

CALIFORNIA COASTAL COMMISSION

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



Th 11c

ADDENDUM

DATE: October 5, 2009
TO: Commissioners and Interested Parties
FROM: South Central Coast District Staff
SUBJECT: Agenda Item 11c, Application No. 4-09-018 (Center for Natural Lands Management) Rancho Guadalupe Dunes County Park, Santa Barbara County, Thursday, October 8, 2009

The purpose of this addendum is to clarify the project description and background section of the staff report.

Note: ~~Strikethrough~~ indicates text to be deleted from the September 21, 2009 staff report and underline indicates text to be added to the September 21, 2009 staff report.

1.) **Section A. Project Description and Background:**

Page 8, 1st paragraph:

...The fence will consist of metal fence posts in upland areas and live willow sapling posts, where feasible, in riparian areas, as well as untreated wooden posts, which will be spaced approximately 20 - 25 ft. apart and will be installed using hand tools.

Page 10, 2nd paragraph:

...The applicant has indicated that they are currently exploring long-term solutions to the cattle encroachment issue. ~~including the potential acquisition of the adjacent 40 - 60 acre portion of the Ranch property for inclusion as part of the preserve, through either fee-title acquisition or a conservation easement.~~ CNLM, in coordination with several resource agencies (FWS, NRCS), have initiated preliminary discussions with the adjacent landowners regarding long-term options to minimize cattle impacts on the Preserve lands and the greater estuary area. Options could ultimately include scheduled grazing, conservation easements, acquisition, or other measures.

Page 11, 3rd paragraph:

Installation Method. Work would be completed by a crew of 2-3 people from CNLM and Ranch Company staff using hand tools under the supervision of the Preserve Manager. Metal fence posts (t-posts) ~~or~~ live willow sapling posts, or untreated wooden posts less than 5 ft. tall would be used to construct the fence. Use of Arroyo willow (*Salix lasiolepis*) posts will only be used near the two river crossings since they require substantial water to effectively root and survive. All posts will be pounded in the ground using hand tools. No mechanized construction will be utilized.

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Filed: 5/8/09
180th Day: 11/4/09
Staff: AT-V
Staff Report: 9/21/09
Hearing Date: 10/8/09
Commission Action:



STAFF REPORT: REGULAR CALENDAR

APPLICATION NO.: 4-09-018

APPLICANT: Center for Natural Lands Management

PROJECT LOCATION: Rancho Guadalupe Dunes County Park and Maretti and Minetti Ranch Company Parcel (APNs: 113-020-021 and 113-020-019), Santa Barbara County

PROJECT DESCRIPTION: Construction of an approximately 3,500 ft. long (0.7 mile) 4-strand barbed wired fence along the shared property boundary between the Maretti and Minetti Ranch Company property and the Santa Barbara County/Rancho Guadalupe Dunes Preserve to prevent cattle intrusion from the adjacent existing ranch operation into sensitive riparian, wetland, and dune habitat areas within the preserve. The project also includes the request for after-the-fact authorization for a second approximately 1,200 ft. long (0.3 mile) fence and the removal of an approximately 200 ft. long portion of the unpermitted fence. The fence will consist of metal fence posts in upland areas and live willow sapling posts, where feasible, in riparian areas, which will be spaced approximately 20 - 25 ft. apart and will be installed using hand tools.

MOTION & RESOLUTION: Page 3

SUMMARY OF STAFF RECOMMENDATION: Staff recommends **approval** of the proposed development with ten (10) special conditions. The standard of review for the proposed project is the Chapter Three policies of the Coastal Act.

The purpose of the proposed project is to halt ongoing adverse impacts to environmentally sensitive riparian, wetland, and dune habitat areas located within the Santa Barbara County/Rancho Guadalupe Dunes Preserve from cattle intrusion from the ranching operation located on the adjacent property to the north. The proposed project involves the installation of approximately 1 mile of fencing. Section 30240 of the Coastal Act specifically requires that environmentally sensitive habitat areas shall be protected against significant disruption of habitat values. In this case, although some portions of the fence will be located within environmentally sensitive habitat areas, the proposed fence constitutes a necessary preventive measure to protect these environmentally sensitive areas from significant disruption of habitat values, consistent with the provisions of Section 30240.

In addition, the project will also include the filling of coastal waters to install some of the fence posts at the two crossings within the Santa Maria River. Section 30233 of the Coastal Act identifies seven allowable uses for the dredging diking and filling of coastal waters. According to Section 30233(a) filling of coastal waters can be allowed for restoration purposes, among other purposes. The installation of the fence is a necessary restoration and preventive measure to halt ongoing cattle intrusion into a wetland area and will allow previously disturbed wetland areas to recover. For this reason, although portions of the proposed project will result in a minor amount of fill of wetland areas; the proposed project constitutes a necessary restoration measure consistent with the provisions of Section 30233(a)(7). The project, therefore, meets the definition of allowable uses for fill of coastal waters as defined by Section 30233.

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EXHIBITS

Exhibit 1.	Vicinity Map
Exhibit 2.	Parcel Map
Exhibit 3.	Site Plans
Exhibit 4.	Project Plans

SUBSTANTIVE FILE DOCUMENTS: Biological Opinion for Cattle-Exclusion Fencing at the Rancho Guadalupe Dunes County prepared by U.S. Fish and Wildlife Service, September 10, 2009; Cattle Exclusion Fence Project Biological Assessment, prepared by Jamie King, M.S., Preserve Manager, Rancho Guadalupe Dunes Preserve, Center for Natural Lands Management, March 2009; Santa Maria River Estuary Enhancement Plan, prepared by Dunes Collaborative, March 2004; Wildlife Extension Agreement for the Interim Rancho Guadalupe Dunes Cattle Exclusion Fence, Agreement 81440-8-J305, U.S. Fish and Wildlife Service and County of Santa Barbara, August 28, 2008.

I. STAFF RECOMMENDATION

The staff recommends that the Commission adopt the following resolution:

MOTION: *I move that the Commission approve Coastal Development Permit 4-09-018 pursuant to the staff recommendation.*

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO APPROVE THE PERMIT:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be

pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

3. **Interpretation.** Any questions of intent or interpretation of any term or condition will be resolved by the Executive Director or the Commission.

4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.

5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Term of Permit Approval**

This coastal development permit authorizes development on a temporary basis only. The development is authorized for a period of five (5) years from the date of Commission action, after which time the authorization for continuation and/or retention of any development (with the exception of all live willow plantings) approved as part of this permit shall cease. Prior to the date that authorization for the development expires (5 years from the date of Commission action), all portions of the fence authorized by this permit must be removed by the applicant, consistent with the timing restrictions of Special Condition Two (2) and requirements of Special Condition Four (4); unless either a new coastal development permit, or amendment to this permit, authorizing the retention of the development is approved by the California Coastal Commission or if a complete application for a coastal development permit, or amendment to this permit, for retention cattle exclusion fence is pending, and delay for the purpose of Commission consideration of the application is therefore beyond the applicant's control, then the above referenced timelines shall be extended until the Commission acts on the relevant pending application. The Executive Director may grant additional time for good cause.

2. **Installation and Maintenance Timing**

All project construction and maintenance shall occur between October 1 and March 1, outside of the nesting and breeding season for snowy plover and California least tern. In addition, in no event, shall any fence post(s) be installed in still water which is more than one meter in depth in order to avoid times when the river could be potentially occupied by tidewater goby. If an emergency situation exists and repairs and or material salvage must take place during the nesting and breeding season, the applicant and the applicant's biological consultant or resources specialist shall coordinate with USFWS and the California Department of Fish and Game. Preserve staff and an onsite USFWS biological monitor shall oversee the repair activities to avoid disturbance to nesting western snowy plovers and California least terns. The applicant's biologist/biological

monitor shall have the authority to stop all activities if plovers or terns could be adversely affected by fence repairs. In addition, CNLM staff and/or the Ranch Company will immediately contact the USFWS and the Executive Director of the Coastal Commission if any repairs could adversely affect nesting plover or least terns and will wait for authorization to proceed from USFWS and the Executive Director.

3. Removal of Excess Material and Operational Responsibilities

It shall be the applicant's responsibility to assure that the following occurs during project operations: (a) No construction materials, debris, or waste shall be placed or stored where it may be subject to wave erosion and dispersion; (b) Any and all debris resulting from construction activities shall be removed from the subject site immediately following fence construction; and (c) All debris shall be removed immediately from the river or estuary if the fence breaks away or is damaged resulting from a high water flow or other event.

Prior to the issuance of the coastal development permit, the applicant shall provide evidence to the Executive Director of the location of the disposal site for all excess debris from the project site. Excess debris shall be deposited at an approved dumping location either outside the coastal zone or at a site within the coastal zone permitted to receive such material.

4. Sensitive Species and Construction Monitoring

- A. The applicant shall retain the services of a qualified biologist(s) or environmental resources specialist(s) (hereinafter, "environmental resources specialist") with appropriate qualifications acceptable to the Executive Director to monitor the site during all construction activities and conduct sensitive species pre-construction surveys. The environmental resources specialist shall conduct a survey of the project site (including all areas where fence construction is proposed and immediately adjacent areas), to determine presence and behavior of sensitive species, one day prior to any construction activities. In the event that any sensitive wildlife species (including but not limited to western snowy plover and California least tern) exhibit reproductive or nesting behavior within 500 feet of the project site, no work shall proceed. In such event, the environmental resources specialist shall direct the applicant to cease work or not to commence work, and shall immediately notify the Executive Director and local resource agencies, including the US Fish and Wildlife Service. Project activities shall begin or resume only upon written approval of the Executive Director.
- B. The environmental resources specialist shall be present during construction and fence repair activities. The applicant shall cease work should any sensitive species be identified in the project area, if a breach in permit compliance occurs, or if any unforeseen sensitive habitat issues arise. In such event, the environmental resources specialist shall direct the applicant to cease work and shall immediately notify the Executive Director. Project activities shall resume only upon written approval of the Executive Director. The environmental resource specialist shall also immediately notify the Executive Director if development activities outside of the

scope of Coastal Development Permit 4-09-018 occur. If significant impacts or damage occur to sensitive wildlife species, the applicant shall be required to submit a revised, or supplemental program to adequately mitigate such impacts. The revised, or supplemental, program shall be processed as an amendment to this coastal development permit.

- C. The environmental resources specialist shall ensure that fence posts shall not be installed in still water at depths that are more than one meter deep to avoid impacts to tidewater goby.

5. Revised Project Plans

A. ***Prior to issuance of the coastal development permit***, the applicant shall submit, for the review and approval of the Executive Director, two (2) sets of revised project plans. All plans must be drawn to scale with dimensions shown. The project plans shall include the following:

1. A schematic diagram of the river crossing/break-away fence design adequate to show that the fence will not result in increased entrainment of flood debris or flooding on site.
2. A site plan, drawn to scale, depicting fence alignment in project area which shows the portion of "Fence B," extending through the river to the west, deleted from the plans.
3. Two representative cross sections, drawn to scale, of the subject site showing the fence (including one cross section for the portion of the site where the fence is located within the river and one cross section of the site where the fence is located entirely on land).

The fence construction shall be in compliance with the approved revised plans and the above provisions.

B. The Permittee shall undertake development in accordance with the final approved plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved plan shall occur without a Coastal Commission-approved amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

6. Reporting Requirement

The applicant shall submit an annual report (by March 1st of each year) to the Executive Director which briefly explains: 1) whether any repairs of the fence were needed, what the repairs consisted of (due to flooding, etc.), and when the repairs took place, 2) the success of the fence in excluding cattle from the property, and 3) an evaluation of the success of the fence in protecting sensitive species and sensitive habitat. At the end of the permit term, the applicant shall also submit to the Executive Director an evaluation of the success or failure of the cattle exclusion fencing throughout the five-year project term.

7. Assumption of Risk, Waiver of Liability and Indemnity

By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

Prior to issuance of the Coastal Development Permit, the applicant shall submit a written agreement, in a form and content acceptable to the Executive Director, incorporating all of the above terms of this condition.

8. Condition Compliance

Within **90** days of Commission action on this coastal development permit application, or within such time as the Executive Director may grant for good cause, the applicant shall satisfy all requirements specified in the conditions hereto that the applicant is required to satisfy prior to issuance of this permit. Failure to comply with this requirement may result in the institution of enforcement action under the provisions Chapter 9 of the Coastal Act.

9. Required Approvals

By acceptance of this permit, the applicant agrees to obtain all other necessary State or Federal permits that may be necessary for all aspects of the proposed project (including the U.S. Army Corps of Engineers) or submit evidence no such approval is required.

10. Debris Removal

By acceptance of this permit, the applicant agrees to immediately remove any fence material or debris from the river or estuary if fencing material breaks away or is damaged due to a high water flow or other event. If not reusable, debris shall be disposed of at an approved location either outside the coastal zone or at a site within the coastal zone permitted to receive such material.

IV. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION AND BACKGROUND

Project Description

The proposed project is for the installation of an estimated 3,500 ft.-long (0.7 mile) 4-strand barbed wired fence (herein referred to as Fence "A") along the shared property boundary between the Ranch Company and Santa Barbara County/Rancho Guadalupe Dunes Preserve. In addition, the project also includes the request for the after-the-fact authorization of an approximately 1,200 ft. long (0.3 mile) segment of fence that was installed in May 2008 without the benefit of a coastal development permit (herein referred to as Fence "B") and the removal of an approximately 200 ft. long segment of the unpermitted fence. (Exhibit 4) The applicant has indicated that the 1,400 linear ft. as-built fence was necessary as an emergency measure to prevent intrusion of cattle from the adjacent existing cattle grazing operation located on the parcel immediately to the north. The 1,200 ft. long portion of the existing as-built fence will be repaired/improved as part of this project and the approximately 200 ft.-long portion crossing into the open river to the west is proposed to be removed. Fence A and Fence B will connect and will constitute a total of approximately 5,000 ft. in length of barbed-wire fence. The fence will consist of metal fence posts in upland areas and live willow sapling posts, where feasible, in riparian areas, which will be spaced approximately 20 - 25 ft. apart and will be installed using hand tools. The bottom wire of all proposed fencing will be a minimum of 18-inches above grade to ensure that the fence is permeable to native wildlife while still restricting cattle movement. The top three wires will be spaced approximately 12-inches apart vertically. All work will be carried using hand tools. No mechanized construction equipment will be utilized.

The purpose of the proposed project is to halt ongoing adverse impacts to sensitive riparian, wetland, and dune habitat areas located within the preserve from cattle intrusion from the ongoing cattle ranching operation located on the adjacent property to the north. To ensure that cattle are prevented from encroaching onto preserve land, it is necessary for the fence to cross the river in two locations. Each crossing will be constructed to allow the wire to loosen easily on one side to permit passage of large debris that might otherwise collect against the fence and cause potential damage during a high flow event. **Special Condition Five (5)** requires the applicant to submit a schematic diagram showing the break-away design. Additionally, **Special Condition Ten (10)** requires any fence debris in the river to be immediately removed.

Project Location & Setting

The subject site is located within Rancho Guadalupe Dunes County Park and Maretti and Minetti Ranch Company Parcel (APNs: 113-020-021 and 113-020-019), which is located along the coast within the northwest corner of Santa Barbara County. (Exhibits 1 & 2) The proposed fencing generally runs along or near the property line between the ranch and the preserve, although the majority of the fence will be located on the ranch

property (APN 113-020-019). The Santa Maria River crosses the subject site and portions of the river are located on both ranch and preserve property. (Exhibit 3-4). Although Santa Barbara County has a certified Local Coastal Program (LCP) the project site is located in an area of retained jurisdiction by the Coastal Commission, as shown on the Point Sal LCP Certification Permit and Appeal Jurisdiction map. The project area includes beach and foredune habitat areas immediately south of the Santa Maria River mouth, as well as riparian, wetland, and open water habitats associated with a portion of the Santa Maria River estuary and floodplain. The proposed fence will be located within riparian, upland, and wetland areas. The fence will not extend into any of the dune habitat areas on site.

Site History & Background

The present park configuration consists of approximately 592 acres, and was established in 1987 when California State Coastal Conservancy and the Nature Conservancy (TNC) purchased land to create the park. TNC and the County of Santa Barbara entered into an agreement for the County to acquire the property from the TNC in 1989, and then leased it back to the TNC for its management. In 1999, TNC transferred its management obligations to the Center for Natural Lands Management (CNLM), a 501(c)(3) nonprofit organization. Management of the Park is currently provided by CNLM through a lease agreement with the County of Santa Barbara.

The park was traditionally used for multiple passive and active recreation activities with off-road vehicles banned from the park in 1983. The Park receives an estimated 40,000 visitors per year. Principal usage of the Park is coastal access and passive beach recreation including fishing, surfing, sunbathing, picnicking, walking, and swimming. Facilities at Rancho Guadalupe Dunes County Park include entrance kiosk and an approximately 2-mile long road that leads to a public parking lot, restroom facilities, and picnic tables, permitted pursuant to CDP 4-03-033, approved by the Commission in August 2004.

Rancho Guadalupe Dunes Park includes former facilities of Thriftway Oil Company, located just west of the existing parking lot. This lease site is currently abandoned and ongoing remediation efforts are underway. This is under separate permit and not a part of this project.

The dune, riparian, and wetland areas associated with the Santa Maria River mouth and within the project area provide important habitats for many special-status species including the listed western snowy plover (*Charadrius alexandrinus nivosus*), California least tern (*Sternula antillarum*), tidewater goby (*Eucyclogobius newberryi*), La Graciosa thistle (*Cirsium loncholepis*), and California red-legged frog (*Rana aurora draytonii*). These sensitive dune, riparian, and wetland habitats are open to cattle from neighboring private property to the north of the Preserve, resulting in cattle trespass into the Preserve. Cattle tend to cross over the open waters of the Santa Maria River estuary when the water level is low and intrude into sensitive wetland and low-lying waters and into sensitive dune habitat, resulting in direct impacts to water quality, habitat

degradation, vegetation disturbance, and direct impacts to sensitive nesting bird species.

An existing cattle grazing operation is located on the adjacent property located immediately north of the project site. Although no evidence has been submitted as part of this application regarding the historical use of the ranch, the applicant has informed staff that Ranch owners have indicated that the ranch property has been historically used for cattle grazing operations by the Minetti and Maretti family for several generations. The adjacent parcel to the north, owned by Maretti and Minetti Ranch Company (Ranch Company), have agreed to cooperate with CNLM to allow installation of the proposed fence in order to prevent cattle from encroaching into the sensitive riparian, wetland, and dune areas which are located on the County's property to the south. As shown on Exhibit 4, the majority of the new proposed cattle exclusion fencing will be located on the ranch parcel in order to prevent cattle from accessing the riparian and wetland areas on site. The proposed fence is necessary to resolve the ongoing land use conflict between the historic ranching use of the property to the north and Santa Barbara County Park property to the south. CNLM has been managing the Preserve since 1999 and is in the process of implementing goals identified in the 2004 Santa Maria Estuary Enhancement plan, including: improving water quality, enhancing physical and ecological processes while protecting important agricultural resources in the study reach from erosion and flooding, and improving habitat quality and quantity while also improving erosion protection along river terraces.

The proposed fencing is intended as a short-term solution to protect the sensitive riparian, wetland, and dune habitat areas on County-owned land that are currently grazed without permission. The applicant has indicated that they are currently exploring long-term solutions to the cattle encroachment issue including the potential acquisition of the adjacent 40 - 60 acre portion of the Ranch property for inclusion as part of the preserve, through either fee-title acquisition or a conservation easement.

In May 2008, the CNLM staff installed an approximately 1,400-ft. long (0.3 mile) segment of 4-strand barbed wire fence on the subject site, crossing the river at two points along the property boundary between the Ranch Company and the Preserve without the required coastal development permit. The applicant has informed staff that the fence was necessary as part of an emergency measure to protect active western snowy plover nests from encroachment by the cattle from the adjacent Ranch parcel. Although the applicant did not obtain either a regular or emergency permit from the Commission, CNLM staff did notify the U.S. Fish and Wildlife Service (USFWS), the County of Santa Barbara Parks Department, and the California Department of Fish and Game prior to installation of the fence, which was monitored by the Preserve Manager and a USFWS monitor. Therefore, as part of the project description, the applicant is now requesting after-the-fact approval for a 1,200 ft. portion of the as-built fencing and removal of an approximately 200 ft. segment of the as-built fence.

Additionally, the Preserve contains known cultural resources, specifically Native American middens and the buried remains of the set for the original 1920's film, "The

Ten Commandments.” None of these resources are located within or near the proposed fence installation area and would not be affected by the proposed development.

Project Timing. The fence is proposed to be installed and maintained between October 1-March 1, which is outside of the western snowy plover and California least tern nesting season. However, if emergency repairs of the fence are needed (due to flooding, cattle intrusion, etc.) outside of this period, the applicant proposes to coordinate with USFWS and the California Department of Fish and Game. Preserve staff and an onsite USFWS biological monitor would oversee the repair activities to avoid disturbance to nesting western snowy plovers and California least terns, or trampling chicks, within 500 feet of nests. The biologist/biological monitor will have the authority to stop all activities if plovers or terns could be adversely affected by fence repairs. In addition, CNLM staff and/or the Ranch Company will immediately contact the USFWS if any repairs could adversely affect nesting plover or least terns and will wait for authorization to proceed from USFWS.

Access. Access to the project area will be via foot from the main Preserve Road and along a path designated by the Preserve Manager after a preconstruction clearance survey is conducted for the project area and access route. Any sensitive resources identified in the project area will be avoided. If emergency repair work must occur during the nesting and breeding season, a USFWS approved monitor will also survey the access route and confirm that no impacts to snowy plover or least tern or other birds will occur before access to the project area will be permitted. The Preserve staff and the Ranch Company staff will work with the monitor to identify minor modifications of fence alignment, within the project area, if needed and if feasible, to avoid nesting plovers and least terns.

Installation Method. Work would be completed by a crew of 2-3 people from CNLM and Ranch Company staff using hand tools under the supervision of the Preserve Manager. Metal fence posts (t-posts) or live willow sapling posts less than 5 ft. tall would be used to construct the fence. Use of Arroyo willow (*Salix lasiolepis*) posts will only be used near the two river crossings since they require substantial water to effectively root and survive. All posts will be pounded in the ground using hand tools. No mechanized construction will be utilized.

As proposed, a biologist will survey the proposed fence line for La Graciosa thistles and other special-status plants prior to installation. The fence alignment would avoid any special-status plants and Preserve Staff would assure a 10 ft. exclusionary buffer between fence posts and special status-species to avoid impacts during installation. Preserve staff will notify the fence installation crew about special-status species observed and identify measures to avoid impacts during installation.

If shovels are needed for excavation to install the live willow posts, all removed soil will be collected and spread in adjacent upland areas where sensitive plants are not present, in order to reduce potential soil erosion and increases in stream turbidity. When posts are placed in areas where moist loose soil is present, the soil will be raked to

uncover any sensitive species, if present, and relocate them nearby. To avoid or minimize potential impacts to burrows of breeding tidewater gobies and individual arroyo chub, no posts will be installed in water with a depth of greater than three feet or in open water areas that lack flow (i.e., still lagoons or still pools of water). In addition, the minimum number of posts would be used for the two river crossings.

Fence Inspection and Maintenance. The applicant proposes to inspect the entire length of the fence by February 5th of each year, in coordination with the Ranch Company, to ensure that repairs, minor realignments, or other necessary fence maintenance is completed prior to March 1 (the start of bird nesting and breeding season). At a minimum, annual maintenance and replacement of river crossings is anticipated. All river crossing repairs, fence repairs, and minor realignments are proposed to follow the same protocol as described for initial fence installation (i.e., biological surveys, timing, and installation methods).

Alternatives

The applicant has analyzed alternative siting and configurations for the proposed fence. Alternative locations for the fence were evaluated in order to determine the feasibility of locating the fence entirely outside of any sensitive habitat areas on site, including the riparian, wetland, and dune habitat areas on site. Although several alternatives were evaluated, including relocation of all fencing within upland areas of the site (with no encroachment into the river) none of the feasible alternatives were adequate to achieve the stated project goal of protecting sensitive riparian, wetland, and dune habitat areas.

The first alternative of locating the fence parallel to, and immediately south of, the river was evaluated; however, although this alternative would serve to protect the sensitive dune habitat areas located within the preserve, it would not prevent the cattle from entering the sensitive riparian habitat and wetland areas on the Preserve property from the north. The second alternative of locating the fence parallel, and immediately north of the river, was also evaluated; however, although this option would prevent any cattle intrusion into the sensitive riparian and wetland areas on site, it would also require that the majority of the new fencing be located on multiple privately-owned parcels of land. The applicant has indicated that this is not a feasible option because the two adjacent property owners are not willing to construct the required fencing upland on their property. The applicant has informed staff that the Ranch Company will not agree to this alternative because it would substantially reduce available grazing areas on their adjacent property and eliminate cattle access to portions of the river which are located outside the preserve. Thus, staff concurs with the applicant's analysis that the proposed project, which includes locating the fence roughly along the property boundary between the Preserve and the Ranch Company property to the north, is the best feasible alternative which would serve to minimize the ongoing impacts to sensitive habitat areas on site.

Additionally, alternative fencing types were also analyzed. The applicant evaluated the alternative of using a smooth strand of barbed wire for the bottom strand; however, this alternative was determined to be infeasible because such a design is inadequate to

prevent smaller calves from accessing the preserve. Therefore, staff concurs with the applicant's analysis that the proposed fence design, which utilizes a bottom barbed strand, 18" off of the ground, is the only design which would prevent all cattle intrusion into preserve areas while still preserving the ability of native wildlife to pass under or through the fence, including coyotes, foxes, and other medium sized animals. Larger animals, such as deer, will be still be able to jump over the fence or go around it.

Commission Jurisdiction

Although the Commission has previously certified a Local Coastal Program for Santa Barbara County, the proposed project will be located on state tidelands and is located within an area where the Commission has retained jurisdiction over the issuance of coastal development permits. Thus, the standard of review for this project is the Chapter 3 policies of the Coastal Act.

B. MARINE RESOURCES AND ENVIRONMENTALLY SENSITIVE HABITAT

Section **30230** of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section **30231** of the Coastal Act states that:

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, among other means, minimizing adverse effects of waste water discharges- and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section **30233(a)** of the Coastal Act states:

The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial facilities.*

- (2) *Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
- (3) *In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
- (4) *Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
- (5) *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
- (6) *Restoration purposes.*
- (7) *Nature study, aquaculture, or similar resource dependent activities.*

Section **30240** of the Coastal Acts states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*
- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.*

Section 30231 requires that the biological productivity and quality of coastal waters be maintained. Section 30230 requires that uses of the marine environment be carried out in a manner that will sustain the biological productivity of coastal waters for long-term commercial, recreational, scientific, and educational purposes. In addition, Section 30240 of the Coastal Act states that environmentally sensitive habitat areas shall be protected and that development within or adjacent to such areas must be designed to prevent impacts which could degrade those resources.

The purpose of the proposed project is to halt ongoing adverse impacts to environmentally sensitive riparian, wetland, and dune habitat areas located within the Santa Barbara County/Rancho Guadalupe Dunes Preserve from cattle intrusion from the ranching operation located on the adjacent property to the north. The proposed project involves the installation of approximately 1 mile of fencing. Section 30240 of the Coastal Act specifically requires that environmentally sensitive habitat areas shall be protected against significant disruption of habitat values. In this case, although some portions of the fence will be located within environmentally sensitive habitat areas, the proposed fence constitutes a necessary preventive measure to protect these environmentally sensitive areas from significant disruption of habitat values, consistent with the provisions of Section 30240.

The project will also include the filling of coastal waters to install some of the fence posts at the two crossings within the Santa Maria River. (Exhibit 4) Section 30233 of the Coastal Act identifies seven allowable uses for the dredging diking and filling of coastal waters. According to Section 30233(a), filling of coastal waters can be allowed for restoration purposes, among other purposes. Although the proposed project involves the installation of approximately one mile of fencing for the purpose of preventing adverse impacts to wetland habitat areas, fencing would only be installed within wetland areas at the two designated fence crossing locations. Thus, relatively few fence posts would actually be installed within wetland areas. Moreover, the installation of the fence is a necessary restoration and preventive measure to halt ongoing cattle intrusion into a wetland area and will allow previously disturbed wetland areas to recover. For this reason, although portions of the proposed project will result in a minor amount of fill of wetland areas; the proposed project constitutes a necessary restoration measure consistent with the provisions of Section 30233(a)(7). The project, therefore, meets the definition of allowable uses for fill of coastal waters as defined by Section 30233.

The project site is located within Rancho Guadalupe Dunes County Park which is a part of the 20,000-acre Guadalupe-Nipomo Dunes complex. The Guadalupe-Nipomo Dunes complex is the largest remaining dune system in California south of San Francisco. This dune complex stretches along eighteen miles of coastline, within San Luis Obispo and Santa Barbara Counties, with dunes extending inland two to five miles.

Two approximately 200 ft. long segments of the approximately one mile of proposed fencing will extend into the Santa Maria River Estuary, including in wet marsh areas and tidelands in the river estuary, which meet the Coastal Act definition of wetlands. The proposed fence project is necessary to protect actively nesting snowy plovers and least terns in the nearby foredune habitat and sand dune complex, which also meets the Coastal Act definition of ESHA. The adjacent dune habitat is designated critical habitat for the federally-threatened western snowy plover. Snowy plovers forage along the shoreline and nest in the foredunes. The proposed fence will not be located in the dune area.

In order to protect sensitive species and habitat in the dune area, the applicant proposes to prohibit all construction during the nesting season of the western snowy plover and California least tern, generally March to September, unless an emergency exists. Given the relatively small footprint of development of the individual fence posts within the stream and use of hand tools, the installation of the fence is not expected to result in adverse impacts to goby or steelhead that may be present. To further protect habitat and sensitive species in the river estuary during installation, the applicant has proposed to inspect the fence location prior to post installation and to install posts within open water areas when the water depths are less than one meter to avoid disturbance of tidewater gobies, discussed below.

USFWS Biological Opinion

USFWS has issued a concurrence and biological opinion based upon review of the Service's proposed funding for the construction of cattle-exclusion fencing at the Rancho Guadalupe Dunes Preserve. This Section 7(c) consultation was required under the Endangered Species Act of 1972 because the USFWS has entered into a cooperative agreement to provide cost-share funding to the CNLM, in partnership with the Ranch Company and the County of Santa Barbara, for the installation of approximately 0.7 mile portion of cattle exclusion fencing within the Preserve. The consultation was necessary to determine the effects of the proposed action on federally listed species.

Six federally-listed species potentially occur within the Park boundaries, including the endangered California least tern, endangered brown pelican, endangered tidewater goby, endangered La Graciosa thistle, threatened California red-legged frog, and threatened western snowy plover. The USFWS concluded that the project would result in no effect to the La Graciosa thistle, tidewater goby, California brown pelican, California least tern, western snowy plover, or California red-legged frog based on the following rationale:

La Graciosa Thistle

1. *While the species is historically known from the mouth of the Santa Maria River, no current records for La Graciosa thistle exist within the project area.*
2. *Prior to the initiation of construction activities, the CNLM preserve manager and/or the Ventura Fish and Wildlife Office Partners Program biologist will survey the proposed fence lines for La Graciosa thistle.*
3. *The fence construction crew(s) will be informed of the presence of any La Graciosa thistle within the project area.*
4. *The CNLM preserve manager will surround any identified plants with a 10 ft. exclusionary buffer to preclude any impacts to the species during fence installation activities.*

La Graciosa Thistle Critical Habitat

The primary constituent elements for La Graciosa thistle critical habitat include the following: moist, sandy soils associated with dune swales, margins of dune lakes and marshes, seeps, intermittent streams, and river margins form the Guadalupe Dune complex along the coast and inland to Canada de las Flores; plant communities that support associated wetland species,...;hydrologic processes, particularly the maintenance of a stable groundwater table supporting the soil moisture regime...While the project area is located within the designated critical habitat (Pismo-Orcutt unit) and contains these elements, the impacts associated with the cattle-exclusion fencing will affect only an extremely very small area (i.e., that are needed to install support posts) of the 38,262-acre unit. The overall effect will be to benefit La Graciosa thistle by excluding cattle and removing grazing, an identified threat to the species (69 FR 122558). As such,

the proposed project is not anticipated to result in the destruction or adverse modification of critical habitat for La Graciosa thistle.

Tidewater Goby

The last known survey effort for the species in the field occurred in 1999 and identified 25 tidewater gobies in the lagoons at the Santa Maria River mouth (Swift 2000). As tidewater goby are typically present when water depths exceed one meter, installation and maintenance work for the barbed-wire cattle exclusion fencing within the Santa Maria River will be conducted when water depths are less than one meter to avoid times when the area could be occupied by the species.

Tidewater Goby Critical Habitat

Primary constituent elements for tidewater goby are considered to include areas with the following: persistent, shallow (in the range of 0.1 to 2 meters), still-to-slow moving aquatic habitat most commonly ranging in salinity from 0.5 ppt to about 10 to 12 ppt, which provides adequate space for normal behavior and individual and population growth; substrates (e.g., sand, silt, mud) suitable for the construction of burrows for reproduction; submerged and emergent aquatic vegetation...that provides protection from predators; and presence of a sandbar(s) across the mouth of a lagoon or estuary during the late spring, early summer, and fall that closes or partially closes the lagoon or estuary, thereby providing relatively stable water levels and salinity. The project area is located within designated critical habitat unit SB-1 and contains these elements; however, the impacts associated with the cattle-exclusion fencing will be very short-term in duration and affect only an extremely very small area (i.e., that are needed to install support posts) of this 468-acre unit. The overall effect will benefit tidewater goby by eliminating cattle grazing that results in increased sedimentation of coastal lagoons and riparian habitats, removes vegetative cover, increases water temperatures, and eliminates plunge pools and undercut banks used by the species (73 FR 5290). As such, the proposed project is not anticipated to result in the destruction or adverse modification of critical habitat for tidewater goby.

California Brown Pelican

- 1. California brown pelicans are not known or expected to nest within the project area.*
- 2. No night roosts have been identified in the project area; however, any California brown pelicans that may roost in the vicinity of the proposed project activities would be able to easily relocate without being substantially disturbed as there is an abundance of similar suitable habitat adjacent to the proposed project area.*
- 3. Any disturbance that individual California brown pelicans may be subjected to from project-related activities would be short in duration and unlikely to reach the level of causing an adverse effect or take.*

Western Snowy Plover

1. *While western snowy plovers are known to nest in close proximity to the project area, all construction and maintenance activities associated with the cattle exclusion fencing would be restricted between October 1 and March 1 annually to avoid the breeding and nesting season. Post-installation, the cattle-exclusion fence lines will be waked and conditions assessed by February 5 annually to ensure that any necessary repairs can be made prior to March 1.*
2. *If unexpected fence repairs or realignments are required between March 1 and October 1, the CNLM preserve manager will obtain any necessary approvals from the Service. A Service-approved biologist will be retained to survey the project area prior to making any repairs or realignments and will work closely with the biologist to avoid disturbing nesting western snowy plovers or any action that could adversely affect adults or chicks when making any repairs within 500 feet of identified nests. This biologist will also have the authority to stop all CNLM and Maretti and Minetti Ranch Company activities if western snowy plovers could be adversely affected by any fence repairs. In addition, the CNLM preserve or Maretti and Minetti Ranch Company personnel will immediately contact the Ventura FWS ...The CNLM preserve manager and/or Maretti and Minetti Ranch Company personnel will not implement any work until the Service has evaluated and completed the appropriate level of compliance for those repairs that may result in adverse effects to western snowy plovers.*

California Least Tern

1. *Historically, California least terns have only sporadically bred and nested at RGDP... The closest past recorded nest locations are approximately 1,500 feet south of the project area.*
2. *California least terns typically do not arrive in the area until mid-to late May of those years when they have been present.*
3. *Any repairs or maintenance of the symbolic and cattle-exclusion fences will be performed prior to March 1 annually, well outside of the established breeding season for California least terns.*
4. *If unexpected fence repairs or realignments are required between March 1 and October 1, the CNLM preserve manager will obtain any necessary approvals from the Service. A Service-approved biologist will be retained to survey the project area prior to making any repairs or realignments and will work closely with the biologist to avoid disturbing nesting California least terns or any action that could adversely affect adults or chicks when making any repairs within 500 feet of identified nests. This biologist will also have the authority to stop all CNLM and Maretti and Minetti Ranch Company activities if western snowy plovers could be adversely affected by any fence repairs. In addition, the CNLM preserve or Maretti and Minetti Ranch Company personnel will immediately contact the Ventura FWS ...The CNLM preserve manager and/or Maretti and Minetti Ranch Company personnel will not implement any work until the Service has evaluated and completed the appropriate level of compliance for those repairs that may result in adverse effects to California least terns..*

California Red-Legged Frog

California red-legged frogs are known to occur in that reach of the Santa Maria River that is found within the RGDP. Dune wetland habitats immediately to the north of the Santa Maria River mouth on the former Guadalupe Oil Fields also support breeding populations of California red-legged frogs that are monitored quarterly by the Chevron Corporation as part of their remediation efforts on the oil field. In May 2008, biologists at the oil field observed 6 adults and 10 sub-adults in wetland habitats immediately north of the proposed fence line (Lauren Brown, Biological Resources Analyst, Science Applications International Corporation, in litt. 2008). Prior to the initiation of construction activities, the CNLM preserve manager will survey the aquatic and upland habitat in the vicinity of the proposed ...cattle-exclusion fence lines for the presence of California red-legged frog (adults, tadpoles, and/or egg masses). If identified, take will be avoided by re-aligning the fence(s) such that no frogs, tadpoles, or egg masses would be adversely affected.

USFWS staff also made a “no effect” determination regarding project impacts on Steelhead trout. There have been no recent steelhead trout surveys within the Santa Maria River Estuary. However, USFWS consulted with NOAA and with the California Department of Fish and Game regarding possible impacts of the proposed cattle-exclusion on steelhead in the river. (Pers. Comm. with Mary Root of USFWS 9/18/09) USFWS evaluated potential impacts due to the fence or debris during a flooding event disturbing steelhead and potential impacts from the barbed wire during a high flow event. USFWS determined that if loose material is removed as soon as possible after it breaks loose, there will be little to no impact on passage. Further, USFWS determined that the small amount of barbed wire will also not be an impediment to passage. (Pers. Comm. with Mary Root, USFWS, 9/18/09).

The September 2009 Intra-Service Consultation and Biological Opinion further concluded that the “proposed project is not likely to jeopardize the continued existence of these species or adversely modify the critical habitat of the western snowy plover.” USFWS made this determination, finding that “the fence construction activities will be conducted over a very short period of time, confined to a linear corridor, large areas of similar habitat are available adjacent to the project area, preconstruction surveys for both western snowy plovers and California least terns will be conducted and activities overseen by the CNLM preserve manager and/or the onsite Service-approved monitor. The Service-approved monitor would survey the route to ensure that no impacts to nesting plover and terns would occur before access to the project area would be permitted. As needed, the CNLM preserve manager and Ranch staff would work with the monitor to identify those minor modifications of the fence alignment necessary to avoid nesting western snowy plovers and California least terns.”

Additionally, the USFWS Biological Opinion also contained the following analysis regarding “incidental take” of the snowy plover and the least tern. Regarding snowy plover, the take statement explains: “We do anticipate that this work will result in some level of disturbance to the nesting behavior of adults that could result in adverse effects to eggs or chicks. Given the project’s limited scope and duration and the implementation

of minimization measures, we do not anticipate that any take of western snowy plover will occur as a result of the proposed fence construction activities and, as such, no exemption is provided.” Regarding the California least tern, the take statement explains: “We do anticipate that this work will result in some level of disturbance to the nesting behavior of adults that could result in adverse effects to eggs or chicks. Given the project’s limited scope and duration and implementation of the implementation measures, we do not anticipate that any take of California least tern will occur as a result of the proposed fence construction activities and, as such, no exemption is provided.” Therefore, although the fence construction activities may result in some disturbance of these sensitive species, no “take” will result.

Resources within the Rancho Guadalupe Dunes Preserve

Dune Habitat

The significance of the natural resource values of the Guadalupe-Nipomo Dune Complex is well recognized. One of the most critical functions of the dune system is its role as habitat for very unique flora and fauna. These are species which are specifically adapted to the conditions and opportunities found in the dunes. Dune plants in particular play a special role by both stabilizing the dunes from the effects of wind erosion, and hosting rare fauna. However, as the natural dune system has been reduced and fragmented, the risk of extinction has increased for several species.

Several native plants may potentially occur within Rancho Guadalupe Dunes Park which are state or federally listed species as endangered or threatened, or are on sensitive species lists of the California Native Plant Society (CNPS). These include the La Graciosa Thistle (*Cirsium loncholepis*), Surf Thistle (*Cirsium rothophilum*), Beach Spectacle Pod (*Dithyrea maritime*), Dune Larkspur (*Delphinium parryi* spp. *blochmaniae*), Blochman’s Leaf Daisy (*Erigeron blochmaniae*), Wedge-leafed Horkelia (*Horkelia cuneata* ssp. *sericea*), Crisp Monardella (*Monardella crispa*), San Luis Obispo Monardella (*Monardella frutescens*), Dunedelion (*Malacothrix incana*), Suffrutescent Wallflower (*Erysimum insulare* ssp. *suffrutescens*). La Graciosa thistle is a state and federally listed endangered species, and has been identified at the mouth of the Santa Maria River adjacent to the estuary. Surf thistle and beach spectacle pod are state-listed threatened species. The remaining species are identified as sensitive by the CNPS.

State or federally protected wildlife species occurring within the Park include the California least tern (*Sterna antillarum browni*) a federally and state listed endangered species, western snowy plover (*Charadrius alexandrinus nivosus*) a federally-threatened and state species of special concern, California brown pelican (*Pelecanus occidentalis californicus*) federally- and state-endangered species, California red-legged frog (*Rana aurora draytonii*) a federally listed threatened species, and Tidewater goby (*Eucyclogobius newberryi*) a federally-endangered and state species of special concern.

While the distribution of these dune plants and animals may appear sparse, over time they can collectively be expected to utilize the entire available dune surface. This is

because the dunes complex is a dynamic system. The dunes present a rather harsh and difficult growing environment, where the wind keeps shifting the shape of the ground, rainfall rapidly percolates out of reach, and, lacking a distinct topsoil horizon, nutrients are quickly exhausted. Thus, a plant like surf thistle may over a year or two use up the available moisture and nutrients at a particular site, and by means of wind-blown seed “move” to a neighboring area. In this simplified model, the original site remains a bare sand surface until life’s necessities again accumulate at the original site—thereby allowing recolonization and repeating of the cycle. Therefore, the overall growing area (“habitat”) needed over the long run is vastly larger than the area occupied by the plants at any one “snapshot” in time. This also helps explain why the entire dune surface—not just the locations where the plants (and animals) are found in any one particular year—must be considered as ESHA. In this case, the proposed cattle-exclusion fencing is necessary to protect the dune ESHA and sensitive species associated with the dunes.

California Least Tern

California least terns were present at the Preserve in mid-to-late May of the years they were surveyed. Between 2001 and 2008, nests or nesting attempts were observed in 2001 (12 nests initiated, 8 hatching at least once chick), 2004 (8 nests initiated, 3 nests hatching at least one chick), 2005 (4 nests initiated, all failed due to predation from coyotes, and 2007 (1 nest, 1 chick fledged). No least terns were observed nesting in 2008. Least terns have been observed to forage at the Santa Maria River mouth, with adults observed taking a fledgling there on several occasions. (USFWS, 2009)

The California least tern (*Sterna antillarum browni*) are migratory shorebirds that spend the breeding season on beaches from central and southern California to Baja, Mexico. Winter areas for the U.S. breeding population are largely unknown but it is presumed that the birds spend their winters along the pacific coast of Central America. Though the timing of migration varies, terns typically begin to arrive along the California coast in mid-April with the fall migration from breeding colonies starting as early as June and extending as late as mid-October. Least terns typically migrate in small, loose groups, feeding en route in shallow water near land and resting on sandbars, beaches, pilings, and docks. The least tern forages on small surface fish such as anchovies and topsmelts, captured from nearshore waters, estuaries, and river mouths near the breeding colonies.

Least terns nest in loose colonies in areas relatively free from human or predatory disturbance. Courtship may take place away from the nest colony, on a beach or exposed tidal flat. They tend to be site faithful, with the majority of birds returning to the same nesting location in subsequent years. Courtship period is usually 2 to 3 weeks in April and May with first eggs in California appearing in approximately mid-May. The breeding season for least terns along the California coast extends from April through August. California least terns are ground-nesting birds which nest in barren to sparsely vegetated sites near water, usually in association with river mouths or estuaries. Nests are shallow depressions in sand, soil, or pebble and are lined with beach debris (e.g., pebbles, shell fragments, plant material). The eggs are small, oval-shaped eggs, beige

to olive in color with spots or splotches medium brown to black. Eggs are hatched after about 25 days. The chicks are semiprecocial, walking shortly after hatching but with the parents feeding chicks occasionally for up to several weeks after fledging. Chicks leave nest at about 2 days of age, and fledge at approximately 20 days. The population of California least tern has experienced a decline due to the loss of suitable nesting habitat, which has been degraded by high levels of human disturbance along the beach as well as by the effects of urbanization of the shoreline.

As mentioned above, least terns are known to nest at the Park. As a result of the presence of least terns, the applicant proposes to undertake project activities only between October 1 and March 1, which is outside of the reproductive season of the California least tern and snowy plover. To ensure that the project activities are implemented consistent with this timeline thereby ensuring protection of this sensitive species, the Commission requires **Special Condition Two (2)**, to ensure that all construction and maintenance activities occur only between October 1 and March 1. However, if an emergency situation exists and repairs and or material salvage must take place during the nesting and breeding season, **Special Condition Two (2)** will allow the repair to proceed if the applicant's environmental resources specialist coordinates with USFWS and the California Department of Fish and Game. The condition requires Preserve staff and an onsite USFWS biological monitor to oversee the repair activities to avoid disturbance to nesting western snowy plovers and California least terns. The applicant's environmental resource specialist will have the authority to stop all activities if plovers or terns could be adversely affected by fence repairs. In addition, CNLM staff and/or the Ranch Company and the applicant's environmental resource specialist are required to immediately contact the USFWS and the Executive Director of the Coastal Commission if any repairs could adversely affect nesting plover or least terns and will wait for authorization to proceed from USFWS and the Executive Director.

As discussed in detail above, the proposed fencing is necessary to prevent ongoing adverse impacts to sensitive bird species within the preserve, including California least tern. In this case, no adverse impacts from the installation of the fence to California least terns are anticipated because they do not overwinter at the breeding sites. However, to ensure that the project does not impact any least terns that may arrive earlier than the recognized breeding season, **Special Condition Four (4)** requires a biological survey of the project site to be conducted prior to commencement of project activities to determine the presence and behavior of sensitive species, one day prior to construction activities. The condition further requires an environmental resource specialist to be present during construction activities. If the environmental resource specialist finds that any least tern is exhibiting reproductive or nesting behavior, the environmental resource specialist shall require the applicant to cease work, and shall immediately notify the Executive Director and local resource agencies. Work shall not re-commence except upon written approval of the Executive Director.

Western Snowy Plover

The project area has been identified as federally designated critical habitat of the western snowy plover. During the 2001 breeding season, biologists estimated that between 54 and 62 western snowy plovers were breeding at the Park. Biologists found 75 nests, including 9 just outside the Park boundary. Of the 70 nests with a known fate, 25 hatched at least one chick and 45 failed. Predators destroyed 15 nests, wind destroyed one nest, and four nests were abandoned. Biologists were unable to determine what caused 25 nests to fail in 2001. During 2003, 105 nests were located in the Park, 14 nests hatched, 64 nests were destroyed by predators, 5 nests were lost to wind, 5 nests were abandoned, 2 nests were destroyed by cattle, 10 nests were destroyed by unknown causes, and the fate of five nests were unknown. Common ravens were the primary documented predator, responsible for destroying 16 nests. Monitoring data show the number of breeding pairs of western snowy plover documented to nest between the years 2005 and 2007 ranged from 38 to 46 pairs. In 2008, 82 nests and 35 adults were observed during the breeding season census. Snowy plovers have consistently nested within 100 feet of the project site. (USFWS 2009)

The Pacific Coast population of western snowy plover (*Charadrius alexandrinus nivosus*) are small, sand colored shorebird that uses sandy beaches for nesting and roosting from southern Washington to Baja California. The snowy plover forages on invertebrates in the wet sand; amongst surf-cast kelp; on dry sandy areas above the high tide; on salt pans; on spoil sites; and along the edges of salt marshes, salt ponds, and lagoons (USFWS 2001). Plovers breed primarily above the high tideline on coastal beaches, sand spits, dune-backed beaches, sparsely-vegetated dunes, beaches at creek and river mouths, and salt pans at lagoons and estuaries. They tend to be site faithful, with the majority of birds returning to the same nesting location in subsequent years (USFWS 2001 citing Warriner et al. 1986). The breeding season for snowy plovers along the Pacific coast extends from early March to mid-September. The majority of California's wintering plovers roost and forage in loose flocks on sand spits and dune-backed beaches, with some occurring on urban and bluff-backed beaches, which are rarely used for nesting (USFWS 2001). Roosting plovers usually sit in small depressions in the sand, or in the lee of kelp, other debris, or small dunes (USFWS 2001 citing Page et al 1995).

The snowy plover was listed by the U.S. Fish and Wildlife Service (USFWS) as a threatened species in March 1993. Subsequently USFWS designated 180 miles of coastline in California, Oregon, and Washington as critical habitat in 1999. Critical habitat is a specific designation that identifies areas that are essential to conservation of an endangered species. The entire coastline of the Park is within designated critical habitat as part of the Pismo Beach/Nipomo Dunes Recovery Unit, spanning 11.5 miles. Within the Recovery Unit, the plan reports the presence of approximately 123-246 adult breeding birds and approximately 173-314 wintering birds.

As mentioned above, western snowy plovers are known to nest at the Park, and most of the Park is suitable breeding habitat for plovers. The proposed cattle-exclusion fence

will not result in any potential adverse impacts to the snowy plover once it is in place. Although no adverse impacts to snowy plovers from construction of the fence are anticipated; the Commission recognizes that construction activities may result in potential adverse impacts to wintering snowy plovers. The construction-related project activities potentially impacting wintering plovers consist of the disturbances associated with fence construction and maintenance. However, sufficient additional resting and feeding areas are abundant in the vicinity and the potential for the project to impact plovers is minimal due to the temporary nature of project disturbance and the species' ability to tolerate occasional human activities. The overall effect of the fence is proposed to provide a benefit to plover nesting habitat by preventing cattle intrusion. Further, in order to ensure that the project activities do not result in any potential adverse effects to breeding and/or nesting western snowy plovers, **Special Condition Four (4)** requires a qualified environmental resource specialist to examine the project area immediately prior to any fence construction activities. If any breeding or nesting activities of the western snowy plover are observed in the project area, the environmental resource specialist shall require the applicant to cease work, and shall immediately notify the Executive Director and local resource agencies. Project activities shall resume only upon written approval of the Executive Director. Timing of operations are restricted, pursuant to **Special Condition Two (2)**, which restricts all project construction, except emergency repairs, to occur between October 1 and March 1, outside of the nesting season for snowy plover.

Further, in order to minimize any potential adverse impacts to wintering, as well as breeding and nesting, activities and to ensure that construction or other project activities do not adversely affect the western snowy plovers, **Special Condition Four (4)** requires a qualified environmental resource specialist to examine the project area immediately prior to any construction or maintenance activities, to identify the presence of snowy plovers in order to preclude potential adverse impacts to them. As a result, the environmental resource specialist shall ensure that prior to any construction activities; there are no western snowy plovers in the project area or its vicinity. The monitor shall ensure that project activities do not commence until plovers have left the project area or its vicinity.

Tidewater Goby and Steelhead Trout

Given the relatively small footprint of development of the individual fence posts within the stream and use of hand tools, the installation of the fence is not expected to result in adverse impacts to tidewater goby or steelhead that may be present. The river area is under the jurisdiction of the U.S. Army Corps of Engineers as waters of the U.S. and the California Department of Fish and Game, as waters of the State. The California Department of Fish and Game has confirmed that no permit is required for the proposed cattle exclusion fence. (Pers. Comm. with Natasha Lohmus, CDFG, 9/16/09) The U.S. Army Corps of Engineers has not made a definitive determination of whether a permit is needed for the installation of the fence within the Santa Maria River. (Pers. Comm. with Antal Szijj 9/21/09). Therefore, **Special Condition Nine (9)** requires the applicant to obtain all necessary State or Federal permits that may be necessary for all aspects of

the proposed project, including the U.S. Army Corps of Engineers, or the applicant must submit evidence no such approval is required.

Although no adverse impacts to either tidewater goby or steelhead from construction of the fence are anticipated; the Commission recognizes that construction activities may result in some potential adverse impacts. The mouth of the Santa Maria river varies depending on tidal conditions. When the mouth is open, river levels tend to be lower and when the mouth is closed, river levels can be higher than normal. The USFWS has submitted biological information explaining that tidewater gobies prefer open water areas with no to very low velocity and recommend restricting installation of fence posts to shallow areas within the actively flowing channel, avoiding still water areas. Avoiding still open water areas would also avoid soils substrates, comprised of sand, silt, and gravel, where gobies burrow. (Pers. Comm., USFWS, 9/21/09) Therefore, consistent with all USFWS regulations, **Special Condition Four (4)** requires that fence posts be placed in the river when water depths are less than three feet deep, and requires posts to be placed in flowing water areas, in order to avoid times when the area would be more likely to be occupied by breeding tidewater goby. Additionally, **Special Condition Three (3)** requires removal of excess material to prevent debris from entering river habitat. This condition prohibits the applicant from storing construction materials, debris, or waste where it may be subject to wave erosion and dispersion, requires that all debris resulting from construction activities be removed from the subject site immediately following fence construction; and requires that all debris be removed immediately from the river or estuary if the fence breaks away or is damaged resulting from a high water flow or other event. These measures will assure that no extra material will impede steelhead trout migration or degrade goby habitat. **Special Condition Ten (10)** also requires the applicant to immediately remove any fence debris found in the river or estuary following a storm or high flow event.

Further, to avoid impacts to these aquatic species from fence construction, **Special Condition Five (5)** requires the applicant, prior to issuance of the coastal development permit, to submit revised plans showing the removal of the third as-built river crossing- the crossing on the western portion of Fence B, which will no longer be necessary after the new proposed segments of fencing are installed to prevent the cattle from entering the Preserve property.

La Graciosa Thistle

As mentioned above, western snowy plovers are known to nest at the Park, and most of the Park is suitable breeding habitat for plovers. In order to ensure that the project activities do not adversely affect La Graciosa Thistle and other special-status plants that may be found in the project area, **Special Condition Four (4)** requires a qualified resource specialist to examine the project area immediately prior to any fence construction activities. If such plants are found, Preserve staff proposes to place a 10-foot exclusionary buffer around to avoid impacting the plants during fence installation.

At the end of each permit year (by March 1st) and at the end of the five year permit term, **Special Condition Six (6)** requires the applicant to submit evaluation reports to the

Executive Director evaluating the success or failure of the fence in protecting sensitive species and sensitive habitat by preventing cattle-intrusion. This information will aid the Commission in evaluating the net effect to sensitive species within the project area of this interim measure and to evaluate future measures to protect these species.

Alternatives Analysis

The applicant has prepared an alternatives analysis which evaluates alternative siting and configurations for the proposed fence. Alternative locations for the fence were evaluated in order to determine the feasibility of locating the fence entirely outside of any sensitive habitat areas on site, including the riparian and wetland habitat areas on site. Although several alternatives were evaluated, including relocation of all fencing within upland areas of the site (with no encroachment into the river) none of the feasible alternatives were adequate to achieve the stated project goal of protecting sensitive riparian, wetland, and dune habitat areas.

The first alternative of locating the fence parallel to, and immediately south of, the river was evaluated; however, although this alternative would serve to protect the sensitive dune habitat areas located within the preserve, it would not prevent the cattle from entering the sensitive riparian habitat and wetland areas on the Preserve property from the north. The second alternative of locating the fence parallel, and immediately north of the river, was also evaluated; however, although this option would prevent any cattle intrusion into the sensitive riparian, wetland, and dune areas on site, it would also require that the majority of the new fencing be located on multiple privately-owned parcels of land. The applicant has indicated that this is not a feasible option because the two adjacent property owners are not willing to construct the required fencing on their property. The applicant has informed staff that the Ranch Company will not agree to this alternative because it would substantially reduce available grazing areas on their adjacent property and eliminate cattle access to portions of the river which are located outside the preserve. Thus, staff concurs with the applicant's analysis that the proposed project, which includes locating the fence roughly along the property boundary between the Preserve and the Ranch Company property to the north, is the best feasible alternative which would serve to minimize the ongoing impacts to sensitive habitat areas on site.

Additionally, alternative fencing types were also analyzed. The applicant evaluated the alternative of using a smooth strand of barbed wire for the bottom strand; however, this alternative was determined to be infeasible such a design is inadequate to prevent smaller calves from accessing the preserve. Therefore, staff concurs with the applicant's analysis that the proposed fence design, which utilizes a bottom barbed strand, 18" off of the ground, is the only design which would prevent all cattle intrusion into preserve areas while still preserving the ability of native wildlife to pass under or through the fence, including coyotes, foxes, and other medium sized animals. Larger animals, such as deer, will be still be able to jump over the fence or go around it.

Moreover, the proposed fencing is only intended as a short-term solution to protect the sensitive riparian, wetland, and dune habitat areas on County-owned land that are

currently impacted by cattle encroachment from the adjacent ranch-owned land. The applicant has indicated that they are currently exploring long-term solutions to the cattle encroachment issue including the potential acquisition of the adjacent 40 - 60 acre portion of the Ranch property for inclusion as part of the preserve. In the event that the preserve acquires the adjacent ranch land, then the portions of the fence located within the river would no longer be required and should be removed. Therefore, **Special Condition One (1)** authorizes approval of the temporary cattle-exclusion fence for a period of only five years. Prior to the date that authorization for the development expires (5 years from the date of Commission action), all portions of the fence authorized by this permit must be removed by the applicant, consistent with the timing restrictions of Special Condition Two (2) and requirements of Special Condition Four (4); unless either a new coastal development permit, or amendment to this permit, authorizing the retention of the development is approved by the California Coastal Commission or if a complete application for a coastal development permit, or amendment to this permit, for retention cattle exclusion fence is pending, and delay for the purpose of Commission consideration of the application is therefore beyond the applicant's control, then the above referenced timelines shall be extended until the Commission acts on the relevant pending application. The Executive Director may grant additional time for good cause.

Therefore, for the reasons set forth above, the Commission finds that the proposed project, as conditioned, is consistent with Sections 30230, 30231, 30222, and 30240 of the Coastal Act.

C. WATER QUALITY

Section 30230 of the Coastal Act states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 of the Coastal Act states that:

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, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Sections 30230 and 30231 of the Coastal Act require that the biological productivity and the quality of coastal waters and streams be maintained and, where feasible, restored through among other means, minimizing adverse effects of waste water discharge and entrainment, controlling runoff, preventing substantial interference with surface water flows, maintaining natural buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The Commission recognizes that new development has the potential to adversely impact coastal water quality and biological productivity through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources. In this case, natural willow posts are proposed to be used, as feasible, for the river crossings. Metal posts and willow posts are proposed for areas outside of the river bed. Moreover, little to no pollutants are associated with the proposed cattle-exclusion fence; therefore, the proposed development will not pose adverse effects to coastal waters and/or human health.

Water quality in the Santa Maria River Estuary is generally degraded due to the runoff from intense upland farming operations and urban development in the watershed. However, measures implemented during construction will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction. Once the fence construction is complete, CNLM staff would remove all construction debris. The Commission notes that excess construction debris could result in erosion, sedimentation, or debris entering adjacent waters. To ensure that excess debris is removed to an appropriate location and to protect the quality of coastal waters consistent with Coastal Act Sections 30230 and 30231, **Special Condition Three (3)** requires that all debris be removed from the site and that the applicant to provide evidence to the Executive Director of the location of the disposal site prior to the issuance of the permit. Special Condition Three requires the applicant to assure that no construction materials, debris, or waste shall be placed or stored where it may be subject to wave erosion and dispersion. Additionally, **Special Condition Ten (10)** requires the applicant to immediately remove any fence debris from the river or estuary that may have broken loose during a high flow or storm event.

Moreover, the overall effect of the proposed cattle-exclusion fence will benefit water quality in the subject area of the Santa Maria River by preventing cattle from entering the river, thereby decreasing sedimentation of riparian habitat, removal of vegetative cover, and preventing excrement from directly entering the river. Therefore, as proposed, this project will serve to significantly increase the water quality within the Santa Maria River and estuary.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act Sections 30230 and 30231.

D. HAZARDS

Section 30253 of the Coastal Act states, in part, that new development shall:

- (1) ***Minimize risks to life and property in areas of high geologic, flood, and fire hazard.***
- (2) ***Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.***

Section 30253 of the Coastal Act mandates that new development provide for geologic stability and integrity and minimize risks to life and property. The project site is located within the Santa Maria River Estuary, which is subject to flooding and erosion from tidal action.

As discussed previously, the proposed fence will be located within portions of the Santa Maria River and its associated floodplain. Thus, the project site is subject to potential risks due to erosion and flooding. In addition, two segments of the fence will be located within the river itself and could result in increased entrainment of debris during high flow periods, resulting in increased flood hazards on site. To address this issue, the applicant has indicated that the fence will be designed in a manner to avoid such adverse impacts by utilizing a “breakaway” design for segments of the fence that would be subject to periodic flooding. As proposed, the fence posts within the stream would be designed to break away (although the 4 strands of barbwire would remain attached to the fence posts to prevent the fence posts from being washed away or lost downstream) if significant force is applied to them (such as from large debris or trees that are washed down the river) in order to avoid the potential for increased flooding on site. However, the applicant has not submitted detailed project plans showing this design. Therefore, **Special Condition Five (5)** requires the applicant submit revised plans, for the review and approval of the Executive Director, that include a schematic diagram of the river crossing/break-away fence design adequate to show that the fence will not result in increased entrainment of flood debris or flooding on site. If any fence debris breaks away, **Special Condition Ten (10)** requires the applicant to immediately remove the debris from the river or estuary and dispose the debris at an approved location either outside the coastal zone or at a site within the coastal zone permitted to receive such material.

Thus, although the proposed project will be designed in a manner to minimize flood hazard on site to the maximum extent feasible, the Commission finds that given the location of the site within the Santa Maria River and its associated floodplain, there is an inherent possibility of erosion and flooding on site. Therefore, because this risk of harm cannot be completely eliminated, the Commission requires the applicant to waive any claim of liability against the Commission for damage to life or property which may occur as a result of the permitted development. The applicant’s assumption of risk, as required by **Special Condition Seven (7)**, pursuant to a written agreement in a form and content acceptable to the Executive Director, will show that the applicant is aware

of and appreciates the nature of the hazards which exist on the site, and that may adversely affect the stability or safety of the proposed development.

Therefore, the Commission finds that the proposed project, as conditioned, is consistent with Coastal Act Sections 30235 and 30253.

E. UNPERMITTED DEVELOPMENT

Unpermitted development has occurred on the subject site prior to submission of this permit application including the installation of approximately 1,400 linear feet (0.3 mile) of fencing (Fence B) roughly along the property line between the Ranch Property to the north of the Preserve and the Preserve property, which crosses the river at two locations to prevent cattle intrusion. The fence was constructed in May 2008 as part of an emergency measure by CNLM to protect active western snowy plover nests in areas accessed by cattle; however, the required coastal development permit was not obtained. As proposed, this project includes the request for after-the-fact approval of approximately 1,200 ft of the unpermitted fence, with the exception of an approximately 200 ft. segment of the fence which crosses the river which will be removed as part of this project. (Exhibit 4). The portion of the fence to be removed will no longer be necessary to prevent cattle intrusion after the new proposed segments of fencing are constructed; therefore, the applicant has agreed to remove this portion of the unpermitted fence on site.

Staff is recommending the Commission approve this application for the reasons discussed in full in the preceding sections of this report. Although the applicant is proposing to remove a segment of "Fence B" which crosses the river, the applicant has not submitted revised plans showing the removal of the fence. Therefore, to ensure that the applicant's proposal to remove this segment of the fence is adequately implemented, **Special Condition Five (5)** requires the applicant to submit revised project plans showing that section of the fence at this crossing is removed from the plans. To ensure that the unpermitted development component of this application is resolved in a timely manner, **Special Condition Eight (8)** requires that the applicant satisfy all conditions of this permit which are prerequisite to the issuance of this permit within 90 days of Commission action.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to the alleged violation nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

F. LOCAL COASTAL PROGRAM

The proposed project area lies within the unincorporated area of County of Santa Barbara, but falls within the Commission's area of retained original permit jurisdiction as shown on the Point Sal Post LCP Certification Permit and Appeal Jurisdiction map. The Commission has certified the Local Coastal Program for the County of Santa Barbara (Land Use Plan and Implementation Ordinances) which contains policies for regulating development and protection of coastal resources, including the protection of environmentally sensitive habitats, recreational and visitor serving facilities, coastal hazards, and public access.

G. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096(a) of the Commission's administrative regulations requires Commission approval of a Coastal Development Permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect that the activity may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. These findings address and respond to all public comments regarding potential significant adverse environmental effects of the project that were received prior to preparation of the staff report. As discussed above, the proposed development, as conditioned, is consistent with the policies of the Coastal Act. Feasible mitigation measures which will minimize all adverse environmental effects have been required as special conditions. As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

The following special conditions are required to assure the project's consistency with Section 13096 of the California Code of Regulations:

Special Conditions 1 through 10

As conditioned, there are no feasible alternatives or feasible mitigation measures available, beyond those required, which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, can be found to be consistent with the requirements of the Coastal Act to conform to CEQA.

OCEAN

PACIFIC

Project Location

SAN LUIS OBISPO COUNTY

SANTA BARBARA COUNTY

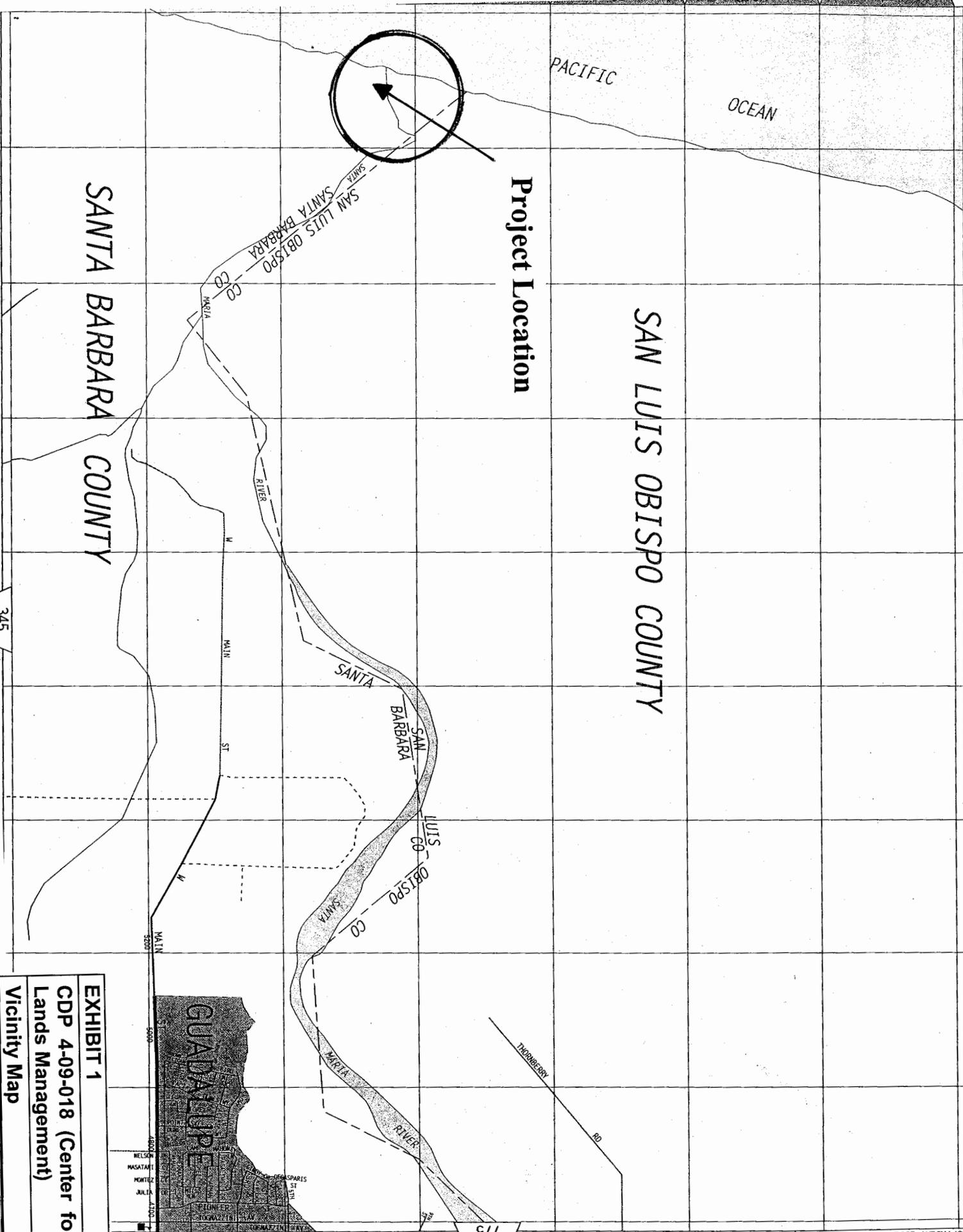
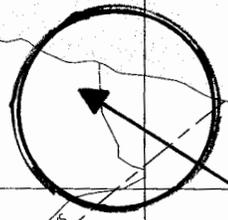
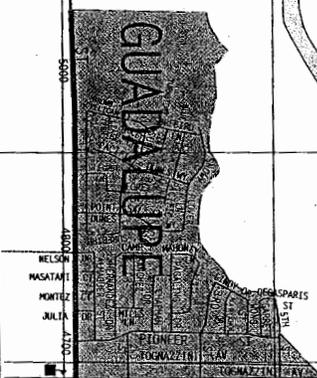
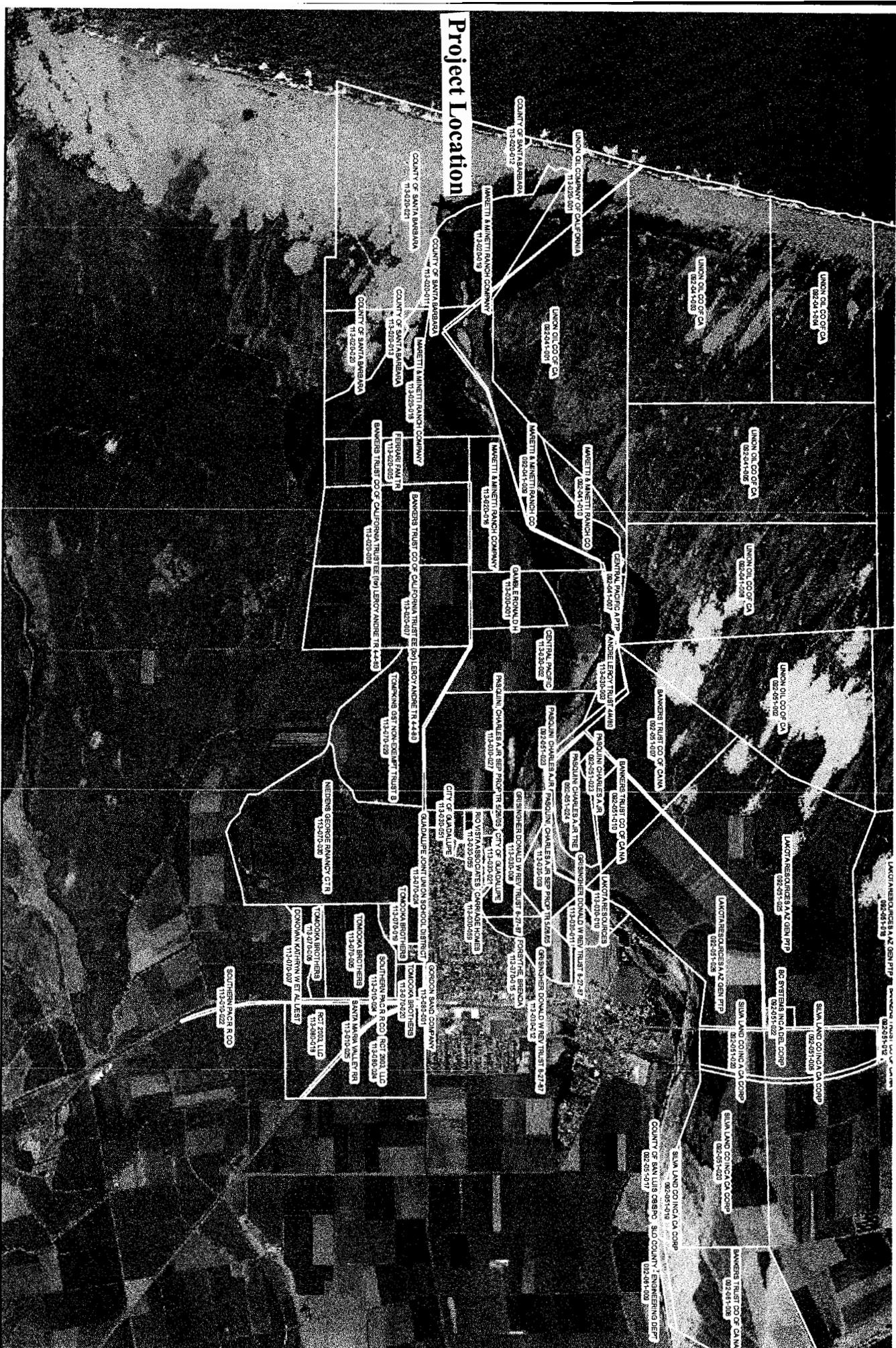


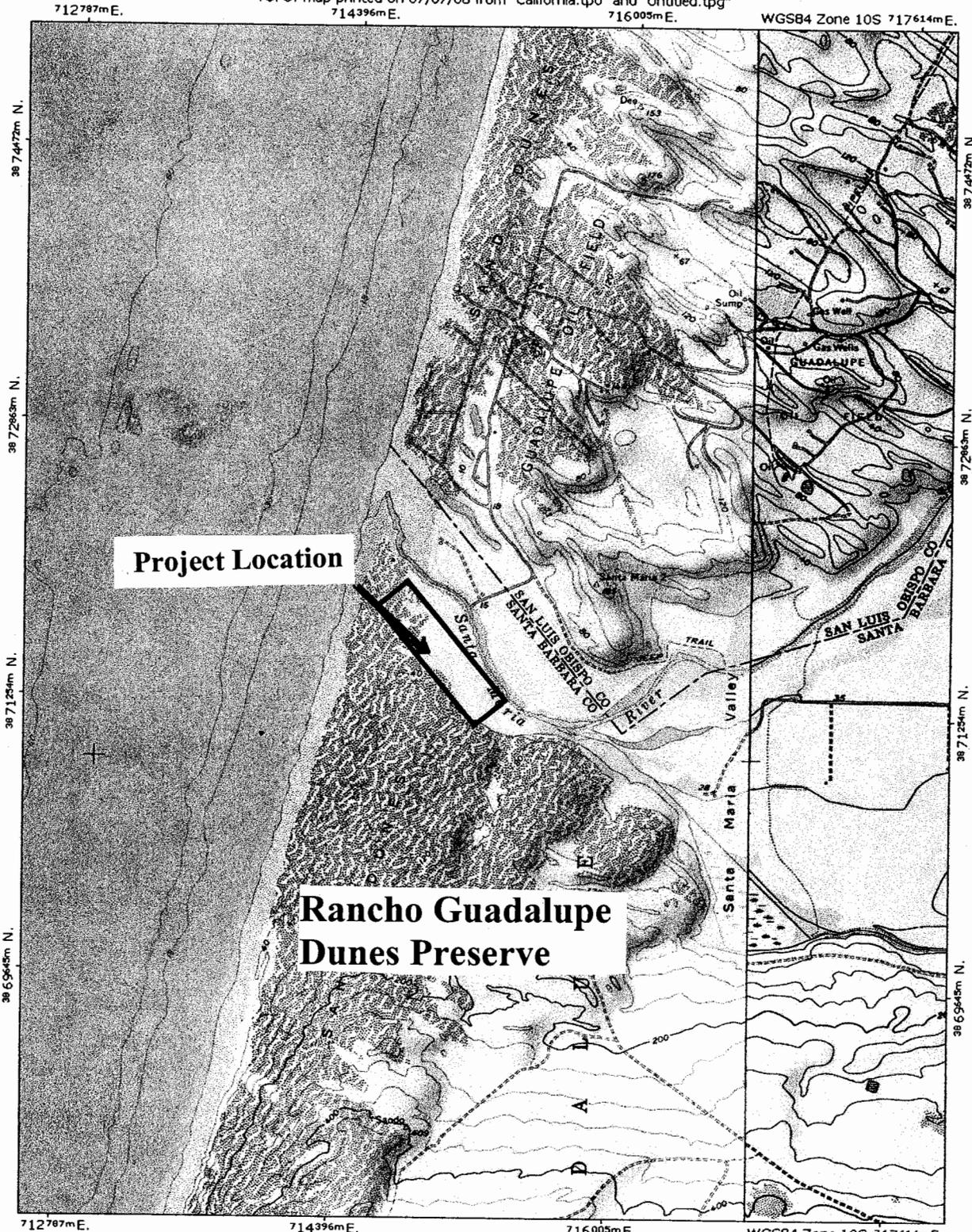
EXHIBIT 1
CDP 4-09-018 (Center for Natural Lands Management)
Vicinity Map





Project Location

EXHIBIT 2
CDP 4-09-018 (Center for Natural
Lands Management)
Parcel Map



Project Location

**Rancho Guadalupe
Dunes Preserve**

712787mE.

714396mE.

716005mE.

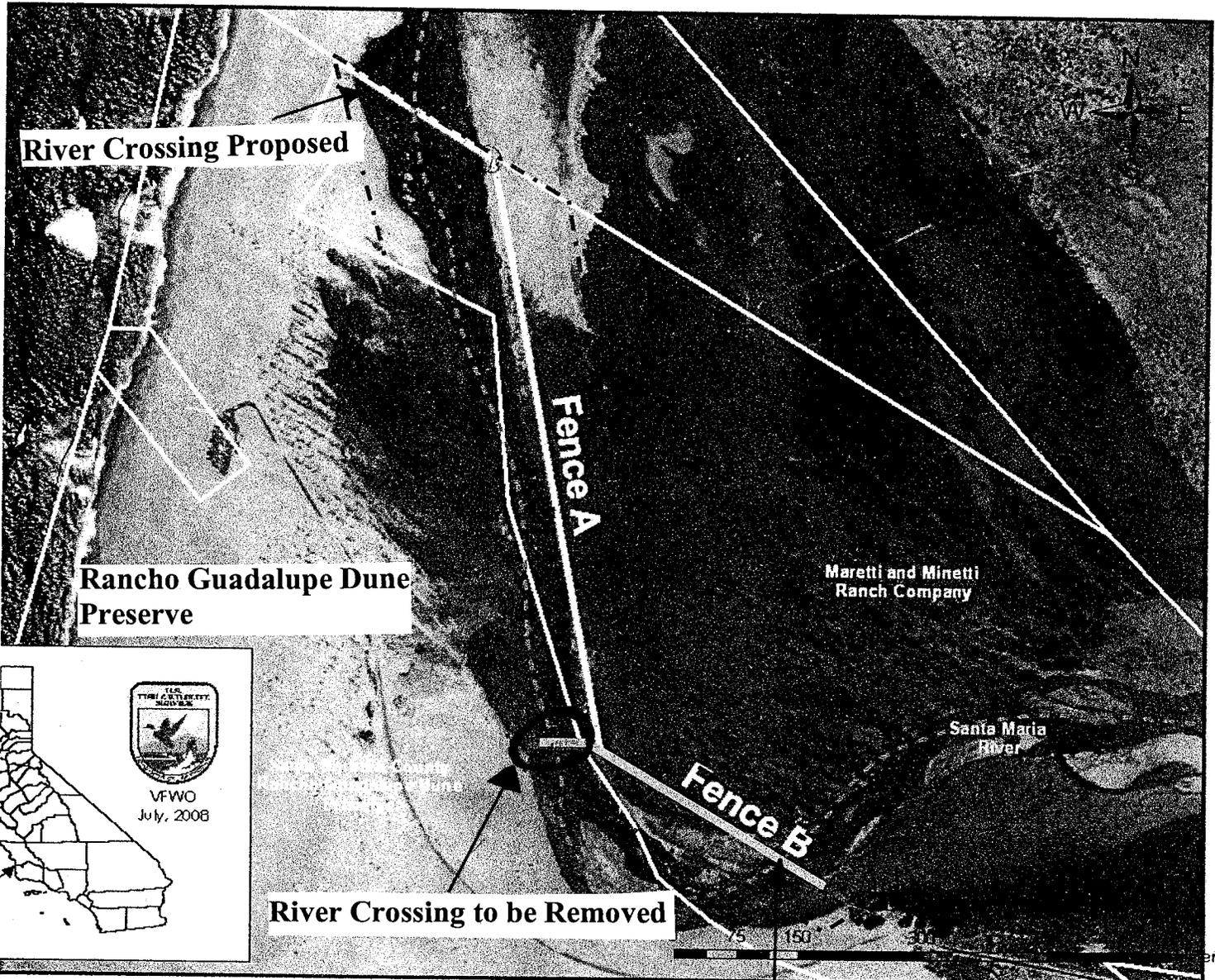
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TN
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EXHIBIT 3
CDP 4-09-018 (Center for Natural Lands Management)
Site Plan



River Crossing Proposed

EXHIBIT 4
CDP 4-09-018 (Center for Natural Lands Management)
Project Plans