

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



M E M O R A N D U M

FROM: Jonna D. Engel, Ph.D., Ecologist
TO: John Del Arroz, Coastal Analyst
SUBJECT: Sunset Ridge Park ESHA Determination, Buffer Dimension
Recommendation, and other Considerations
DATE: September 22, 2011

Documents Reviewed:

Johnston, A.M. (BonTerra). September 9, 2011. Supplemental Biological Resource Information for the Sunset Ridge Park Project. Letter to Michael Sinacori, Public Works Department, City of Newport Beach.

Johnston, A.M. (BonTerra). July 15, 2011. Supplemental Biological Resource Information for the Sunset Ridge Park Project Regarding Vernal Pool Habitat and Buffers for Gnatcatcher Habitat. Letter to Michael Sinacori, Public Works Department, City of Newport Beach.

Johnston, A.M. (BonTerra). June 29, 2011. Supplemental Biological Resource Information for the Sunset Ridge Park Project. Letter to Michael Sinacori, Public Works Department, City of Newport Beach.

Meideiros, G.A. (BonTerra). June 29, 2011. Response to California Coastal Commission Staff Email Dated June 8, 2011 Regarding CDP Application No. 5010-168 (City of Newport Beach – Sunset Ridge Park), Specifically Jurisdictional Delineation of Slope Areas Along Superior Avenue. Letter to Michael Sinacori, Public Works Department, City of Newport Beach.

Bomkamp, T. (Glenn Lukos Associates). June 14, 2011. Clarification Regarding CAGN Mapping from 2002 Protocol Surveys Conducted by Glenn Lukos Associates for West Newport Oil. Memorandum to Christine Medak, USFWS.

Meideiros, G.A. (BonTerra). February 11, 2011. Response to California Coastal Commission Correspondence Dated September 1, 2010 Regarding CDP Application No. 5010-168 (City of Newport Beach – Sunset Ridge Park). Letter to Michael Sinacori, Public Works Department, City of Newport Beach.

- Hamilton, Robb (Hamilton Biological). December 14, 2010. Reply to LSA Memorandum; Bluff Road/Sunset Ridge Park Entrance. Memorandum from Hamilton Biological to Jonna Engel, California Coastal Commission.
- Hamilton, Robb (Hamilton Biological). December 11, 2010. Review of ESHA Issues; Bluff Road/Sunset Ridge Park Entrance. Memorandum from Hamilton Biological to Jonna Engel, California Coastal Commission.
- LSA Associates. December 9, 2010. California Gnatcatcher Issues at the Sunset Ridge Park/Newport Banning Ranch Site. Memorandum from Art Homrighausen and Richard Erickson, LSA Associates, to Mike Sinacori, City of Newport Beach, Department of Public Works. This memorandum includes LSA's 1991 vegetation map and LSA's annual gnatcatcher survey maps from 1992 through 1996.
- Ahrens, Jeff. (Glenn Lukos Associates) October 13, 2010. California Gnatcatcher Use of Polygons Addressed in Notice of Violation. Memorandum to Jonna Engel, CCC.
- Bomkamp, Tony. (Glenn Lukos Associates) August 26, 2010. Response to Coastal Commission Notice of Violation dated May 14, 2010 for Vegetation Removal on Portions of Newport Banning Ranch and City of Newport Beach Properties. Memorandum to Michael Mohler, Newport Banning Ranch, LLC.
- Hamilton, Robb (Hamilton Biological). December 10, 2009. Review of Biological Resource Issues, Sunset Ridge Draft EIR. Memorandum from Hamilton Biological to Janet Johnson Brown, City of Newport Beach.
- BonTerra Consulting. October 2009. Draft Environmental Impact Report: Sunset Ridge Park Project. SCH No. 2009051036. Vol I & II. Prepared for the City of Newport Beach.
- Glenn Lukos Associates. September 24, 2009. Habitat Characterization for Areas Affected by Alleged Clearing near Southeast Corner of Banning Ranch Referenced in July 29, 2009 Letter from California Coastal Commission. Memorandum to Andrew Willis, CCC.
- BonTerra Consulting. June 25, 2009. Results of Coastal California Gnatcatcher Surveys for Newport Banning Ranch Project Site, Orange County, California. Letter addressed to Ms. Sandy Marquez, USFWS.
- Bartel, Jim A. (Field Supervisor, USFWS). April 2, 2009. Formal Section 7 Consultation for Montebello Hills Development and Conservation Project, City of Montebello, Los Angeles County, California. Montebello Biological Opinion. To: Colonel Thomas H. Magness, IV District Engineer, U.S. Army Corps of Engineers

Glenn Lukos Associates. August 2008. The Newport Banning Ranch Biological Technical Report. Report prepared for Mike Mohler, Newport Banning Ranch, LLC.

Glenn Lukos Associates. July 19, 2007. Submittal of 45-Day Report for coastal California gnatcatcher Surveys for the 412.5 Newport Banning Ranch Property, City of Newport Beach and Unincorporated Orange County, Orange County, California. Survey report from Glenn Lukos Associates Biologist Ingrid Chlup to Sandra Marquez, USFWS.

Glenn Lukos Associates. July 25, 2006. Submittal of 45-Day Report for Coastal California Gnatcatcher Presence/Absence Surveys for the 412.5 Newport Banning Ranch Property, City of Newport Beach and Unincorporated Orange County, Orange County, California. Survey report from Glenn Lukos Associates Biologist Jeff Ahrens to Daniel Marquez, USFWS.

Glenn Lukos Associates. October 14, 2002. Protocol Surveys for the Coastal California Gnatcatcher; West Newport Oil Property, Orange County California. Survey report from Glenn Lukos Associates Biologist Tony Bompkamp to Leonard Anderson, West Newport Oil Property.

Gnatcatcher survey map. 2000. Unknown source (we believe the source is PCR Services).

PCR Services. 1998. Gnatcatcher survey map.

PCR Services. 1997. Gnatcatcher survey map.

LSA. 1996. Spring 1996 California Gnatcatcher Survey. Survey report from LSA Biologist Richard Erickson to Leonard Anderson.

LSA. 1995. Spring 1995 California Gnatcatcher Survey. Survey report from LSA Biologist Richard Erickson to Leonard Anderson.

LSA. 1994. Results of 1994 Gnatcatcher and Wren Surveys. Survey report from LSA Biologists Robb Hamilton and Richard Erickson to Leonard Anderson, West Newport Oil Company.

The City of Newport Beach (hereafter 'City') is proposing to construct an active recreational park (Sunset Ridge Park) on a site approximately 20 acres in size at the northwest corner of the intersection of West Coast Highway and Superior Avenue. The proposed park site includes 6.3 acres in the southeast corner of Newport Banning Ranch, a 505 acre property located near the mouth of the Santa Ana River in Orange

County, California (Figure 1). The City has an access agreement with Newport Banning Ranch that allows the park entrance road to occur on ranch property. The project site is one of 28 areas identified in the City's general plan as an Environmental Study Area (ESA) which are undeveloped areas that support natural habitats defined as potentially capable of supporting sensitive biological resources. The two properties that comprise the proposed Sunset Ridge Park site do support a number of important and sensitive habitats and plant and animal species.

On September 15, 2010, I accompanied several other Coastal Commission staff on a site visit to observe and study the biological resources on the proposed park property, in particular, at and around three disturbed areas referred to as the southeast, northwest, and northeast polygons that were the subject of a violation on Newport Banning Ranch that will be resolved once compliance with the Commission's Consent Order is fully carried out¹ (Figure 2). During our site visit we examined the various plant communities supported by the property and discussed the current and historical use of the site by California gnatcatchers. Representatives of Newport Banning Ranch and the City, Newport Banning Ranch's biological consultant (Tony Bomkamp, Glenn Lukos Associates), and Southern California Edison's biologist (Tracy Alsobrook) were also along on the site visit.

I visited the site again on December 15, 2010, with other Coastal Commission staff to review the biological resources on the proposed park site and in and around the three polygons and to discuss the history of gnatcatcher use, the nature of gnatcatcher survey collection, and my approach to making an ESHA determination. Representatives of Newport Banning Ranch, the City, and Southern California Edison, Newport Banning Ranch's biological consultant (Tony Bomkamp, Glenn Lukos Associates), the City's biological consultant's (Art Homrighausen and Richard Erickson, LSA & Ann Johnston, BonTerra), and a USFWS biologist (Christine Medak), accompanied us on the site visit. On both site visits we spent several hours walking and talking while I made visual and audio observations of the natural resources on the proposed park site.

I visited the site again on June 7, 2011 with John Del Arroz, CCC Coastal Analyst; Don Schmitz, Principle, Don Schmitz and Associates; Mike Sinacori, Engineer, City of Newport Beach; Ann Johnston, Biologist, BonTerra Consulting, and Ann Johnston's assistant. During this site visit we carefully examined the seep areas along Superior Avenue. We also walked, and BonTerra mapped (using a GPS unit), the boundary of the ESHA/non-ESHA areas that I had preliminarily mapped on an aerial based on gnatcatcher individual point and use area data spanning 1992 to 2009, vegetation mapping, and site visit observations. In addition to the site visits, I have reviewed the documents listed above (presented in chronological order), peer reviewed literature, and aerial photographs to determine the history of gnatcatcher use and the nature of the habitat on the site of the proposed Sunset Ridge Park in order to make an Environmentally Sensitive Habitat Area (ESHA) determination, buffer size recommendations, and to discuss other considerations such as burrowing owls, coastal

¹ CCC-11-CD-03 and CCC-11-RO-02 issued by the Commission on April 14, 2011.

sage scrub improvement and restoration, invasive species, cowbird parasitism, and predation.

ESHA Definition

Section 30107.5 of the Coastal Act defines Environmentally Sensitive Habitat as:

Any 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.

Plants and animals and habitats that meet the rarity criterion under this definition may include rare plant communities identified by the California Department of Fish and Game (CDFG), federal and state listed species, California Native Plant Society "1B" and "2" plant species, California species of special concern, and habitats that support the type of species listed above.

The City of Newport Beach Coastal Land Use Plan (CLUP) also provides criteria for determining what constitutes ESHA. CLUP policy 4.1.1-1 states that the following site attributes are among those characteristics that are determinative of whether an area constitutes ESHA:

- The presence of natural communities that have been identified as rare by the California Department of Fish and Game.
- The recorded or potential presence of plant or animal species designated as rare, threatened, or endangered under State or Federal law.

CLUP Section 4.1.1 states that coastal sage scrub is an especially important habitat and "where coastal sage scrub occurs adjacent to coastal salt marsh or other wetlands, or where it is documented to support or known to have the potential to support rare species such as the coastal California gnatcatcher, it meets the definition of ESHA because of its especially valuable role in the ecosystem... coastal sage scrub also provides essential nesting and foraging habitat for the coastal California gnatcatcher, a rare species designated threatened under the Federal Endangered Species Act."

Habitats - Plant Communities

The 20-acre site proposed for Sunset Ridge Park supports a number of different habitats. There are several types of coastal scrub communities on the property including coastal sage, coastal bluff, and maritime succulent scrub. Other habitats occurring in large swaths are disturbed encelia scrub, disturbed mulefat/goldenbush scrub, non-native grasslands, and ruderal and ornamental areas (Figure 3; Exhibit 6 of the DEIR Biological Technical Report). There are several small wetland seeps along the slope bordering Superior Avenue and the Banning Ranch Conservancy has alleged that several vernal pools exist in the upper Western corner of the site in the project

footprint. All the native plant communities are invaded by non-native plants to a greater or lesser extent.

Coastal Sage Scrub

Coastal sage scrub is comprised of dominant species that are semi-woody and low-growing, with shallow, dense roots that enable them to respond quickly to rainfall². The species composition and structure of individual stands of coastal sage scrub depend on moisture conditions that derive from slope, aspect, elevation and soil type. Sawyer & Keeler-Wolf (1995) divide coastal scrub communities into series including California sunflower (*Encelia californica*), California buckwheat (*Eriogonum fasciculatum*), and coast prickly-pear, (*Opuntia littoralis*) series³. The coastal sage scrub found within the Sunset Ridge park footprint (including the southeast corner of Newport Banning Ranch), it is best characterized as California sunflower series; however, there are also patches of California buckwheat and coast prickly-pear series. Coastal sage scrub is increasingly rare in the coastal zone and provides an especially valuable ecosystem service when occupied by the coastal California gnatcatcher or other rare species.

Coastal Bluff Scrub

Coastal bluff scrub is found in localized areas along the coast below Point Conception⁴ and is identified as a rare plant community in CDFG's Natural Diversity Data Base. It often intergrades with other scrub community types, as is the case within the Sunset Ridge Park project footprint (southeast corner of Newport Banning Ranch). Coastal bluff scrub is comprised of small stature woody or succulent plants including dwarf shrubs, herbaceous perennials, and annuals⁵. Dominant species include California sunflower, live-forever (*Dudleya sp.*), and prickly pear⁶.

Maritime Succulent Scrub

Maritime succulent scrub, also identified as a rare plant community in CDFG's Natural Diversity Data Base, is a low growing, open (25% - 75% ground cover) scrub community dominated by drought deciduous, semi-woody shrubs that grow on rocky or sandy soils of coastal headlands and bluffs⁷. This community type has a very limited distribution along the coast between southern California and northern Baja California and on the Channel Islands. Characteristic species include California sunflower, prickly pear, and California box-thorn (*Lycium californicum*)⁸. Box-thorn is a CNPS list 4.2 species and is the only special status plant species found on the project site (Figure 4). Like coastal bluff scrub, maritime succulent scrub intergrades with other scrub community types, as is the case on the site proposed for Sunset Ridge Park.

² Holland, R.F. 1986. Preliminary Descriptions of the Terrestrial Natural Communities of California. State of California, The Resources Agency, Department of Fish and Game.

³ Sawyer, J. and T. Keeler-Wolf. 1995. A manual of California vegetation. California Native Plant Society.

⁴ Holland (1986) op cit.

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

⁸ Ibid.

The coastal scrub communities within the Sunset Ridge Park project footprint tend to be dominated by California sunflower and distinguished by those species which are diagnostic of the particular coastal scrub community types. BonTerra lumps some of the coastal scrub communities together as “southern coastal bluff scrub” and finds a total of 1.15 acres of this habitat type on the site (Figure 3). BonTerra treats California sunflower separately and maps the following habitats; “Encelia Scrub”, “Disturbed Encelia Scrub”, and “Encelia/Ornamental Scrub”. All of the coastal scrub communities are invaded to a greater or lesser degree by non-native and invasive species, such as highway iceplant (*Carpobrotus edulis*), crystalline iceplant (*Mesembryanthemum crystallinum*), castor bean (*Ricinus communis*), myoporum (*Myoporum laetum*), pampas grass (*Cortaderia selloana*), tree tobacco (*Nicotiana glauca*), fennel (*Foeniculum vulgare*), black mustard (*Brassica nigra*), tocalote (*Centaurea melitensis*), and European annual grasses (*Bromus diandrus*, *B. madritensis*, *B. hordeaceus*, *Lolium multiflorum*).

Encelia Scrub

BonTerra mapped 0.53 acres of “Encelia Scrub”, 3.64 acres of “Disturbed Encelia Scrub”, and 0.21 acres of “Encelia/Ornamental Scrub” (Figure 3). The western-most area that BonTerra mapped as “Encelia Scrub” is an area that has a history of California gnatcatcher use and is an area I include in my “ESHA East” delineation (see ESHA discussion below and Figure 12). In addition to the “Encelia Scrub” patch that is included in my “ESHA East” delineation, there are several patches of “Encelia Scrub” along West Coast Highway and Superior Avenue (Figure 7; BonTerra Exhibit 2, Detailed vegetation types and other areas). All of these patches are adjacent to or very close to the large patch (approximately 3.3 acres) of “Disturbed Encelia Scrub” (Figure 3). The patches of “Encelia Scrub” (Figure 7) along the slope are within areas where foraging gnatcatchers have been observed by Robb Hamilton (Figure 30).

California sunflower is one of the dominant native scrub species found in the coastal scrub communities on the City and Newport Banning Ranch property. Weaver (1998) found that gnatcatcher densities in northern San Diego County were highest in areas where California sunflower or California buckwheat were co-dominate with sagebrush⁹. Both areas mapped as “Disturbed Encelia Scrub” by BonTerra are areas routinely mowed once or twice a year to ground level by the City and Newport Banning Ranch.

Page 14 of Appendix E, Sunset Ridge Park Draft EIR states:

The 3.64 acres of disturbed Encelia scrub is regularly mowed for fuel modification and weed abatement purposes and contains a high percentage of non-native weeds; therefore, it is not considered special status.

I disagree with this statement and believe that in absence of the routine mowing, the areas identified as “Disturbed Encelia Scrub” would become dense stands of robust, nearly pure, California sunflower. California sunflower is a fast growing shrub and if it wasn’t mowed it would reach heights of two to three feet over one growing season.

⁹ Weaver, K.L. 1998. Coastal sage scrub variations of San Diego County and their influence on the distribution of the California gnatcatcher. *Western Birds*, Vol. 29: 392-405.

During my site visits I have seen these areas numerous times and have observed how closely spaced the mowed individual California sunflower plants are to each other. I have also reviewed the photographs of fresh growth during the growing season in Robb Hamilton's December 10, 2009 memorandum to Janet Johnson Brown, City of Newport Beach, "Review of Biological Resource Issues, Sunset Ridge Draft EIR" and I have no doubt that these areas would be dominated by California sunflower suitable for gnatcatcher foraging and possibly nesting without continued mowing. If the periodic mowing is legal, this area would not be ESHA, however, if the mowing is not legal, the area would be ESHA.

The area mapped "Encelia Scrub/Ornamental" by BonTerra, that includes native big saltbush (*Atriplex lentiformis*) and the invasive species, pampas grass, and highway iceplant, is on the slope on the corner of West Coast Highway and Superior Avenue. The patch of "Encelia Scrub/Ornamental" is between the two patches mapped as "Encelia Scrub". The patches of "Encelia Scrub" (Figure 7) and "Encelia Scrub/Ornamental" (Figure 3) on the slope of the property are within areas where California gnatcatchers have been observed foraging on several occasions (Figure 30).

Disturbed Mulefat/Goldenbush Scrub

BonTerra mapped 0.48 acres of "disturbed mulefat/goldenbush scrub" which they describe as co-dominated by mulefat and goldenbush and invaded by myoporum, highway iceplant, and pampas grass (Figure 3). In addition to the species identified by BonTerra as inhabiting this area, I have also observed a significant amount of California sunflower and black mustard. This habitat has a history of California gnatcatcher use and is within the area I have delineated "ESHA West" (see ESHA discussion below and Figure 12).

Non-native Grasslands

BonTerra mapped the majority of the project site (6.58 acres) directly north of the proposed park entry road as non-native grasslands "dominated by a mix of non-native species including riggut grass (*Bromus diandrus*), foxtail chess (*Bromus madritensis* ssp. *rubens*), black mustard, and tocalote" (Figure 3).

This same area was mapped as mixed scrub or scrub/grassland by Glenn Lukos Associates in 2002 (Figure 5; Glenn Lukos Associates 2002 vegetation map) and as a mix of non-native grassland, disturbed goldenbush scrub, and invasive/ornamental in 2008 (Figure 6; Exhibit 9, Glenn Lukos Associates, August 2008, Draft Biological Technical Report for Newport Banning Ranch). In the DEIR BonTerra makes the following statement about the site grasslands, as well as the ruderal, ornamental, and disturbed areas:

These areas generally have low biological value because they are composed of unvegetated areas or are vegetated with non-native species. These areas generally provide limited habitat for native plant and wildlife species although they may occasionally be used by native species. Therefore, impacts on these areas would not be considered significant, and no mitigation would be required.

While the grassland areas are clearly disturbed in that they are regularly mowed and dominated by non-native European annual grasses, I do not agree with BonTerra's assessment that they have low biological value and provide limited habitat for native plant and wildlife species. If these areas were not mowed I believe they would transition into a more mixed scrub/ grassland habitat that would support higher biodiversity including numerous native plants and animals. However, currently the non-native grasslands provide dwelling habitat for burrowing animals and significant foraging habitat for numerous species including mammals, birds, and reptiles. Robb Hamilton reported seeing large numbers of grasslands bird species in just two visits: "two Red-tailed Hawks, an American Kestrel, 14 Killdeers, 25 American Pipits, 70 Western Meadowlarks, 100 Mourning Doves, and 100 House Finches (minimum estimates provided for the last four species)"¹⁰. The non-native grasslands are important raptor foraging habitat and suitable habitat for burrowing owls, a sensitive species that has been documented nearby in similar habitat (see below, Figure 32). CDFG under CEQA recommends 0.5 ac of preservation for every 1.0 ac of non-native grassland impacted to provide raptor foraging opportunities.

Ruderal and Ornamental Areas

BonTerra maps a total of 7.75 acres as "Ruderal" and a total of 3.19 acres as "Ornamental" (Figure 3). The ruderal areas are described by BonTerra as dominated by black mustard and tocalote. They also state that:

They consist of areas that have been previously disturbed and now consist primarily of non-native vegetation that is well adapted to disturbed conditions and high nitrogen soils. The ruderal vegetation that covers most of the park portion of the Project site appears to be periodically mowed.

I believe that in the absence of disturbance (including mowing) ruderal areas would become a mixture of grassland and scrub that would slowly transition from an area dominated by non-natives to an area dominated by natives.

BonTerra describes the areas they mapped as "ornamental" as dominated by a mix of invasive species including highway iceplant, myoporum, pampas grass, and castor bean; this is consistent with my observations of the site.

Wetlands

There are several areas on the slope along Superior Drive with water seeps. Several of the plants associated with these seeps are wetland species including narrowleaf cattail (*Typha angustifolia*), spike-rush (*Eleocharis* sp.) growing in mud and standing water, spike bentgrass (*Agrostis exarata*), rabbitfoot grass (*Polypogon monspeliensis*), marsh fleabane (*Pluchea odorata*), and seaside heliotrope (*Heliotropium curassavicum*). In addition, Mediterranean tamarisk (*Tamarix ramosissima*), a non-native species with

¹⁰ Hamilton, R. (Hamilton Biological). December 10, 2009. Review of Biological Resource Issues, Sunset Ridge Draft EIR. Memorandum from Hamilton Biological to Janet Johnson Brown, City of Newport Beach.

wetland plant status, also occurs in this area. Pampas grass, another non-native species, is abundant in this area. While the federal government has yet to assign pampas grass a wetland indicator status, this species grows in damp soils along river margins in its native range in South America¹¹. In coastal California it is an insidious invader colonizing disturbed areas including moist slopes in urban centers. Robb Hamilton reports that examination of 82 records of Pampas Grass in California showed that 32 percent were from wetlands¹². Upon my request, BonTerra mapped in detail the slope along the southern perimeter of the proposed park site (Figure 7; BonTerra Exhibit 2, Detailed vegetation types and other areas). The wetland seeps occur in the areas mapped “Cattail” and “Tamarisk” and within some of the areas mapped “Pampas Grass”.

In many areas the soils in these moist areas have a salt crust and/or what appear to be oxidation stains. BonTerra dug two soil pits in the seep areas and in both cases found hydric soils (Figure 8; BonTerra Exhibit 1, Detailed vegetation types and other areas, soil sample sites). BonTerra has maintained that the seep areas are not wetlands for numerous reasons including their determination that the water source is artificial¹³, the presence of non-native species, and that the seeps are “small areas of low function/value hydrophytic vegetation”.

I disagree with this conclusion. In fact, the small seeps and surroundings supporting a preponderance of hydrophytic plants, or hydric soils, or wetland hydrology meet the definition of wetlands in the Coastal act and the Commission’s regulations. Whether or not wetland plants are non-native, or wetlands are degraded, or residential development contributes to wetland hydrology is not germane. Although the City’s biological consultant, BonTerra, erroneously concluded that the slope seeps are not wetlands, the City revised the park plans to avoid these areas.

Vernal Pools

The Banning Ranch Conservancy has alleged that four vernal pools exist on the proposed park site at the fill area to the north of the access road, and states that these pools could contain the endangered San Diego Fairy Shrimp. They submitted a powerpoint presentation titled “Complete Banning Ranch Mesa Vernal Pools/Wetlands First Edition 6-7-11” on June 30, 2011 in which they assign the potential vernal pools numbers “34”, “35”, “36”, and “39” (Figure 9, BonTerra Exhibit 2, BRC Features 34, 35, 36, and 39). In response to the vernal pool allegation, BonTerra consulting biologist Allison Rudalevige revisited these areas along with BonTerra consulting biologist Jeff Crain and Glenn Lukos Associates biologist Tony Bomkamp. They observed three

¹¹ Connor, H.E. and D. Charlesworth. 1989. Genetics of male-sterility in gynodioecious *Cortaderia* (Gramineae). *Heredity*, Vol. 63: 373–382.

¹² Hamilton, R. (December 10, 2009) op. cit.

¹³ Leighton Consulting’s geotech report, found in the project DEIR states that “Our exploration showed that the site is underlain by marine terrace deposits over bedrock. The subsurface materials at the site were found to consist of medium dense to dense silty sand and stiff to very stiff clay. Groundwater was encountered within two of our borings during our exploration. Seepage was noted within all borings along a sand and clay layer interface. The seepage was very likely generated from surface runoffs within the site and from the residential developments north of the site”.

areas of cracked soil, a potential indicator of ponding water, but state that “it is clear that none of the four features are vernal pools as all of the features lack vernal pool indicator plant species and all of the features occur on previously graded areas and exhibit a predominance of upland plant species.” They conclude that “Therefore, due to the lack of plant species characteristic of vernal pools, lack of sustained/observable ponding over multiple years of surveys onsite, the project site does not contain vernal pools.¹⁴” Regarding the Banning Ranch Conservancy’s powerpoint presentation BonTerra states “The BRC PowerPoint does not utilize any appropriate vernal pool identification protocol for this resource issue, as it does not document ponding duration, soil types present, plant indicator species, invertebrate activity, and other necessary parameters.¹⁵”

I requested to visit the site with USFWS vernal pool experts to examine these areas but to date that request has not been fulfilled by the City or Newport Banning Ranch. In the absence of an onsite survey, I requested that USFWS review the powerpoint submitted by the Banning Ranch Conservancy. Christine Medak, USFWS biologist, provided a detailed review via an email sent to me on September 13, 2011 (Appendix 1) and concluded the following:

After reviewing the available information we conclude that all four areas (VP 34, 35, 36, and 39) could potentially support San Diego fairy shrimp if ponding sufficient to support the species happens at a time when cysts are present. Extensive vernal pool habitat once occurred on the coastal plain of Los Angeles and Orange counties (Mattoni and Longcore 1997) and soils over the majority of Banning Ranch are likely suitable. However, the probability that ponding will be adequate to support the species is low in VP 34, 35, and 36 because the "pools" are located in a drainage and hydrological processes (including erosion and water flow) are not currently impeded by substantial alterations in the natural topography. In the absence of maintenance these ponds are unlikely to persist or to support the species over time. Vernal pool 39 has a higher probability of supporting the species because fill deposited in the drainage is likely contributing to longer periods of ponding. The rings of vegetation around the pool are another indication that ponding may occur at a frequency [sic] and for a length of time sufficient to support San Diego fairy shrimp. In the absence of maintenance we expect VP 39 will continue to pond (and pond for longer periods over time as silts collect in basin), unless the roadway fill is removed. To ensure the proposed project does not result in unintended impacts to listed species, we recommend protocol surveys for San Diego fairy shrimp are conducted in VP 39 prior to filling the pool.

I have reviewed BonTerra’s vernal pool analyses and the Banning Ranch Conservancy powerpoint. I find that both are inconclusive regarding the existence or non-existence of vernal pools. Comprehensive vernal pool protocol surveys require two full wet season

¹⁴ Johnston, A.M. (BonTerra Consulting). September 9, 2011. Supplemental Biological Resource Information for the Sunset Ridge Park Project. Letter to Michael Sinacori, Public Works Department, City of Newport Beach.

¹⁵ Ibid.

surveys done within a 5-year period or two consecutive seasons of one full wet season survey and one dry season survey (or one dry season survey and one full wet season survey). In addition, as BonTerra points out, appropriate vernal pool identification protocol includes documentation of ponding duration, identification of soil types and plant species present, invertebrate activity, and other necessary parameters. Neither BonTerra nor the Banning Ranch Conservancy have submitted the full complement of information necessary to make a firm conclusion regarding the existence or not of vernal pools on the proposed Sunset Ridge Park site. It is important to point out that vernal pools are a special type of wetland that are especially valuable because of the rare and unique species that they support. However, regardless of whether presumptive wetlands are vernal pools, they are protected under the Coastal Act. Given the lack of information and considering the review and conclusions of the USFWS, I recommend that a technical wetland delineation be conducted and that vernal pool protocol surveys be required on all four purported vernal pools.

California Gnatcatcher

Coastal sage scrub in southern California provides habitat for about 100 rare species, many of which are also endemic to limited geographic regions¹⁶. One such species is the coastal California gnatcatcher (*Polioptila californica*). The California gnatcatcher is an obligate, year-round resident of coastal sage scrub communities¹⁷. California gnatcatchers typically live a total of 4 to 6 years. They primarily feed on insects, which are eaten directly off coastal scrub and other vegetation. California gnatcatchers range from Baja California north to Ventura and San Bernadino Counties in southern California. Gnatcatchers in southern California preferentially nest and feed in coastal scrub vegetation on mesas and gentle slopes that are characterized by varying abundances of California sagebrush, California sunflower; and California buckwheat¹⁸. Gnatcatcher densities in northern San Diego County were found to be highest in areas where California encelia and California buckwheat were co-dominant with sagebrush¹⁹. Where these species are in low abundance, California gnatcatchers will forage on other species, including some non-natives such as black mustard²⁰. They also use grassland, chaparral, and riparian habitats in proximity to sage scrub for dispersal and foraging²¹.

In the last 60 years extensive southern California suburban sprawl has reduced and fragmented coastal scrub habitats, resulting in a significant decline in California gnatcatcher populations. In addition, the majority of remaining coastal scrub habitats

¹⁶ Westman, W.E. 1981. Diversity relations and succession in Californian coastal sage scrub. Ecology, Vol. 62: 170-184

¹⁷ Atwood, J.L. and D.R. Bontrager. 2001. California Gnatcatcher (*Polioptila californica*). In The Birds of North America, No. 574 (A. Poole and F. Gill, eds.). The Birds of North America, Inc. Philadelphia, PA.

¹⁸ Ibid.

¹⁹ Weaver (1998) op. cit.

²⁰ Dixon, J. Dec. 18, 2002. ESHA Determination for the Marblehead Property. Memorandum to Karl Schwing

²¹ Ibid.

are disturbed to a greater or lesser extent by non-native and invasive plant species. In response to the drop in gnatcatcher numbers in southern California due to the habitat loss and fragmentation resulting from urban and agricultural development, the northernmost subspecies (*Polioptila californica californica*) was listed as federally threatened in 1993²². The California gnatcatcher is also a California Species of Special Concern. Loss of gnatcatcher coastal scrub habitat in southern California is estimated to be 70 to 90 percent^{23,24} and, in 1999, the United States Fish and Wildlife Service (USFWS), estimated the number of gnatcatcher breeding pairs in Los Angeles, Orange and San Diego Counties at only 144, 643, and 1,917, respectively²⁵. Fragmented habitats have reduced biological integrity due to the increased potential for human disturbance. An increase in recreational use of habitats, fire frequency, trash dumping, air pollution, invasive species, predators, cowbird parasitism, domestic pets, herbicides and pesticides, and night lighting are directly associated with development and can have adverse impacts on the quality of gnatcatcher habitat.

In 2007, the USFWS identified and mapped critical gnatcatcher habitat in southern California²⁶. In determining areas to designate they “consider the physical and biological features (primary constituent elements (PCEs)), that are essential to the conservation of the species”. Primary constituent elements define the actual extent of habitats that contribute to the primary biological needs of foraging, nesting, rearing of young, intra-specific communication, roosting, dispersal, genetic exchange, or sheltering. Primary constituent elements for California gnatcatcher critical habitat include not only intact sage scrub habitats, but also “non-sage scrub habitats such as chaparral, grassland, riparian areas, in proximity to sage scrub habitats that provide space for dispersal, foraging, and nesting.” The USFWS defines sage scrub as a broad category of vegetation that includes coastal sage scrub, coastal bluff scrub, and maritime succulent scrub in their extensive list of the various sage scrub plant communities. The USFWS designated all of the City’s property and all of Newport Banning Ranch as critical habitat for California gnatcatchers in 2007²⁷ (Figure 10; California Gnatcatcher Critical Habitat Unit Map). In designating this block of land as critical habitat, USFWS noted that the area was occupied by gnatcatchers at the time of listing and at the time of designation of critical habitat and the area “contains all the features essential to the conservation of the coastal California gnatcatcher.”²⁸ This

²² Department of the Interior, Fish and Wildlife Service, 50 cfr part 17, RIN 1018–AV38, Endangered and threatened wildlife and plants; Notice of determination to retain the threatened status for the coastal California gnatcatcher under the endangered species act. Federal Register 60:72069. (March 1993).

²³ Westman (1981) op. cit.

²⁴ Michael Brandman Associates. 1991. Unpubl. Report. A rangewide assessment of the California Gnatcatcher (*Polioptila californica*). Prepared for Building Industry Assoc. of Southern California; July 23.

²⁵ Department of the Interior, Fish and Wildlife Service, 50 cfr part 17, RIN 1018–AV38, Endangered and threatened wildlife and plants; Revised designation of critical habitat for the Coastal California Gnatcatcher (*Polioptila californica californica*). 50; Federal Register 72:72069. (December 19, 2007).

²⁶ Ibid.

²⁷ Ibid. See also Exhibit 13, Banning Ranch DEIR.

²⁸ USFWS (Dec. 19, 2007) op. cit.

block of land is the only immediately coastal land mapped as critical gnatcatcher habitat in Unit 7 in Orange County (Figure 11; USFWS Federal Register Vol. 72, No. 243). USFWS pointed out in the final rule that the critical habitats in northern Orange County “may require special management considerations or protection to minimize impacts associated with habitat type conversion and degradation occurring in conjunction with urban and agricultural development.” 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 City property and Newport Banning Ranch is occupied by coastal California gnatcatchers.

California gnatcatcher breeding season territories range in size from less than 2.5 acres to 25 acres^{29,30}, with a mean territory size generally greater for inland populations than coastal populations³¹. Nesting territories typically have greater than 50 percent shrub cover and an average shrub height that exceeds 2.3 ft; nests are most often at 3 feet above the ground³². The relative density of shrub cover influences gnatcatcher territory size, with territory size increasing as shrub cover decreases presumably as a result of limited resources. In a 1989 to 1992 study of two sites in San Diego County, breeding season territories averaged 20 acres; non-breeding season territories were larger³³. In studies by Bontrager (1991)³⁴ and Preston et al. (1998)³⁵, territory size during the non-breeding season increased 82 percent and 78 percent, respectively. Increase in non-breeding season territory size is thought to serve two purposes; to allow gnatcatchers to acquire more habitat resources and to obtain information about potential mates. California gnatcatchers are known to occupy (i.e., to breed, nest, and forage in) year round various locations of coastal scrub habitat on the city’s property and Newport Banning Ranch. Numerous gnatcatcher surveys have been conducted on Newport Banning Ranch; only one survey has been conducted on the city property. The USFWS California gnatcatcher survey protocols, published in 1997, require a minimum of six or more surveys covering all potentially occupied habitat areas during the gnatcatcher breeding season which extends from March 15 to June 30^{36,37}. All surveys must take

²⁹Atwood, J.L., S.H. Tsai, C.H. Reynolds, J.C. Luttrell, and M.R. Fugagli. 1998. Factors affecting estimates of California Gnatcatcher territory size. *Western Birds*, Vol. 29: 269-279.

³⁰Preston, K.L., P.J. Mock, M.A. Grishaver, E.A. Bailey, and D.F. King. 1998. California Gnatcatcher territorial behavior. *Western Birds*, Vol. 29: 242-257.

³¹Ibid.

³²Beyers, J.L. and W.O. Wirtz. 1997. Vegetative characteristics of coastal sage scrub sites used by California gnatcatchers: Implications for management in a fire-prone ecosystem. In Greenlee, J. M. (ed.), *Proceedings: First conference on fire effects on rare and endangered species and habitats*, Coeur d’Alene, Idaho, November 1995. International Association of Wildland Fire, Fairfield, Washington. pp. 81-89.

³³Atwood and Bontrager (2001) op. cit.

³⁴Bontrager, D.R. 1991. Unpublished Report: Habitat requirements, home range and breeding biology of the California Gnatcatcher (*Polioptila californica*) in south Orange County. Prepared for Santa Margarita Co., Rancho Santa Margarita, CA; April.

³⁵Preston et. al. (1998) op. cit.

³⁶U.S. Fish and Wildlife (USFWS). 1997a (February 28). Coastal California Gnatcatcher (*Polioptila californica californica*) Presence/Absence Survey Protocol. Washington, D.C.:USFWS.

place during the morning hours and no more than 80 acres of suitable habitat may be surveyed per visit. Typically gnatcatcher survey reports include a compilation of gnatcatcher observations (dot/point locations) in the form of a map of gnatcatcher breeding pair use areas (breeding territories).

The gnatcatcher survey data for the southeast corner of Newport Banning Ranch, made available to us from Newport Banning Ranch, City of Newport Beach, and Newport Banning Ranch Conservancy (via USFWS), includes the following: gnatcatcher use areas and gnatcatcher observations collected by LSA from 1992 through 1994, gnatcatcher use areas collected by LSA in 1995 and 1996, gnatcatcher use areas and gnatcatcher observations collected by PCR in 1997, gnatcatcher observations collected by PCR in 1998, gnatcatcher use areas in 2000 (collector unknown, we believe it may have been PCR), gnatcatcher observations collected by GLA in 2002, 2006, and 2007, and gnatcatcher observations collected by BonTerra in 2009. For some years we have the reports associated with the data maps (1994 - 1996, 2002, 2006, 2007, and 2009) and for other years we do not (1992, 1993, 1997, 1998, and 2000).

We also have breeding season and non-breeding season gnatcatcher observations collected by Robb Hamilton in 2009 and 2010³⁸. Mr. Hamilton was one of the biologists who collected gnatcatcher data for LSA in the early 1990's. Mr. Hamilton currently runs his own environmental consulting firm, Hamilton Biological, and holds a permit to conduct gnatcatcher presence/absence surveys (No. TE-799557).

The Newport Banning Ranch gnatcatcher survey efforts (number of days per annual survey), methodology (timing, areal coverage, etc.), and data presentation vary among the biological consulting firms. LSA surveyed for nine days in 1992, three in 1993, and four each from 1994 through 1996. Regarding the presentation of their data LSA states that:

Each year of the LSA surveys, composite maps were prepared that showed the distribution of approximate gnatcatcher territory boundaries at NBR. ... The composite territories thus identified generally represented the most conservative polygons possible that combined all observation points. Notions of what might constitute gnatcatcher habitat were put aside; only those areas where gnatcatchers were observed were mapped. However, because polygons were mapped by combining all outlying observation points, on a finer scale many areas within polygons never were actually used by gnatcatchers. Most of the polygons depicted include suitable habitat as well as unused pockets (e.g., ice plant, barren or developed areas), and the territory maps do not distinguish

³⁷ U.S. Fish and Wildlife (USFWS). 1997b (July 28). Coastal California Gnatcatcher (*Poliophtila californica californica*) Presence/Absence Survey Protocol. Washington, D.C.:USFWS.

³⁸ Mr. Hamilton did not have access to Newport Banning Ranch so his observations are limited to those areas of the southeastern corner of Newport Banning Ranch that he could survey from the property boundary.

*suitable habitat from unsuitable habitat such as solid ice plant, roads, and structures.*³⁹

PCR conducted surveys in 1997, 1998, and 2000⁴⁰. We do not have any information regarding these surveys other than the survey maps.

Glenn Lukos Associates and BonTerra present gnatcatcher sightings for individuals and breeding pairs as dot/point observations on their annual survey maps. We asked Glenn Lukos Associates to interpret their dot/point observations and they said they represent an interpolation of a few to multiple individual gnatcatchers and/or a gnatcatcher pair within a use area (pers. comm. Tony Bomkamp, January 3, 2011). We asked BonTerra the same question and they said their dot/point observations were their best approximation or estimation of the center point of observed gnatcatcher activity (pers. comm. Ann Johnston, December 15, 2010).

The only protocol gnatcatcher survey that was performed specifically for the proposed Sunset Ridge Park site was the 2009 survey conducted by BonTerra. Since that time numerous gnatcatcher sightings have occurred on the site including those of Robb Hamilton discussed above (Figure 30). In addition to Mr. Hamilton's gnatcatcher observations, Christine Medak, USFWS biologist, and Andrew Willis, CCC Enforcement Analyst, have observed gnatcatchers on several occasions in the location identified on the emails and maps attached here (Appendix 2).

The USFWS California gnatcatcher survey protocols require a minimum of six surveys conducted in the morning during the gnatcatcher breeding season. Surveys conducted in the early '90's did not always meet the six-day minimum, however, they did take place in the morning during the breeding season. We are assuming that surveys conducted from 1997 on followed the USFWS gnatcatcher survey protocols. We are also assuming that gnatcatcher survey data presented as dot/point observations have associated use polygons subject to gnatcatcher habitat requirements. Our conclusions are based on the data we have and our assumptions regarding these data. The gnatcatcher survey results are reported below in the ESHA discussions. The details of the observations are not critical, because it is clear that any suitable gnatcatcher habitat on the City property and on Newport Banning Ranch must be considered "occupied."

ESHA Delineation

Areas of coastal scrub habitat with significant gnatcatcher use perform an important ecosystem function, are increasingly rare, and are easily disturbed and therefore meet the definition of ESHA under the Coastal Act and the City of Newport LUP.

³⁹ Quote from December 9, 2010 "California Gnatcatcher Issues at the Sunset Ridge Park/Newport Banning Ranch Site" letter to Mick Sinacori, City of Newport Beach, Department of Public Works from Art Homrighausen and Richard Erickson of LSA

⁴⁰ The 2000 gnatcatcher use map is unlabeled and therefore, while the format suggests it was made by PCR, we can not be sure who created the exhibit.

In general, relatively pristine coastal sage scrub, scrub vegetation with significant coastal California gnatcatcher use, and appropriate gnatcatcher habitat in “occupied” areas⁴¹ are increasingly rare in coastal California and meet the definition of ESHA. However, all ESHA determinations are based on an analysis of site-specific conditions. Since the entire Newport Banning Ranch and City property have been identified by the USFWS as California gnatcatcher critical habitat the determination of ESHA is appropriately based on both observations of gnatcatcher use, which is assumed in “occupied” areas, and on the presence of vegetation that constitutes suitable habitat.

I applied the following criteria in determining what areas of the proposed park site rose to the level of ESHA:

1. Areas occupied by California gnatcatchers (the entire site), and
2. Areas supporting habitat suitable for gnatcatchers, and
3. Unfragmented patches of suitable gnatcatcher habitat of substantial size – not small, isolated, fragmented patches, and
4. Areas supporting other rare species or rare vegetation communities.

In addition to the gnatcatcher habitat ESHA, the proposed Sunset Ridge Park site supports several wetland seep areas as discussed above. Opponents of the project allege that the proposed park site supports several vernal pools that will be impacted by the project footprint. While the project consultant maintains that these areas are not vernal pools, technical wetland delineations and vernal pool fairy shrimp protocol surveys must be performed in order to accurately identify the status of these areas.

ESHA Determination

I delineated two areas of ESHA within the footprint of the proposed Sunset Ridge Park. These areas consist of habitat that supports the federally threatened California gnatcatcher. One area, “ESHA West”, is west of the proposed entrance road. The other area, “ESHA East”, is east of the proposed entrance road (Figure 12).

I reviewed all the vegetation and ESHA mapping that has been performed on the Newport Banning Ranch portion of the project site and for the City’s property. Four vegetation maps and one ESHA map are available for the southeast corner of Newport Banning Ranch: vegetation maps created by LSA, PCR Services, and Glenn Lukos Associates and a vegetation and ESHA map created as part of the Newport Banning Ranch Technical Appendices⁴² by Glenn Lukos Associates. In addition, the City’s consultant, BonTerra, mapped vegetation on the City’s property.

⁴¹ An area is considered “occupied” by gnatcatchers if they have been observed nearby in easy flight distance regardless of whether gnatcatchers have been observed to use a particular plot of ground.

⁴² Glenn Lukos Associates, Inc. August 2008. Draft Biological Technical Report for the Newport Banning Ranch.

This document is a part of the “Banning Ranch, Planned Community Development Plan, Technical Appendices Volume II” that was posted on the City of Newport Beach website and downloaded in August 2009; it has since been removed from the City’s website. While the report text is marked draft, the exhibits and appendices are not. Given that the vegetation (Exhibit 9) and ESHA (Exhibit 12) exhibits

In 1991 LSA mapped various habitat types including coastal bluff scrub on the southeast corner of Newport Banning Ranch (Figure 13; Figure 1, LSA December 9, 2010 letter). In 1998 PCR Services mapped coastal sage scrub habitat on the southeast corner of Newport Banning Ranch (Figure 14; Exhibit 9, Glenn Lukos Associates, August 26, 2010 memorandum). In 2002 Glenn Lukos Associates mapped "bluff scrub or succulent scrub" in several areas on the southeast corner of Newport Banning Ranch (Figure 15; Exhibit 2, Glenn Lukos Associates, West Newport Oil Property 2002 Gnatcatcher surveys). The 2008 Glenn Lukos Associates vegetation map (Figure 6 and 16; Exhibit 9, Glenn Lukos Associates, August 2008. Draft Biological Technical Report for the Newport Banning Ranch) identifies several native plant communities including maritime succulent scrub, disturbed encelia scrub, disturbed mule-fat scrub, goldenbush scrub, and disturbed goldenbush scrub on the southeast corner of Newport Banning Ranch. The ESHA map (Figure 17; Exhibit 12, Glenn Lukos Associates, August 2008. Draft Biological Technical Report for the Newport Banning Ranch) identifies two areas of ESHA: maritime succulent scrub and disturbed encelia scrub on the southeast corner of Newport Banning Ranch. In 2009 and in greater detail in 2011, BonTerra mapped the vegetation on the City's property as discussed above.

Based on the historical and current vegetation and ESHA maps, the site proposed for Sunset Ridge Park supports a significant cover of coastal scrub vegetation, much of it suitable for California gnatcatchers. There are areas of coastal bluff and maritime succulent scrub that rise to the level of ESHA whether or not they support gnatcatchers due to the rarity of these habitat types. It happens that in the case of the proposed park property, the mapped coastal bluff and maritime succulent scrub habitats are within the boundaries of ESHA West and/or ESHA East (Figure 12) because they also have a history of gnatcatcher use.

ESHA West

Between 1992 and 2009 gnatcatchers have been documented during eight surveys on the western boundary of the proposed Sunset Ridge Park project (Figure 18). In 1992 LSA mapped a gnatcatcher use area and six gnatcatcher observations along the western boundary of the proposed park property (Figures 19a and 19b; Figure 1, December 9, 2010 LSA memorandum and from LSA map submitted by the Newport Banning Ranch Conservancy, respectively). In 1993 LSA mapped a very large gnatcatcher use area that contains a wide swath of vegetation along the western boundary of the proposed park (Figure 20; Figure 2, December 9, 2010 LSA memorandum). In 1994 LSA mapped a large gnatcatcher use area that encompasses a large amount of habitat along the western boundary of the proposed park (Figures 21a and 21b; LSA map submitted by the Newport Banning Ranch Conservancy). In 1996, LSA mapped a gnatcatcher use area about three times the size of the area mapped in 1996 that overlaps all of the 1996 gnatcatcher use area and extends eastward (Figures

portray the expert opinion of Glenn Lukos Associates, Inc., at the time they were developed, we believe it is appropriate to consider this information, along with other sources, in our ESHA determination. We note that these data support our ESHA conclusions and we are awaiting the revised analysis, but in the interim, we continue to note the significance of the data presented in draft form.

22a and 22b; Figure 5, December 9, 2010 LSA memorandum). In 1998 PCR Services mapped point observations for two breeding pairs along the western boundary of the proposed park (Figures 23a and 23b; Glenn Lukos Associates map submitted by the Newport Banning Ranch Conservancy).

In 2000 a gnatcatcher use area was mapped that covers a small area adjacent to the western boundary of the proposed park (Figure 24; Gnatcatcher use map I believe was created by PCR that was submitted by the Newport Banning Ranch Conservancy). In 2002 two breeding pairs were mapped in the same general location as the use area that was mapped in 2000 (Figures 25a; Exhibit 3, September 24, 2009 Glenn Lukos Associates memorandum - and 25b; Exhibit 2, October 14, 2002 Glenn Lukos Associates memorandum). The City submitted a letter from Glenn Lukos Associates biologist Tony Bomkamp addressed to Christine Medak on June 14, 2011, that states that the pair of gnatcatchers within the 0.08 acre patch of California sunflower scrub was mapped incorrectly and should have been mapped approximately 200 feet west which would place it in the area I have identified as "ESHA West". In 2006 and 2007, gnatcatcher observations for breeding pair and an unpaired male sightings, respectively, were mapped by Glenn Lukos Associates along the western boundary of the park in the area mapped as disturbed encelia scrub in the Glenn Lukos Associates 2008 vegetation map and identified as ESHA in the Glenn Lukos Associates 2008 ESHA map (Figures 26 and 27; Exhibit 3, July 19, 2007 Glenn Lukos Associates memo). In 2009 BonTerra mapped a gnatcatcher breeding pair observation on the western side of the proposed park in disturbed goldenbush scrub (Figure 28; Exhibit 3b, July 25, 2009 BonTerra memorandum).

Based on the vegetation and ESHA maps, the vegetation I observed during my site visits, and the gnatcatcher survey data, I have delineated an area I have labeled "ESHA West" (Figure 12) on the western boundary of the proposed park that rises to the level of ESHA because it provides an especially valuable ecosystem service by providing critical habitat that is utilized by the California gnatcatcher for nesting, breeding, foraging and dispersal; the critical habitat is also easily disturbed by human activities as evidenced by bare areas (road), imported fill, and graded areas on the property and therefore meets the definition of ESHA in the Coastal Act.

ESHA East

A second area of ESHA, "ESHA East", occurs east of the ESHA West, on the other side of an access road that serves oil operations on Newport Banning Ranch. Between 1992 and 2009, gnatcatchers have been documented during six surveys in this area (Figure 18). The ESHA East includes a bluff with slopes that support coastal sage, coastal bluff, and maritime succulent scrub habitat. In 1993 LSA mapped a very large gnatcatcher use area that includes the entire bluff area (Figure 20; Figure 2, December 9, 2010 LSA memorandum). In 1996, LSA mapped another very large gnatcatcher use area that includes most of the bluff area (Figures 18a and 18b; Figure 5, December 9, 2010 LSA memorandum). In 1997 PCR Services mapped a gnatcatcher use area that covers the entire bluff (Figure 29a; PCR use area map submitted by the Newport Banning Ranch Conservancy). In 1997 PCR also mapped point observations for two

breeding pairs; one of the breeding pairs was located on the bluff in maritime succulent scrub while the second pair was located on a slope above PCH in disturbed California sunflower scrub (Figures 29c and 29b; Glenn Lukos Associates map submitted by the Newport Banning Ranch Conservancy). PCR Services conducted another survey in 1998 and mapped an observation of a gnatcatcher pair in maritime succulent scrub on the bluff (Figures 23a and 23b; Glenn Lukos Associates map submitted by the Newport Banning Ranch Conservancy).

In 2000, a gnatcatcher use area was mapped on the bluff (Figure 24; Gnatcatcher use map I believe was created by PCR that was submitted by the Newport Banning Ranch Conservancy). In 2006 Glenn Lukos Associates mapped a gnatcatcher breeding pair observation on the bluff in maritime succulent scrub (Figure 26; Exhibit 3 July 26 2006 Glenn Lukos Associates memorandum). In addition to Newport Banning Ranch's and the City of Newport Beach's biological consultant's surveys, Mr. Hamilton mapped gnatcatcher use areas in 2009 and 2010. He mapped two gnatcatcher pair use areas outside the breeding season on November 4, 2009; one in the disturbed California sunflower scrub above PCH and one to the northeast in mulefat near the proposed parking lot (Figure 30; Figure 8, December 11, 2010 Hamilton Biological letter). Mr. Hamilton also mapped a gnatcatcher male use area during the breeding season above PCH in the disturbed California sunflower scrub on June 3, 2010 (Figure 30; Figure 8, December 11, 2010 Hamilton Biological letter). Mr. Hamilton's 2009 gnatcatcher observations indicate that the area around the disturbed area identified as the southeast polygon in the NOV continues to be utilized by gnatcatchers outside the breeding season. Between 1993 and 2009, seven gnatcatcher use areas and four dot/point gnatcatcher observations were mapped (Figure 18). I believe that had gnatcatcher use areas been mapped for the gnatcatcher observations, they would overlap most of the area I have mapped as ESHA east. I base this on the documented minimum gnatcatcher breeding territory size (2.5 acres)^{43,44} (Figure 31).

Based on the vegetation and ESHA maps; the vegetation I observed during my site visits, and the gnatcatcher survey data, I have delineated an area of ESHA that I call "ESHA East" (Figure 12). From the extensive history of gnatcatcher survey data it is clear that the disturbed coastal sage, coastal bluff, and maritime succulent scrub within the area provide an especially valuable ecosystem service by furnishing critical habitat utilized by the California gnatcatcher for nesting, breeding, foraging, and dispersal; the critical habitat is also easily disturbed by human activities, as evidenced by bare areas (road), imported fill, and graded areas, and therefore meets the definition of ESHA in the Coastal Act.

Buffers

There are several areas where the proposed park development, including the entrance road, parking lot, and children's playground, is designed near the west and east

⁴³ Atwood et al. (1998) op. cit.

⁴⁴ Preston et. al. (1998) op. cit.

gnatcatcher habitat ESHA areas. From the time the Commission began recognizing coastal scrub habitat occupied by gnatcatchers as ESHA, several of our past permit actions have required 100 foot buffers between gnatcatcher ESHA and development to adequately protect gnatcatchers and their habitat from human disturbance. The entire site of the proposed Sunset Ridge Park is gnatcatcher critical habitat and therefore protective ESHA buffers are essential. I recommend 100 foot buffers between the parking lot and the children's playground to adequately protect gnatcatchers from human disturbance. I believe however, that a 50 foot minimum buffer between the park entrance road and gnatcatcher ESHA is adequate to protect gnatcatchers for several reasons. The park entrance road is located in a canyon with slopes on either side which enable gnatcatchers to fly over it with ease. Studies have shown that the California gnatcatcher can become accustomed to some disturbance by vehicles. That disturbance is best accommodated in situations where the bird can easily fly over the disturbed area (i.e. narrow roads), and where there is appropriate habitat immediately on either side of the road. Car trip estimates for the park are 173 per day which is a low impact traffic pattern; the use intensity of the road will be comparatively less than with most other types of development (e.g. housing, commercial, etc.). This low level of impact is a key factor in my determination that reducing the buffer from 100 feet to 50 feet along the entrance road is acceptable in this particular case. If the anticipated traffic estimates were larger, or were to increase, I believe that this would constitute a significant impact on the gnatcatcher habitat and a reduction to a 50 foot buffer along the proposed park entrance road would no longer be appropriate. Thus, it is critical that the road remain just that, a park entrance road as planned and nothing more.

Development of the park entrance road will further fragment the two patches of ESHA on the Sunset Ridge Park site. Restoring the existing ESHA to higher quality coastal sage scrub and vegetating the buffers, which currently consist of bare dirt or ruderal habitat, with coastal sage scrub species, provides improved and new suitable gnatcatcher habitat that to some degree offsets any loss in connectivity between the two ESHA areas.

My 50 foot buffer recommendation for the road is contingent on the entirety of all the buffers and the adjoining ESHA being re-vegetated or restored to high quality coastal scrub habitat specifically designed to be attractive to gnatcatchers. This will help minimize habitat fragmentation caused by the development. Small habitat fragments can only support small populations of plants and animals and small populations are more vulnerable to extinction. Minor fluctuations in resources, climate, or other factors that would be trivial in large populations can be catastrophic in small, isolated populations. Habitat fragmentation is an important cause of species extinction⁴⁵ and given the importance of the proposed park site to the survival of California gnatcatchers, habitat fragmentation must be avoided to the greatest extent possible.

The park development plans include grading within the buffer along the road which is an activity the Commission typically does not allow. The only use the Commission typically

⁴⁵ Rosenzweig, M. L. 1995. *Species Diversity in Space and Time*. Cambridge University Press, Cambridge.

allows in buffers is restoration. However, in this instance, the buffer area along the road is either bare dirt or highly impacted ruderal vegetation. Therefore, I feel that grading is acceptable provided the grading does not occur within 20 feet of the ESHA and provided that after grading is finished the buffer is restored to high quality coastal sage scrub habitat. To mitigate potential negative impacts on gnatcatchers grading must occur outside gnatcatcher breeding season and construction noise must be minimized to the greatest extent possible. During construction, gnatcatcher habitat must be shielded from sight and sound by 8-foot high, solid 1-inch thick barriers. A biological monitor must be on site daily during construction to insure that the construction activities are having no negative impact on gnatcatchers. Immediately following grading the buffer must be restored to coastal sage scrub suitable for gnatcatchers. Planting high quality coastal sage scrub in the buffers will be a significant benefit to gnatcatchers and other species and will increase the effectiveness of the buffers.

Burrowing Owls

BonTerra conducted protocol surveys for burrowing owls and California gnatcatchers and determined that the only sensitive species that occurs on the project site is the gnatcatcher. Burrowing Owls (*Athene cunicularia hypugaea*) 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. The Commission considers habitat that supports burrowing owls ESHA. In January 2008, Glenn Lukos Associates conducted winter-season surveys for burrowing owls at Newport Banning Ranch and found two in the ranch's southern grasslands and a third individual 212 feet to the west (Figure 32; Exhibit 7 in the 2008 draft biological report prepared by Glenn Lukos Associates for NBR), outside the Sunset Ridge Park project site, but in habitat similar to that in the western portion of the park project site. BonTerra downplays the site's potential value to the species:

Limited suitable habitat and burrow sites for this species are present on the Project site. Focused surveys for the burrowing owl were conducted in winter 2008/2009 and in spring/summer 2009; the burrowing owl was not observed. Therefore, burrowing owl is not expected to occur on the Project site due to lack of detection during focused surveys. However, there is potential for the burrowing owl to occasionally occur on the Project site as a migrant or rare winter visitor.

I disagree and find that the project site's grasslands comprise ideal habitat for burrowing owls. To ensure that the proposed project does not impact burrowing owls I recommend that an additional set of protocol burrowing owl surveys be performed before development in the area is given further consideration.

Coastal Sage Scrub Habitat Creation and Restoration

The Commission's findings of approval of the LUP amendment (NPB-MAJ-1-06 part b, July 2006) state that "the siting and design of a park development on the proposed City

property, particularly an active park, must take into account on-site natural resources and avoid substantial landform alteration..." The findings also note that

...the site currently exists as undisturbed open space and may contain potential wildlife habitat. The subject site is located directly adjacent to Banning Ranch, a 505-acre undeveloped area known to support a number of sensitive habitat types, including coastal bluff scrub. There is a potential biological connection between the two sites that will need to be addressed when specific development is contemplated at the Caltrans West property...

The Commission further noted that "the developable area of the site may be restricted by the existence of habitat and associated setbacks/buffers..."

Given the importance of the property to the survival of the federally threatened California gnatcatcher (*Poliioptila californica californica*) I recommend that all suitable areas of the property not proposed for formal park development and that are not currently non-native grassland (except for the area adjacent to the "ESHA East") be restored to high quality coastal sage scrub habitat suitable for gnatcatchers. The entire site has been identified by the USFWS as critical gnatcatcher habitat and is also within the boundaries of a CDFG NCCP which recognizes the importance of the site for gnatcatchers. The site is the only immediately coastal critical California gnatcatcher habitat in Orange County. Three breeding pairs are known to use the property proposed for the park. The minimum breeding territory for gnatcatchers is 2.5 acres and when habitat is less than premium breeding territories necessarily increase. In addition, non-breeding season territories are much larger; by as much as 80 percent. Furthermore, we have only one year of formal gnatcatcher surveys for the City's property and Robb Hamilton, a biologist who holds a permit to survey for gnatcatchers, has documented gnatcatchers in several areas of the site of the proposed park on several occasions (Figure 30) and Christine Medak, USFWS biologist and Andrew Willis, CCC Enforcement Analyst have observed gnatcatchers on the site on several occasions (Appendix 2).

In order to ensure that three gnatcatcher pairs are able to persist on the site I recommend that the site be designed to support a minimum of 7.5 acres of high quality coastal sage scrub. This can be accomplished by creating or restoring to high quality coastal sage scrub habitat in all suitable areas of the property not proposed for formal park development and that are not currently non-native grassland, as stated above. In addition, high quality coastal sage scrub creation and/or restoration must occur in the ESHA areas, ESHA buffer areas, and all suitable areas adjacent to the ESHA. The created and restored coastal sage scrub areas will provide habitat for California gnatcatchers and other species. A habitat maintenance and management plan designed to ensure that the coastal sage scrub habitat remains healthy and robust in perpetuity should be developed.

Non-Native and Invasive Species

Throughout the range of gnatcatchers in southern California, not only are coastal scrub communities being lost to development at an alarming rate, they are also being type converted to non-native grassland and other ornamental or ruderal habitats^{46,47}. A combination of factors is thought to be behind this conversion including competitive displacement by European annual grasses, increased fire frequency, nitrogen deposition due to air pollution, high silt, and high pH⁴⁸. Loss and type conversion of coastal sage scrub habitats in southern California is another reason that improving and restoring all the appropriate areas on the proposed Sunset Ridge Park site that are not slated for formal development is essential.

In addition to loss and type conversion of coastal sage scrub habitats, invasive animals are also a threat to California gnatcatchers. Invasive ants such as the Argentine ant (*Linepithema humile*) can be abundant in landscaped areas and can move up to 1400 feet toward native habitat from an urban or urban/rural boundary⁴⁹. Irrigation encourages invasive ants which prefer wetter soil conditions. Argentine ants are documented predators on gnatcatcher nestlings and their presence can also alter the native arthropod community by reducing their diversity and abundance⁵⁰. A number of measures should be taken to prevent or limit invasive ants including using low-water use turf and/or artificial turf on all playing fields and playground areas, maintaining drainage best management practices, maintaining a clean, trash free park, and planting high quality coastal sage.

Cowbird Parasitism

Brown Headed cowbirds are brood parasites; that is they lay their eggs in the nests of other birds. Cowbird chicks usually hatch one or two days before the eggs of the host bird and grow rapidly, giving them a competitive head start. Rapid growth allows the cowbird chick to out-compete the host's chicks for food and space in the nest so that

⁴⁶ Allen, E.B., S.A. Eliason, V.J. Marquez, G.P. Schultz, N.K. Storms, C.D. Stylinski, T.A. Zink, and M.F. Allen. 2000. What are the limits to restoration of coastal sage scrub in southern California? In: Keeley, J.E., M. Baer-Keeley, and C.J. Fotheringham (Eds.). 2nd Interface Between Ecology and Land Development in California. U.S. Geological Survey Open File Report 00-62.

⁴⁷ Allen, E.B. 2004. Restoration of Artemisia Shrublands Invaded by Exotic Annual Bromus: A comparison between southern California and the Intermountain region. In: Hild, A.L., N.L. Shaw, S.E. Meyer, D.T. Booth, and E.D. McArthur (Comps.), Seed and Soil Dynamics in Shrubland Ecosystems: Proceedings: 2002 August 12-16; Laramie, Wyoming. Proceedings RMRS-P-31. Ogden, U.T. U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station.

⁴⁸ Talluto, M.V. and K.N. Suding. 2008. Historical change in coastal sage scrub in southern California, USA, in relation to fire frequency and air pollution. Landscape Ecology, Vol. 23: 803-815.

⁴⁹ Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. Ecology, Vol. 79: 2041-2056

⁵⁰ Bolger, D.T., A.V. Suarez, K.R. Crooks, S.A. Morrison and T.J. Case. 2000. Arthropods in Urban Habitat Fragments in Southern California: Area, Age, and Edge Effects. Ecological Applications, Vol. 10(4): 1230-1248.

host chicks usually perish. In areas where cowbirds have invaded California gnatcatcher breeding territories, gnatcatcher fitness has decreased⁵¹. Brood parasitism of gnatcatcher nests by cowbirds is a problem encountered in urban and urban/rural settings. Fast food restaurants, equestrian and livestock facilities, and large expanses of turf grass associated with developments, schools, and parks all provide foraging opportunities for cowbirds. The turf covered ball fields proposed for Sunset Ridge Park adjacent to residential and commercial development including fast food restaurants is a perfect set-up for a cowbird invasion. I recommend that park monitoring plans include cowbird monitoring. If cowbirds are found on the park I recommend immediate implementation of a cowbird trapping program.

Predation

The most common cause of gnatcatcher nest failure is predation which accounts for up to 66 percent of nest failures in some areas^{52,53}. Predation is more prevalent where native habitat edges up against urban or urban/rural development. Numerous nest predators such as raccoons, rats, and skunks thrive along the edges of development where trash and debris are often accessible. These animals along with domestic pets may opportunistically prey on gnatcatchers in adjacent habitat. In addition, nest-predator species such as corvids and raptors do well in urban and urban/rural areas.

One way to minimize gnatcatcher predation is to encourage coyote foraging on the property. Coyotes are known to reduce gnatcatcher predator populations and to decrease the intensity of gnatcatcher predation⁵⁴. Property fencing must include adequate coyote access. If coyote friendly fencing is not used the City will have to implement a predator monitoring and exclusion program.

In summary, areas of coastal scrub occupied by California gnatcatchers perform an important ecosystem function, are increasingly rare, and are easily disturbed and therefore meet the definition of ESHA under the Coastal Act and the City of Newport LUP. Coastal Bluff Scrub and Maritime Succulent Scrub rise to the level of ESHA, whether occupied by gnatcatchers or not, because they are identified as rare plant communities by CDFG. The "ESHA West" and "ESHA East" areas on the proposed Sunset Ridge Park site meet the definition of ESHA because they support areas of rare habitat (coastal bluff scrub and maritime succulent scrub) and habitat important to the federally threatened California gnatcatcher, have a history of gnatcatcher use, and are

⁵¹ Smith, J.M.N., T.L. Cook, S.I. Rothstein, S.K. Robinson, and S.G. Sealy. 2000. Ecology and management of cowbirds and their hosts. University of Texas Press; Austin, Texas.

⁵² Braden, G., R. McKernan, and S. Powell. 1997a. Association of within-territory vegetation characteristics and fitness components of California gnatcatchers. *The Auk*, Vol. 114: 601-609.

⁵³ Grishaver, M., P. Mock and K. Preston. 1998. Breeding behavior of the California gnatcatcher in southwestern San Diego County, California. *Western Birds*, Vol. 29: 299-322.

⁵⁴ Crooks, K.R. and M.E. Soulé. 1999. Mesopredator release and avifaunal extinctions in a fragmented system. *Nature*, Vol. 400: 563-566.

easily disturbed. As I state above, provided the City improves and restores the ESHA areas, buffers, and other suitable areas not slated for formal park development with high quality coastal sage scrub in perpetuity, I believe 50-foot buffers are protective of the gnatcatchers and their habitat. In addition, if the City incorporates the coastal sage scrub improvement and restoration that I recommend here and takes measures to prevent non-native and invasive species invasion, cowbird parasitism, and predation, I believe that development of Sunset Ridge Park will not significantly impact California gnatcatchers and has the potential to improve the success of gnatcatchers on this site.

This ESHA analysis applies only to the area proposed for development as part of the proposed Sunset Ridge Park and immediately adjacent areas. It specifically does not apply to the larger area of Newport Banning Ranch. A similar analysis for the latter area would include consideration of the presence of wetlands, rare species and habitats, dispersal opportunities, and potential for habitat fragmentation.

Jonna Engel

From: Christine_Medak@fws.gov
Sent: Tuesday, September 13, 2011 1:41 PM
To: Jonna Engel
Cc: 'Basye GL (George) at Aera'; Sinacori, Mike; Michael Mohler
Subject: Review of vernal pools on Sunset Ridge Project Site

Jonna,

Per your request, we have reviewed the vernal pool information on Sunset Ridge Project Site, which we received from Terry Welsh (Banning Ranch Conservancy) on June 30, 2011. The information (a powerpoint presentation titled Complete Banning Ranch Mesa Vernal Pools/Wetlands First Edition 6-27-11) includes the identification of 4 potential vernal pools within the grading area for the project (VP 34, 35, 36, and 39). The four ponded areas were identified by photos taken between February 2009 and March 2011.

All four areas are located within a drainage (as opposed to a mesa top). VP 34, 35, and 36 are within a drainage that flows in a southerly direction (towards the Coast Hwy) and VP 39 is in a drainage that flows westward to meet up with the primary drainage running through the Banning Ranch property. The reason this is significant is that typically vernal pools do not form in a drainage because the water runs downstream (as opposed to ponding). Because the water is running downstream, it will not typically pond long enough to support vernal pool species. Ephemeral drainage areas will more often support riparian vegetation or transitional scrub vegetation (e.g., mulefat, elderberry...) if mowing does not occur. A significant exception is when the drainage is artificially blocked (e.g., to form a stock pond). The drainage below VP 39 has been blocked by roadway fill to the west, which may allow this area to pond longer than expected. VP 39 also appears to have the classic bathtub ring look of a vernal pool (e.g., rings of different vegetation types extending outward around the pool).

Several pools on Banning Ranch are occupied by the federally endangered San Diego fairy shrimp. San Diego fairy shrimp cysts (eggs) may persist in the soil for several years until conditions are favorable for successful reproduction. Cysts from this species can be picked up by animals and distributed throughout the site, however, not all areas where the cysts are deposited will be suitable to support the life cycle of San Diego fairy shrimp. Critical habitat for the San Diego fairy shrimp was designated on December 12, 2007 (72 FR 70648), and includes a portion of Banning Ranch, but not the Sunset Park project site. The Primary Constituent Elements (PCEs) of critical habitat provide a good summary of the physical and biological features essential to the conservation of the species. The PCEs for San Diego fairy shrimp are:

1. Vernal pools with shallow to moderate depths (2 inches to 12 inches) that hold water for sufficient lengths of time (7 to 60 days) necessary for incubation, maturation, and reproduction of the San Diego fairy shrimp, in all but the driest years.
2. Topographic features characterized by mounds and swales and depressions within a matrix of surrounding uplands that result in complexes of continuously, or intermittently, flowing surface water in the swales connecting the pools described in PCE 1, providing for dispersal and promoting hydroperiods of adequate length in the pools (i.e., the vernal pool watershed).
3. Flat to gently sloping topography and any soil type with a clay component and/or an impermeable surface or subsurface layer known to support vernal pool habitat (including Carlsbad, Chesterton, Diablo, Huerhuero, Linne, Olivenhain, Placentia, Redding, and Stockpen soils).

Conclusion:

After reviewing the available information we conclude that all four areas (VP 34, 35, 36, and 39) could potentially support San Diego fairy shrimp if ponding sufficient to support the species happens at a time when cysts are present. Extensive vernal pool habitat once occurred on the coastal plain of Los Angeles and Orange counties (Mattoni and Longcore 1997) and soils over the majority of Banning Ranch are likely suitable. However, the

probability that ponding will be adequate to support the species is low in VP 34, 35, and 36 because the "pools" are located in a drainage and hydrological processes (including erosion and water flow) are not currently impeded by substantial alterations in the natural topography. In the absence of maintenance these ponds are unlikely to persist or to support the species over time. Vernal pool 39 has a higher probability of supporting the species because fill deposited in the drainage is likely contributing to longer periods of ponding. The rings of vegetation around the pool are another indication that ponding may occur at a frequency and for a length of time sufficient to support San Diego fairy shrimp. In the absence of maintenance we expect VP 39 will continue to pond (and pond for longer periods over time as silts collect in basin), unless the roadway fill is removed. To ensure the proposed project does not result in unintended impacts to listed species, we recommend protocol surveys for San Diego fairy shrimp are conducted in VP 39 prior to filling the pool.

Should you have any questions regarding this message please feel free to call me.

Christine L. Medak
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, CA 92011
(760) 431-9440 ext. 298
<http://www.fws.gov/carlsbad/>

Mattoni, R. and T. R. Longcore. 1997. Down memory lane: the Los Angeles coastal prairie, a vanished community. *Crossosoma* 23(2):71-102.

To "Tony Bomkamp" <tbomkamp@wetlandpermitting.com>

06/15/2011 01:34 PM

cc "'Michael Mohler'" <mohler@brooks-street.com>,"'Basye GL \ (George\)
at Aera'"<GLBasye@aeraenergy.com>

Subject Banning Ranch Site Visit

Thank-you for taking the time to walk me through Banning Ranch to see the extent of mowing on the property. The following is a summary of my observations on the site, recommendations for avoiding impacts to gnatcatchers, and suggested revisions to your vegetation mapping to reflect conditions on the site

The first area we stopped at (east of the apartment housing, north of territory #2) [**LOCATION A ON EXHIBIT 1**] was an area not documented as supporting a gnatcatcher territory; however, a family group was foraging in the depression, mapped as disturbed scrub on your vegetation map. Prior to conducting any mowing through this canyon, additional monitoring for the gnatcatcher should be conducted in this location to ensure the mowing is not impacting habitat supporting gnatcatcher foraging.

Next, we took a close look at mowed vegetation in the vicinity of territories #2 [**LOCATION B ON EXHIBIT 2**] and #4. It appears a portion of territory #2 that was mowed at the top of the bluff was mapped as disturbed scrub on your vegetation map but is actually primarily iceplant and non-native grasses. Vegetation mapping should be changed to reflect the actual vegetation community in this area. The mowing that occurred near territory #4 is consistent with previous mowing. The mowed areas appeared to consist of non-native grasses and other weeds. Therefore, it does not appear that mowing activities impacted habitats for the gnatcatcher in territories #2 or #4.

The third area we stopped at was located under a power line (north of territory #5, east of territory #10), in an area not previously supporting a gnatcatcher pair. This area consisted predominantly of encelia scrub that was mowed but was growing back. This area was previously mapped as CSS by PCR in 1997. Your vegetation map should be changed to reflect the predominantly native scrub vegetation located in this area.

Finally, we stopped at the vernal pools occupied by SDFS (pools 1, 2, and 3). The smallest pool was mowed, consistent to prior mowing patterns. The other two pools were previously flagged to prevent oil operators from entering the pools. The flagging is almost all gone and pool #2 to appears to extend outside the limits of old flagging now. All three pools should be flagged, with a buffer to minimize the potential for disturbance. We should also discuss options to initiate

restoration of the pools. Some manual vegetation removal within the pools may contribute to increasing the quality of habitat in the pools for SDFS.

I look forward to continuing our discussions of a potential consultation on oil operations and restoration on the project site.

Christine L. Medak
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, CA 92011
(760) 431-9440 ext. 298
<http://www.fws.gov/carlsbad/>

From: Christine_Medak@fws.gov [mailto:Christine_Medak@fws.gov]
Sent: Monday, July 11, 2011 4:13 PM
To: Jonna Engel
Subject: Fw: Banning Ranch Site Visit

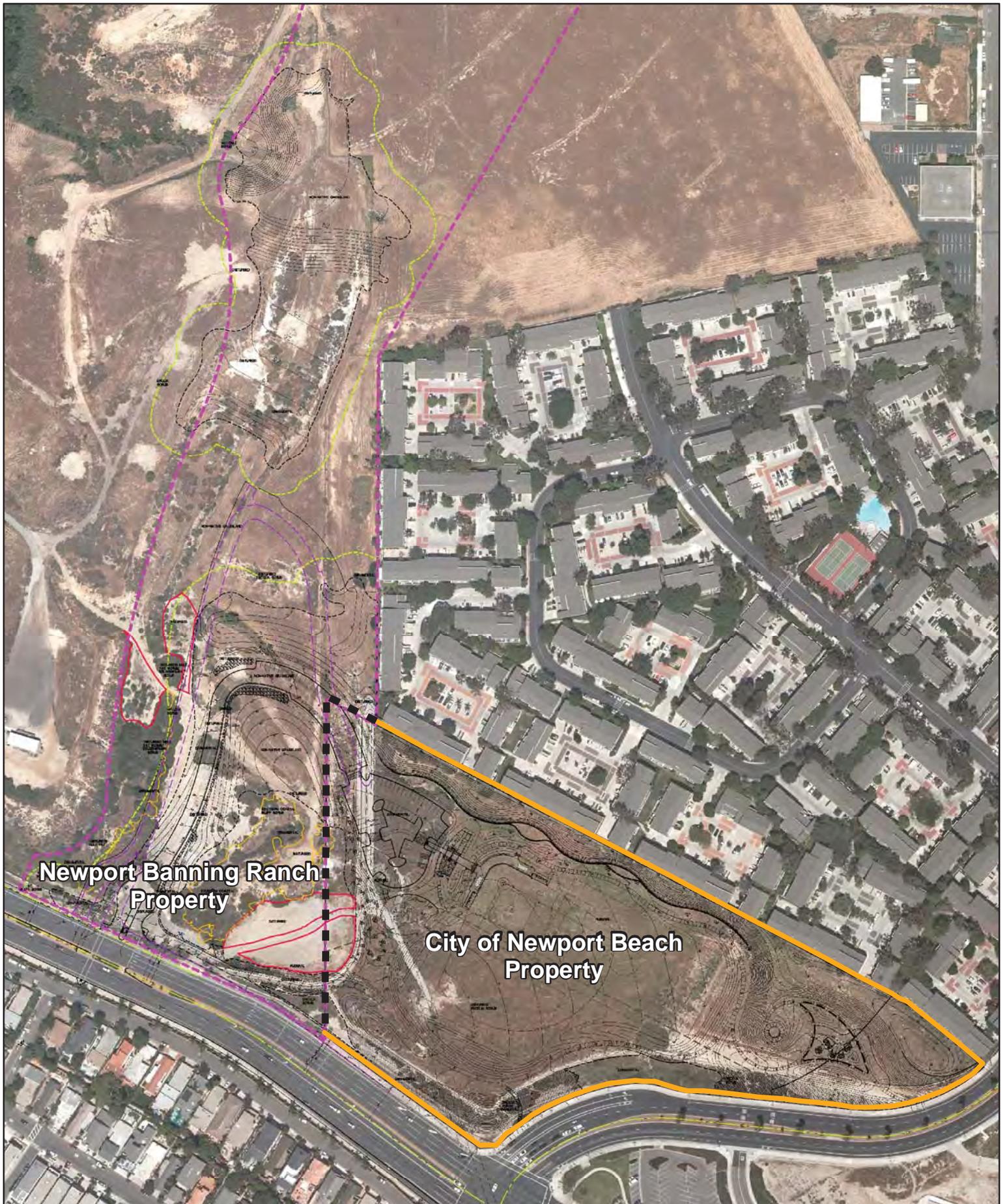
Jonna,

These are the recommendations I provided to Tony following our site Visit on June 14. The following week, I again visited the site with Mike Mohler, George, Mike Sincacore, Ann Johnston and another biologist from BonTerra(don't remember his name). While reviewing the potential revised alignment of the park entryway we again encountered gnatcatchers east of the apartment complex and north of territory 2 in a small patch of CSS and willow scrub vegetation. **[LOCATION A ON EXHIBIT 1]** It appeared that a male was defending a territory in this location and was not just foraging in the vicinity. My understanding was that Mike Mohler was planning to have 2 independent biologists survey the area to determine how it was being used by the gnatcatchers.

Hope this helps.







**Newport Banning Ranch
Property**

**City of Newport Beach
Property**



**Figure 1: Site of proposed Sunset Ridge Park.
Includes property owned by the City of Newport Beach and
Newport Banning Ranch.**
5-11-302 Exhibit 7 Page 34 of 72

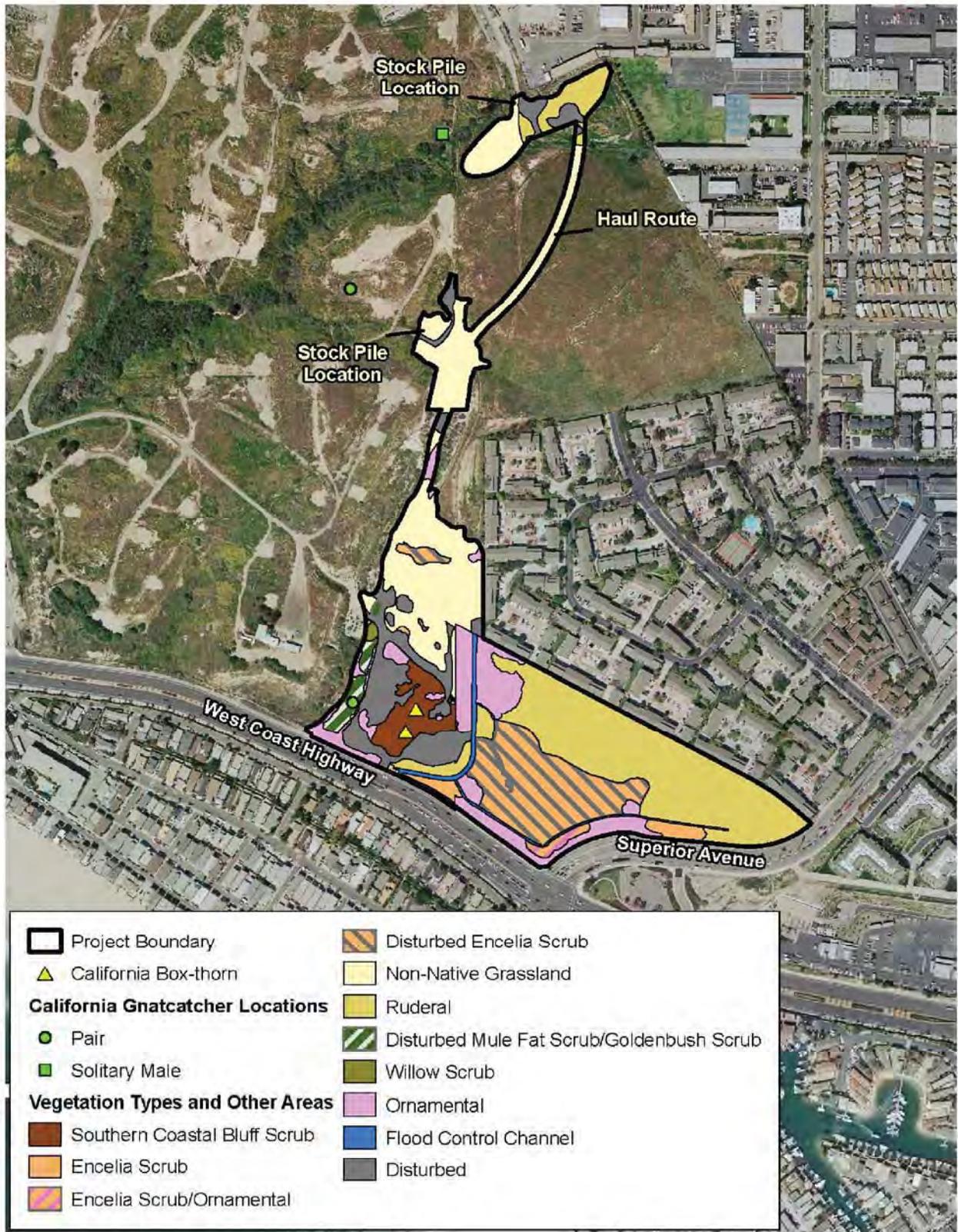


**Northwest
Polygon**

**Northeast
Polygon**

**Southeast
Polygon**





Special Status Biological Resources

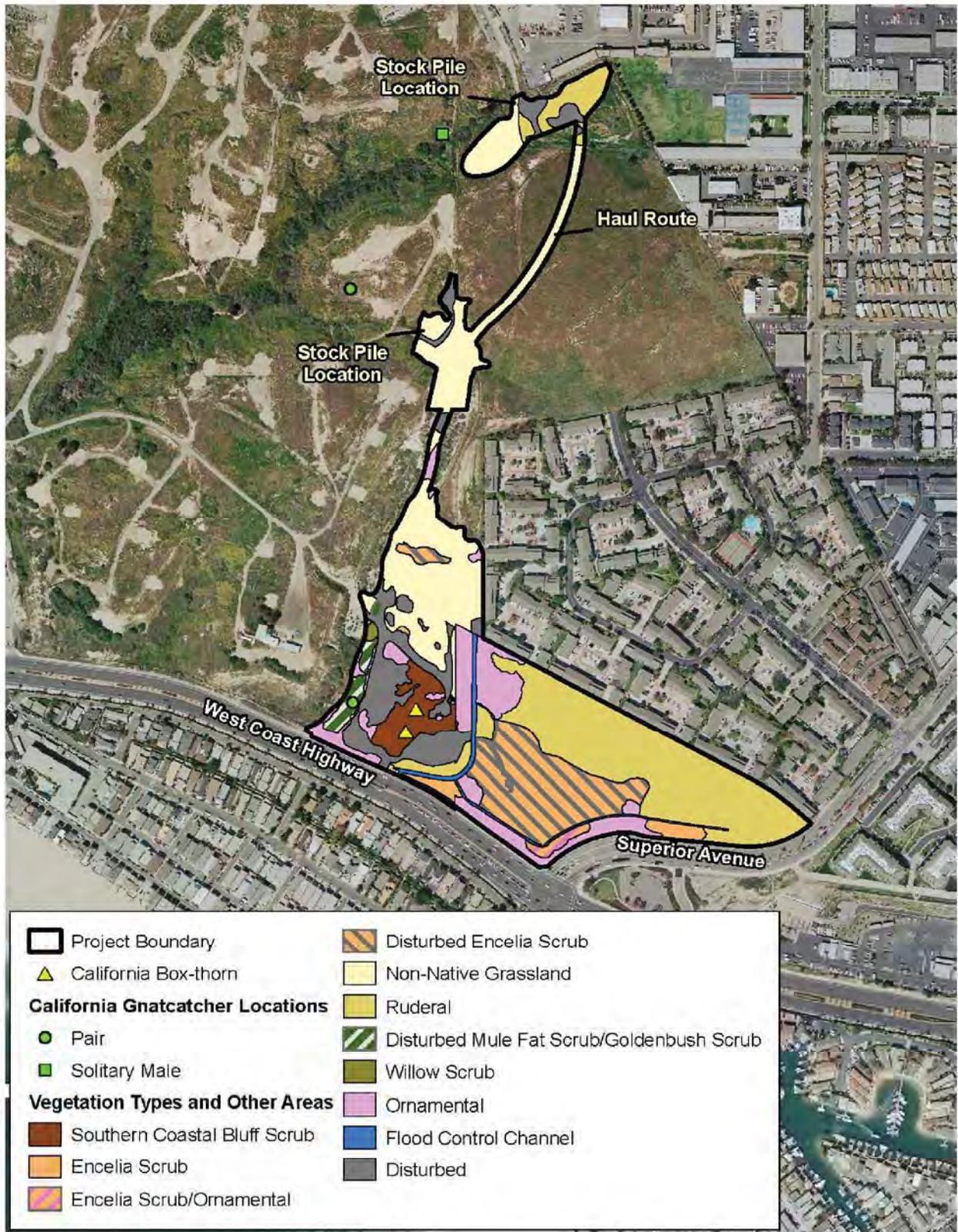
Exhibit 4.6-2

Sunset Ridge Park EIR



(REV. JFG 03-03-10)R:\Projects\Newport\016\Graphics\EIR\ex4.6-2_Special_Status.pdf





Special Status Biological Resources

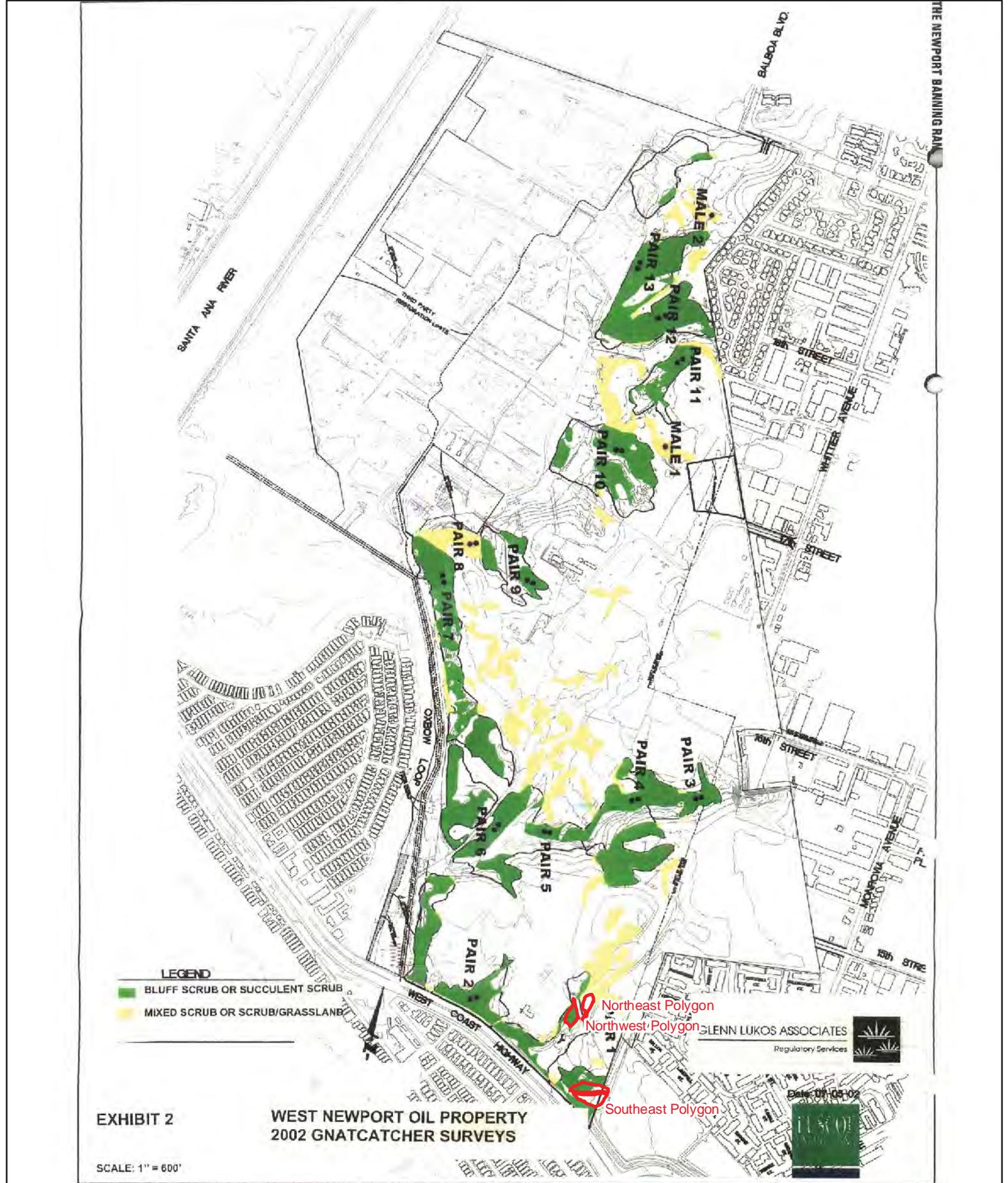
Exhibit 4.6-2

Sunset Ridge Park EIR



(REV. JFG 03-03-10)R:\Projects\Newport\016\Graphics\EIR\ex4.6-2_Special_Status.pdf





LEGEND
 ■ BLUFF SCRUB OR SUCCULENT SCRUB
 ■ MIXED SCRUB OR SCRUB/GRASSLAND

EXHIBIT 2

**WEST NEWPORT OIL PROPERTY
 2002 GNATCATCHER SURVEYS**

SCALE: 1" = 600'

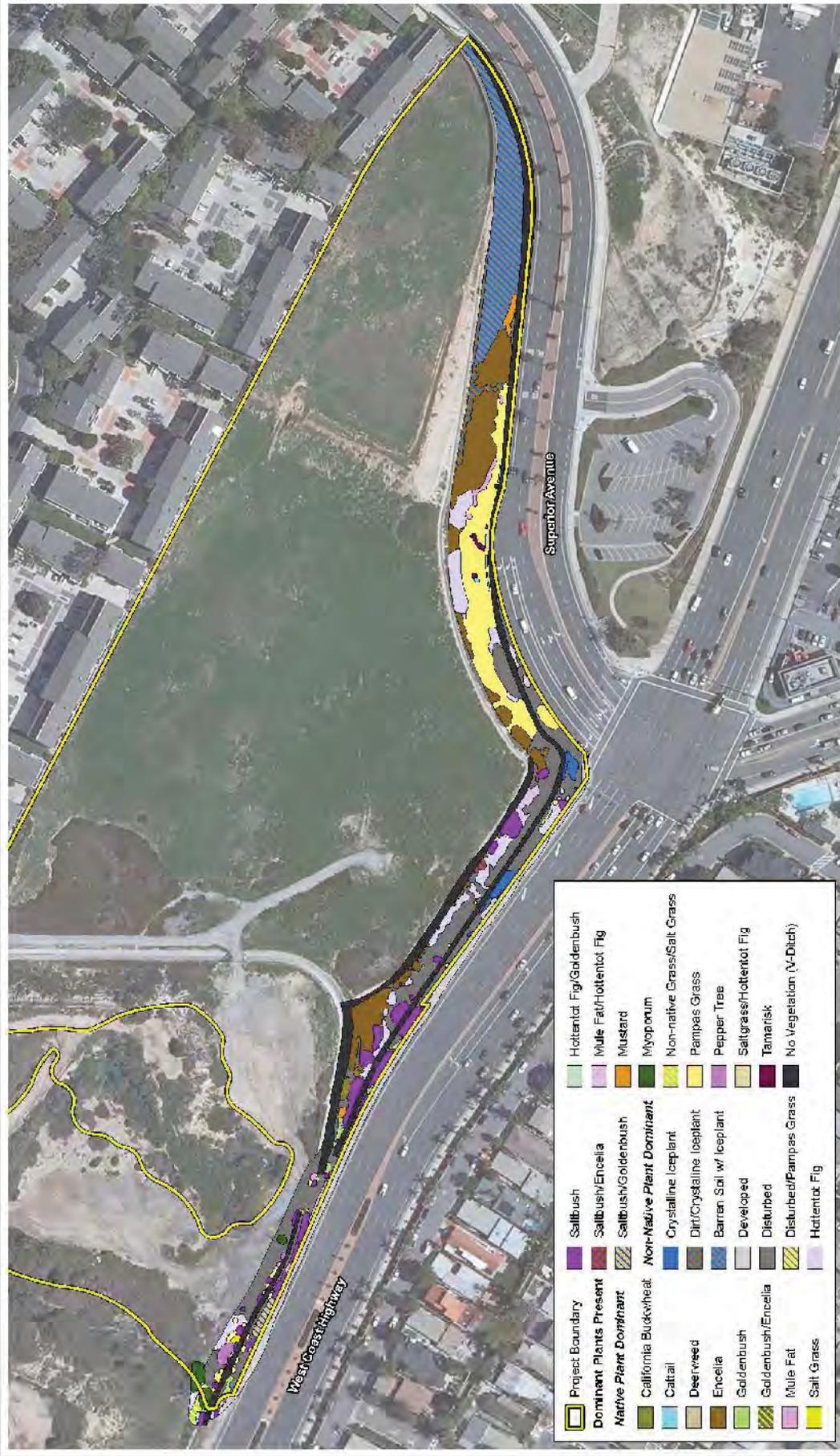
Northeast Polygon
 Northwest Polygon
 Southeast Polygon

GLENN LUKOS ASSOCIATES
 Regulatory Services

Date: 07-04-02



Figure 5



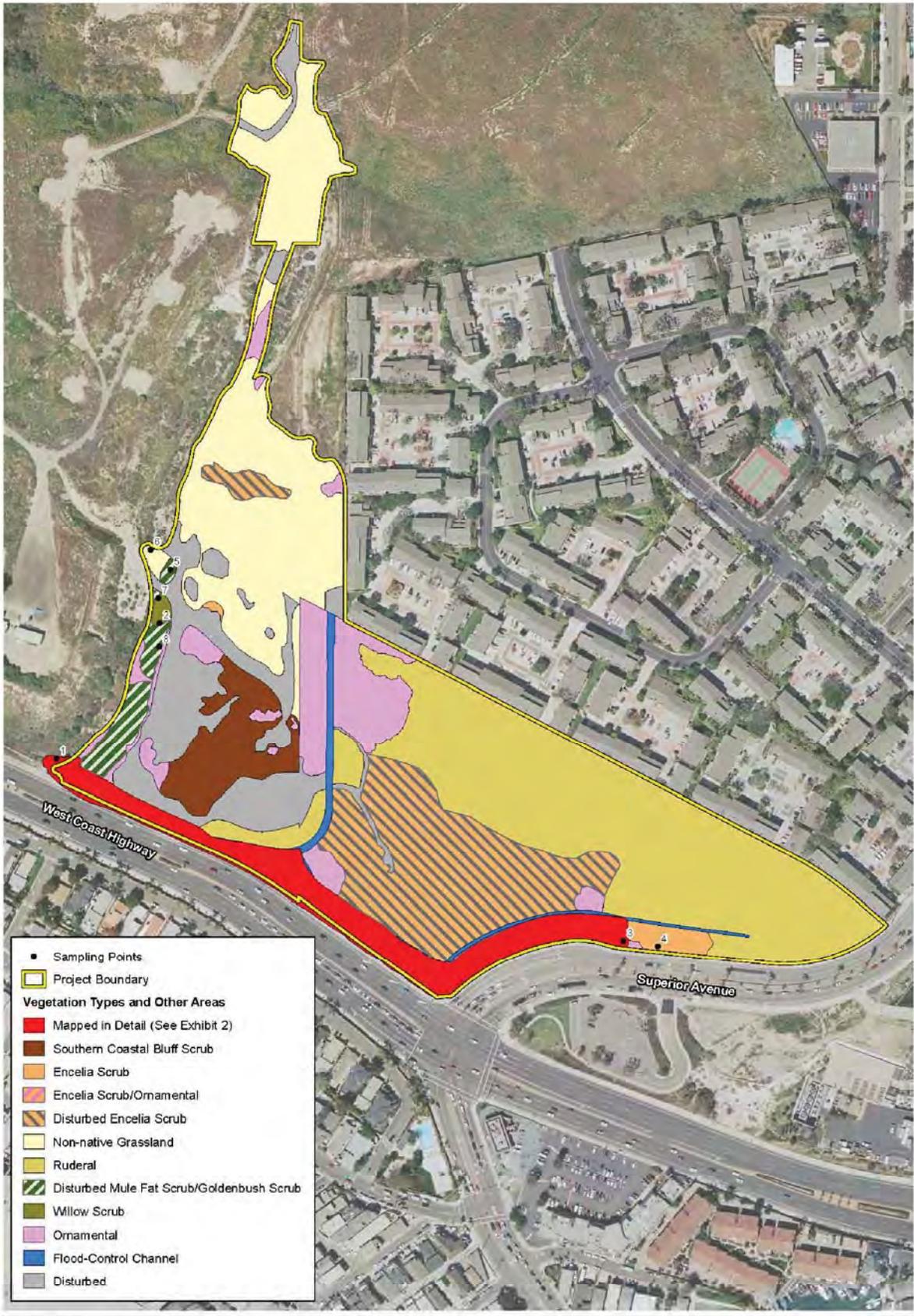
	Project Boundary		Salibush		Hottentot Fig/Goldenbush
	Dominant Plants Present		Salibush/Encelia		Mule Fat/Hottentot Fig
	Native Plant Dominant		Salibush/Goldenbush		Mustard
	California Buckwheat		Non-Native Plant Dominant		Myoporum
	Caltrail		Crystalline Iceplant		Non-native Grass/Salt Grass
	Deerweed		Dist/Crystalline Iceplant		Pampas Grass
	Encelia		Barron Soil w/ Iceplant		Pepper Tree
	Goldenbush		Developed		Saltgrass/Hottentot Fig
	Goldenbush/Encelia		Distributed		Tamarisk
	Mule Fat		Disturbed/Pampas Grass		No Vegetation (V-Ditch)
	Salt Grass		Hottentot Fig		

Exhibit 2

BonTerra CONSULTING
 1000 S. GARDEN AVENUE, SUITE 200, ANAHEIM, CA 92805
 TEL: 714.944.8800 FAX: 714.944.8801 WWW.BONTERRA.COM

Detailed Vegetation Types and Other Areas
 Sunset Ridge Park





Vegetation Types and Other Areas

Sunset Ridge Park



Exhibit 1



(Rev: 02-08-11) WADJ:R:\Projects\Mapworks\GIS\MapInfo\stated_Veg_Mapping\GIS_Veg.ppt



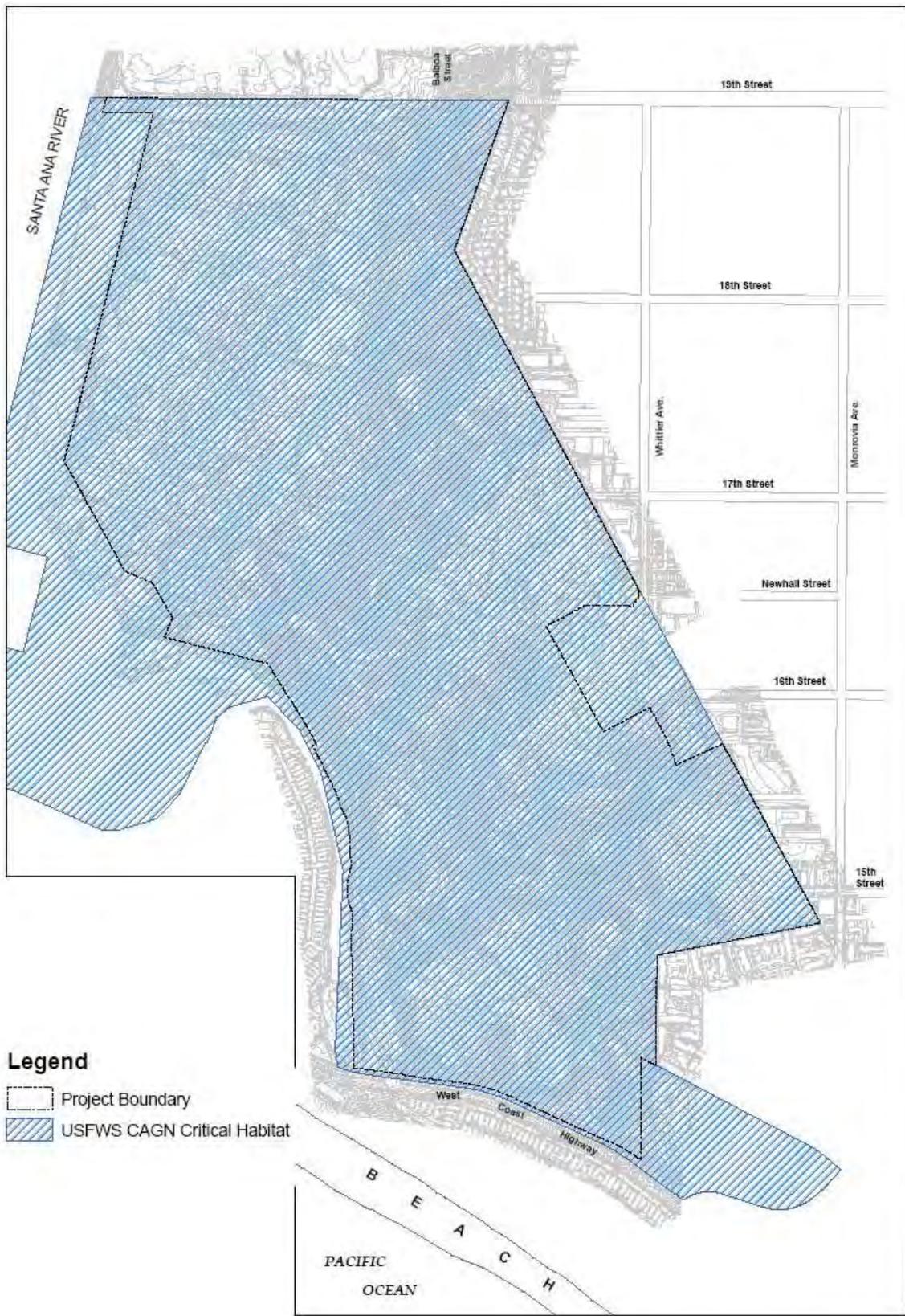
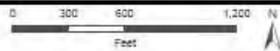


Exhibit 13

California Gnatcatcher Critical Habitat Unit Map

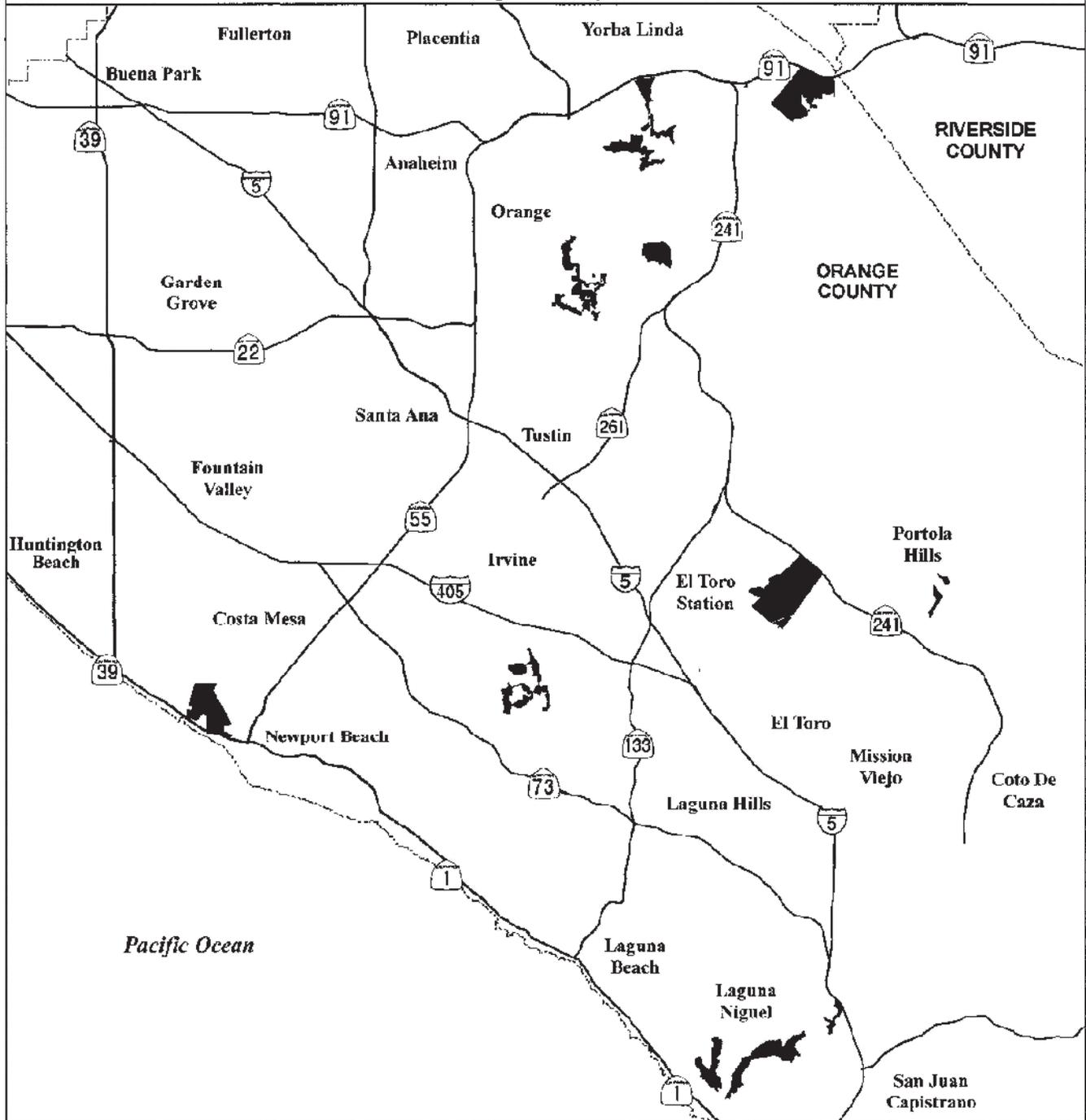


X:\0363-THE REST\0472-08BANN\472-6.GIS\BIOGIS\BIOB\472-60AGNDec2007_CriticalHabitat_SF.mxd

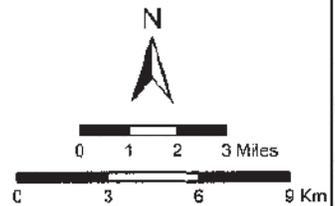


All Locations Approximate.
 For Illustrative Purposes Only.
 Source: Glenn Lukos Associates.

Map 7
 Critical Habitat for Coastal California Gnatcatcher (*Poliptila californica californica*),
 Unit 7, Orange County, California



Critical Habitat
 County boundary





ESHA
West

ESHA
East





Habitat from LSA (c. 1991)

- | | | | |
|--|--------------------------------------|--|--|
| | Annual Grassland (AG) | | Disturbed (DIST) |
| | Coastal Bluff Scrub (CBS) | | Non-native Woodland (NNW) |
| | Mixed AG/CBS | | Palustrine, Scrub, Evergreen, Baccharis (mulefat scrub) (PSEB) |
| | Disturbed Coastal Bluff Scrub (CBSD) | | Ruderal Scrub (RS) |

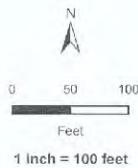
Not To Scale.
 All Locations Approximate.
 For Illustrative Purposes Only.
 Sources: LSA, 1991.

Figure 13



Legend

- Property Location
- Transect Location
- Subject Polygons
- PCR Coastal Scrub Within Subject Polygons (1998)



NEWPORT BANNING RANCH

Transect Location Map

GLENN LUKOS ASSOCIATES



Exhibit 9

X:\0363- THE REST\0472_C83A\NM\472_8_GIS\workspace\workspace\GIS\472_9NOV_09\Exhibit9.mxd



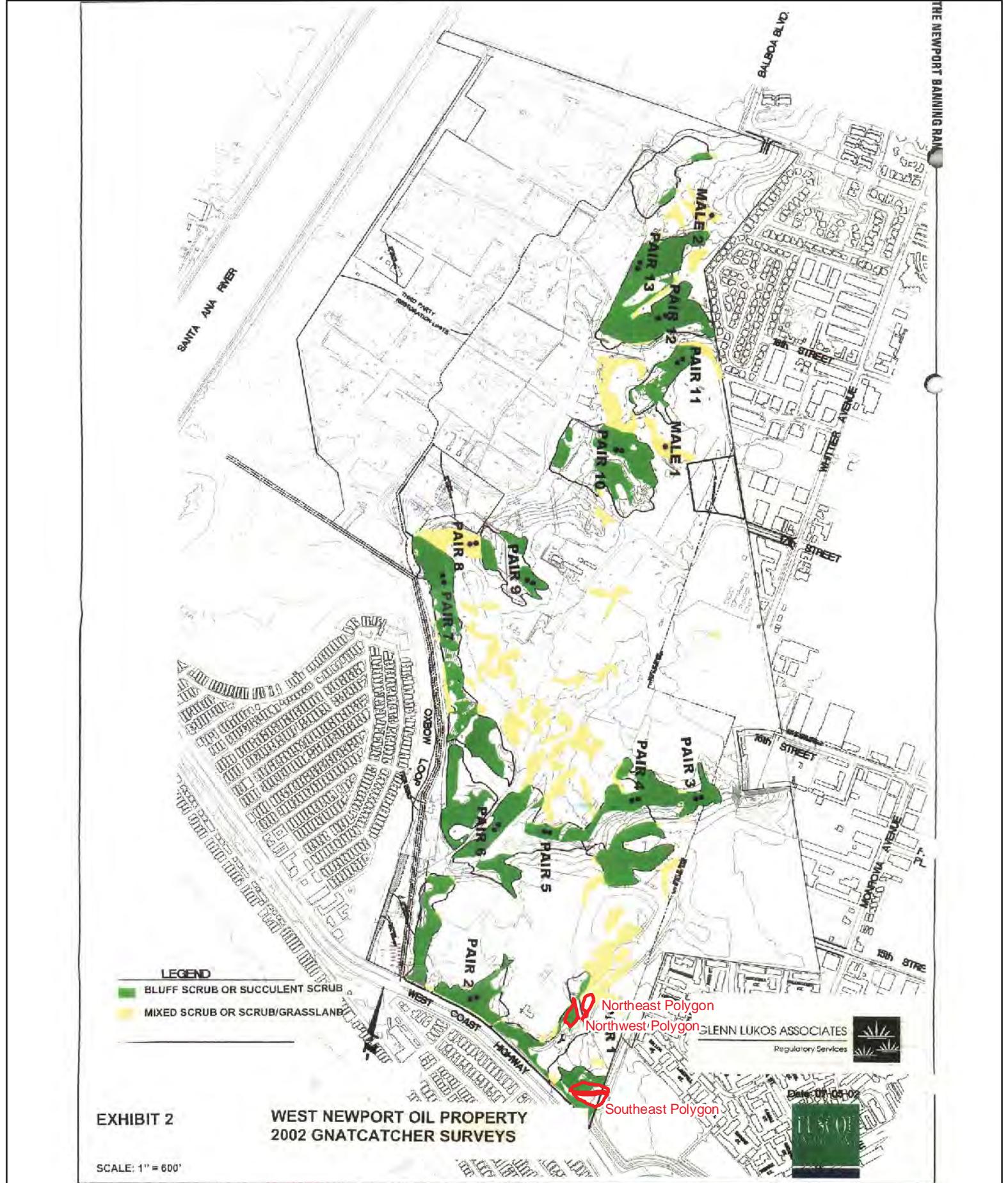


EXHIBIT 2

**WEST NEWPORT OIL PROPERTY
2002 GNATCATCHER SURVEYS**

SCALE: 1" = 600'

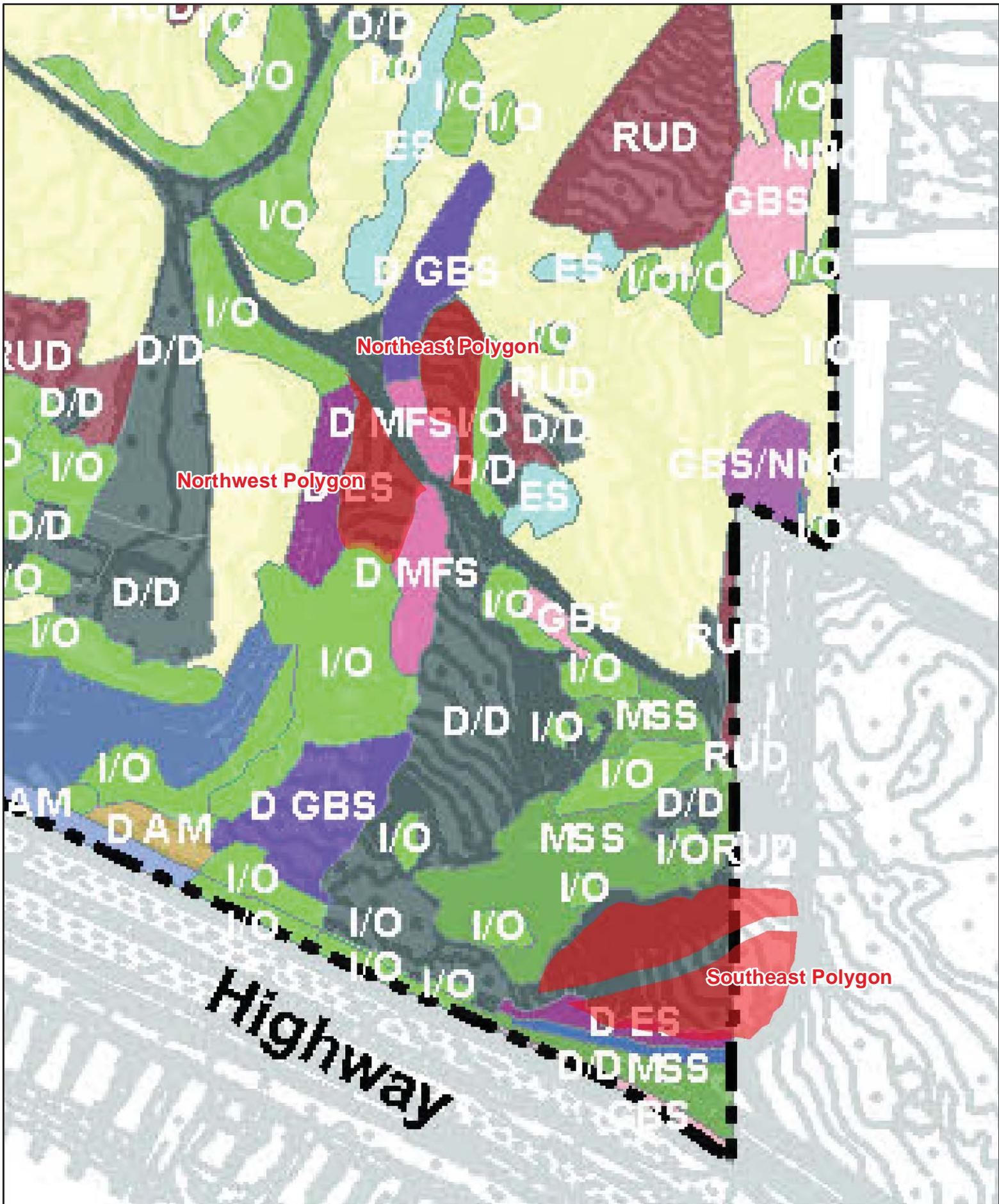
- LEGEND**
- BLUFF SCRUB OR SUCCULENT SCRUB
 - MIXED SCRUB OR SCRUB/GRASSLAND

Northeast Polygon
Northwest Polygon
Southeast Polygon

GLENN LUKOS ASSOCIATES
Regulatory Services

Date: 07-04-02





SANTA ANA RIVER

19th Street

18th Street

17th Street

Newhall Street

16th Street

Monrovia Ave.

15th Street

Bal
St

Whittier Ave.

West Coast Highway

PACIFIC OCEAN

B
E
A
C
H

Legend

-  Project Boundary
-  ESHA Scrub
-  Non-ESHA Scrub
-  ESHA Wetland and/or Riparian
-  Non-ESHA Wetland and/or Riparian

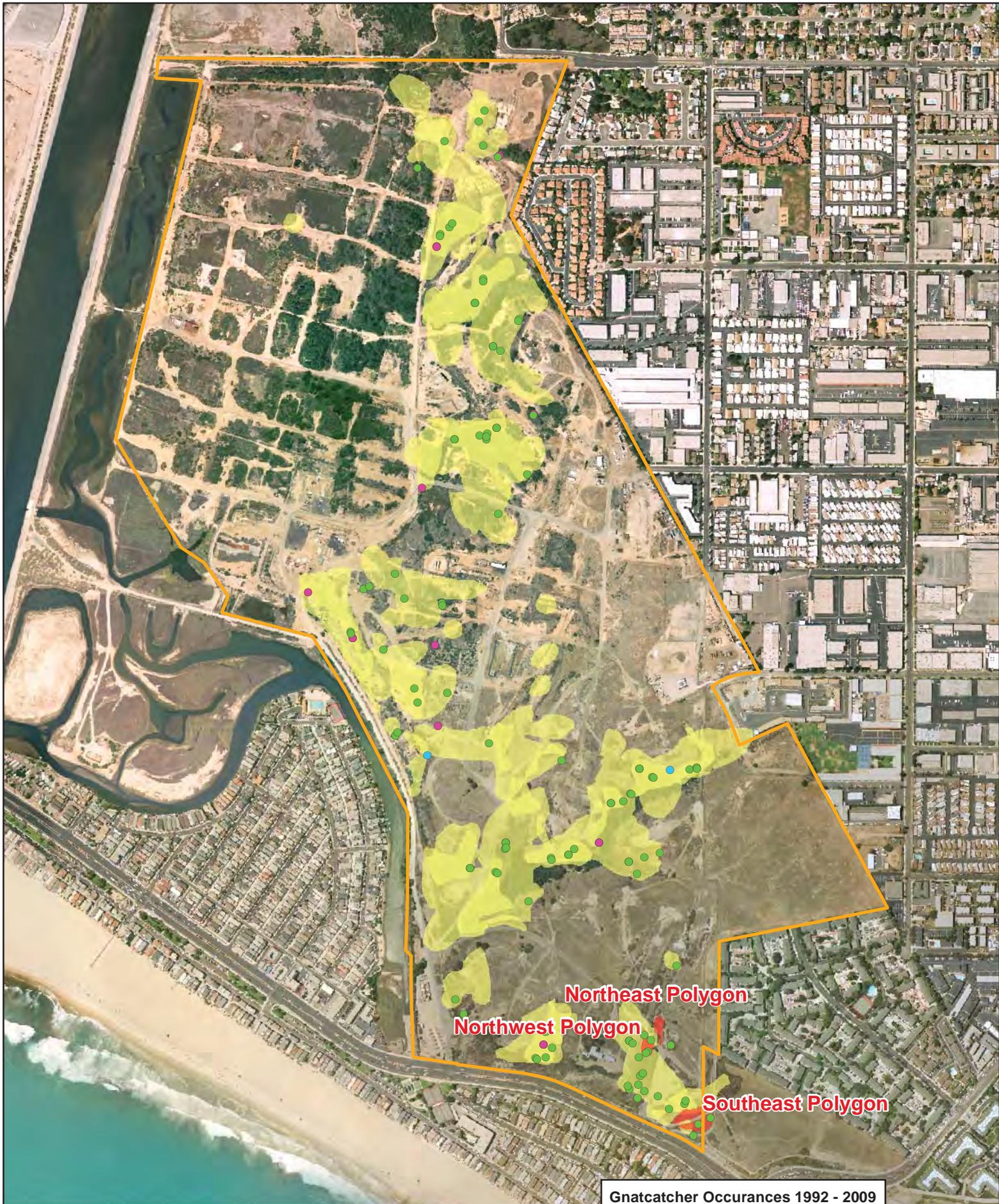
Northeast Polygon
 Northwest Polygon
 Southeast Polygon

Exhibit 12

Environmentally Sensitive Habitat (ESHA) Map



Not To Scale.
 All Locations Approximate.
 For Illustrative Purposes Only.

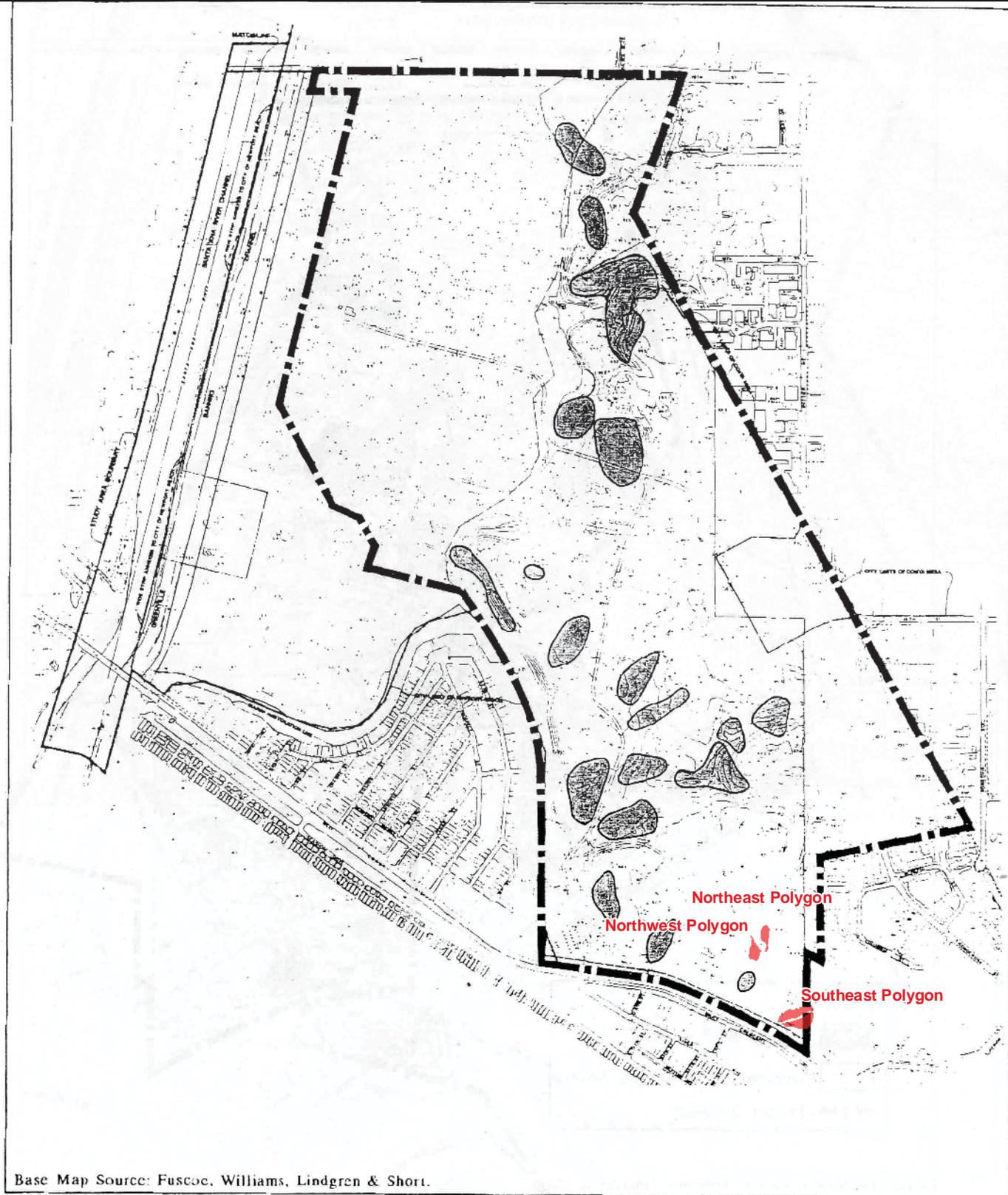


Gnatcatcher Occurances 1992 - 2009

- Pair Observed
- Single Observation of Unpaired Male
- Multiple Observations of Unpaired Male
- ✶ Estimated CAGN territories



Not To Scale.
 All Locations Approximate.
 For Illustrative Purposes Only.
 Sources: GLA, LSA.

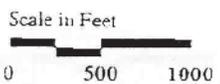


Base Map Source: Fuscoe, Williams, Lindgren & Short.

2/19/93(WNO201)



LSA



California Gnatcatcher Territories - Spring 1992





Northeast Polygon

Northwest Polygon

Southeast Polygon

1992

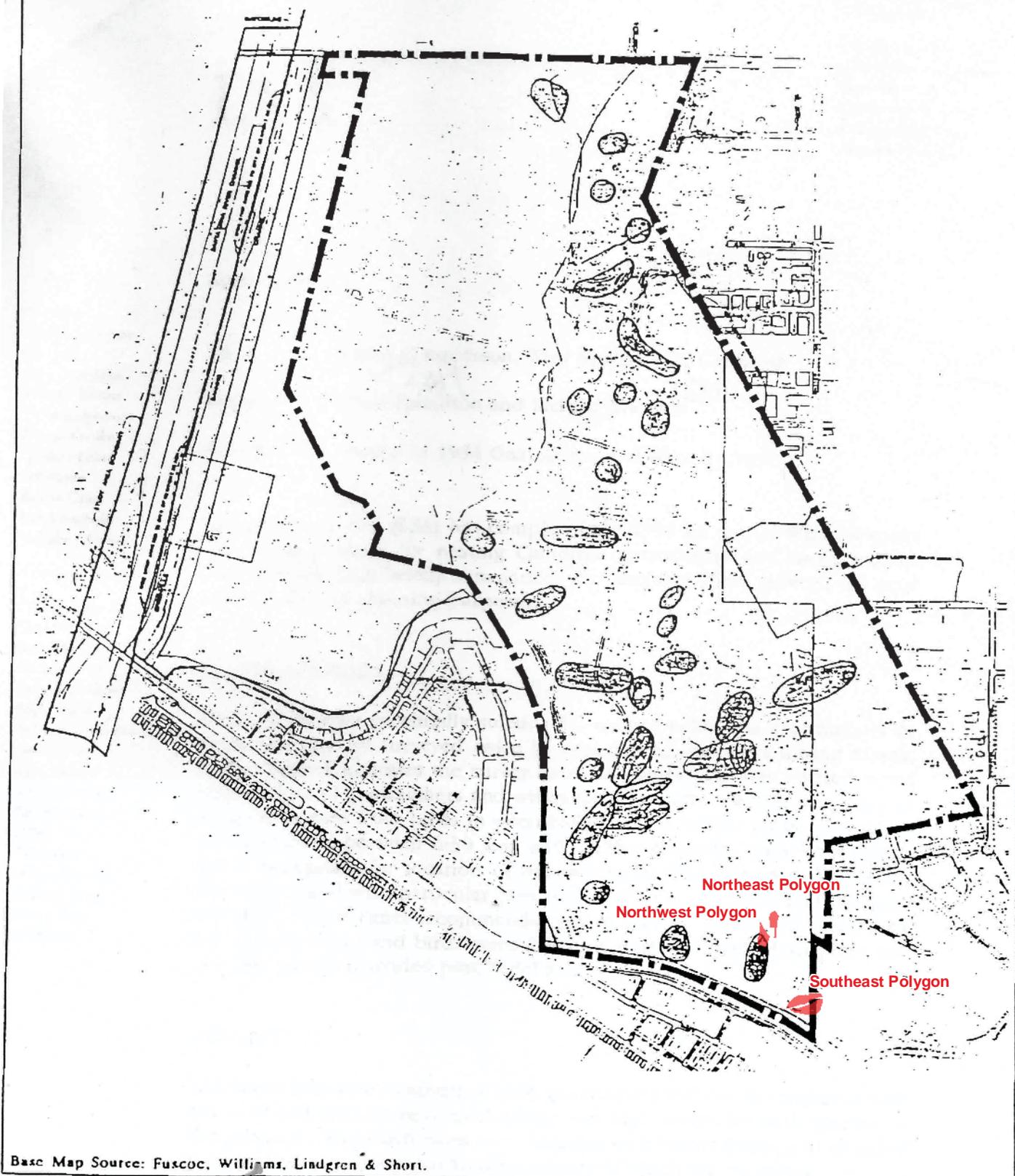
1992
1992

1992
1992

1992







Base Map Source: Fuscoc, Williams, Lindgren & Short.
 4/7/94(WNO401)



Scale in Feet

gnatcatcher



Not To Scale.
 All Locations Approximate.
 For Illustrative Purposes Only.
 Source: LSA 1994.

Figure 21a



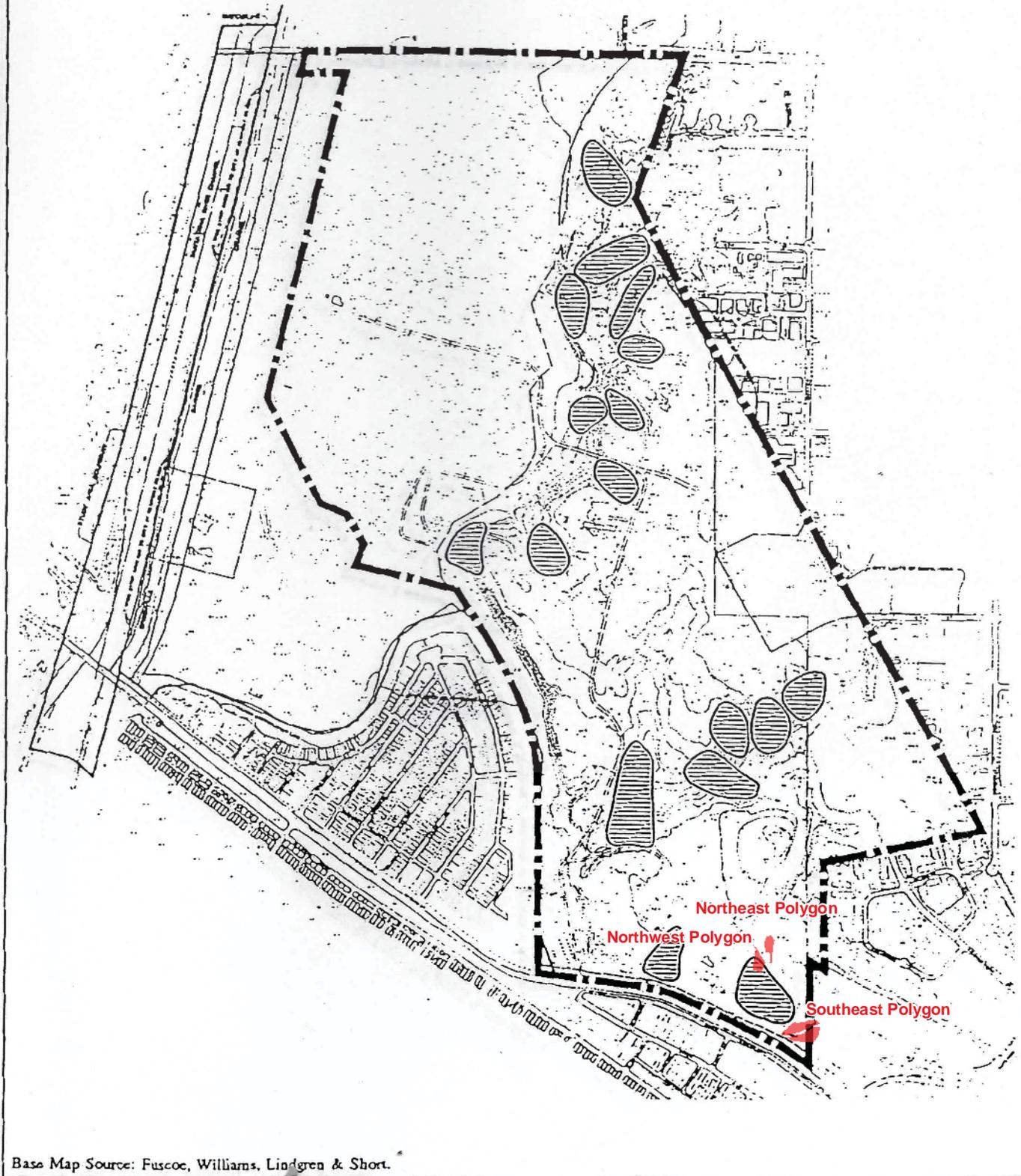
Northeast Polygon

Northwest Polygon

1994 1994

Southeast Polygon





Base Map Source: Fuscoe, Williams, Lindgren & Short.

4/15/96(WNO201)

Figure 1



Scale in Feet



Spring 1996

gnatcatcher





Northeast Polygon

Northwest Polygon

Southeast Polygon



LEGEND

- General Location of Development Phase
- Building's General Location
- (with dot) Coastal Salt Marsh

Project Boundary



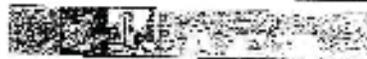
No Scale

Northeast Polygon
 Northwest Polygon
 Southeast Polygon

Figure 10
Listed Species
Occupied Habitat
1998

Date Prepared: 1-25-99

GLENN LUKOS ASSOCIATES
REG. CIVIL ENGINEER



Preliminary Draft For Discussion Purposes Only

Integrated Resource Conservation Plan





Northeast Polygon

1998

Northwest Polygon

1998

1998

Southeast Polygon





LEGEND



California Gnatcatcher Observation Areas

2000





Northeast Polygon

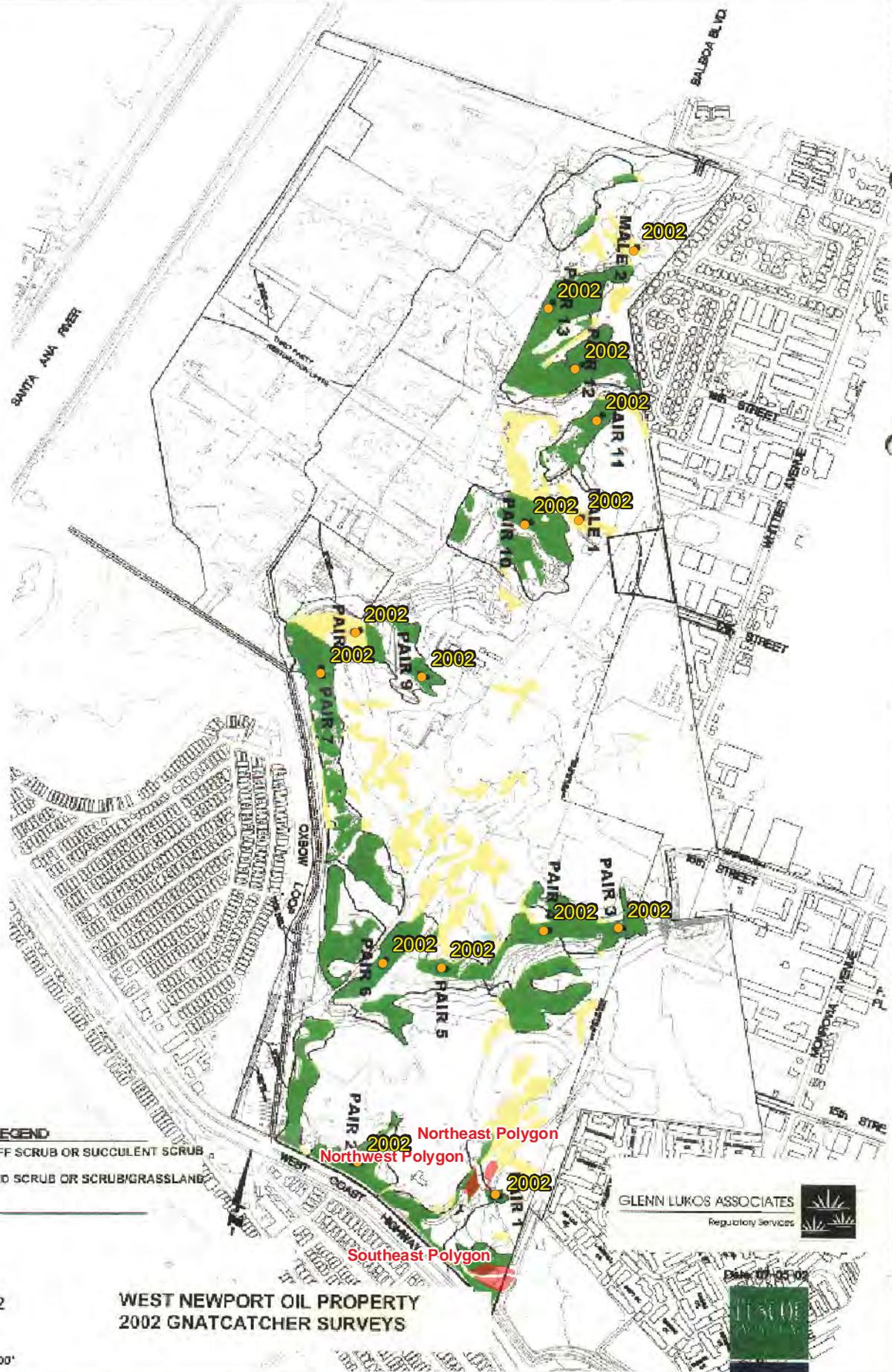
2002

Northwest Polygon

2002

Southeast Polygon





LEGEND
 ■ BLUFF SCRUB OR SUCCULENT SCRUB
 ■ MIXED SCRUB OR SCRUB/GRASSLAND

EXHIBIT 2

**WEST NEWPORT OIL PROPERTY
2002 GNATCATCHER SURVEYS**

SCALE: 1" = 600'

GLENN LUKOS ASSOCIATES
 Regulatory Services

Date: 07-05-02





Gnatcatcher Occurances 2006	
●	Pair
●	Single



Northeast Polygon

2007

Northwest Polygon

Southeast Polygon







SOURCE: MAPPING 1997
PCR, October 1997



 CALIFORNIA GNATCATCHER TERRITORIES

 PROPERTY BOUNDARY
CAGA 25

- | | | |
|---------|----------|----------|
| 1 - 222 | 7 - 285 | 12 - 293 |
| 2 - 272 | 10 - 276 | 13 - 290 |
| 3 - 274 | 11 - 277 | |
| 4 - 250 | 12 - 288 | |
| | 13 - 287 | |

Figure 3
Newport Banning Ranch -
California Gnatcatcher Sightings
and Territories

PCR



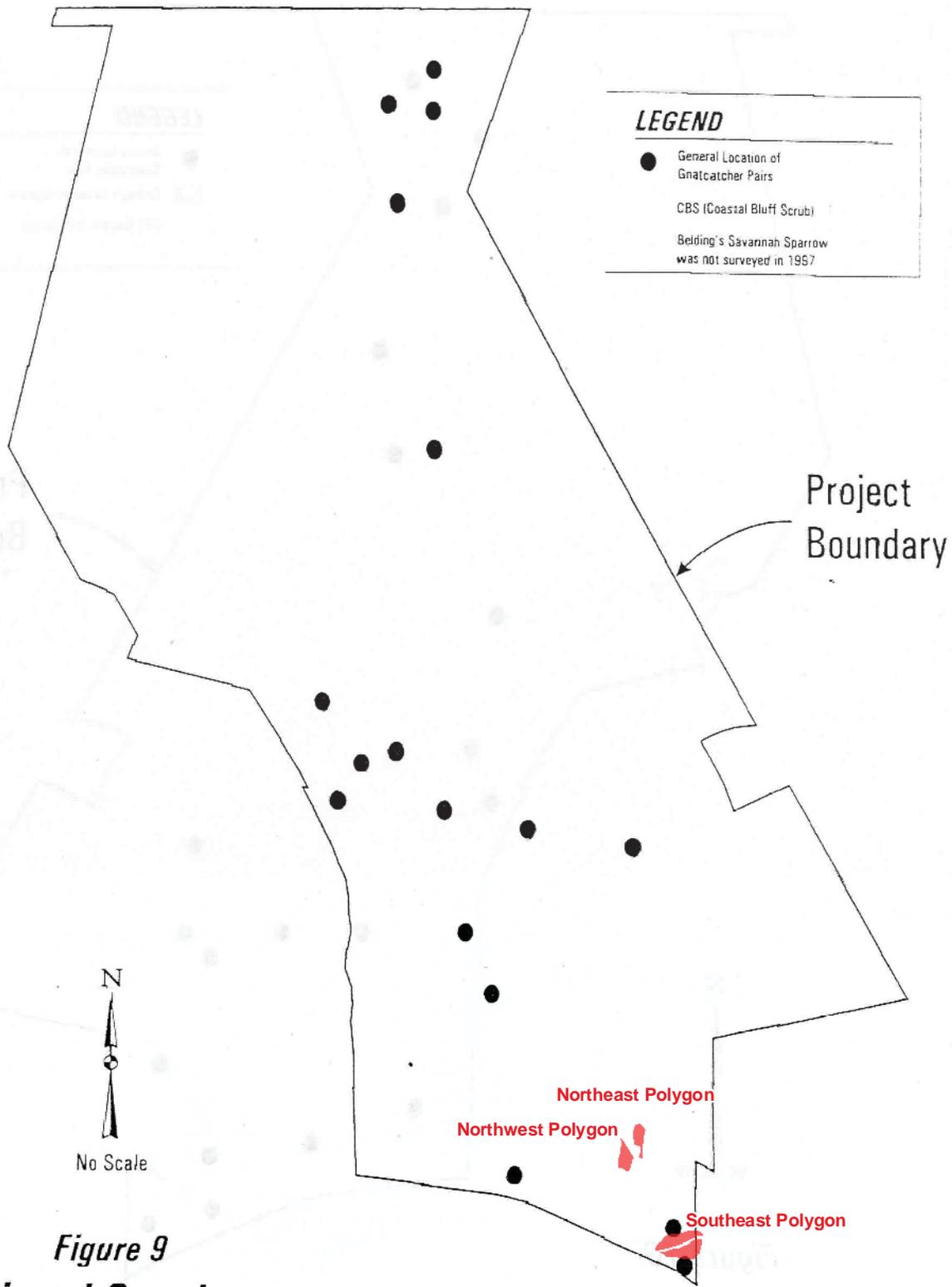


Figure 9
Listed Species
Occupied Habitat
1997

Date Prepared: 1-25-99

GLENN LUKOS ASSOCIATES
 Regulatory Services



Preliminary Draft For Discussion Purposes Only

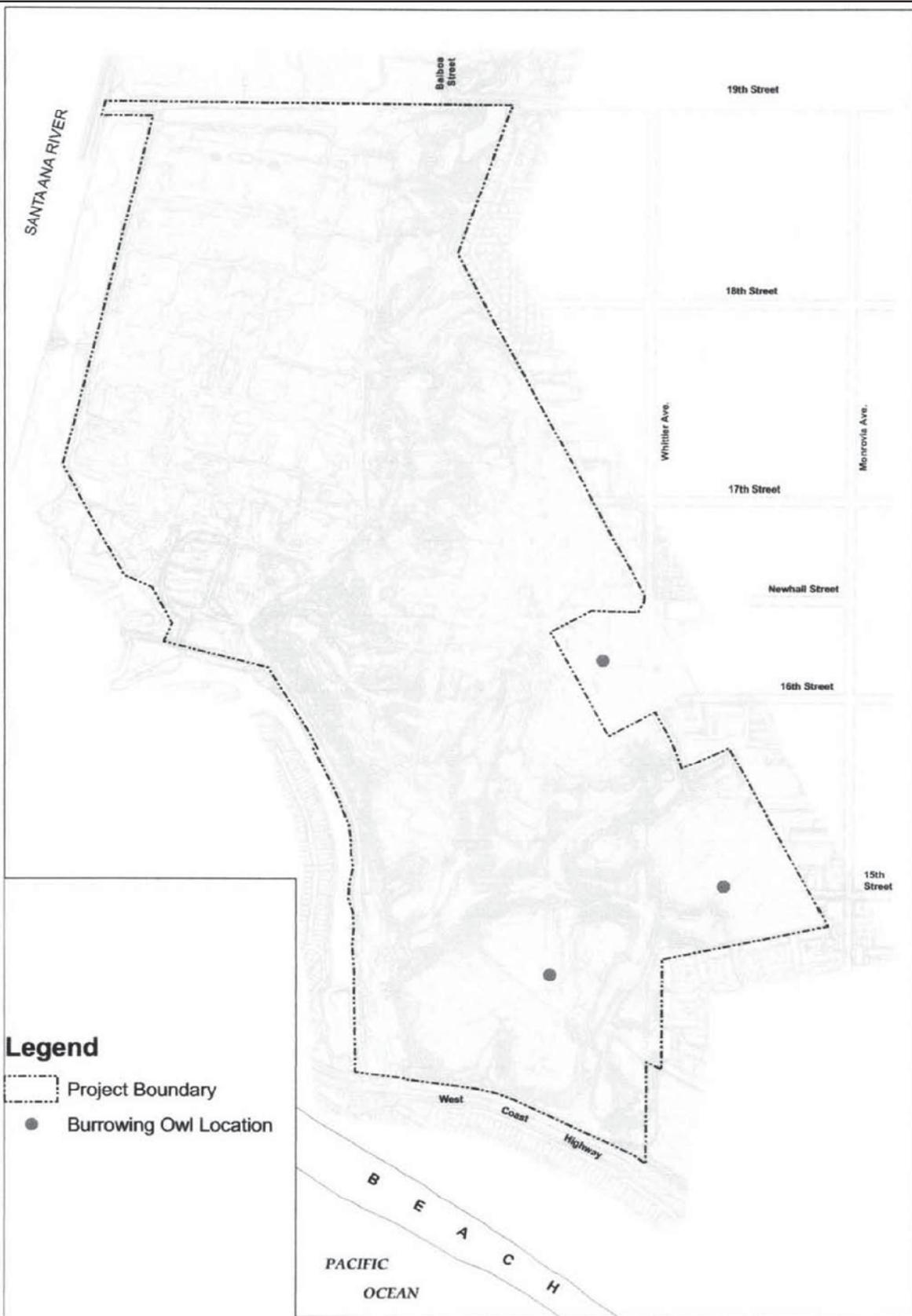
Integrated Resource Conservation Plan











Legend

- Project Boundary
- Burrowing Owl Location

Exhibit 7

2008 Wintering Burrowing Owl Location Map



GLENN LUKOS ASSOCIATES FORM

March 25, 2008





OFFICE OF THE ATTORNEY GENERAL

Department of Justice

333 CAPITOL MALL, SUITE 300
SACRAMENTO 95814
(916) 448-2588

April 6, 1978

RECEIVED APR 21 1978

RECEIVED
APR 10 1978
CALIFORNIA
COASTAL COMMISSION

Mr. Michael L. Fischer
Executive Director
California Coastal Commission
631 Howard Street
San Francisco, California 94105

Dear Mr. Fischer:

Re: Opinion No. SO 77/39 I.L.

Your predecessor, Joseph E. Bodovitz, as Executive Director of the California Coastal Commission, requested our advice concerning the meaning of that part of Public Resources Code section 30106.1/ which defines "development" to include "the removal or harvesting of major vegetation other than for agricultural purposes. . . ." You have also asked that we consider the applicability of this statutory language to eight fact situations and determine whether any or all of them involve a "development" and thus require a permit under the 1976 California Coastal Act.

We conclude that whether any particular vegetation is "major" depends on its size, extent, variety, uniqueness, and relation to the environment in which it is located. If vegetation is major, its removal or harvesting constitutes a "development" and requires a coastal permit unless done in furtherance of an "agricultural purpose."

Referring to the factual situations forwarded, the following could be included in removal or harvesting of major vegetation "for agricultural purposes": conversion of

1. All statutory references are to the Public Resources Codes unless otherwise indicated.

COASTAL COMMISSION

EXHIBIT # 8
PAGE 1 OF 12

acreage to fruit trees; conversion of approximately 30 acres of walnut trees for cattle grazing and row crops; thinning of native vegetation and orchard trees to promote air circulation and convert acreage to row crops; replacement of mature lemon trees with younger lemon stock; thinning of an avocado orchard to allow more vigorous growth and production on the part of the remaining trees; and conversion of areas of native vegetation to lemons or avocado trees. Where removal or harvesting of major vegetation is "for agricultural purposes" it is not a "development" within the meaning of section 30106. Whether the particular removal or harvesting in each case is for this purpose, however, will in each instance be a question of fact.

ANALYSIS

The Legislature has enacted a clause in section 30106 of the 1976 Coastal Act that defines "development" to include "the removal or harvesting of major vegetation other than for agricultural purposes. . ." The Legislature has not, however, defined the term "major vegetation" nor has it specified what constitutes "removal or harvesting. . ." for agricultural purposes." We must therefore employ the rules of statutory construction to ascertain the meaning of this language.

In analyzing any statutory language, we begin with the fundamental rule that a court should determine the intent of the Legislature so as to effectuate the purpose of the law. In doing so, the court turns first to the words themselves, giving effect to statutes according to the usual, ordinary import of the language employed in framing them. When used in a statute, words must be construed in context, keeping in mind the nature and purpose of the statute where they appear. The various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole. (Moyer v. Workmen's Comp. Appeals Bd. (1973) 10 Cal.3d 222, 230.) Individual provisions of conservation and environmental protection measures, such as the Coastal Act, must be interpreted broadly so as to ensure that the objective of the statute is attained, but the result must not be unreasonable. (Friends of Mammoth v. Board of Supervisors (1972) 8 Cal.3d 247, 259-61.) Legislative history can also be used as an aid in determining intent. (See Moyer v. Workmen's Comp. Appeals Bd., supra, at p. 231.)

COASTAL COMMISSION

EXHIBIT # 8
PAGE 2 OF 12

In applying these rules of construction to the clause in question, we must first look at the whole of section 30106, the immediate statutory context in which the language is found. Section 30106 provides:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

"As used in this section, 'structure' includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line." (Emphasis added.)

Even a cursory reading of this section indicates that it contains language other than that in question which would define certain agricultural activities as "developments." For instance, the building of a barn, silo, or windmill would be ". . . on land . . . the erection of any . . . structure" or "construction . . . of any structure." That some agricultural activities are defined as developments and require a coastal permit is significant because it indicates that the Legislature did not intend to exempt all activities

COASTAL COMMISSION

EXHIBIT # 8
PAGE 3 OF 12

Mr. Michael L. Fischer
Page 4

with agricultural purposes from the scrutiny of the permit process.

The clause in question took its present form following a Senate Committee amendment to SB 1579 on April 29, 1976. The first version of the Beilenson Bill SB 1579 (the forerunner of the Smith Bill SB 1277 that became the 1976 Coastal Act) had contained almost the identical language as the enacted section 30106 except for the clause in question, which then read "the removal or harvesting of major vegetation." On April 21, 1976, the California Farm Bureau Federation criticized section 30106, as it then existed, in a written statement to the Senate Natural Resources and Wildlife Committee:

"30106 -- Defines 'development' so as to include the moving of any irrigation pipe or watering trough, or taking a wheelbarrow load of gravel out of the creek for making stepping stones for the garden. It is far too broad and encompassing. It even includes any change of crop to one which would not use both the land and water with exactly equal intensity. Major vegetation is not defined. Can crops be harvested without a permit?"

In apparent response to this concern, the Committee succeeded in amending SB 1579 on April 29, 1976, by adding the language below following "removal or harvesting of major vegetation":

". . . other than for agricultural purposes or where such harvesting is in accordance with a timber-harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with section 4511) of Part 2 of Division 4)."

The term "kelp harvesting" was later inserted following "agricultural purposes." This language, as amended, was enacted into law under SB 1277 except for a minor change in the citation of the Forest Practice Act.

Having the Farm Bureau statement before it, the Committee proposed no changes in any language of section 30106 other than in the clause in question. The Legislature therefore must have realized and intended that any language

COASTAL COMMISSION

EXHIBIT # 8
PAGE 4 OF 12

Mr. Michael L. Fischer
Page 5

of section 30106, other than that in the clause in question, that had previously applied coastal permit scrutiny to certain agricultural purposes would continue to do so.

This is significant because not all removal or harvesting of major vegetation alone accomplishes an agricultural purpose. In many instances, removal or harvesting is only preliminary to an additional activity or activities necessary to accomplish the agricultural purpose. Yet those additional activities may constitute developments under section 30106.

We will thus use a two-part framework for analyzing the clause in question. We will first discuss the meaning of "major vegetation." We will then discuss "removal or harvesting" that is for an "agricultural purpose."

In all our analysis of the undefined language in the clause in question, we shall be guided by legislative intent. We have already seen that this clause was amended apparently in response to Farm Bureau criticism. In doing so, the Legislature may have believed and intended that the amendment disposed of some of the Bureau's concerns. It may have also believed and intended that the existing language of section 30106 did not apply as broadly as the Bureau feared and therefore saw no need to amend all of the language. In sum, the Legislature may have believed and intended that section 30106, as amended, did not define as a "development" the moving a wheelbarrow load of gravel, or the change from one crop to another, or the harvesting of a crop.

That this was the Legislature's belief and intent is buttressed by the statement of State Senator Jerry Smith, the author of SB 1277, in the Senate Journal of August 31, 1976:

"... During the debate on SB 1277, questions were raised relative to the interpretation of several provisions in the bill. Several of these questions have been dealt with in AB 2948. By including this letter in the Senate Journal, it is my purpose to clarify my intent, as the author of SB 1277, with respect to the remaining provisions. I have made these same statements of intent before both the Senate and Assembly Committees. Speaker McCarthy made similar representations, with my

COASTAL COMMISSION

EXHIBIT # 8
PAGE 5 OF 12

full concurrence, during the debate on this bill before the full Assembly.

.....

"The use of agricultural lands: SB 1277 does not, is not intended to, and should not be construed to authorize the coastal commission to mandate, prescribe or otherwise regulate agricultural operations or management practices (including, but not limited to: types of crops to be cultivated, harvested or processed; types of animals or poultry to be raised or processed; cropping patterns; irrigation, cultivation or yield techniques). . . ." (Senate Journal 1975-76, Regular Session, Volume 9, pp. 16967-68.)

We have already considered the language of section 30106, the immediate context of the clause in question. The larger context, the 1976 Coastal Act itself, is also instructive on the question of legislative intent. Sections 30241 and 30242 express a policy of hands off at least as to on-going coastal agricultural activities:

"The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the area's agricultural economy. . . ." (Emphasis added.) (§ 30241.)

"All other lands suitable for agricultural use shall not be converted to nonagricultural use unless (1) continued or renewed agricultural use is not feasible. . . ." (Emphasis added.) (§ 30242.)

On the other hand, the Coastal Plan found that:

"Agriculture Can Have Adverse Environmental Effects that Require Control. Agricultural operations may have such adverse effects as . . . removal of large areas of native vegetative cover (common in the development of citrus and avocado orchards), and heavy drafts on surface and groundwater supplies." (Emphasis added.) (California Coastal Plan, p. 55.)

COASTAL COMMISSION

EXHIBIT # 8
PAGE 6 OF 12

This finding was expressed as policy in section 30231 of the Coastal Act:

"The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained, and where feasible, restored through . . . preventing depletion of ground water supplies and substantial interference with surface water flow . . ." (Emphasis added.) (§ 30231.)

To the extent that policies may conflict, the Coastal Act provides further:

"The Legislature further finds and recognizes that conflicts may occur between one or more policies of this 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. . . ." (Emphasis added.) (§ 30007.5.)

"This division shall be liberally construed to accomplish its purposes and objectives." (§ 30009.)

With these provisions in mind, we can recognize and give account to a legislative intent to leave hands off coastal agricultural activity, especially in ongoing agricultural use of land, but also to scrutinize major changes in water consumption associated with agriculture as might result from large-scale removal of native vegetation in the conversion of undeveloped land into agricultural use. To the extent that these intents conflict, we believe they can be resolved by reasonable statutory construction that, on balance, is most protective of significant coastal resources.

1. Major Vegetation

"Vegetation" is a broad and inclusive term. Webster's Collegiate Dictionary defines "vegetation" as "The sum of vegetable life; plants in general. . . ." The real inquiry, therefore, is as to the meaning of "major."

COASTAL COMMISSION

EXHIBIT # 8
PAGE 7 OF 12

Webster's Seventh New Collegiate Dictionary defines "major" as "adj. . . . 1. greater in dignity, rank, importance, or interest 2. greater in number, quantity, or interest. . . . 4. notable or conspicuous in effect or scope. . . ." Funk and Wagnalls Standard Collegiate Dictionary defines "major" as "adj. 1. Greater in quantity, number, or extent. 2. Having primary or greater importance. . . ." Finally, Black's Law Dictionary defines it as "Greater or larger. Zenith Radio Distributing Corporation v. Mateer, 35 N.E.2d 815, 816." It is apparent, therefore, that "major" refers to the importance as well as the size of the vegetation in question.

It is impossible to define "major" so comprehensively and precisely as to resolve all questions in advance. At best, we can list factors and parameters to be considered, noting that size and importance may be either exclusive or supplementary determinants in a particular case. The absolute size of a particular form of vegetation, as a large tree or perhaps any mature tree, could alone render it major. The relative size of a particular specimen in relation to the average size of its variety might make it major on grounds of size and importance (uniqueness). The total size or extent of a number of specimens of a particular variety growing together or found in large numbers in close proximity to each other could constitute major vegetation regardless of the size of each individual specimen.

If a particular specimen or variety of vegetation were deemed important, this could buttress considerations of size and extent or could render the vegetation major even without regard to size and extent. A particular specimen or variety might be unique to a certain area, not found anywhere else. Its location in a particular area might also render it major if, for example, it was necessary part of a scenic landscape or a wildlife habitat or in some other way part of an integrated environment that depended on its presence to preserve other coastal resources.

The question of what is "major" is one of fact in each case. The term "major vegetation" also appeared in section 27103 of the 1972 Coastal Act, and we gave informal advice that eucalyptus trees were obviously included within its meaning. We also informally advised that coastal sage scrub is "major vegetation" in that it is part of a vegetative community which provides habitats for certain plant and

COASTAL COMMISSION

EXHIBIT # 8
PAGE 8 OF 12

animal species found only in certain coastal areas of Southern California. As to whether something like brush or any native ground cover is major vegetation, one would have to know its size, extent, and uniqueness, if any, and its relation to the environment in which it is located. We conclude, however, that "major vegetation" should be broadly defined in close cases because of the rule that individual provisions of conservation and environmental protection measures must be interpreted broadly so as to ensure attainment of the statute's objective. (Friends of Mammoth v. Board of Supervisors, supra, (1972) 8 Cal.3d 247, 259-61.)

2. Removal or Harvesting for Agricultural Purposes

Only if it is factually determined that the vegetation is "major" do we reach the second question, the meaning of "removal or harvesting . . . for agricultural purposes." Webster's Seventh New Collegiate Dictionary defines "agricultural" as "of, relating to, used in, or concerned with agriculture." It then defines "agriculture" as "the science or art of cultivating the soil, producing crops, and raising livestock." Black's Law Dictionary defines "agriculture" as "The cultivation of soil for food products or any other useful or valuable growth of the field or garden; tillage, husbandry . . . breeding and rearing of stock, dairying State v. Stewart, 190 P. 129, 131." The clause in question therefore excludes from the definition of "development" and the requirement of a coastal permit any removal or harvesting done for the purpose of cultivating the soil, producing crops, or raising livestock. In each case, this will be a factual question.

We have previously informally advised that removal and harvesting, which alone accomplishes an agricultural purpose or which leads to an agricultural purpose without intervening permit-requiring activities, would not require a permit, while removal or harvesting which is preliminary only, necessitating additional permit-requiring activities to accomplish the particular agricultural purpose, would require a permit. This conclusion was based on the fact that other "development" under section 30601 for agricultural purposes are not excluded and should be considered with major vegetation removal or harvesting for agricultural purposes in order to give effect to the intent of sections 30007.5, 30009 and 30231 and the above-quoted excerpt from

COASTAL COMMISSION

EXHIBIT # 8
PAGE 1 OF 12

the Coastal Plan, to afford the greatest protection to significant coastal resources, consistent with the Act.

Further study of this matter, however, leads us to a contrary conclusion.

It is true, of course, that some major vegetation removal may, by itself accomplish an agricultural purpose, as, for example, the removal of trees to open areas for grazing of cattle or removal of orchard trees or plants to encourage or permit the growth of adjacent agricultural vegetation. It is also true that some major vegetation removal may contemplate additional activities, either requiring or not requiring a Coastal Permit, such as removal of native vegetation to convert the land to orchard, or other cultivated use. This distinction, however, no longer appears valid.

Section 30106 makes no such distinction. Any conclusion requiring a permit predicated on such a distinction, based on the above policies, would be based on inference as to the legislative intent drawn from these broad policies. On the other hand, the Legislature has expressly stated its intent in section 30106, by specifically providing "development" includes the "removal or harvesting of major vegetation other than for agricultural purposes." In such cases where specific terms of a statute might appear to conflict with general provisions found elsewhere in the statute, the Legislature's specific language is controlling. (Neubald v. Brock (1939) 12 Cal.2d 662, 669.)

The Legislature's apparent intent in excluding such vegetation removal while requiring permits for other defined "development" for agricultural purposes, was to allow the agriculturist to harvest and remove vegetation for agricultural purposes free of the controls under the Act applicable to other "developments", while protecting the other significant coastal resources through the regulatory measures applicable to the agricultural activities requiring permits. Such an interpretation is supported also by Senator Smith's letter, which indicated the intent of the Act was not to regulate agricultural operations or management practices, including "types of crops to be . . . harvested . . . cropping patterns . . . yield techniques." Supra.

In the present case, therefore, section 30106, having excluded removal or harvesting of major vegetation

COASTAL COMMISSION

EXHIBIT # 8
PAGE 10 OF 12

for agricultural purposes, leaves as a question of fact whether any specific removal or harvesting of major vegetation is for an agricultural purpose, within the meaning of the Act.

This does not, however, suggest that the intervening steps between removal or harvesting and the ultimate agricultural use are not relevant in such a factual determination. The connection between removal or harvesting of the vegetation and the accomplishment of the agricultural purpose may, indeed, be so attenuated or indefinite as to render the removal or harvesting factually not "for an agricultural purpose" within the meaning of the Act. Another factor is whether the contemplated agricultural purpose is actually accomplished within a reasonable time of the harvesting or removal. Where other activities require a coastal permit to accomplish the agricultural purpose, the responsible party would be advised to obtain preliminary issuance of such permits to avoid the risk that subsequent denial of the permit would prevent the realization of the agricultural purpose for which the major vegetation was harvested or removed in the first place.

Whether the vegetation removed in the factual situations presented in fact constitutes "major vegetation" the removal of which would otherwise require a permit would, of course depend upon the number, size, uniqueness and importance of the vegetation and the other factors discussed above.

The purpose stated in each factual situation would appear to be reasonably designed to achieve an agricultural purpose, i.e., cultivation of the soil, producing crops or raising livestock. These purposes are generally accepted agricultural purposes resulting from the removal of vegetation: converting areas containing eucalyptus trees to fruit trees; conversion of mature walnut trees for grazing and row crops; thinning of a lemon orchard and removal of adjacent trees to promote air circulation and free acreage for row crops; replacement of mature lemon trees with young lemon trees; thinning of trees in an avocado orchard to allow more vigorous growth and production on the part of the remaining trees; and conversion of native vegetation to fruit trees.

Whether the particular removal or harvesting of the vegetation in each instance would fall within the exclusion is another matter, however, and would turn on the

COASTAL COMMISSION

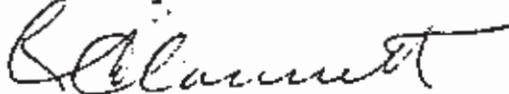
EXHIBIT # 8
PAGE 11 OF 12

Mr. Michael L. Fischer
Page 12

facts. For example, an unreasonable time having passed since the removal of the eucalyptus trees in your first example, and no planting of the fruit trees, would tend to show, notwithstanding the "stated intent" of the landowner, that the trees were not in fact removed for the stated purposes. Reasons for the delay in converting the land to fruit trees would be relevant. Whether any activities necessary for the conversion of native vegetation to row crops or other agricultural vegetation have been undertaken and whether required permits for these activities (e.g., irrigation systems, access roads, supporting facilities, etc.) have been applied for or obtained, would also be relevant. Subsequent use of the property after the harvesting or removal of the vegetation would also be pertinent. These and other matters, such as statements of the responsible party and witnesses, would be relevant to show whether the trees were, in fact, removed for the stated agricultural purpose, or were, in fact, removed or harvested for some other purpose.

Very truly yours,

EVELLE J. YOUNGER
Attorney General



R. H. CONNETT
Assistant Attorney General

RHC:ag

COASTAL COMMISSION

EXHIBIT # 8
PAGE 12 OF 12

RECEIVED
South Coast Region

MAY 22 2012

CALIFORNIA
COASTAL COMMISSION

May 22, 2012

Via Hand Delivery

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

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

Dear Mr. Del Arroz:

In response to your inquiries posed to Don Schmitz on April 26, 2012, please find the applicants' responses below:

- There is no development proposed in the northwest corner of the City's Park property which would extend off-site onto Newport Banning Ranch's (NBR's) property.
- The City has no plans to make any modifications to the existing chain link gate which is locked and secured.
- No athletic games on Sunset Ridge Park will be scheduled for July 4th holidays. As with all other public parks and beaches in California, Sunset Ridge Park will be open for visitors to safely enjoy the Independence Day holiday. Just as with other parks and beaches, parking will be on a first come basis.

Pursuant to your subsequent email inquiry regarding the Pacific Pocket Mouse, please see our project Biological Technical Report (prepared by BonTerra Consulting, September 23, 2009), *Appendix E* in Volume II of the Project EIR. BonTerra specifically notes that there are only four locations in Southern California that this species is known to occur: Dana Point Headlands, two near San Mateo Creek in Camp Pendleton, and near the Santa Margarita River. On pages 31 and 49 of the Biological Technical Report, BonTerra Consulting concludes that previous extensive trapping efforts resulted in no detection, that there is limited potentially suitable habitat on site, and that the Pacific pocket mouse is not expected to occur on the Project site.

Also, please find enclosed, a copy of correspondence dated April 27, 2012 from USFWS indicating their determination that "when considering potential impacts to gnatcatcher, [USFWS has] determined that the revised project is in compliance with the [Endangered Species] Act. Moreover, USFWS staff find that the "revised project will restore more habitat than is impacted."

COASTAL COMMISSION

EXHIBIT # 9
PAGE 1 OF 9



PROVIDERS OF LAND USE PLANNING
FOR A BETTER COMMUNITY

HEADQUARTERS - MALIBU OFFICE
29350 PACIFIC COAST HWY., SUITE 12
MALIBU, CA 90265

TEL: 310.589.0773 FAX: 310.589.0353

EMAIL: INFO@SCHMITZANDASSOCIATES.NET

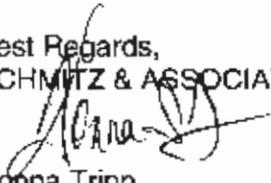
REGIONAL - CONCORD VALLEY OFFICE
5234 CHESEBRO ROAD, SUITE 200
ACCORDA HILLS, CA 91301

TEL: 818.338.8636 FAX: 818.338.3423

WEBSITE: WWW.SCHMITZANDASSOCIATES.COM

Should you have any further questions, please do not hesitate to contact us.

Best Regards,
SCHMITZ & ASSOCIATES, INC.


Donna Tripp
Regional Manager

CC: Andy Tran, PE, City of Newport Beach

Attachment: US Fish & Wildlife Service correspondence dated April 27, 2012

COASTAL COMMISSION

EXHIBIT # 9
PAGE 2 OF 9



United States Department of the Interior

FISH AND WILDLIFE SERVICE

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



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

APR 27 2012

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

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

Dear Mr. Tran:

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

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

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

COASTAL COMMISSION

EXHIBIT # 9
PAGE 3 OF 9

revised Sunset Ridge Park Project to "harm" gnatcatchers¹. In addition, the site will continue to support gnatcatcher habitat and to maintain connectivity with gnatcatchers on the Banning Ranch property. Thus, the ecological role and function of designated critical habitat will not be precluded by the project².

Disturbance and Habitat Loss Associated with Project Construction

The revised project results in a decrease in impacts to gnatcatcher foraging and sheltering habitat from 9.35 acres to 3.95 acres and avoids the primary breeding season use areas where gnatcatchers have been observed since 1992³. Native habitat creation/restoration has also been reduced from 7.35 acres to 4.40 acres; however, the revised project will restore more habitat than is impacted. Therefore, project impacts to foraging and sheltering habitat that are primarily used outside of the breeding season are temporary. As discussed in our previous letter, sufficient habitat is available adjacent to the project site on the Banning Ranch property to allow gnatcatcher pairs located in the project vicinity to compensate for the temporary loss of habitat through minor adjustments to their non-breeding season use areas. In addition, we do not anticipate the revised project to result in direct harm or disturbance to gnatcatchers during construction activities because no changes are proposed to the construction minimization measures included as part of the project (Enclosure).

Habitat Degradation and Disturbance Associated with Project Operation and Maintenance

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

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

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

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

COASTAL COMMISSION

EXHIBIT # 9
PAGE 4 OF 9

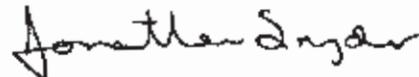
Recommendations

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

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

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

Sincerely,



Karen A. Goebel
Karen A. Goebel
Assistant Field Supervisor

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

COASTAL COMMISSION

EXHIBIT # 9
PAGE 5 OF 9

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

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

Project Design (refer to Figure 1):

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

COASTAL COMMISSION

EXHIBIT # 9
PAGE 6 OF 9

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

Construction of the Project:

6. Vegetation removal and clearing for the proposed project will occur between August 1 and February 14, outside the gnatcatcher breeding and nesting season.
7. The limits of vegetation removal will be delineated in all areas adjacent to preserved vegetation by bright orange plastic fencing, stakes, flags, or markers that are clearly visible to personnel on foot and in heavy equipment.
8. A qualified biologist⁴ will be present during all vegetation removal and clearing and will have the authority to halt activities that might result in harm to the gnatcatcher or result in impacts beyond the limits of the project footprint as depicted in Figure 1.
9. Construction activities that occur within 200 feet of gnatcatcher habitat during the breeding and nesting season will be conducted in the presence of a qualified biologist. Construction activities will not occur within 200 feet of an active gnatcatcher nest. The qualified biologist will provide, on a weekly basis to the CFWO, a summary (including photos) of project activities completed during the breeding and nesting season.

Park Operations:

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

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

COASTAL COMMISSION

EXHIBIT # 9
PAGE 2 OF 9

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

COASTAL COMMISSION

EXHIBIT # 9
PAGE 8 OF 9



LEGEND

Expanded CSS - Native
Average: 10.0%

Water Infiltration / Native Buffer Area
Average: 22.0%

Residential Buffer
Average: 2.21%

Active Area - Ornamental Evergreen Grasses
Average: 1.41%

Turf Area (Including Drivable Gravel)
Average: 3.32%

Butterfly Garden
Average: 1.3%

Structural Slope
Average: 1.51%

Existing - Not to Be Disturbed*
Average: 10.0%

1.0' Wide Maintenance Road
Average: 2.00%

Hardscape (Including Tot Lot)
Average: 1.51%

* Areas are outside of Grading Limits and are Not to be Disturbed as part of the Sunset Ridge Park Project

NOV Areas

Boundary of Potentially Significant Vegetation

Official from Boundary of SE NOV and

Potentially Significant Vegetation

Caltrans Science Easement

New Chain Link Fencing

Site Section
Refer to Page 2 of Section 4, EDC

TOTAL PARK ACREAGE
12.70 ac ± 1.58% Existing (Total) ± 15.20 ac

New Chain Link Fencing
Existing Fencing to be Removed
100' Offset from SE NOV and Potentially Significant Vegetation
50' Offset from SE NOV and Potentially Significant Vegetation

COASTAL COMMISSION



City of Newport Beach
12/20/2013

EXHIBIT # 9
PAGE 9 OF 9

May 30, 2012

Via Email

John Del Arroz, Coastal Program Analyst
California Coastal Commission
200 OceanGate, 10th Floor
Long Beach, CA 90802-4416

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

Dear John:

I appreciate the opportunity to highlight the somewhat unique circumstances relating to the complete and ongoing clearance of vegetation on the flat portions of the proposed City of Newport Beach Sunset Ridge Park. As you are aware, the subject Park property was previously owned by the California Department of Transportation (CALTRANS). Said agency graded almost the entire property down some 30 ft. below natural grade in the 1960's, which quite obviously completely removed any and all native vegetation well below the root zone. Subsequently, the State of California mowed and cleared the entire property of all vegetation, native and ruderal, on an ongoing annual basis during their extended ownership.

Upon acquiring ownership of the property from the State, the City regularly continued the annual mowing and maintenance of the property. Unlike other properties in the area, the Sunset Ridge property is in actuality a small finger of undeveloped land adjacent to a significantly larger open space area; there is a legitimate concern that the light, weedy, "flash fuels" that could grow back on the property would serve as a ladder to convey a wildfire directly onto the adjacent residential community into the heart of the City.

As already documented, the subject property has been annually mowed by the City subsequent to their acquisition from the State (i.e. Spring 2007 to present). The subject property is surrounded by/abuts on three sides intense urban uses and development. Moreover, unlike similarly situated properties, the subject property has never been fenced off; as such, the site has been historically disturbed and utilized recreationally by children/youth in the community. It is our understanding that the local youth have periodically set up impromptu dirt bike and go kart tracks on the land.

Accordingly, it is clear that the annual complete mowing of the property is unique to the subject property, and is not necessarily a precedent that would apply elsewhere.

USFWS Critical Habitat Designation:

We wish to also address references to a 2007 determination by US Fish & Wildlife Service (USFWS) that the subject property is included in a larger area designated as "critical habitat" for California gnatcatchers.

COASTAL COMMISSION



HEADQUARTERS - MALIBU OFFICE
29350 PACIFIC COAST HWY - SUITE 12
MALIBU, CA 90265
TEL: 310.589.0779 FAX: 310.589.0398
EMAIL: INFO@SCHMITZANDASSOCIATES.NET

EXHIBIT # 10
SCHMITZ & ASSOCIATES, INC.
REPAGE - COASTAL COMMISSION OFFICE
5254 CHESTNUT ROAD - SUITE 200
AGOURA HILLS, CA 91301
TEL: 818.338.3636 FAX: 818.338.3423
WWW: WWW.SCHMITZANDASSOCIATES.COM

Please find below the following excerpts from a USFWS document on *Critical Habitat* (source: http://www.fs.fed.us/r9/wildlife/tes/docs/esa_references/critical_habitat.pdf):

The areas shown on critical habitat maps are often large. Are all the areas within the mapped boundaries considered critical habitat?

No. Our rules normally exclude by text developed areas such as buildings, roads, airports, parking lots, piers and other such facilities.

Why are large areas shown on critical habitat maps if the entire area is not actually considered critical habitat?

In such cases, precisely mapping critical habitat boundaries is impractical or impossible, because the legal descriptions for these precise boundaries would be too unwieldy [sic].

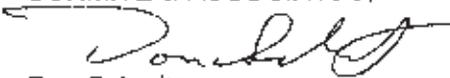
In short, "critical habitat" designations do not take into account the specific biological conditions that actually exist on the ground. Instead, if there is known viable habitat in the surrounding area, this will often result in the inclusion of non-critical habitat in the larger mapped area, as is the case here.

In plain English, there is no difference between the disturbed Encelia area on the South side of the proposed park, and the area adjacent to the condominium complex, as it pertains to the designation of critical habitat. It is all within the critical habitat area, but this should not be misconstrued as an assessment by USFWS when they designated the entire area as critical habitat; it is a broad brush planning tool. In fact, last week when I met with representatives of the USFWS they affirmed that the City could legally mow the subject property weekly (including the disturbed Encelia area) should they deem fit and it would not be a violation of their regulations. However, and importantly, it is their professional opinion that the planting plan for the proposed park will represent a significant improvement to habitat values for the gnatcatchers in the area from that which presently exists, which is the intent of the broad mapping of critical habitat designation in the first place.

Accordingly, USFWS has already concluded based on site specific assessment of the subject property, that "when considering potential impacts to gnatcatcher, [USFWS has] determined that the revised project is in compliance with the [Endangered Species] Act" (April 27, 2012 USFWS letter).

Should you have any questions, please do not hesitate to contact us. Thank you for your ongoing assistance and consideration of the City's Sunset Ridge Park project.

Sincerely,
SCHMITZ & ASSOCIATES, INC.


Don Schmitz

CC: Andy Tran, City of Newport Beach
Christine Medak, US Fish & Wildlife Services

COASTAL COMMISSION

EXHIBIT # 10
PAGE 2 OF 2



City of Newport Beach Urban Wildland Interface Area Standard for Hazard Reduction

Fire Resistive Plant List

<u>Common Name</u>	<u>Botanical Name</u>	<u>Plant Form</u>	<u>Remarks</u>
Aaron's Beard	Hypericum calycinum	Shrub	Good to very good drought tolerance
Aeonium	Aeonium decorum	Ground cover	
African Sumac	Rhus lancea	Tree	25' height
Alkali Heath	Frankonia salina	Ground Cover	Native
American Sweet Gum	Liquidambar styraciflua	Tree	
Australian Puschia	Corea pulchella	Ground Cover	12" height, 36" spread
Australian Tea Tree	Leptospermum laevigatum	Shrub	
Autumn Sage	Salvia greggii	Shrub	
Baby Blue Eyes	Nemophila menziesii	Annual	
Beach Bur-Sage	Ambrosia chamissonis	Perennial	
Beach Evening Primrose	Camissonia cheiranthifolia	Perennial Shrub	Native
Beach Sagewort	Artemisia pycnocephala	Perennial	
Bearberry	Arctostaphylos uva-ursi	Ground Cover	Excellent drought tolerance, spreading 4-6', height to 1'
Beard Tongue	Penstemon spp.	Shrub	
Berber Orchard Grass	Baxtylis glomerata	Grass	
Big Leaf Maple	Acer macrophyllum	Tree	
Big Pod Ceanothus	Ceanothus megarcarpus	Shrub	
Bird of Paradise	Strelitzia reginae	Perennial	
Bird's Eyes	Gilia tricolor	Perennial	
Bird's Foot Trefoil	Lotus corniculatus	Ground Cover	Green lush look
Bladderpod	Isomeris arborea	Shrub	Native - Drought tolerant
Blanketflower	Gaillardia x grandiflora	Ground Cover	Ornamental flower
Blood-Red Trumpet Vine	Distictis buccinatoria	Vine/Climbing vine	
Blue Dicks	Dichelostemma capitatum	Herb	
Blue Eyed Grass	Sisyrinchium bellum	Ground Cover	Drought tolerant
Blue Hibiscus	Alogyne huegelii	Shrub	
Blue Stemmed Bush Penstemon	Keckiella ternata	Subshrub	
Boobyalla	Myoporum insulare	Shrub	
Bottle Palm	Beaucarnea recurvata	Shrub/Small Tree	
Bougainvillea	Bougainvillea spectabilis	Shrub	
Brewer Saltbush	Atriplex lentiformis ssp. breweri	Shrub	Native
Bush Ice Plant	Lamprathus aurantiacus	Ground Cover	
Bush Morning Glory	Convolvulus cneorum	Shrub	White flower color
Bush Poppy	Dendromecon rigida	Shrub	
Bush Snapdragon	Galvezia speciosa	Shrub	Red flowers
Bushrue	Cneoridium dumosum	Shrub	
California Coreopsis	Coreopsis californica	Annual	
California Black Walnut	Juglans californica	Tree	
California Brome	Bromus carinatus	Grass	
California Bulrush	Scirpus californicus	Perennial	Native
California Coffee Berry	Rhamnus californica	Shrub	Green leaves, drought tolerant
California Croton	Croton californicus	Ground Cover	

COASTAL COMMISSION

EXHIBIT # 11
PAGE 1 OF 4

<u>Common Name</u>	<u>Botanical Name</u>	<u>Plant Form</u>	<u>Remarks</u>
California Encelia	Encelia californica	Small Shrub	Native
California Evening Primrose	Oenothera hookeri	Flower	Drought tolerant
California Everlasting	Gnaphalium Californicum	Annual	
California Flannelbush	Fremontodendron californicum	Shrub	
California Laurel	Umbellularia californica	Tree	Very spreading
California Plantain	Plantago erecta	Annual	
California Poppy	Eschscholzia californica	Flower	
California Scrub Oak	Quercus berberidifolia	Shrub	Valuable soil binder
California Sycamore	Plantanus racemosa	Tree	Native
Cape Honeysuckle	Tecomaria capensis	Ground Cover	Vine
Carmel Creeper Ceanothus	Ceanothus griseus var. horizontalis	Shrub	Excellent drought tolerance.
Carob	Ceratonia siliqua	Tree	
Carolina Cherry Laurel	Prunus caroliniana	Shrub/Tree	White flower color
Carpet Bugle	Ajuga reptans	Ground Cover	Poor on slopes
Catalina Cherry	Prunus lyonii	Shrub/Tree	White flower color
Caucasian Artemisia	Artemisia caucasica	Ground Cover	Very low maintenance; takes some foot traffic
Century Plant	Agave attenuata	Succulent	
Chalk Dudleya	Dudleya pulverulenta	Succulent	Native
Chaparral Bloom	Baccharis pilularis ssp. Consanguinea	Shrub	Native - Drought tolerant
Chaparral Mallow	Malacothamnus Fasciculatus	Shrub	
Chaparral Nolina	Nolina cismontana	Shrub	
Chinese Houses	Collinsia heterophyllia	Annual	
Chinese Pistache	Pistacia chinensis	Tree	
Citrus	Citrus spp.	Tree	
Coast Cholla	Opuntia prolifera	Cactus	Native
Coast Live Oak	Quercus agrifolia	Tree	Oak woodland
Coastal Goldenbush	Isocoma menziesii	Small Shrub	Native
Coastal Scrub Oak	Quercus dumosa	Shrub	
Common Yarrow	Achillea millefolium	Low Shrub	Prune back after flowering to remove dried fire fuel
Coral Tree	Erythrina spp.	Tree	Red/pink flower color
Coreopsis	Coreopsis lanceolata	Ground Cover	Ornamental flowering
Cork Oak	Quercus suber	Tree	
Crape Myrtle	Lagerstroemia indica	Tree	
Creeping Coprosma	Coprosma kirkii	Ground Cover/Shrub	Subject to dieback after 3-4 years
Creeping Sage	Salvia sonomensis	Ground Cover	
Creeping Snowberry	Symphoricarpos mollis	Shrub	
Deerweed	Lotus scoparius	Shrub	Native
Desert Carpet	Acacia redolens desert carpet	Shrub	
Desert Lupine	Lupinus arizonicus	Annual	
Desert Marigold	Balfeya multiradiata	Ground Cover	Drought tolerant
Desert Wild Grape	Vitis girdiana	Vine	
Dewflower	Diosanthemum speciosus	Ground Cover	
Douglas Nightshade	Solanum douglasii	Shrub	
Dwarf Goldfields	Lasthenia californica	Annual	
Dwarf Periwinkle	Vinca minor	Ground Cover	Very spreading

COASTAL COMMISSION

EXHIBIT # 11
PAGE 2 OF 4

<u>Common Name</u>	<u>Botanical Name</u>	<u>Plant Form</u>	<u>Remarks</u>
Eastwood Manzanita	Arctostaphylos glandulosa ssp.	Shrub	
Edging Candytuft	Iberis sempervirens	Ground Cover	White flower color
Elephant's Food	Portulacaria Afra	Shrub	
Emory Baccharis	Baccharis emoyi	Shrub	
Engelmann Oak	Quercus engelmannii	Tree	Open structure
English Ivy	Helix Canariensis	Ground Cover	
Evergreen currant	Ribes viburnifolium	Shrub	
Evergreen Plantain	Plantago sempervirens	Ground Cover	
Fernleaf Ironwood	Lyonothamnus floribundus ssp.	Tree	Grey leaves; drought tolerant
Firethorn	Asplenifolius		
Firewheel Tree	Pyracantha spp.	Shrub	
Foothill Needlegrass	Stenocarpus sinuatus	Tree	
Four-Wing Saltbush	Nassella (stipa) lepidra	Ground Cover	Native
French Lavender	Atriplex canescens	Shrub	
Fuchsia Flowering Gooseberry	Lavandula dentata	Shrub	
Germander	Ribes speciosum	Shrub	Native
Giant Bird of Paradise	Teucrium chamodrys	Ground Cover	
Giant Wild Rye	Strelitzia nicolai	Perennial	
Globe Candytuft	Leymus condensatus	Large Grass	Native
Globe Gilia	Iberis umbellatum	Ground Cover	Ornamental flowering
Glossy Abelia	Gilia capitata	Perennial	
Golden Abundance Oregon Grape	Abelia x grandiflora	Shrub	
Golden Currant	Mahonia aquifolium 'Golden Abundance'	Shrub	Bright yellow flowers
Goldmoss Sedum	Ribes aureum	Shrub	
Grass Tree	Sedum acre	Ground Cover	Not recommended on steep slopes
Green Bark Ceanothus	Xanthorrhoea spp.	Perennial accent/shrub	
Green Carpet Natal Plum	Ceanothus spinosus	Shrub	
Green Lavender Cotton	Carissa macrocarpa	Ground Cover/Shrub	Fair-good drought tolerance, spreads 12-18"
Green Stonecrop	Santolina virens	Shrub	
Greensphere Manzanita	Sedum album	Ground Cover	
Guadalupe Palm	Arctostaphylos x 'Greensphere'	Shrub	
Gum Plant	Brahea edulis	Palm	
Hall's Japanese Honeysuckle	Grindelia stricta	Ground Cover	Green foliage
Hard Stem Bulrush	Lonicera japonica 'Halliana'	Vining Shrub	
Heart Leaved Penstemon	Scirpis sculus	Perennial	
Hoary California Fuschia	Keckiella cordifolia	Subshrub	
Holly Leafed Cherry	Epilobium canum [Zauschneria californica]	Shrub	
Hollyleaf Redberry	Prunus ilicifolia ssp. Ilcifolia	Shrub	
Hopseed Bush	Rhamnus crocea ssp. Ilcifolia	Shrub	
Hyron Rose Clover	Dodonaea viscosa	Shrub	Drought tolerant
Indian Hawthorne	Trifolium hirtum 'Hyron'	Ground Cover	Drought tolerant
Italian Alder	Rhaphiolepis spp.	Shrub	
Italian Buckthorn	Alaus cordata	Tree	
Ivy Geranium	Rhamnus alaternus	Shrub	
Jade Tree	Pelargonium peltatum	Ground Cover	
Kangaroo Paw	Crassula ovata	Shrub	
Lance-leaved Dudleya	Anigozanthus flavidus	Perennial/accnt	
	Dudleya lanceolata	Succulent	

COASTAL COMMISSION

EXHIBIT # 11
 PAGE 3 OF 4

<u>Common Name</u>	<u>Botanical Name</u>	<u>Plant Form</u>	<u>Remarks</u>
Lavender Cotton	Santolina chamaecyparissus	Ground Cover	
Lemon Thyme	Thymus serpyllum	Ground Cover	
Lemonade Berry	Rhus integrifolia	Shrub	Native - May be trimmed up to tree form
Likiang Cotoneaster	Cotoneaster congestus 'Likiang'	Ground Cover/Vine	
Lilac Vine	Hardenbergia comptoniana	Shrub	
Lippia	Phyla nodiflora	Ground Cover	
Little Sur Manzanita	Arctostaphylos edmundsii	Ground Cover	Slow to establish
Loosely Flowered Annual	Lupinus sparsiflorus	Annual	
Lupine/Coulter's Lupine			
Loquat	Eriobotrya japonica	Tree	
Louis Edmunds Ceanothus	Ceanothus griseus 'Louis Edmunds'	Shrub	
Macadamia Nut	Macadamia integrifolia	Tree	
Maidenhair Tree	Ginkgo biloba	Tree	
Matilija Poppy	Romneya coulteri	Shrub	Large showy white flowers
Mayten Tree	Maytenus boaria	Tree	
Medicinal Aloe	Aloe Vera	Succulent	
Mexican Blue Palm/Blue Hesper Palm	Brabea armata	Palm	
Mexican Elderberry	Sambucus mexicana	Tree	Drought tolerant
Mexican Evening Primrose	Oenothera belandieri	Ground Cover	
Mexican Grasstree	Nolina spp.	Shrub	Drought tolerant
Mexican Palo Verde	Parkinsonia aculeata	Tree	Yellow flowers
Mexican Poppy	Eschscholzia mexicana	Herb	
Mojave Woolly Star	Briastrum sapphirinum	Annual	
Mondo Grass	Ophiopogon japonicus	Ground Cover	
Monkeyflower	Mimulus spp.	Flower	
Monterey Carpet Manzanita	Arctostaphylos hookeri 'Monterey Carpet'	Low Shrub	Excellent drought tolerance, semi-upright to 12 inches
Mulefat	Baccharis salicifolia	Shrub	Native - Drought tolerant
Nevin Mahonia	Mahonia nevenii	Shrub	Yellow flowers
New Zealand Christmas Tree	Metrosideros excelsus	Tree	
no common name	Aeonium simsii	Ground cover	
no common name	Agave victoriae-reginae	Ground Cover	Low maintenance
no common name	Aloe aristata	Ground Cover	
no common name	Aloe brevifolia	Ground Cover	
no common name	Antirrhinum nuttalianum ssp.	Subshrub	
no common name	Arctostaphylos pungens	Shrub	
no common name	Brickellia californica	Subshrub	
no common name	Cistus crispus	Ground Cover	
no common name	Cistus incanus	Shrub	
no common name	Cistus incanus ssp. Corsicus	Shrub	
no common name	Cotoneaster buxifolius	Shrub	
no common name	Cotoneaster aprmeyii	Shrub	
no common name	Crassula lactea	Ground Cover	
no common name	Crassula multicava	Ground Cover	Not recommended for steep slopes
no common name	Crassula tetragona	Ground Cover	
no common name	Drosanthemum hispidum	Ground Cover	
no common name	Eriophyllum confertiflorum	Shrub	Native
no common name	Limonium pectinatum	Ground Cover	Drought and salt tolerant
no common name	Myoporum debile	Shrub	Excellent along seacoast
no common name	Myoporum parvifolium	Ground Cover	

COASTAL COMMISSION

EXHIBIT # 11
PAGE 4 OF 4

Revised 8/07

1972

Title



Selected Photos

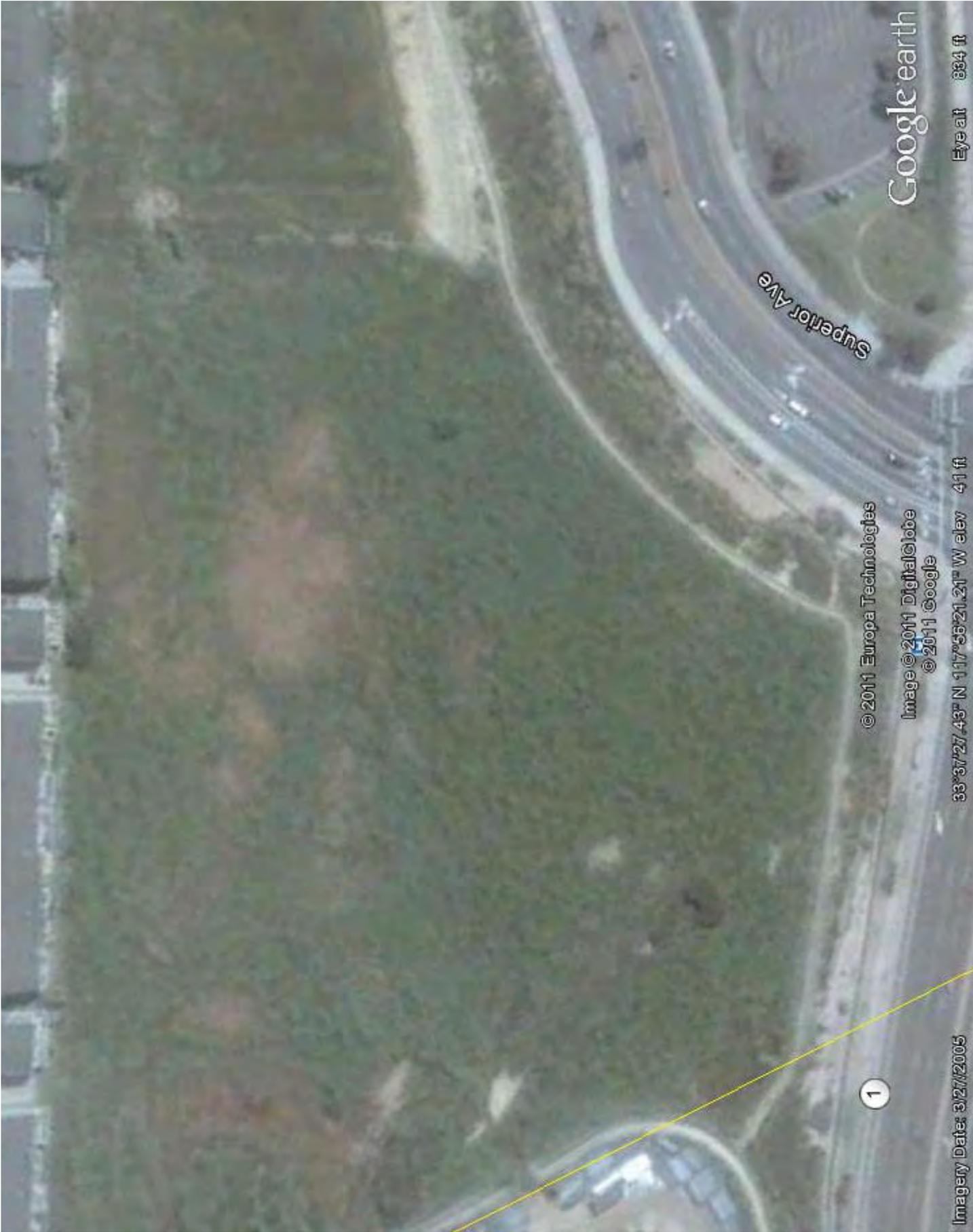
5-11-302
Exhibit 12

Title

1993



Selected Photos



1

© 2011 Europa Technologies

Image © 2011 DigitalGlobe
© 2011 Google

33°37'27.43" N 117°56'21.21" W elev 411 ft

Imagery Date: 3/27/2005

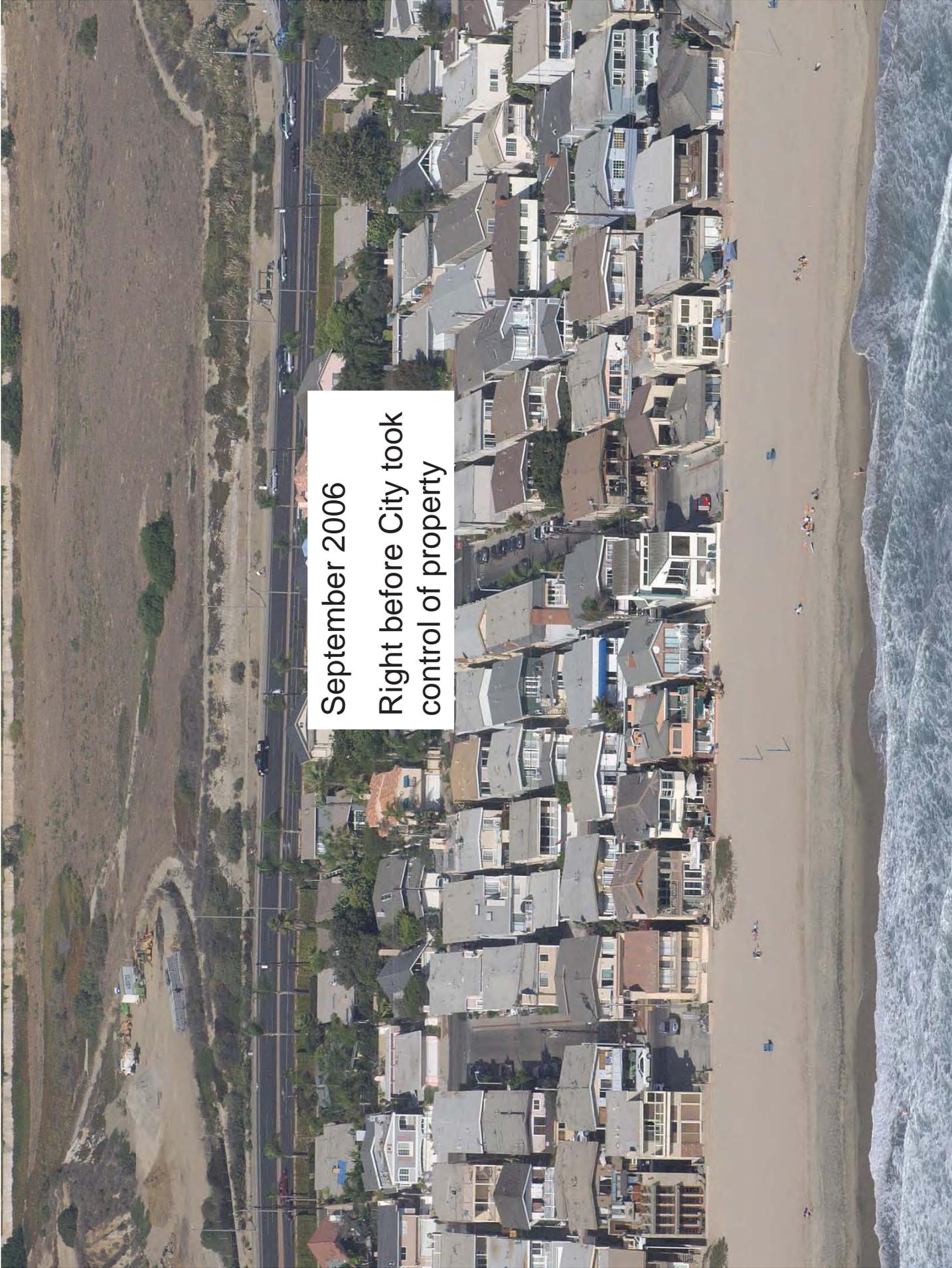
Google earth

Eye at 884 ft

Selected Photos

5-11-302

Exhibit 12



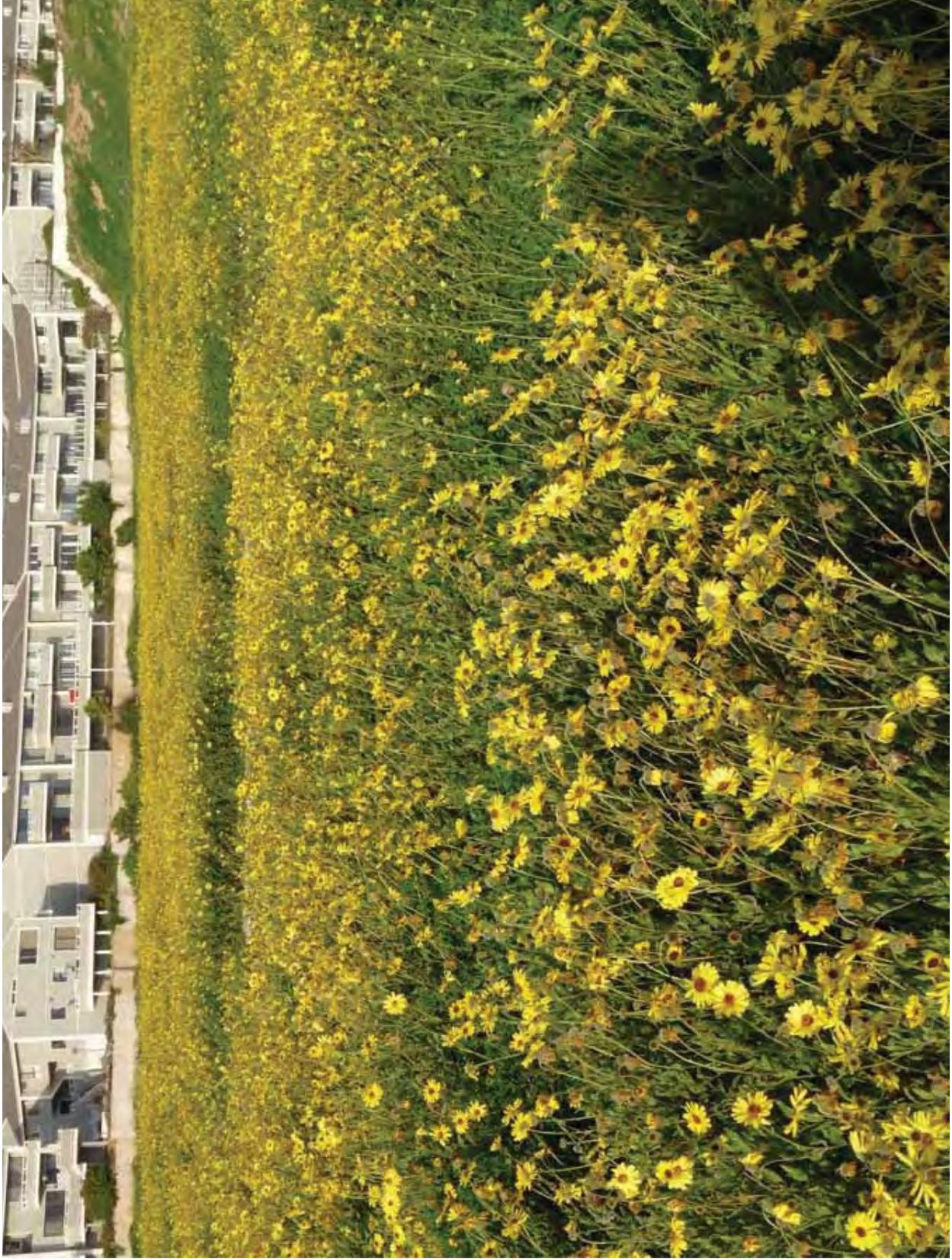
September 2006
Right before City took
control of property



November 6, 2009

Selected Photos

5-11-302
Exhibit 12



March 20, 2010



HAMILTON BIOLOGICAL

June 17, 2012

Dr. Jonna Engel
California Coastal Commission
200 OceanGate
Long Beach, CA 90802-4316

**SUBJECT: POTENTIAL COASTAL ACT VIOLATIONS
SUNSET RIDGE PROJECT, CITY OF NEWPORT BEACH
APPLICATION 5-11-302, W11C**

Dear Dr. Engel,

On behalf of the Banning Ranch Conservancy, Hamilton Biological, Inc. is reviewing and evaluating biological issues related to the proposed Sunset Ridge park project in the City of Newport Beach (City). In preparation for the June hearing in Huntington Beach, I read the staff report for this proposed project, dated June 1, 2012. I also attended the hearing in Huntington Beach on June 13, when this item was originally scheduled to be heard by the Commission (before it was postponed by the City). I am taking this opportunity to express support for the notion that enforcement action should be taken on any potential violations of the Coastal Act before the Commission further considers the City's application for a park development on this site.

APPARENT REMOVAL OF ESHA MUST BE ADDRESSED

I commend staff for providing a coherent and thorough discussion of issues related to the City's repeated disturbances of 3.3 acres of scrub dominated by *Encelia californica* (i.e., "Disturbed Encelia Scrub"). The City and its consultants have attempted to explain why the City is justified in mowing and applying herbicide to this native scrub community as far as 570 feet from any structure. Despite these ongoing disturbances, the 3.3 acres of Disturbed Encelia Scrub remains a sensitive biological resource to this day. Obviously, the habitat values of this vegetation would be greater for California gnatcatchers and most other native species were the City to refrain from mowing and spraying it, but the simple fact is that this native scrub community *exists* and should not be treated as a non-entity.

COASTAL COMMISSION

The same basic point is made on Page 2 of the staff report:

... staff finds that the Disturbed Encelia Scrub provides valuable ecological services for the California gnatcatcher during the period of time that the vegetation is present, including foraging and potentially nesting habitat. Therefore, although the site has been subject to disturbance, staff finds that the vegetation constitutes 'Major Vegetation' due to its special ecological role in supporting the federally threatened California gnatcatcher. Section 30106 of the Coastal Act defines 'development', in part, as '...removal or harvesting of major vegetation...'. Thus, the mowing of the Disturbed Encelia Scrub requires a coastal development permit and is subject to the requirements of the Coastal Act. In this case, no coastal development permit has been granted for the mowing of the Disturbed Encelia Scrub.

The proposed project would rely on the elimination of ESHA for the construction of active sports fields, a non-resource dependent use, and therefore will be entirely degraded by the proposed development and the eventual human activities on the subject site. The proposed project is therefore inconsistent with Coastal Act Section 30240 and must be denied.

Near the bottom of Page 26, the staff report states:

As noted above, the Commission's staff ecologist has found that in the absence of mowing of vegetation, the Disturbed Encelia Scrub would provide foraging and potentially nesting habitat for the California gnatcatcher and would qualify as ESHA.

At the June 13 hearing, Executive Director Charles Lester noted that, since a determination had been made confirming ESHA and that the appropriate findings had been provided, staff may now commence with enforcing the Coastal Act with regard to the City's unpermitted development activities. I support the staff in this course of action, and trust that the Commission will not be rendering any decision on the City's application for the Sunset Ridge project until this enforcement issue is resolved. It is also apparent that Commissioners are concerned about this issue of enforcement action preceding consideration of the application, as expressed in their discussions of both the Shea and Sunset Ridge applications. Along with other members of the public, I look forward to Executive Director Lester's report to the Commission on this issue at the July hearing in Chula Vista.

PROPOSED PLANTING OF ENCELIA AT SUNSET RIDGE

It should not escape anyone's attention that the City is now proposing to plant *Encelia californica* in those parts of the Sunset Ridge project site closest to existing residences. This is appropriate, given that the City Fire Department regards *Encelia californica* as a "fire-resistant species," but it demonstrates bad faith on the part of City representatives, who consistently claim that this same plant species must be mowed and sprayed — both on Sunset Ridge and on Newport Banning Ranch — in the name of fuel modification.

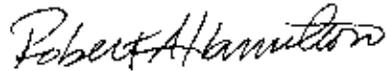
COASTAL COMMISSION

EXHIBIT # 13
PAGE 2 OF 30

CONCLUSION

Thank you for the opportunity to provide these comments. If you have questions, please call me at (562) 477-2181 or send e-mail to robb@hamiltonbiological.com.

Sincerely,



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

cc: Charles Lester, Lisa Haage, Andrew Willis, Pat Veasant, Sherilyn Sarb, John DeArroz, Karl Schwing, and Teresa Henry

COASTAL COMMISSION

EXHIBIT # 13
PAGE 3 OF 32



California Native Plant Society

ORANGE COUNTY CHAPTER

P.O. Box 54891

Irvine, CA 92615-4891

occnps.org

June 10, 2012

The mission of the California Native Plant Society is to conserve California native plants and their natural habitats, and to increase understanding, appreciation, and horticultural use of native plants.

OCCNPS focuses that mission on the native plants and remaining areas of natural vegetation in Orange County and adjacent Southern California.

John Del Arroz, Coastal Analyst
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach CA 90802-4416

RE: Sunset Ridge Park, Newport Beach CA, Application 5-11-302, Wille

Dear Sir:

The Orange County Chapter of the California Native Plant Society is concerned that development of the proposed Sunset Ridge Park, if done according to the plan in the current application, will not adequately protect the site's biological resources. We have two major concerns:

1. The proposed plan would remove 3.3 acres of Disturbed *Encelia* Scrub. The Staff Report relates that the 3.3 acres has been mowed, in the name of fire safety, at least annually since about 1970, and that the *Encelia* grows back after mowing.

Encelia californica readily flushes new growth in "spring" (i.e. in our rainy season) after a heavy cutting-back; just such pruning is recommended to keep *Encelia* from getting leggy and senescent in the garden^{1,2,3}. The abundance of new growth on variously sized individuals seen in Exhibit 12 demonstrates that *Encelia* also readily reproduces by seed and by self-layering.

The mowing acts as an extreme version of the herbivory that *Encelia* would be subject to in an undisturbed natural habitat. The mowing keeps *Encelia* from reaching its full height and spread, and keeps the stand from developing the intricate interweaving of its slender branches that would provide more permanent shelter for birds and small animals. The mowing also keeps individual plants from maturing, senescing and dying (perhaps within 5-10 years). Thus the mowing perpetuates this patch of Disturbed *Encelia* Scrub in an early seral stage. The patch's ample new growth in spring likely feeds a wide variety of herbivores which in turn feed a wide

1. Bornstein, Fross and O'Brien, 2005, *California Native Plants for the Garden*.

2. O'Brien, Landis and MacKey, 2006, *Care & Maintenance of Southern California Native Plant Gardens*.

3. Celia Kutcher, personal experience.

COASTAL COMMISSION

EXHIBIT # 13
PAGE 4 OF 32

variety of predators, even though the patch does not provide the year-round habitat of an undisturbed mature stand.

Mown or unmown, the 3.3 acres of Disturbed Encelia Scrub is a biological resource. Destroying it to develop the park as proposed would end its role in the functioning of the site's overall habitat, thus would not adequately protect the site's other biological resources.

OCCNPS requests that the park be redesigned so that the 3.3 acres of Disturbed Encelia Scrub is not removed, but instead becomes an element in the overall park design and part of the protected habitat.

2. OCCNPS disagrees with the Staff Report (p. 29) that "The proposed landscaping plan does not include the installation of plant species which are invasive..." In fact the plan's palette includes:

- *Pennisetum alopecuroides* 'Little Bunny': all *Pennisetum* spp. and forms are wind-dispersed reseeder (some heavily so) and are known invasives.
- Several other non-native grasses; in general non-native grasses, especially those that are wind-dispersed, can easily invade native wildlands.
- Several *Acacia* spp. and forms: Acacias are notorious reseeder and known to invade nearby wildlands.

These should be removed from the plant palette.

We concur with the rest of the Staff Report, p. 29, that the proposed "... plant palette includes plant species which could result in future impacts to ESHA." For the reasons detailed on p. 29, we suggest that all non-natives be removed from the palette. There are California native plant species that can fulfill all the park's landscape needs except turf for the sports fields, for example see http://www.californianativeplants.com/index.php/plants/planning_tools/plant-respecifier.

Please include this letter among any addenda to the Staff Report, and/or make it available to the Commissioners. Thank you for the opportunity to comment.

Respectfully,

Celia Kutcher
Conservation Chair

cc:

John D. Dixon, Ph.D, Ecologist
Jonna Engel, Ph.D, Staff Ecologist
Teresa Henry, District Manager for Orange County
Sherilyn Sarb, Deputy Director for Orange County
Karl Shwing, Coastal Program Analyst

COASTAL COMMISSION

EXHIBIT # 13
PAGE 5 OF 30

Del Arroz, John@Coastal**From:** Linda Vas [auzwombat@hotmail.com]**Sent:** Saturday, June 09, 2012 1:14 PM**To:** Del Arroz, John@Coastal; Dixon, John@Coastal; Sarb, Sherilyn@Coastal; Engel, Jonna@Coastal; Veesart, Pat@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Schwing, Karl@Coastal; Haage, Lisa@Coastal; Lester, Charles@Coastal**Subject:** Concerns Regarding Sunset Ridge Park**California Coastal Commission Members:**

As a resident of Newport Beach, California for more than forty years, I feel strongly about preserving some unspoiled areas of land in our community. We have open space and important wildlife habitat to protect so my concerns are:

- Excessive mowing has been an ongoing issue on Sunset Ridge Park.
- The City continues to mow all of Sunset Ridge though the fire safety guidelines call for mowing within 100' structures. The reason for this is obvious: to destroy the natural, sensitive, and endangered habitat in terms of plants, animals, and birds.
- I would like to bring to your attention the fact that excessive and unnecessary mowing continues to be a problem on Sunset Ridge'.
- 'Having observed the Sunset Ridge area closely for a number of years, I would like to tell you about the wealth of habitat that exists there and destruction that has occurred from the excessive mowing done by the City of Newport Beach'.
- 'I object to the needless destruction of habitat and the ruination of my/our quality of life given there is no fire threat'
- 'The City is going far beyond the prescribed fuel modification in an effort to destroy environmentally sensitive habitat, and potentially sensitive habitat for threatened and endangered species'.
- Isn't a Coastal Development Permit needed to conduct mowing like this?
- Is there some sort of enforcement action against the City of Newport Beach that can take place to protect this sensitive habitat from being destroyed again in the future?
- 'If so, I would sincerely appreciate your assistance in initiating an enforcement action against the City of Newport Beach'.
- 'One can only conclude that this mowing is a deliberate and systematic effort to eliminate the habitat for the gnatcatcher (and other wildlife such as raptors) living on Sunset Ridge'.
- As nature keeps being divided up into the smallest possible units for our economic purposes, it's no surprise that key predators and sensitive species occasionally suffer unexplained drops in numbers and vitality. We have not left enough slack in nature's systems by giving it space to flex and change without breaking.

Please consider these issues as you review the plans for the development of the Banning Ranch land.

Sincerely,

Linda Vas

Newport Beach Resident and Homeowner

COASTAL COMMISSIONEXHIBIT # 13
PAGE 6 OF 30

To: John DelArroz

California Coastal Commission

200 OceanGate, 10th Floor

Long Beach, CA 90802-4416

From: Kevin Nelson

Hello John,

In regards to the Sunset Ridge Park application by the City of Newport Beach, please include this letter in staff reports on the project.

I would like to state my opposition to the current plan as an active sports field for the following reasons:

1. **Destroys Local Habitat:** The plan would destroy too much habitat and disrupt the area's use by large predators. Sunset Ridge is part of a larger ecosystem that stretches west to the Santa Ana River and north for over a mile. Impacts to a habitat of this size and diversity should therefore be carefully considered. All of us who pay attention to nature and her wonders have seen how small projects like this gradually impinge on and degrade the places we love.
2. **Piecemeal Impact:** If an active park goes in, the biological value of the Banning area goes down. Keeping this resource whole now is the only way to enable it to be saved in the future.
3. **Key Project Facts Obscured:** City project managers apparently concluded that the best way to get Coastal Commission approval was to obscure fundamental facts by first teaming with Newport Banning Ranch developers on what was to become a four lane road into a massive development, then mowing native vegetation in the middle of winter for "fire prevention".
4. **Higher Use Not Considered:** Since Sunset Ridge is a logical entry point for cyclists and hikers into a future Banning Nature Preserve, this use deserves highest priority. While a ball field would be a nice addition to the community, it is insignificant compared with the lasting regional benefits of a nature preserve.
5. **Poor City Planning:** The city should have planned for other ball field options. If less intensive development choices had been made by the city a number of other ball field locations might be available. In addition, the city of Costa Mesa evidently has an agreement for after school use of fields that includes Newport residents.
6. **Bigger Goal :** If the Commission's great mission of conservation is to be achieved over the long run, projects such as this that result from poor planning as well degrade key habitat should be rejected.
7. **Potential Pacific Pocket Mouse Site:** Though Banning has been noted as having potential for this endangered species, it is the Sunset Ridge area that has a combination of elements the Pocket Mouse seems to require; light cover of native vegetation and a particular type of

COASTAL COMMISSION

EXHIBIT # 13
PAGE 7 OF 32

sandy soil. Although the chances for an existing population's survival on or near Sunset Ridge have likely been lowered by the disturbance of the city's mowing, it could still become a translocation site as research into this possibility matures. And this again points to area's value as a haven for the many species pushed towards extinction by overdevelopment.

Many of the residents who face onto Sunset Ridge have mentioned to me the wildlife that they observe from their decks and windows. The stories include hawks landing on decks with prey, coyotes hunting, fox sightings and regular heron use.

Consequently, I decided to spend a few days this spring 2012 to record species use of the area.

Early the first day, the show was all about hawks, turkey vultures or other predators lightly visiting or swooping in very low and fast in what appeared to be a hunting tactic. On average, this happened every 30-60 minutes over first part of the day before dropping in frequency.

The next day I was able to spend a few hours, Egrets and Herons were dining on lizards, as many as four birds at a time. For the 5 hours I was there the hunting was non-stop as video time stamps can confirm. And most of this survival activity occurred around the only vegetation left after the city's mowing, the iceplant.

Until city contractors thoroughly mowed the Encelia and Deerweed and trimmed stands of Mulefat in early 2012, a tip of the native plant community reached most of the distance north from PCH north to the edge of the Newport Crest property. If left un-mowed for 2-3 years, it is hard to understand why it wouldn't cover all of the lower section of Sunset Ridge.

In observing the area I have also noticed that large bird species seem to be traveling between area wetlands. If true, the biological combination of Newport Back Bay, Banning marshlands and Bolsa Chica makes it more imperative that these elements be protected.

Due to these considerations, I urge the Coastal Commission to reject the Sunset Ridge Sports Park in order to promote a small passive park located primarily on the upper level of the property near Superior St.

Below are a few pictures of wildlife, Encelia coverage and stills from video. At your request I'll be happy to send videos taken this year.

With appreciation for the job you do,

Kevin Nelson

733 Calle Vallarta

San Clemente, CA 92673

COASTAL COMMISSION

EXHIBIT # 13
PAGE 6 OF 30



March 2010



Jan 2011 before Jan 18th mowing

COASTAL COMMISSION

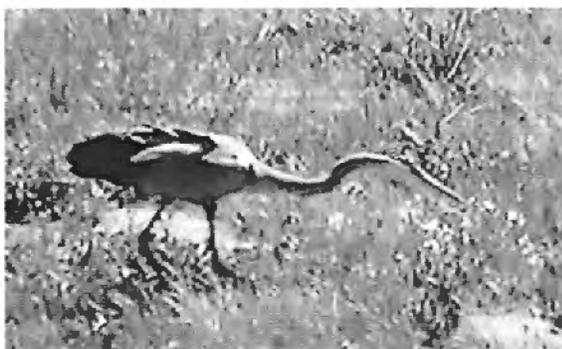
EXHIBIT # 13
PAGE 9 OF 30



Texture in this 2005 shot suggests that Encelia has covered the entire area



Hawk on fence overlooking Sunset Ridge. 2010



Heron hunting April 2 2012

COASTAL COMMISSION

EXHIBIT # 13
PAGE 10 OF 30



Turkey Vulture June 2 2012



Coyote overlooking area 2011



Hawk overlooking area in 2009



Resident who took this has Hawks feeding at Sunset Ridge



Hawk over SR taken by me April 23 2012



Groups of this small bird species hunt in SR grass daily

COASTAL COMMISSION

EXHIBIT # 13
PAGE 11 OF 30



Hawk on ground April 2012



Heron hunting in iceplant April 2012



Egret about to strike a lizard in SR iceplant April 2012

COASTAL COMMISSION

EXHIBIT # 13
PAGE 12 OF 30

BRUCE E. BARTRAM
Attorney at Law
2 Seaside Circle
Newport Beach, CA 92663
Tel. (949) 650-8682
Fax (949) 515-1589

RECEIVED
South Coast Region

JUN 11 2012

CALIFORNIA
COASTAL COMMISSION

June 7, 2012

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

Sent via email and US Mail

Re: City of Newport Beach -- Sunset Ridge Park (Coastal Development Permit Application No. 5-11-302) June 13, 2012 Meeting Agenda Item 11c.

Dear Coastal Commission:

Throughout all proceedings regarding Sunset Ridge Park it has been the position of the City of Newport Beach that its design must be as an "active sports park." That is, it must include active sports fields for baseball and soccer. This to serve an alleged need of the community. Therefore, the City has repeatedly told the California Coastal Commission and the citizens of Newport Beach these fields must be built even if their construction involves the destruction of environmentally sensitive habitat areas (EHSA) on Sunset Ridge. This despite any conflict with the California Coastal Act and its stated protections for ESIIA.

This position/policy of the City is reflected (and perhaps originates) in a City Parks, Beaches & Recreation Commission Staff Report dated May 20, 2008 concerning the Sunset Ridge Park Updated Concept Plan. A copy of the Staff Report is attached. As you can see, the Staff Report deals in part with the results of a City Council Study Session on March 25, 2008 at which a report was presented concerning the progress "of the outreach and planning for the Sunset Ridge Park." According to the Report, during public comment issues brought forth included the following:

"There is an immediate need for a baseball field for 13 and 14 year olds to play league games for the Newport Harbor Baseball Association in West Newport Beach.

There is a need for more soccer fields for at least 1000 children who play soccer for AYSO 97 in West Newport Beach."

AYSO 97 stands for "American Youth Soccer Organization, Region 97" the AYSO organization which serves the Newport Beach area. Their website is located at:<http://www.newportayso.com/>.

COASTAL COMMISSION

In any event, from the above it appears the "need" for the sports fields on SRP arises in large part from the claims of these two organizations -the Newport Harbor Baseball Association and AYSO 97.

It is the "need" by these two organizations for sports fields that the City is championing by demanding sports fields on SRP. Thus, these organizations' true need for additional sports fields become the issue.

Attached are the pertinent pages of the City of Costa Mesa Public Services Department, Recreation Division" Athletic Field Use and Allocation Policy dated January 2012. The full Policy is located at: <http://www.ci.costa-mesa.ca.us/recreation/FUA-Policy.pdf>. As you can see in the Introduction on Pg. 2:

"The City of Costa Mesa Public Services Department, Recreation Division coordinates and issues permits for the use of athletic fields in the City and at Newport Mesa Unified School District sites in Costa Mesa when school is not in session to organizations and the general public for cultural, social and recreational activities and programs. The City and the Newport Mesa Unified School District work cooperatively in accordance with a Joint Use Agreement. The purpose of this policy is to outline procedures and allocation priority for the permitted use of City and Newport Mesa Unified School District athletic fields within the City of Costa Mesa.

Priority will be given to Costa MESA residents."

On the same Pg. 2, in the Resident Status section it is stated:

"Two youth sports groups (AYSO Region 97 and Newport Harbor Baseball Association) have special status assigned by City Council action as a result of having had historical use of fields which exempts them from the 75% residency requirement. See page 3 & 4 for Groups 1-6 resident status." (Emphasis added)

On Pgs. 3-4 in the Priority Use Classifications and Qualifications section it is stated in pertinent part:

"Organizations that have special status OR have special status assigned by City Council action as a result of having had historical use of fields or receive special status assigned by City Council action as a result of servicing Newport Mesa Unified School District students.

Group 1 organizations shall have highest priority, equal to City sponsored leagues, for use of City and School District fields." (Emphasis added)

Thus, AYSO Region 97 and Newport Harbor Baseball Association are deemed as Group 1 organizations by the City of Costa Mesa and have the highest priority for use of City and School District fields.

On Pg. 8 in the Adult Field use section, the number of City of Costa Mesa and NMUSD fields AYSO Region 97 and Newport Harbor Baseball Association have priority access to are listed. These include:

COASTAL COMMISSION

" Adult field use for 2012 is allowed at Back Bay High School, Balearic Center, Davis Field at Lions Park, Killybrooke School, TeWinkle Park Sports Complex and Wilson School. These fields may be scheduled if they have not already been previously permitted to their maximum for sustainability Monday through Saturday. No Adult Field Use Will Be Allowed at Adams, California, College Park, Davis, Harper, Kaiser, Paularino, Pomona, Rea, Sonora, Victoria, Whittier and Woodland Elementary Schools, TeWinkle Middle School. Parsons field and Jack Hammett Sports Complex. Estancia High School and Costa Mesa High School adult field usage is not allowed though August 2013."

By my count from the above, AYSO Region 97 and Newport Harbor Baseball Association have priority access to fields located at 23 City park and School District locations in the City of Costa Mesa. This fact casts serious doubt on the AYSO Region 97 and Newport Harbor Baseball Association stated "need" for additional sports fields on SRP justifying the destruction on EHSAs protected by the Coastal Act.

One of the City of Costa Mesa parks discussed above to which AYSO Region 97 and Newport Harbor Baseball Association have priority access is Davis Field at Lions Park. Lions Park is located 1.5 miles from the site of the Sunset Ridge Park. Attached is a Daily Pilot article dated February 2, 2012 which describes \$520,000 in upgrades made to Davis Field at Lions Park. Contained in the article is a photograph of a uniformed member of the Newport Harbor Baseball Association aged 10 years old eyeing the improvements to Davis Field. Thus, the City of Newport Beach proposes to construct sports fields on SRP when a "state of the art" facility located 1.5 mile away already exists to which the interested sports organizations have priority access.

Needless to say, the above information should be presented to the Coastal Commission before and/or at the June 13 hearing on the SRP CDP. Given the above, I oppose the SRP project and support the Coastal Commission Staff Recommendation the SRP CDP application be denied.

Very truly yours,



Bruce Bartram
2 Seaside Circle
Newport Beach, CA 92663

COASTAL COMMISSION

EXHIBIT # 13
PAGE 15 OF 32

**CITY OF NEWPORT BEACH
PB&R COMMISSION STAFF REPORT**

Agenda Item No. _____
May 20, 2008

TO: PB&R Commission

FROM: Recreation & Senior Services Department
Wes Morgan, Director — 949-644-3157 — wmorgan@city.newport-beach.ca.us

SUBJECT: Sunset Ridge Park UPDATED Draft Concept Plan

STAFF RECOMMENDATION

1. Review the Sunset Ridge Park UPDATED Draft Concept Plan presentation by EPT Design Group.
2. Accept public comment regarding the UPDATED Draft Concept Plan.
3. Forward a PB&R Commission recommendation to the City Council regarding this Concept Plan.

DISCUSSION

The Recreation Element of the *General Plan* which was approved by the City Council in 2006 addresses citywide issues and needs regarding park lands. The Recreation Element states that the service area of West Newport has a current deficit of 21.6 park acres. This is based on the standard of five acres of park land for each 1000 of population. Additionally, in Service Area 1 – West Newport, Sunset Ridge Park is designated as an active park which will include ball fields, picnic areas, a playground, parking and restrooms. The planning and outreach process for this project began in November 2007 and continues to move toward an approved concept plan.

At the City Council Study Session on March 25, 2008, the City Council received a report on the progress of the outreach and planning for the Sunset Ridge Park. The Council listened to public comment regarding the draft concept plan for Sunset Ridge Park. Issues which speakers brought forth to the City Council included the following:

- There is an immediate need for a baseball field for 13 and 14 year olds to play league games for the Newport Harbor Baseball Association in West Newport Beach.
- There is a need for more soccer fields for at least 1000 children who play soccer for AYSO 97 in West Newport Beach.
- Residents who live adjacent to the park site expressed the following concerns:
 - Traffic created by park users will be a problem for homeowners.
 - Noise created by youth sports games will disturb the nearby neighborhood.
 - Park facilities and athletic fields are being placed too close to homes.
 - Security for nearby residents will diminish.
 - There is a potential loss of scenic views.
 - Trash will be left by park users.
 - There will be a loss of privacy for homeowners.

COASTAL COMMISSION

EXHIBIT # 13
PAGE 16 OF 30

Sunset Ridge Park UPDATED Draft Concept Plan

Page 2

At the conclusion of the City Council Study Session, the Council directed staff to revise the draft concept plan for the park. The Council wants to improve the park design in ways which continue to allow for the active park elements while addressing the concerns of the residents.

To achieve these goals, staff directed the City's architect to create a buffer zone between the private property owners and the sports fields, restroom, parking lot and playground. The updated draft concept plan now includes a new buffer zone which is 10 ft above the active park areas. The buffer zone creates the opportunity for the sports fields to retain the size needed for youth sports programs in West Newport while maximizing the use of the available land to protect the nearby residents from any potential issues brought on by activities in the park.

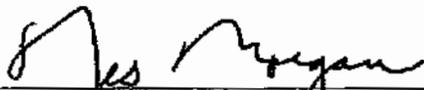
The elevation of the proposed Butterfly Garden and the Vista Point near Superior Avenue will be preserved at the present height of the site.

Also all the active park elements have been moved from a distance of 50 ft adjacent to the bordering properties to a new distance of at least 100 ft of clearance.

The updated draft concept plan is more than just a compromise from the original basic plan. It improves the park layout by making better use of the property to create a passive area near the residential properties, allowing for sports fields of the necessary size and retains the present elevation for the proposed Vista Point.

Following this Special Meeting of the PB&R Commission, the updated plan will be returned to the City Council for further review.

Prepared & Submitted by:



Wes Morgan, Recreation & Senior Services Director

- Attachments:
1. General Plan Recreation Element 8-10
 2. General Plan Recreation Element 8-15
 3. General Plan Recreation Element 8-40-41
 4. Minutes from March 25, 2008 City Council Study Session
 5. May 20 2008 PB&R Commission Special Meeting Public Notice

COASTAL COMMISSION

EXHIBIT # 13
PAGE 17 OF 30

City of Costa Mesa ♦ Public Services Department
Recreation Division

Athletic Field Use And Allocation Policy



Parks and Recreation Commission

- Approved September 25, 1996
- Amended March 26, 1997
- Amended February 23, 2000
- Amended May 23, 2001
- Amended May 26, 2004
- Amended March 23, 2005
- Revised June 27, 2007
- Revised May 28, 2008 and September 24, 2008
- Revised March 24, 2010
- Revised January 26, 2011
- Revised November 16, 2011

City Council

- Amended November 3, 1997
- Amended March 20, 2000
- Amended June 18, 2001
- Upheld May 17, 2005
- Amended September 6, 2005
- Amended July 17, 2007
- Amended October 8, 2008
- Revised October 3, 2009
- Revised April 20, 2010
- Revised February 15, 2011
- Revised January 3, 2012

Planning Commission

- Clarification on Conditions of Use, Farm Complex August 12, 2002

Joint Use Agreement between CITY and NMUSD

- Revised and Dated February 14, 2006
- Approved City Council January 17, 2006
- Approved NMUSD February 14, 2006

COASTAL COMMISSION

EXHIBIT # 13
PAGE 18 OF 30

I. INTRODUCTION

The City of Costa Mesa Public Services Department, Recreation Division coordinates and issues permits for the use of athletic fields in the City and at Newport Mesa Unified School District sites in Costa Mesa when school is not in session to organizations and the general public for cultural, social and recreational activities and programs. The City and the Newport Mesa Unified School District work cooperatively in accordance with a Joint Use Agreement.

The purpose of this policy is to outline procedures and allocation priority for the permitted use of City and Newport Mesa Unified School District athletic fields within the City of Costa Mesa.

Athletic fields are allocated and permitted in two, 6-month periods from February through June and from July through January as sustainability allows. The Recreation Division will monitor proper use of allocations and permits. Priority will be given to Costa Mesa residents. The City may charge to recover public costs to operate, maintain, supervise and administer the use of schools, parks and athletic facilities. Submission of an Application and Agreement Request does not constitute approval.

Requests for additional use or programs not covered by the Athletic Field Use and Allocation Policy should be addressed in writing to the Recreation Manager. The Public Services Department Director will make interpretation of language in the Field Use and Allocation Policy. An appeal to the Parks and Recreation Commission of the Director's decision must be submitted in writing with justification within ten (10) working days from the decision and will be heard at the next regularly scheduled Parks and Recreation Commission meeting, unless appeal is received fewer than 10 days prior to a meeting, in which case it will be heard at the following meeting of the Parks and Recreation Commission.

II. DEFINITION OF TERMS AND FEES

Resident Status

Resident status will be determined from the prior season's actual rosters (fall season for fall season, spring season for spring season). Team rosters and/or individual participant utility bills/photo ID may be required by City staff to verify residency status. Two youth sports groups (AYSO Region 97 and Newport Harbor Baseball Association) have special status assigned by City Council action as a result of having had historical use of fields which exempts them from the 75% residency requirement. See page 3 & 4 for Groups 1-6 resident status required percentages.

Youth Status

Youth status is defined as persons 19 years of age or under.

Non-Profit Status 501 c

Organization must be established as a non-profit organization. Non-profit status is defined as an organization that is so defined by the Internal Revenue Service, 501c and has a State of California Tax Identification Number. Visit www.irs.gov for additional information on Non-profit Status 501 c.

Organization must submit the following to be considered for Non-Profit Status:

1. Submit 501c IRS papers and bylaws.
2. Current financial statement.

COASTAL COMMISSION

EXHIBIT # 13
PAGE 19 OF 30

City of Costa Mesa ♦ Public Services Department, Recreation Division
ATHLETIC FIELD USE AND ALLOCATION POLICY
January 2012



3. Roster of Officers
4. List of persons authorized to make reservations for your organization.

Commercial Status

Business or leagues that are running a business and making a profit from the use of community use fields.

Fees are charged per hour per field usage for utility, baseball and softball fields:

- Non-Profit resident - \$20.
- Non-Profit non-resident - \$30
- Private resident - \$72
- Private non-resident - \$130
- Commercial resident - \$130
- Commercial non-resident - \$234

Other fees

- Baseball & Softball Field Preparations - \$40 per prep
- Refundable Deposits for tournaments and large events
 - 1 Field with 20 or more participants \$100
 - 2 Fields \$100
 - 3 to 6 Fields \$300
 - 7 or more Fields \$500

III. USE OF CITY AND SCHOOL ATHLETIC FIELDS/FACILITIES

Neighborhood and community parks and Newport Mesa Unified School District schools in Costa Mesa that have athletic field space designated in their design are available for use. Due to the limited number of fields available, the Public Services Department and Field Use and Allocation Committee have established priority use. Adult field use is limited to specific sites. Allocation of fields will follow the terms set forth in this Field Use and Allocation Policy as sustainability allows. The City has exclusive discretion in decisions relating to the scheduling of City and District Active Use Areas and such decisions shall be final.

Priority Use Classifications and Qualifications

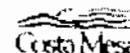
Priority scheduling of use of fields/facilities will be as follows:

Group 1 organizations must meet all of the following:

- Organizations, or portions of organizations, that assign registrants to teams in an effort to make the teams in each division of equal playing experience and talent (not assigned to teams of differing talent levels)
- Have an "everyone plays" philosophy requiring that each player suited up and able to play is entered into games for a significant period of time (i.e., 1/2 of game or 2 of every 5 innings or 2 of 4 quarters, etc)
- Is recreational in nature (versus teams that are more competitive or have selected players) – this excludes AP, all-stars and tournaments
- 501c(3) status certificate
- No child turned away that wants to play
- 75% or greater Costa Mesa residents, for priority use of City fields; 50% Costa Mesa residents for priority use of NMUSD fields. Organizations that have special status OR have special status assigned by City Council action as a result of having had historical use of fields or receive special

COASTAL COMMISSION

ATHLETIC FIELD USE AND ALLOCATION POLICY



January 2012

status assigned by City Council action as a result of servicing Newport Mesa Unified School District students.

Group 1 organizations shall have highest priority, equal to City sponsored leagues, for use of City and School District fields

NOTE: Organizations that have both recreational and competitive teams will be assigned status based upon the nature of the play. Recreational and Advanced Placement teams will have Group 1 user status and competitive (select/travel) teams in that organization will have Group 3 status.

Group 2: Newport Mesa Unified School District related programs. NMUSD has priority at NMUSD sites prior to 4:00 p.m. on weekdays when school is in session.

Group 3: Organizations that may otherwise meet all Group 1 requirements EXCEPT:

- 50% or greater Costa Mesa residents, for priority use of City and NMUSD fields
- OR
- Have at least 50% or greater Costa Mesa residents in which tryouts are held in order to place registrants according to their ability on competitive teams (select, travel, etc); applicants may be turned away; not every player suited up and not able to play in every game

All select/travel games must have at least one team from the Group 3 organization on the field, or fee assessed for that field will be at the Group 5 rate.

Group 3 organizations shall have third highest priority for use of City and School District fields

Group 4: Adult programs, organizations or events with at least 75% Costa Mesa residents. *Group 4 organizations shall have fourth highest priority for use of City and School District fields, except on Sundays when they shall have second highest priority after City adult programs.*

Group 5: Youth programs, organizations or events with less than 50% Costa Mesa residents. *Group 5 organizations shall have fifth highest priority for use of City and School District fields.*

Group 6: Adult programs, organizations or events with less than 75% Costa Mesa residents. *Group 6 organizations shall have lowest priority for use of City and School District fields except on Sundays when they shall have third highest priority after City adult programs and Group 4 adult programs.*

Priority use of fields will be given to traditional primary season sports and by priority grouping.

IV. PROCESS FOR OBTAINING PERMITS

Application and Agreement

Fields are allocated and permitted for two use periods: February through June and July through January. Each organization is required to sign and submit the following documents by the first week of November for the February 1 through June 30 use period and by the first week of May for the July 1 through January 31 use period.

- Application and Agreement Request For Use of City of Costa Mesa and Newport Mesa Unified School District Athletic Field form (see page 23)
- Field User Information Sheet (see page 24), Athletic Field Use Rules and Regulations form (see page 25)

COASTAL COMMISSION

ATHLETIC FIELD USE AND ALLOCATION POLICY

January 2012



NMUSD representative upon request. The City has exclusive discretion in decisions on scheduling of City and District fields and such decision shall be final.

- **Adult field use for 2012** is allowed at Back Bay High School, Balearic Center, Davis Field at Lions Park, Killybrooke School, TeWinkle Park Sports Complex and Wilson School. These fields may be scheduled if they have not already been previously permitted to their maximum for sustainability Monday through Saturday. **No Adult Field Use Will Be Allowed** at Adams, California, College Park, Davis, Harper, Kaiser, Paularino, Pomona, Rea, Sonora, Victoria, Whittier and Woodland Elementary Schools, TeWinkle Middle School, Parsons field and Jack Hammett Sports Complex. *Estancia High School and Costa Mesa High School adult field usage is not allowed though August 2013.*
- A copy of the City-issued permit must be available at each site approved for use for inspection by City or NMUSD staff, including Field Ambassadors, Park Rangers and Police. It is the responsibility of the organization president and the individual identified as the person in charge of the City-issued permit to enforce the rules and regulations regarding the conduct of the members of the organization while on permitted facilities.
- Use begins and ends at the times stated on the permit including set-up and clean up. Groups are not allowed on fields prior to the start time shown on the City-issued permit and are required to have the fields clean, picked up and be off the fields at the ending time indicated on the permit. Additional fees will be charged for unauthorized or extended field use beyond times listed on the permit. No member of the organization holding a City-issued permit is allowed on any field approved for that organization's use prior to time listed on permit.
- Sub-leasing of fields is NOT allowed under any circumstance. *Subleasing of fields may result in revocation of all permits.*
- Property boundary walls, perimeter fences and foul line fences are not to be used as backstops at any time.
- Groups are authorized to use portable goals, benches and makers which need to be stored in a designated space after each use as well as remove all trash from the field area.
- Fields not being utilized by the appropriate organization or team indicated on the City-issued use schedule will result in the field being reassigned. City will notify organization president or person identified as in charge of the City-issued permit by phone or e-mail when City staff observes that a field has gone without use. A written letter will be sent after second non-use observed. Third non-use observed will result in reassignment and re-issuance of permits. Lit fields may be re-assigned after two non-use observed. Teams and organizations may be required to provide schedules that indicate all allocated fields are being used.
- Field Ambassadors may temporarily re-assign a field not being used according to the City-issued use policy to other youth organizations. If the group holding a City-issued field permit does not show up for use after 30 minutes from the start of the permitted time, any City-approved youth user group may use the field. If it is a Group 3 or Group 5 user organization, City reserves the right to charge that organization for the additional use. In the event that the originally scheduled group shows up, the non-scheduled group must leave that field within 10 minutes. There will be no charge to non-scheduled Group 3 or Group 5 organizations that leave the field per this rule.
- At the conclusion of games or practice each user group is responsible for picking up trash and debris and depositing it into the proper trash bins. Adjoining areas must be clear of all trash. In the event that trash is found on site prior to or at the start of use, notify the Field Ambassador who will note it in the log. Any costs incurred by the City or NMUSD to clean fields may be charged to last user group permitted.
- **NO** alcoholic beverages, smoking, gambling, fireworks or flammable material, narcotics or drugs are allowed on City or Newport Mesa Unified School District property. No dogs are allowed on school property. Dogs must be on leash on City property.

COASTAL COMMISSION

EXHIBIT # 13
PAGE 22 OF 30

Sign In or Sign Up

Subscribe Special Sections Jobs

DAILY PILOT

Wednesday, June 6, 2012
10:44 a.m. PDT

HOME NEWS SPORTS PILOT CUP LIFE & ARTS OPINION CALENDAR OFFERS & DEALS

O.C. Now Business & Real Estate Education Politics Public Safety Obituaries For

IN THE NEWS: DANCE FOR AUTISM | FISH FRY | PILOT CUP RESULTS | KOBE BRYANT | ROMNEY



62+? Get paid to live in your house, live there forever

Provided by The Easy Loan Site



\$500K life insurance, no exam necessary

Provided by USA Coverage



Home > News

Lions Park receives upgrades for field

SEE



Comments 2

Share 3

0

Tweet 1

Recommend

RELATED

February 2, 2012 | 10:02 p.m.



PHOTO:

Lions Park in Costa Mesa was the site of a lighting ceremony Thursday evening, where new eco-friendly lights illuminated the upgrades.

Some \$520,000 of Costa Mesa's redevelopment agency funds was used to provide Davis Field with new vinyl-coated perimeter fencing, 50-foot baseball netting and a new lighting

system, according to a city news release.

The lighting system for the West 18th Street facility will cut energy use by about 1.2 million kilowatt hours and 873 metric tons of carbon dioxide over a 25-year period. The system can also be turned on and off via phone and online.

"This is a project of great importance because we are able to offer recreational opportunities for our residents," said Ernesto Munoz, the city's interim public services director. "Installation of new sports

COASTAL COMMISSION

EXHIBIT # 13
PAGE 23 OF 30



Lantz Bell, 10, who plays on a team in the Newport Harbor Baseball Assn., looks at the lights Thursday above Davis Field during a ceremony to celebrate the improvements made for the facility at Lions Park in Costa Mesa. (SCOTT SMELTZER, Daily Pilot / February 2, 2012)

lights and field improvements will allow Costa Mesa residents to fully utilize the facility for its intended potential. Great venues like this allow users to play at higher levels and further develop their skills."

— Sarah Peters

Twitter: @speters01

Comments **2** Share **3** **0**

COASTAL COMMISSION

« Previous Story

More Costa Mesa, Newport Beach and Irvine news | Latest breaking news from Newport Beach, Costa Mesa and Irvine, California | Daily Pilot

Next Story » 13
 EXHIBIT # _____
 PAGE 29 OF 31

Del Arroz, John@Coastal

From: olwen hageman [o-hageman@sbcglobal.net]

Sent: Friday, June 08, 2012 9:58 AM

To: Del Arroz, John@Coastal; Dixon, John@Coastal; Sarb, Sherilyn@Coastal; Engel, Jonna@Coastal; Veasart, Pat@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Schwing, Karl@Coastal; Haage, Lisa@Coastal; Lester, Charles@Coastal

Subject: 5-11-302 Sunset Ridge Park

Dear Callifornia Coastal Commission,

We greatly appreciate your efforts and dedication to saving what is left of the natural environment.

I am greatly concerned about the excessive mowing on Sunset Ridge Park and urge you to take measures that will put an end to it.

This precious land and its inhabitants -- the Gnatcatchers, the wonderful herons, the hawks, the coyotes, and even the squirrels who eat my plants when they can't find food -- must be treated with respect. This land should be used for people to enjoy nature, the ocean, peace and quiet.

The fate of this virgin land is in your hands and we are counting on you to protect it. Please let your legacy be that you saved it from civic encroachment.

Thank you,

Olwen Hageman

COASTAL COMMISSION

EXHIBIT # 13
PAGE 25 OF 30

Del Arroz, John@Coastal

From: RODGER hageman [evenkee14@sbcglobal.net]
Sent: Friday, June 08, 2012 11:03 AM
To: Del Arroz, John@Coastal; Dixon, John@Coastal; Sarb, Sherilyn@Coastal; Willis, Andrew@Coastal; Veasart, Pat@Coastal; Haage, Lisa@Coastal; Henry, Teresa@Coastal; Schwing, Karl@Coastal; Engel, Jonna@Coastal; Lester, Charles@Coastal
Subject: APPLICANT: CITY OF NEWPORT BEACH 5-11-302

Agenda No. Unassigned

Applic.No.

Item No.W11c

Permit No. 5-11-302

Rodger Hageman - OPPOSED

Dear Mr Del Arroz and Commissioners,

Again, I am petitioning you for consideration of a continuing denial of the Referenced project on a basis other than protecting the native flora and fauna, which is, of course, pertinent. The need for this park is not a proven one. No feasibility study or cost effectiveness projection has been presented to justify

another expensive commitment for the taxpayer's burden.

As you have readily noted, it is an awkward and inaccessible location skewed to the northwest part of town, not one favorable to easy usage by the city's youngsters on a daily basis. One might believe it is an attempt to justify the debatable expenditure of some \$5,000,000 a few years ago to purchase the land.

Your good offices are engaged to approve a marginal project. One of your criterion is " IS IT A PRUDENT USE BY CURRENT AND FUTURE GENERATIONS".

Thank you, r hageman / 949 642 1998

THE LAST CROP IS ASPHALT!

COASTAL COMMISSION

EXHIBIT # 13
PAGE 26 OF 30

Del Arroz, John@Coastal

From: Mary Parsell [mfp2001@hotmail.com]
Sent: Wednesday, June 06, 2012 12:52 PM
To: Del Arroz, John@Coastal; Schwing, Karl@Coastal
Subject: June 13, 2012 Banning Ranch Deny the CDP Request inclusion in addendum staff report

We request that this letter be made part of the addendum staff report. Thank you, in advance.

El Dorado Audubon
California Chapter of The National Audubon Society
PO Box 90713, Long Beach, CA 90809-0713

June 1, 2012

California Coastal Commission

RE: Banning Ranch, June 13, 2012, Deny CDP
Support Staff Report and Prefer a passive park at the site, sparing the Encelia Scrub

Dear Commissioners:

We recommend denial of the Coastal Development Permit (CDP). Mowing "a mature stand of Encelia Scrub which would qualify as ESHA (environmentally sensitive habitat area)" occurs on Sunset Ridge. The Encelia mowing is subject to the Coastal Act and requires a CDP. No CDP has been issued. The project itself relies on the elimination of the ESHA for the construction of active sport fields, an improper "use" under the Coastal Act. Thus, the proposed project is therefore inconsistent with Coastal Act and must be denied.

Sunset Ridge has valuable habitat on it and is part and parcel of entire Banning Ranch area which is rich in birds, plants and the entire web of life of one of our last remaining coastal open spaces.

Sincerely,

Mary Parsell
President, El Dorado Audubon
Long Beach, Seal Beach & surrounding communities

email: eldoradoaudubon@yahoo.com
mfp2001@hotmail.com
banningranchconservancy.org

COASTAL COMMISSION

EXHIBIT # 13
PAGE 27 OF 30

Del Arroz, John@Coastal

From: Sara Kent [sara@coastlawgroup.com]
Sent: Tuesday, June 05, 2012 8:59 AM
To: Del Arroz, John@Coastal
Cc: Dixon, John@Coastal; Sarb, Sherilyn@Coastal; Engel, Jonna@Coastal; Veasart, Pat@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Schwing, Karl@Coastal; Haage, Lisa@Coastal; Lester, Charles@Coastal; Livia Borak; Marco Gonzalez
Subject: Application No. 5-11-302 (Sunset Ridge Park)
Attachments: CERF CCC Sunset Ridge Park.pdf

Good morning, Mr. DelArroz and Coastal Commission Staff Members:

Please find the attached comments on behalf of the Coastal Environmental Rights Foundation (CERF) regarding Application No. 5-11-302 (Sunset Ridge Park). Please consider these comments and include them in any Commission materials for the Wednesday, June 13 meeting.

Thank you.

Sincerely,

Sara Kent
 Programs Director
 Coastal Environmental Rights Foundation



The information contained in this e-mail is intended only for the personal and confidential use of the recipient(s) named above. This message may be an attorney-client communication and, as such, is PRIVILEGED & CONFIDENTIAL. If the reader of this message is not the intended recipient or an agent responsible for delivering it to the intended recipient, you are hereby notified that you have received this document (and any attachments) in error and that any review, dissemination, distribution or copying of this message is strictly prohibited. If you have received this communication in error, please notify us immediately by e-mail and deliver the original message.

To ensure compliance with requirements imposed by the IRS, we inform you that (a) any U.S. tax advice in this communication (including attachments) is limited to the one or more U.S. tax issues addressed herein; (b) additional issues may exist that could affect the U.S. tax treatment of the matter addressed below; (c) this advice does not consider or provide a conclusion with respect to any such additional issues; (d) any U.S. tax advice contained in this communication (including attachments) is not intended or written to be used, and cannot be used, for the purpose of promoting, marketing or recommending to another party any transaction or matter addressed herein, and (e) with respect to any U.S. tax issues outside the limited scope of this advice, and U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding tax-related penalties under the Internal Revenue Code.

COASTAL COMMISSION

EXHIBIT # 13
 PAGE 28 OF 30

**COASTAL
ENVIRONMENTAL
RIGHTS
FOUNDATION**

June 5, 2012

Mr. John DelArroz
Staff Member
California Coastal Commission
200 OceanGate, 10th Floor
Long Beach, CA 90802-4416

Via Electronic Mail
jdelarroz@coastal.ca.gov

Re: Application No. 5-11-302 (City of Newport Beach Public Park (Sunset Ridge))
Preserve vital habitat, limit mowing activities, recommend denial

Dear Mr. DelArroz and Coastal Commission Staff Members:

Please accept the following comments on behalf of Coastal Environmental Rights Foundation (CERF). We write to respectfully request you include information about current mowing activities and the City of Newport Beach's maintenance activities which threaten vital habitat in your staff report related to Application No. 5-11-302. CERF is a nonprofit environmental organization founded by surfers in North San Diego County and active throughout California's coastal communities. CERF was established to aggressively advocate, including through litigation, for the protection and enhancement of coastal natural resources and the quality of life for coastal residents.

CERF commends Coastal Commission Staff for its thorough staff report and recommendation of denial regarding Application No. 5-10-168, dated September 23, 2011¹. Page 4 of this report raises the concern "whether or not the degraded encelia scrub habitat located on site (within the footprint of the proposed park) is legally mowed, or if that area, which would qualify as ESHA if not mowed, is being mowed illegally." Apparently, this area may indeed be being mowed illegally.

The City of Newport Beach has a practice of excessive and unnecessary mowing at the proposed Sunset Ridge Park site well beyond fire safety guidelines. According to local residents, this activity has destroyed sensitive habitat, can be deemed a disturbance to the gnatcatchers inhabiting the coastal sage scrub in the vicinity, and is perhaps setting precedent for the destruction of these resources in the adjacent and upcoming Banning Ranch project.

CERF advises Coastal Commission staff that this mowing activity, left unchecked, has already negatively impacted natural resources. Approval of expanded uses and impacts at the proposed Sunset Ridge Park in advance of the proposed Banning Ranch project will likely represent piecemeal approval of permanent, cumulative impacts to the natural resources of the region, including sensitive coastal sage scrub gnatcatcher habitat.

Additionally, CERF strongly recommends Coastal Commission staff further investigate the legality of the City's activities in regard to impacts to habitat and species within the vicinity and footprint of Sunset Ridge Park, and possibly take enforcement action.

Given the sensitivity of the wetlands features within the footprint of the park, the City's apparent unwillingness to heed Coastal Commission staff's recommendations as set forth in the related September 23rd report, and ongoing and likely impacts to sensitive habitat, CERF urges staff to recommend denial of the Sunset Ridge Park application.

COASTAL COMMISSION

EXHIBIT # 13
PAGE 29 OF 30

¹ <http://documents.coastal.ca.gov/reports/2011/10/Th9a-10-2011.pdf>

Application No. 5-11-302

June 5, 2012

Page 2

For the foregoing reasons, we urge you to investigate the impacts of the City of Newport Beach's ongoing and likely illegal maintenance activities, include information regarding these habitat-destructive mowing activities in your staff report, and recommend **DENIAL** of Application No. 5-11-302.

Sincerely,

COASTAL ENVIRONMENTAL RIGHTS FOUNDATION



Sara Kent
Programs Director

cc:

John Dixon: jdixon@coastal.ca.gov
Sharlyn Sarb: ssarb@coastal.ca.gov
Jonna Engles: jengel@coastal.ca.gov
Paul Veesart: pveesart@coastal.ca.gov
Andrew Willis: awillis@coastal.ca.gov
Teresa Henry: thenry@coastal.ca.gov
Karl Schwing: kschwing@coastal.ca.gov
Lisa Haage: lhaage@coastal.ca.gov
Charles Lester: clester@coastal.ca.gov

COASTAL COMMISSION

EXHIBIT # 13
PAGE 30 OF 30