, with regard to *water resources,* water is an important part of the Native American cultural landscape, a vital and precious commodity for tribes and native communities. In California, with the most extensive natural water resources in the nation, tribal communities, burial sites, sacred places were found along rivers and streams. Now, even after removal of native communities from those locations, Native American burials and artifacts are steadily discovered as a result of 'ground-breaking' activities and reported, nearly every week, to the Native American Heritage Commission under Health & Safety Code §7050.5. In recognition of water as not merely a commodity but a critical part of California native culture the current update date of the California Water Plan (c.f. Water Code §§10004-10013) has an outreach program to California Native American tribes, both those federally recognized and non federally recognized. Barbara Cross of the California Department of Water Resources staff coordinates this program. The Native American Heritage Commission is an 'agency partner' in the State Water Plan update processes. Also, John Tommy Rosas is listed as one of the Native American Contributor in the planning process.

California is unique among states with large indigenous populations in that the 1851-52 treaties with the United States Government were never ratified. The Treaty of Hidalgo de Guadalupe of 1848, to end the U.S. – Mexico War, does and did entitle individuals including tribes to make land claims including water rights of land removed from them. In recognition of Indian ownership of land, Southern California tribes received 'reservations' in exchange for land ceded to the United States Government. In Northern and Central California, with the exceptions of the Hoopa-Yurok (Humboldt County), Round Valley (Mendocino County) and Tule River (Tulare County), all created by federal executive orders, most were created as a result of the California Homeless Indians Act of 1906, on the recommendation of Congressional Indian Agent Charles E. Kelsey (c.f. 1905-1906 Kelsey Census). who also estimated the California Indian population, pre-European contact, at 750,000. The Owens Valley Paiute-Shoshone tribes, comprised of Bishop, Big and Lone Pine were created by Congressional action in April, 1937 in exchange for water rights given to the City of Los Angeles. In recent years, the Owens Valley tribes (Fort Independence, Benton), Quechan Indian Nation (Imperial County) and the San Luis Rey River tribes (San Diego County), among others, have filed water rights claims with the Indian Land Claims of the U.S. Department of the Interior to get their water rights restored and to restore fisheries habitats. Most of these claims have been based on the federal court decision of ***Winter versus the United States of America*** (c.f. 207 US 564 [1908]). A recent New York court decision extended the 'Winters Doctrine' to a state-recognized tribes. Recognizing that California water is a 'property right', not an 'ownership right' requiring accessing by application to the California Water Quality Control Board since 1914, California tribes, both federally recognized and non federally recognized have been challenged to obtain water rights. However, non federally recognized tribes and some federally recognized tribes, due to California's unique history relating to federal tribal recognition, are basing their appeal on rights allowing claims derived under Spanish law for Spanish and/or Mexican-established 'pueblos.'

Be that as it may, water will continue to be an inherent part of the cultural elements that define a California Native American tribe. So, Mr. John Tommy Rosas, has the support of the NAHC to comment and participate in planning forums focusing on water resources of the Las Angeles Basin.

If you have any questions about this, please do hot hesitate to contact me at (916) 653-6251.

Sincerely,



Dave Singleton
Program Analyst

Cc: Ms. Jeanine Townsend
Clerk to the Board
State Water Resources Control Board

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October 3, 2011

Mr. Patrick J. Alford
**CITY OF NEWPORT BEACH**
3300 Newport Boulevard; P.O. Box 1768
Newport Beach, CA 92663

Re: SCH#2009031061; CEQA Notice of Completion; draft Environmental Impact Report (DEIR) for the **"Newport Banning Ranch Project;"** located in the City of Newport Beach Orange County, California

Dear Mr. Alford:

The Native American Heritage Commission (NAHC), the State of California 'Trustee Agency' for the protection and preservation of Native American cultural resources pursuant to California Public Resources Code §21070 and affirmed by the Third Appellate Court in the case of EPIC v. Johnson (1985: 170 Cal App. 3rd 604). The NAHC wishes to comment on the proposed project. In the decision, the court held that the NAHC has jurisdiction and special expertise, as a state agency, over affected Native American resources, impacted by proposed projects including archaeological, places of religious significance to Native Americans and burial sites

This letter includes state and federal statutes relating to Native American historic properties of religious and cultural significance to American Indian tribes and interested Native American individuals as 'consulting parties' under both state and federal law. State law also addresses the freedom of Native American Religious Expression in Public Resources Code §5097.9.

The California Environmental Quality Act (CEQA – CA Public Resources Code 21000-21177, amendments effective 3/18/2010) requires that any project that causes a substantial adverse change in the significance of an historical resource, that includes archaeological resources, is a 'significant effect' requiring the preparation of an Environmental Impact Report (EIR) per the CEQA Guidelines defines a significant impact on the environment as 'a substantial, or potentially substantial, adverse change in any of physical conditions within an area affected by the proposed project, including ...objects of historic or aesthetic significance." In order to comply with this provision, the lead agency is required to assess whether the project will have an adverse impact on these resources within the 'area of potential effect (APE), and if so, to mitigate that effect. The NAHC Sacred Lands File (SLF) search resulted as follows: **Native American cultural resources were identified** within one-half mile of the project. This area is known to the NAHC as very culturally sensitive. Also, the absence of archaeological resources does not preclude their existence.

The NAHC "Sacred Sites,' as defined by the Native American Heritage Commission and the California Legislature in California Public Resources Code §§5097.94(a) and 5097.96. Items in the NAHC Sacred Lands Inventory are confidential and exempt from the Public Records Act pursuant to California Government Code §6254 (r ).

Early consultation with Native American tribes in your area is the best way to avoid unanticipated discoveries of cultural resources or burial sites once a project is underway. Culturally affiliated tribes and individuals may have knowledge of the religious and cultural significance of the historic properties in the project area (e.g. APE). We strongly urge that you make contact with the list of Native American Contacts on the attached list of Native American contacts, to see if your proposed project might impact Native American cultural resources and to obtain their recommendations concerning the proposed project. Special reference is made to the *Tribal Consultation* requirements of the California 2006 Senate Bill 1059: enabling legislation to the federal Energy Policy Act of 2005 (P.L. 109-58), mandates consultation with Native American tribes (both federally recognized and non federally recognized) where electrically transmission lines are proposed. This is codified in the California Public Resources Code, Chapter 4.3 and §25330 to Division 15.

Furthermore, pursuant to CA Public Resources Code § 5097.95, the NAHC requests that the Native American consulting parties be provided pertinent project information. Consultation with Native American communities is also a matter of environmental justice as defined by California Government Code §65040.12(e). Pursuant to CA Public Resources Code §5097.95, the NAHC requests that pertinent project information be provided consulting tribal parties. The NAHC recommends *avoidance* as defined by CEQA Guidelines §15370(a) to pursuing a project that would damage or destroy Native American cultural resources and Section 2183.2 that requires documentation, data recovery of cultural resources.

Consultation with tribes and interested Native American consulting parties, on the NAHC list, should be conducted in compliance with the requirements of federal NEPA and Section 106 and 4(f) of federal NHPA (16 U.S.C. 470 *et seq*), 36 CFR Part 800.3 (f) (2) & .5, the President's Council on Environmental Quality (CSQ, 42 U.S.C 4371 *et seq.* and NAGPRA (25 U.S.C. 3001-3013) as appropriate. The 1992 *Secretary of the Interiors Standards for the Treatment of Historic Properties* were revised so that they could be applied to all historic resource types included in the National Register of Historic Places and including cultural landscapes. Also, federal Executive Orders Nos. 11593 (preservation of cultural environment), 13175 (coordination & consultation) and 13007 (Sacred Sites) are helpful, supportive guides for Section 106 consultation. The aforementioned Secretary of the Interior's *Standards* include recommendations for all 'lead agencies' to consider the historic context of proposed projects and to "research" the cultural landscape that might include the 'area of potential effect.'

Confidentiality of "historic properties of religious and cultural significance" should also be considered as protected by California Government Code §6254( r) and may also be protected under Section 304 of he NHPA or at the Secretary of the Interior discretion if not eligible for listing on the National Register of Historic Places. The Secretary may also be advised by the federal Indian Religious Freedom Act (cf. 42 U.S.C., 1996) in issuing a decision on whether or not to disclose items of religious and/or cultural significance identified in or near the APEs and possibility threatened by proposed project activity.

Furthermore, Public Resources Code Section 5097.98, California Government Code §27491 and Health & Safety Code Section 7050.5 provide for provisions for accidentally discovered archeological resources during construction and mandate the processes to be followed in the event of an accidental discovery of any human remains in a project location other than a 'dedicated cemetery'.

To be effective, consultation on specific projects must be the result of an ongoing

relationship between Native American tribes and lead agencies, project proponents and their contractors, in the opinion of the NAHC. Regarding tribal consultation, a relationship built around regular meetings and informal involvement with local tribes will lead to more qualitative consultation tribal input on specific projects.

If you have any questions about this response to your request, please do not hesitate to contact me at (916) 653-6251.

Sincerely,

Dave Singleton
Program Analyst

Cc: State Clearinghouse

Attachment: Native American Contact List

**Native American Contacts**
Orange County
October 3, 2011

Ti'At Society/Inter-Tribal Council of Pimu
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714-321-1944 - cell

**This list is current only as of the date of this document.**

**Distribution of this list does not relieve any person of the statutory responsibility as defined in Section 7050.5 of the Health and Safety Code, Section 5097.94 of the Public Resources Code and Section 5097.98 of the Public Resources Code.**

**This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2009031061; CEQA Notice of Completion; draft Environmental Impact Report (EIR); for the Newport Banning Ranch Project located in the Newport Beach area of Orange County, California.**

**Native American Contacts**
Orange County
October 3, 2011

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com

**This list is current only as of the date of this document.**

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**This list is applicable for contacting local Native Americans with regard to cultural resources for the proposed SCH#2009031061; CEQA Notice of Completion; draft Environmental Impact Report (EIR); for the Newport Banning Ranch Project located in the Newport Beach area of Orange County, California.**