

RESOLUTION NO. 2005-10

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OXNARD RECOMMENDING TO THE CITY COUNCIL AN AMENDMENT TO THE LOCAL COASTAL PROGRAM (LCPA 98-1) TO CHANGE THE ZONING DESIGNATION OF TWO PARCELS, FROM RP (COASTAL RESOURCE PROTECTION) TO R-B-1 (SINGLE FAMILY BEACH). FILED BY CITY OF OXNARD, PLANNING & ENVIRONMENTAL SERVICES DIVISION, 305 WEST THIRD STREET, OXNARD, CA 93030.

WHEREAS, the Planning Commission of the City of Oxnard has considered an application for LCPA 98-1 to amend the Local Coastal Land Use Program to change the zoning designation of two vacant parcels within the Oxnard Shores area, applied for by the City of Oxnard, Planning and Environmental Services Division; and

WHEREAS, the Planning Commission has held a public hearing and received and reviewed written and oral comments related to LCPA 98-1; and

WHEREAS, the Planning Commission finds, after due study and deliberation, that it is in the public interest and general welfare to adopt said amendment to the Local Coastal Program; and

WHEREAS, in accordance with the California Environmental Quality Act, the Planning and Environmental Services Manager provided public notice of the intent of the City to adopt a mitigated negative declaration for this project, and the Planning Commission has considered the proposed mitigated negative declaration before making its recommendation herein.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission of the City of Oxnard hereby recommends that the City Council adopt an ordinance approving LCPA 98-1, as shown in Exhibit "A" attached hereto and incorporated herein by reference.

PASSED AND ADOPTED by the Planning Commission of the City of Oxnard on this 20<sup>th</sup> day of January 2005, by the following vote:

AYES: Commissioner: Sanchez, Pinkard, Medina, Lopez, Okada, Fischer, Dean

NOES: Commissioner: None

ABSENT: Commissioner: None



Dale Dean, Chairperson

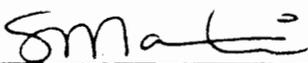
ATTEST:   
Susan Martin, Secretary

EXHIBIT NO. 1
APPLICATION NO.
LCPA OXN-MAJ-1-05
RESOLUTION 2005-10

CITY COUNCIL OF THE CITY OF OXNARD

ORDINANCE NO. 2684

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OXNARD APPROVING A ZONE CHANGE FOR PROPERTIES LOCATED ON THE WEST SIDE OF HARBOR BOULEVARD, BETWEEN BREAKERS WAY AND REEF WAY, AND ON THE NORTH SIDE OF WHITECAP STREET, EAST OF MANDALAY BEACH ROAD.

WHEREAS, in accordance with the California Environmental Quality Act, the Planning and Environmental Services Manager provided public notice of the intent of the City to adopt a mitigated negative declaration for this project, and the City Council considered the proposed mitigated negative declaration, together with any comments received during the public review process, finds on the basis of the whole record before it (including the initial study and any comments received) that with the imposition of mitigation measures as conditions of approval, there is no substantial evidence that the project will have a significant effect on the environment, further finds that the mitigated negative declaration reflects the independent judgment of the City, and adopts the mitigated negative declaration; and

WHEREAS, the documents and other materials that constitute the record of proceedings upon which the decision to adopt the mitigated negative declaration is based is located in the Planning and Environmental Services Division of the City of Oxnard, and the custodian of the record is the Planning and Environmental Services Manager.

NOW, THEREFORE, the City Council of the City of Oxnard does ordain as follows:

Part 1. The zoning governing vacant property consisting of 1.39 gross acres, located on the west side of Harbor Boulevard, between Breakers Way and Reef Way (APN 191-033-15), is hereby changed from RP (Coastal Resource Protection) to R-B-1 (Single Family Beach), as shown on the map attached hereto as Exhibit A and incorporated herein by reference.

Part 2. The zoning governing vacant property consisting of 1.6 gross acres, located on the north side of Whitecap Street, east of Mandalay Beach Road (APN 191-082-07), is hereby changed from RP (Coastal Resource Protection) to R-B-1 (Single Family Beach), as shown on the map attached hereto as Exhibit A and incorporated herein by reference.

Part 3. The City Council of the City of Oxnard certifies that this ordinance is intended to be carried out in a manner fully in conformity with Division 20 of the Public Resources Code (the Coastal Act).

Part 4. Within fifteen days after passage, the City Clerk shall cause this ordinance to be published one time in a newspaper of general circulation within the City. Ordinance No. 2684 was first read on March 1, 2005, and finally adopted on March 8, 2005, to become effective automatically upon approval by the California Coastal Commission.

EXHIBIT NO. 2
APPLICATION NO.
LCDA OXN-MAJ-105
ORDINANCE #2684

Ordinance No. 2684

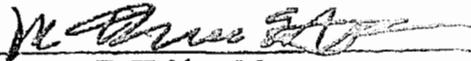
Ordinance, Zone Change (LCPA 98-1)

Page 2

AYES: Councilmembers Flynn, Herrera, Holden and Maulhardt.

NOES: Councilmember Zaragoza.

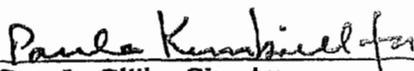
ABSENT: None.

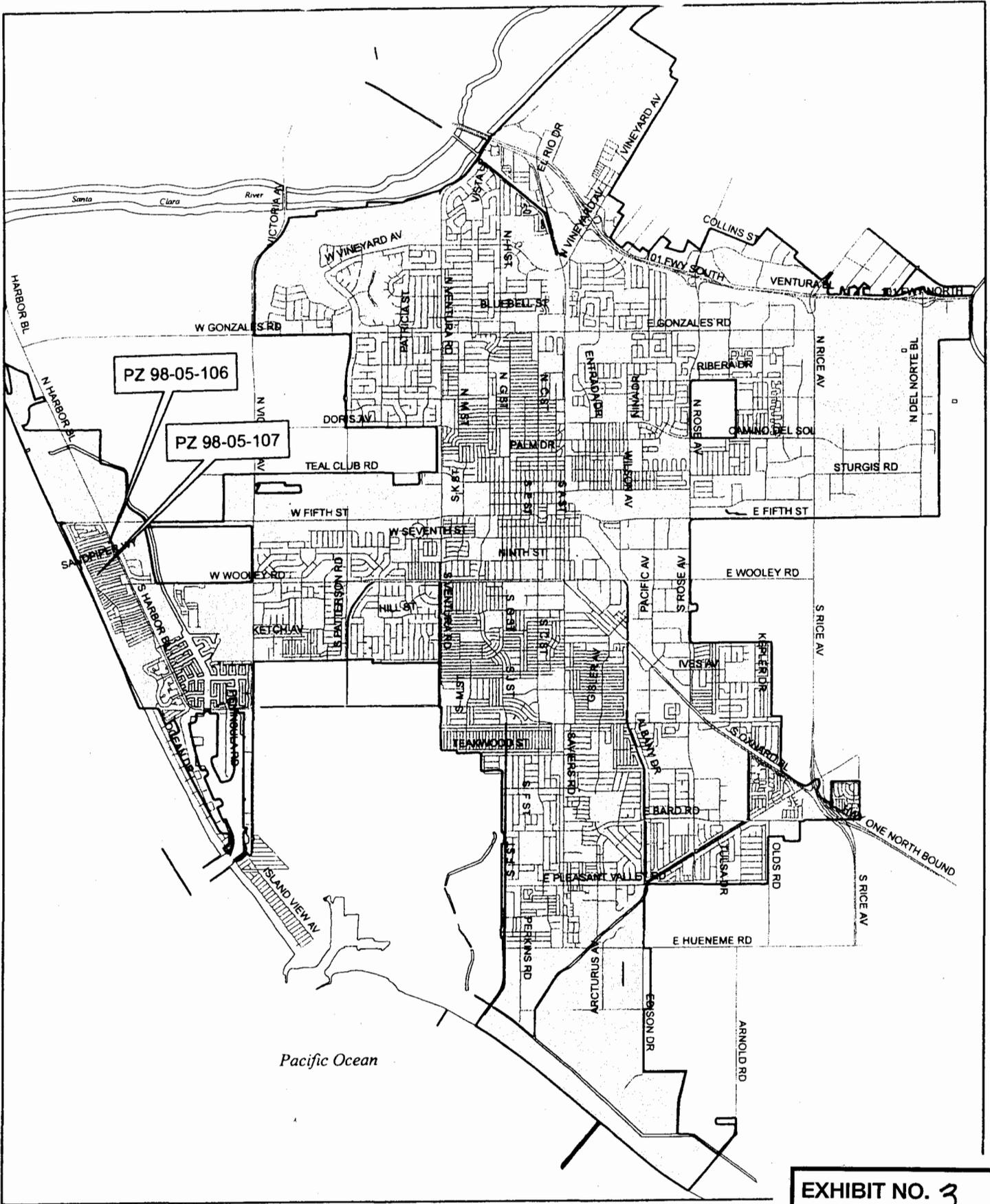
  
\_\_\_\_\_  
Dr. Thomas E. Holden, Mayor

ATTEST:

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Daniel Martinez, City Clerk

  
\_\_\_\_\_  
Gary L. Gillig, City Attorney

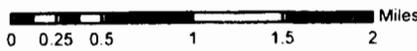


Pacific Ocean

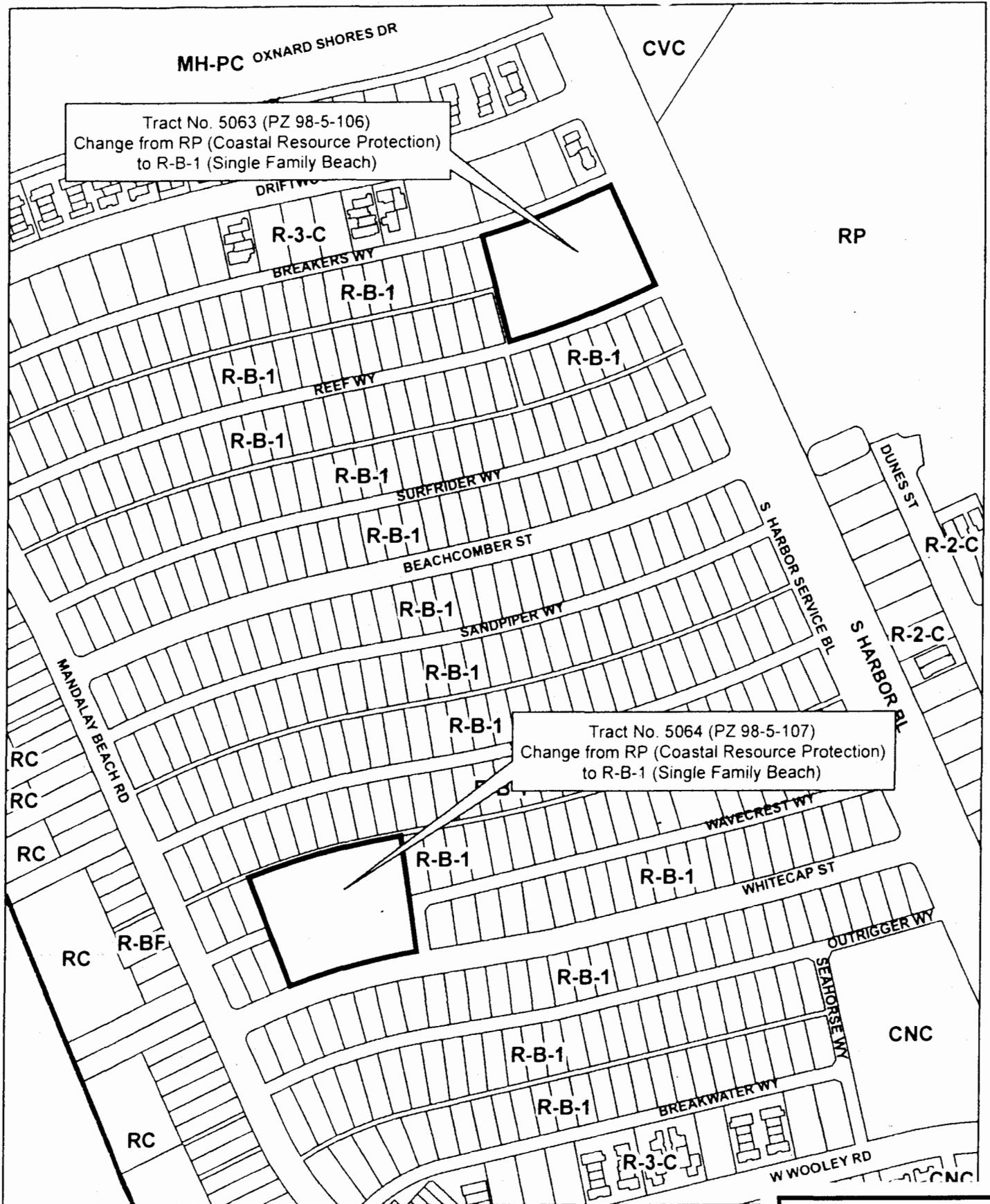


Planning & Environmental Services

PZ 98-05-106 & PZ 98-05-107



<b>EXHIBIT NO. 3</b>
APPLICATION NO.
LCDA OXN-MAJ-1-05
<b>VICINITY MAP</b>



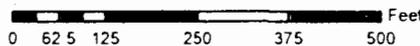
Tract No. 5063 (PZ 98-5-106)  
 Change from RP (Coastal Resource Protection)  
 to R-B-1 (Single Family Beach)

Tract No. 5064 (PZ 98-5-107)  
 Change from RP (Coastal Resource Protection)  
 to R-B-1 (Single Family Beach)

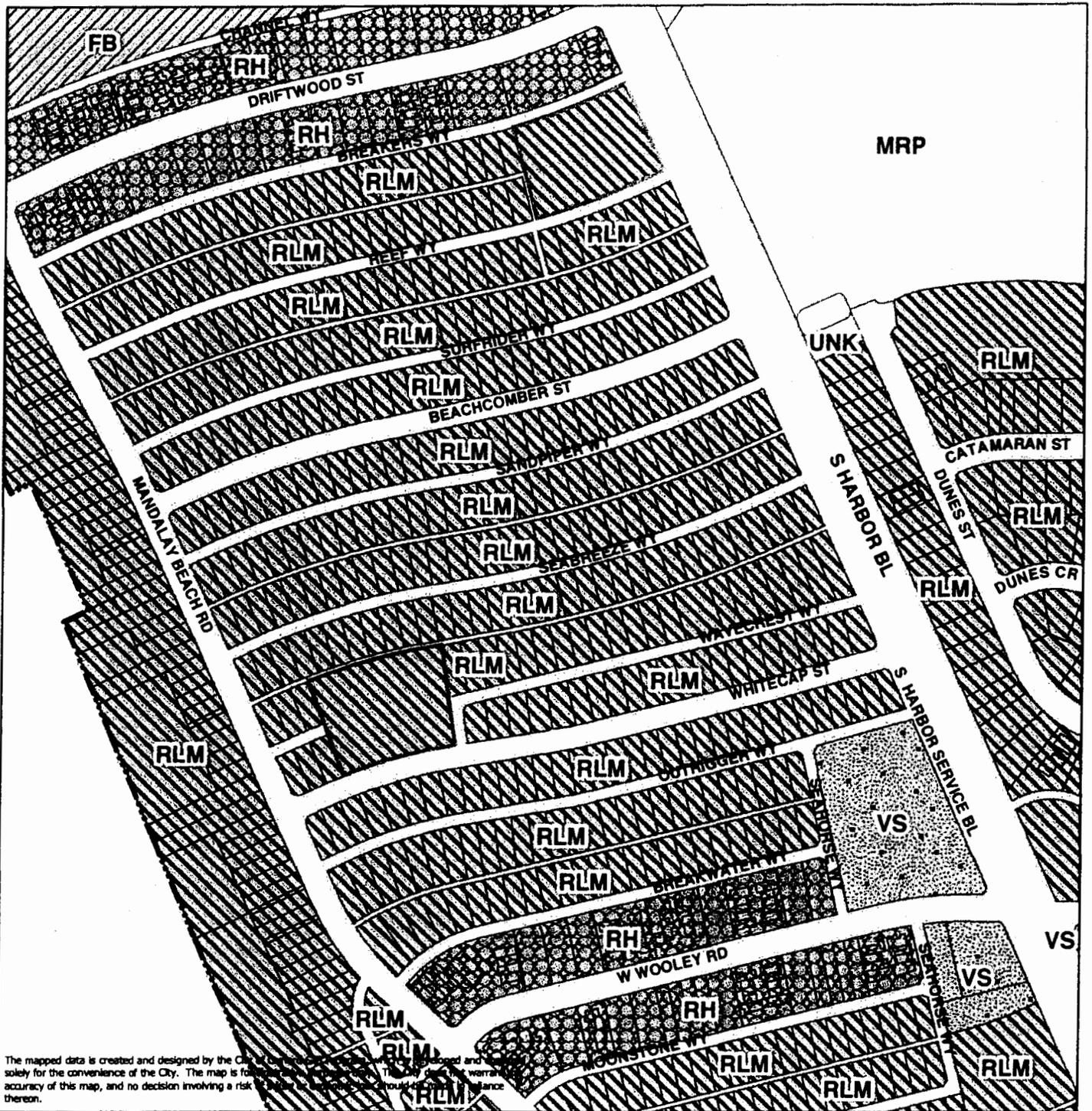


Planning & Environmental Services

**EXHIBIT A**  
 Coastal Plan Amendment



<b>EXHIBIT NO. 4</b>
APPLICATION NO.
<b>LCDA OXN-MAJ-1-05</b>
<b>ZONE CHANGE MAP</b>



The mapped data is created and designed by the City of Oxnard and is provided solely for the convenience of the City. The map is for informational purposes only and no warranty of accuracy of this map, and no decision involving a risk of injury or property damage should be made thereon.

PZ 98-05-106  
PZ 98-05-107

General Plan Map

**Legend**

-  MISC MR/PLANNING RESERVE
-  RESIDENTIAL HIGH
-  RESIDENTIAL LOW MEDIUM
-  VISITOR SERVING

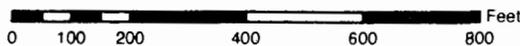
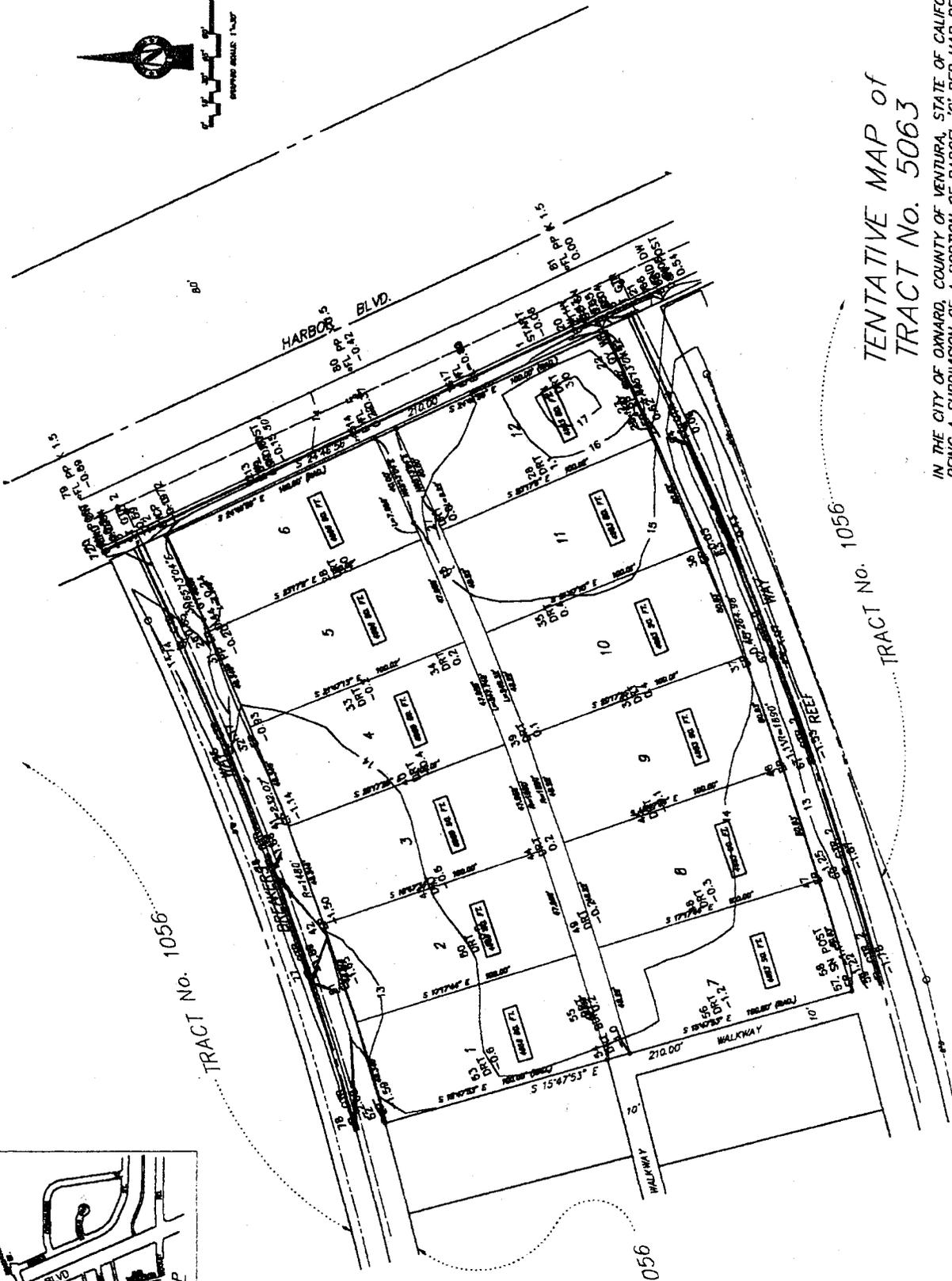
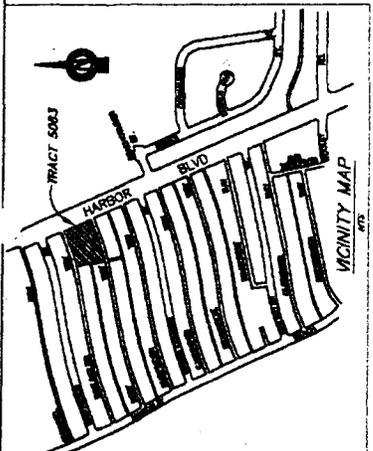
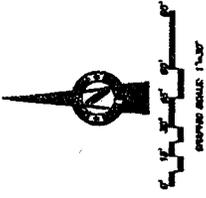


EXHIBIT NO. 5  
APPLICATION NO.  
LCDA OXN-MAJ-1-05  
LAND USE PLAN MAP







TENTATIVE MAP of  
TRACT No. 5063

IN THE CITY OF OXNARD, COUNTY OF VENTURA, STATE OF CALIFORNIA  
BEING A SUBDIVISION OF A PORTION OF PARCEL "C" PER MAP RECORDED  
IN BOOK 16 OF MISCELLANEOUS RECORDS (MAPS) AT PAGES 46 THROUGH  
49, INCLUSIVE.

TRACT No. 1056

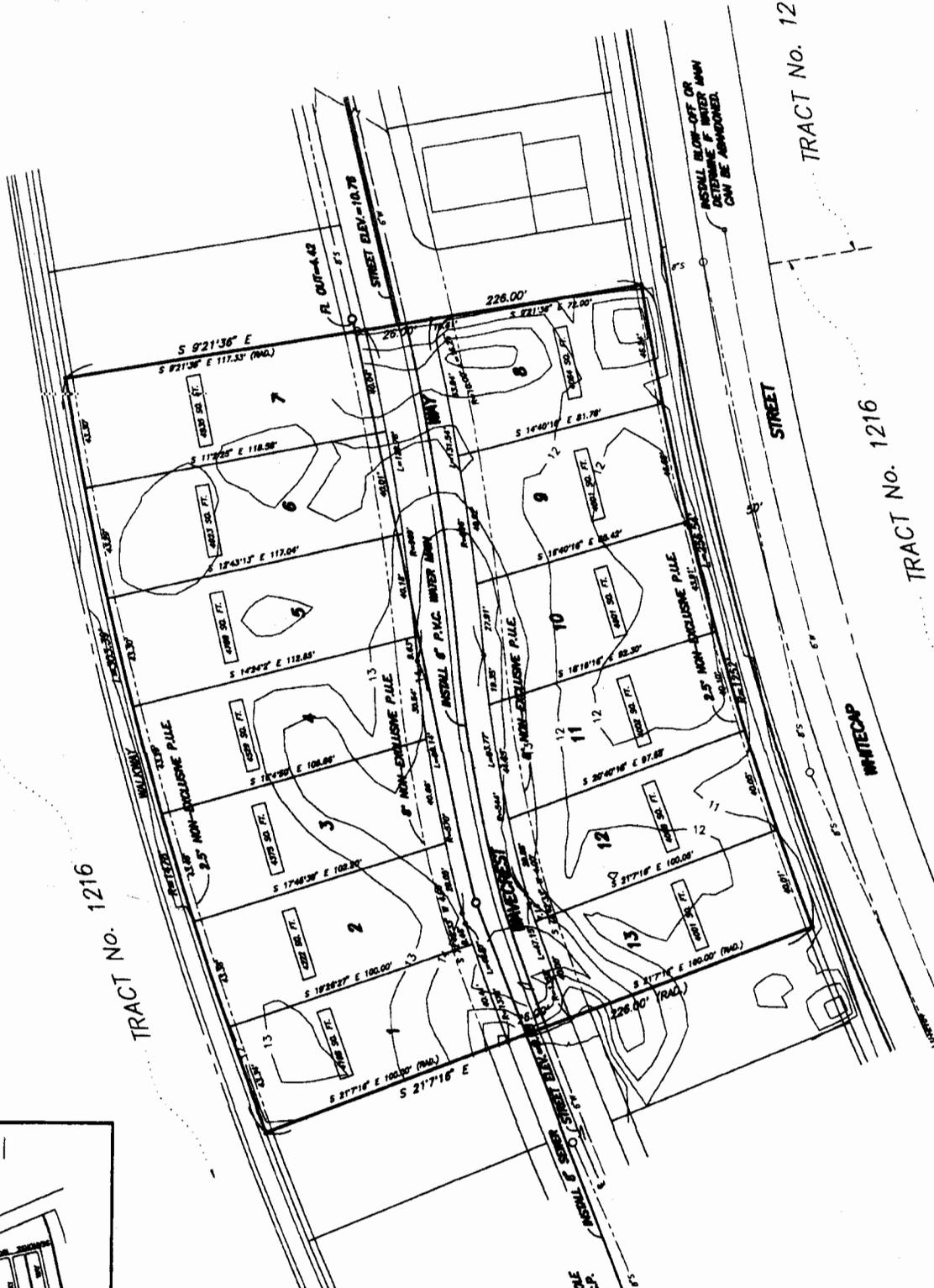
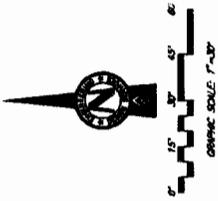
TRACT No. 1056

TRACT No. 1056

1"=60'

MADE FROM CALIFORNIA EDISON COMPANY  
WARD  
CALIFORNIA GAS COMPANY

EXHIBIT NO. 7
APPLICATION NO.
LCDA OXN-MAJ-1-05
TRACT MAP-BREAKERSWP.



TRACT NO. 1216

TRACT NO. 1277-1

TRACT NO. 1216

# TENTATIVE MAP of TRACT No. 5064

BEING A SUBDIVISION OF "NOT A PART OF THIS TRACT" OF TRACT 1216  
 RECORDED IN BOOK 28 OF MISCELLANEOUS RECORDS (MAPS) ON PAGES  
 20 THROUGH 23, INCLUSIVE IN THE CITY OF OXNARD, COUNTY OF VENTURA,  
 STATE OF CALIFORNIA

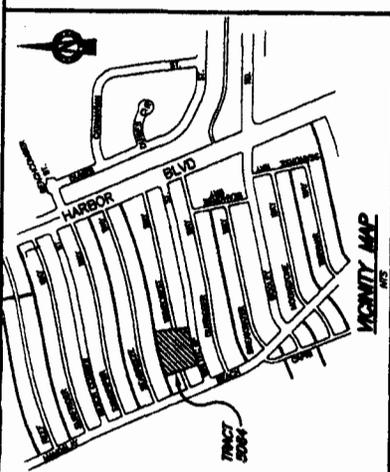


EXHIBIT NO. 8  
 APPLICATION NO.  
 LCDA OXN-MAJ-1-05  
 TRACT MAP- WHITECAP ST.

EDSON COMPANY  
 MAPMAKERS

**DEPARTMENT OF FISH AND GAME**<http://www.dfg.ca.gov>South Coast Region  
4949 Viewridge Avenue  
San Diego, CA 92123  
(858) 467-4201

24 July 2006

Lillian Ford, Staff Analyst  
California Coastal Commission  
89 South California Street  
Ventura CA 93001

Proposed rezone of Whitecap Way parcel, Oxnard Shores

Dear Ms. Ford.

The California Department of Fish & Game ( the Department) has reviewed both the Impact Sciences and Dr. Lawrence Hunt reports dated July 15<sup>th</sup> and July 17<sup>th</sup> 2006 respectively. The information contained in both reports references the potential for the presence of two state species of special concern *Phrynosoma coronatum* , (Coast Horned lizard) and *Anniella pulchra pulchra* (Silvery legless lizard) on a vacant parcel in Oxnard Shores.

The Department believes the potential for both species to exist on this and other remnant foredune habitats in the Oxnard area to be high. Both species have been repeatedly located on similar small lots with degraded yet functional habitat from San Buena Ventura State Beach to Channel Islands Harbor. In some cases the legless lizard has been located beneath landscape shrubs growing on sandy soils within the Pierpont area. A notable case for the presence of Horned Lizard on remnant foredune habitats in this area was the presence within Oxnard shores of the species on a vacant lot much smaller than the subject parcel in 1990/91. Allison Rainboth-Collins an employee of Impact Sciences during that time trapped and relocated several Horned Lizards from the site with the Department's position. The lot was approximately 3 blocks from the Whitecap way parcel. The capture lizards were marked with beads on their tails and relocated to a larger parcel near 5<sup>th</sup> and harbor( the Voss property). It was inconclusive that the relocated lizards ever survived the relocation. Because of this and some other failures to successfully relocate Coast Horned Lizards the Department does not support relocation as a viable mitigation measure for this species. Rainboth-Collins observed the individuals prior to relocation. The individuals were smaller than average due to the lack of typical prey species (harvester ants). The lizards were found preying on a variety of beetles and flying insects. Though small in average weights than horned lizards feeding on harvester ants the individuals were still healthy enough to sustain successful reproduction. A variety of age classes were present. The Department can provide you with a copy of the Impact Sciences report if you would find it useful.

The Department agrees with Dr Hunt's assessment of the value in preserving and restoring the remainder of remnant foredune habitat in the McGrath/Mandalay area. If you have any further questions please contact me a [mwehtje@dfg.ca.gov](mailto:mwehtje@dfg.ca.gov), or by phone at 805-320-2640.

EXHIBIT NO. 10

APPLICATION NO.

OXN-MAJ-1-05

CDFG LETTER

Sincerely, (right of center)

Morgan Wehtje  
Senior Environmental Scientist  
California Department of Fish & Game

cc: Maurice Cardenas, CDFG  
Martin Potter, CDFG



*Engineering, Planning,  
Environmental Sciences and  
Management Services*

Corporate Office:  
605 Third Street  
Encinitas, California 92024

760.942.5147  
Fax 760.632.0164

May 13, 2002

3308-01

Mr. Matthew Winegar, AICP  
Development Services Director  
City of Oxnard  
305 West Third Street  
Oxnard, CA 93030

**SUBJECT: BIOLOGICAL RESOURCES ANALYSIS OF TRACT NUMBER 5063  
(NORTH SITE), OXNARD, CALIFORNIA**

Dear Mr. Winegar:

On 13 March 2002 Dudek & Associates, Inc. (DUDEK), biologists Brock A. Ortega and Michelle L. Balk conducted a biological resources survey of the 1.39-acre Tract 5063 project site located in the City of Oxnard, California.

**1.0 PROJECT LOCATION**

The property is located east of Harbor Drive, north of Reef Way, and south of Breakers Way, in the City of Oxnard, California. The property lies within the U.S. Geological Survey 7.5 minute map, Oxnard Quadrangle: Section 1; Township 1 North, Range 25 West (*Figures 1 and 2*). Surrounding land uses include residential to the north, south, and west, undeveloped land (stabilized sand dune) to the immediate east, and agricultural land to the more distant east. The site is located approximately 0.5 mile from the Pacific Ocean.

**2.0 METHODS AND SURVEY LIMITATIONS**

Data regarding biological resources present on the project site were obtained through a review of pertinent literature and through field reconnaissance; both are described in detail below.

**Literature Review**

Sensitive biological resources present or potentially present onsite were identified through a literature search using the following sources: U.S. Fish and Wildlife Service

<b>EXHIBIT NO. 11</b>
<b>APPLICATION NO.</b>
<b>OXN-MAJ-1-05</b>
<b>BIOLOGY REPORTS</b>

Mr. Matthew Winegar, AICP

Re: Biological Resources Analysis of Tract Number 5063 (North Side), Oxnard, California

A list of plant and wildlife species observed on the property is presented in APPENDIX A.

## Survey Limitations

Limitations of the surveys include seasonal constraints, a diurnal bias and the absence of focused trapping for mammals and reptiles. Botanical surveys were conducted when many spring annuals are present, therefore botanical surveys were not compromised. Climatic conditions during the surveys generally were favorable for the identification of wildlife. Surveys were conducted during the daytime to maximize visibility for the detection of plants and most animals. Birds represent the largest component of the vertebrate fauna, and because they are active in the daytime, diurnal surveys maximize the number of observations of this portion of the fauna. In contrast, daytime surveys usually result in few observations of mammals, many of which may only be active at night. In addition, many species of reptiles and amphibians are secretive in their habits and are difficult to observe using standard meandering transects. Pitfall trapping is the most effective technique for detecting many of these species; however, such trapping was beyond the scope of this project.

## 3.0 RESULTS

The CNDDDB indicated that no sensitive plant or animal species are known to occur onsite; however, several sensitive species may have the potential to occur within the project boundary. These sensitive species, their listing statuses, and their likelihood of occurring onsite are provided in *Tables 1* (plants) and *2* (wildlife).

The survey was conducted at the appropriate time of year for the detection of species listed in *Tables 1* and *2*. No sensitive plant or wildlife species were identified onsite.

## Vegetation Types

Based on species composition and general physiognomy, two vegetation types/land covers were identified during the field survey: annual (non-native) grassland and disturbed habitat. These vegetation types or land covers are described below, their acreages are presented in *Table 3*, and their spatial distributions are presented in *Figure 3*. A species list is included as APPENDIX A.

Mr. Matthew Winegar, AICP

Re: Biological Resources Analysis of Tract Number 5063 (North Side), Oxnard, California

TABLE 1 (Continued)

Scientific Name	Common Name	State Federal/State Other	Primary Habitat Associated Life Form/Ecology/Period	State/Qualitative Potential to Occur
<i>Cordylanthus maritimus</i> ssp. <i>maritimus</i>	Salt marsh bird's-beak	FE/SE	Coastal dunes, coastal saltwater marshes and swamps/annual herb/May-October	Not observed onsite. Moderate potential to occur onsite. If present onsite, species would have been observed.
<i>Dithyrea maritima</i>	Beach spectaclepod	None/ST	Coastal dunes, coastal scrub/perennial herb/March-May	Not observed onsite. Moderate potential to occur onsite. If present onsite, species would have been observed.
<i>Dudleya cymosa</i> ssp. <i>ovatifolia</i>	Santa Monica Mountains dudleya	FT/None	Chaparral, coastal sage scrub, volcanic substrates/perennial herb/March-June	Not observed onsite. Low potential to occur onsite; suitable habitat is not present. If present onsite, species would have been observed.
<i>Dudleya cymosa</i> ssp. <i>marcescens</i>	Marcescent dudleya	FT/None	Chaparral/rocky outcrops, slopes, talus/perennial herb/May-June	Not observed onsite. Low potential to occur onsite; suitable habitat is not present. If present onsite, species would have been observed.
<i>Dudleya abramsii</i> ssp. <i>parva</i>	Conejo dudleya	FT/None	Coastal scrub, Valley and foothill grassland/perennial herb/April-June	Not observed onsite. Low potential to occur onsite; suitable habitat is not present. If present onsite, species would have been observed.
<i>Dudleya verityi</i>	Verity's dudleya	FT/None	Chaparral, coastal scrub, Valley and foothill grassland/north-facing volcanic outcrops/perennial herb/May-June	Not observed onsite. Low potential to occur onsite; suitable habitat is not present. If present onsite, species would have been observed.

Mr. Matthew Winegar, AICP

Re: Biological Resources Analysis of Tract Number 5063 (North Side), Oxnard, California

**TABLE 2**  
**SENSITIVE WILDLIFE SPECIES POTENTIALLY OCCURRING ON TRACT 5063**  
**PROJECT SITE BASED ON GEOGRAPHY AND GENERAL HABITATS IN**  
**VICINITY - ACTUAL POTENTIAL FOR OCCURRENCE ANALYSIS**

Scientific Name	Common Name	Status Federal/State	Primary Habitat	Potential to Occur
<b>AMPHIBIANS</b>				
<i>Scaphiopus hammondi</i>	Western spadefoot toad	None/CSC, P	Most common in grasslands, coastal sage scrub near rain pools or vernal pools; riparian habitats	Very low potential to occur onsite based on isolation of site and apparent lack of suitable breeding sites
<b>REPTILES</b>				
<i>Anniella pulchra pulchra</i>	Silvery legless lizard	FS, CNF/CSC	Loose soils (sand, loam, humus) in coastal dune, coastal sage scrub, woodlands, and riparian habitats	Moderate potential to occur onsite
<i>Arizona elegans occidentalis</i>	Coastal (California) glossy snake	None/None	Grassland, chaparral, coastal sage scrub, woodlands in sandy and rocky substrates	Low potential to occur due to isolation of site
<i>Cnemidophorus tigris multiscutatus</i>	Coastal western whiptail	None/None	Coastal sage scrub, chaparral	Low potential to occur due to isolation of site
<i>Cnemidophorus hyperythrus beldingi</i>	Orange-throated whiptail	None/CSC, P	Coastal sage scrub, chaparral, grassland, juniper and oak woodland	Low potential to occur due to isolation of site
<i>Diadophis punctatus similis</i>	San Diego ringneck snake	FS, CNF/None	Moist habitats; woodland, forest, grassland, chaparral; typically found under debris	Low potential to occur due to isolation of site
<i>Phrynosoma coronatum blainvillei</i>	San Diego horned lizard	FS, CNF/CSC, P	Coastal sage scrub, annual grassland, chaparral, oak and riparian woodland, coniferous forest	Very low potential to occur due to isolation of site
<b>BIRDS</b>				
<i>Ammodramus savannrum</i>	Grasshopper sparrow	PIF, SMC/None	Open grassland and prairie, especially native grassland with a mix of grasses and forbs	Very low potential to occur due to isolation of site

Mr. Matthew Winegar, AICP

Re: Biological Resources Analysis of Tract Number 5063 (North Side), Oxnard, California

TABLE 2 (Continued)

Scientific Name	Common Name	Status Federal/State	Primary Habitat Associations	Status Onsite/ Potential to Occur
<i>Falco columbarius</i>	Merlin	None/CSC	Nests in open country, open coniferous forest, prairie; winters in open woodlands, grasslands, cultivated fields, marshes, estuaries and sea coasts	Likely forages onsite occasionally but does not breed onsite
<i>Falco mexicanus</i>	Prairie falcon	PIF, SBNF/CSC	Grassland, savannas, rangeland, agriculture, desert scrub, alpine meadows; nest on cliffs or bluffs	Likely forages onsite occasionally but does not breed onsite
<i>Lanius ludovicianus</i>	Loggerhead shrike	MNBMC/CSC	Open ground including grassland, coastal sage scrub, broken chaparral, agriculture, riparian, open woodland	Likely forages onsite occasionally but does not breed onsite
<i>Siala mexicana</i>	Western bluebird	None/None	Open forests of deciduous, coniferous or mixed trees, savanna, edges of riparian woodland	Likely forages onsite occasionally but does not breed onsite
<i>Speotyto (Athene) cunicularia</i>	Western burrowing owl	BLM, MNBMC/CSC	Grassland, lowland scrub, agriculture, coastal dunes and other artificial open areas	Not present onsite. Would have observed the species or evidence of occupation if present onsite
<b>MAMMALS</b>				
<i>Lepus californicus bennettii</i>	San Diego black-tailed jackrabbit	None/CSC	Arid habitats with open ground; grasslands, coastal sage scrub, agriculture, disturbed areas, rangelands	Not present onsite. Would have observed the species or evidence of occupation if present onsite
<i>Taxidea taxus</i>	American badger	SBNF/R	Dry, open treeless areas, grasslands, coastal sage scrub	Not present onsite. Would have observed the species or evidence of occupation if present onsite
<b>INVERTEBRATES</b>				
<i>Branchinecta lynchi</i>	Vernal pool fairy shrimp	FT/None	Vernal pools; cool-water pools with low to moderate dissolved solids	Not present onsite due to lack of suitable habitat

The federal and state status of species primarily is based on the Special Animals List (January 2000), California Department of Fish and Game. It has been updated as needed. This version is dated November 17, 2000.

Mr. Matthew Winegar, AICP

Re: *Biological Resources Analysis of Tract Number 5063 (North Side), Oxnard, California*

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grasses, such as bromes (*Bromus* spp.) and wild oats (*Avena* spp.), and other disturbance-tolerant species such as filarees (*Erodium* spp.). Annual grassland onsite is dominated by red-stemmed filaree (*Erodium cicutarium*), pineapple weed (*Camomilla suaveolens*), California burclover (*Medicago polymorpha*), slender oat (*Avena barbata*), and barley (*Hordeum* sp.).

**Disturbed habitat** occurs in two areas along the northern and southern project boundaries. These areas are nearly entirely lacking in vegetation, apparently due to vehicle use. At the time of the survey a vehicle was parked in the southern patch of disturbed habitat, and tire tracks were present within both the southern and northern disturbed habitat patches.

#### 4.0 REGIONAL RESOURCE PLANNING CONTEXT

The project site does not lie within an existing or proposed focused planning area. The site does not contribute to regional wildlife movement as it surrounded on three sides by residential development and on the fourth side by a busy street.

#### 5.0 IMPACTS AND MITIGATION REQUIREMENTS

##### Proposed Project Impacts

The proposed subdivision project would impact the entire project site: 1.20 acres of annual (non-native) grassland and 0.19 acre of disturbed habitat.

##### Mitigation Requirements

Impacts to annual (non-native) grassland and disturbed habitat are not considered significant; no mitigation is recommended.

*Mr. Matthew Winegar, AICP*

*Re: Biological Resources Analysis of Tract Number 5063 (North Side), Oxnard, California*

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## LITERATURE CITED

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- California Department of Fish and Game (CDFG). 1980. At the Crossroads: A Report on the Status of California's Endangered and Rare Fish and Wildlife. State of California Resources Agency, Sacramento, California.
- California Department of Fish and Game (CDFG). 1986. Endangered, Rare, and Threatened Animals of California. State of California Resources Agency, Sacramento, California.
- California Department of Fish and Game (CDFG). 1987. Designated Endangered or Rare Plants. Summary list from Section 1904 Fish and Game Code (Native Plant Protection Act). State of California Resources Agency, Sacramento, California.
- California Department of Fish and Game (CDFG). 2000 (January). California Natural Diversity Database, Special Animals. The Resources Agency, Wildlife and Habitat Data Analysis Branch.
- CNPS. 2001. Inventory of Rare and Endangered Plants of California. Special Publication No. 1 (6th Edition), Scientific Advisory Committee, California Native Plant Society, David P. Tibor, Convening Editor, Sacramento, California.
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- Ehrlich, P.R. 1988. The Birder's Handbook: a Field Guide to the Natural History of North American Birds. Simon and Schuster, Fireside, New York, New York.
- Emmel, T.C. and J.F. Emmel. 1973. The Butterflies of Southern California. Natural History Museum of Los Angeles County, Science Series 26:1-148.

RECEIVED

MAR 18 2005

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

# Appendix A

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## *List of Species Observed Onsite*

Mr. Matthew Winegar, AICP

Re: Biological Resources Analysis of Tract Number 5063 (North Side), Oxnard, California

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### **APPENDIX A (Continued)**

- \* *Bromus diandrus* - ripgut grass
- \* *Cynodon dactylon* - Bermuda grass
- Hordeum* sp. - barley

### **WILDLIFE SPECIES - VERTEBRATES**

#### **BIRDS**

#### **EMBERIZIDAE - WOOD WARBLERS, TANAGERS, BUNTINGS & BLACKBIRDS**

*Euphagus cyanocephalus* - Brewer's blackbird

#### **FRINGILLIDAE - FINCHES**

*Carpodacus mexicanus* - house finch

#### **STURNIDAE - STARLINGS**

- \* *Sturnus vulgaris* - European starling

#### **MAMMALS**

#### **GEOMYIDAE - POCKET GOPHERS**

*Thomomys bottae* - Botta's pocket gopher

- \* signifies introduced (non-native) species

**Biological Resources Evaluation and Analysis  
The Whitecap Street Site  
(Tract Numbers 5063 and 5064)**

**Prepared For:  
The City of Oxnard, California**

**Prepared By:  
Impact Sciences  
803 Camarillo Springs Road, Suite A  
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**November 2005**

**Biological Resources Evaluation and Analysis  
The Whitecap Street Site (Tract Numbers 5063 and 5064)  
November 21, 2005**

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**INTRODUCTION**

Impact Sciences, Inc. conducted an updated biological resources evaluation and analysis of a 1.60-acre site (Tract Nos. 5063 and 5064), referred to as the "Whitecap Street Site," located west of Harbor Boulevard, just north of the Whitecap Street, and east of Mandalay Beach Road, in the City of Oxnard, California. The site is an infill parcel located in the developed Oxnard Shores subdivision, with residential development to the north, west, and east, with Whitecap Street to the south. The site is isolated from other open space areas; however, two undeveloped residential lots are located immediately to the south across Whitecap Street from the site and a number of other similar undeveloped residential lots are scattered throughout the area (Figures 1 and 2).

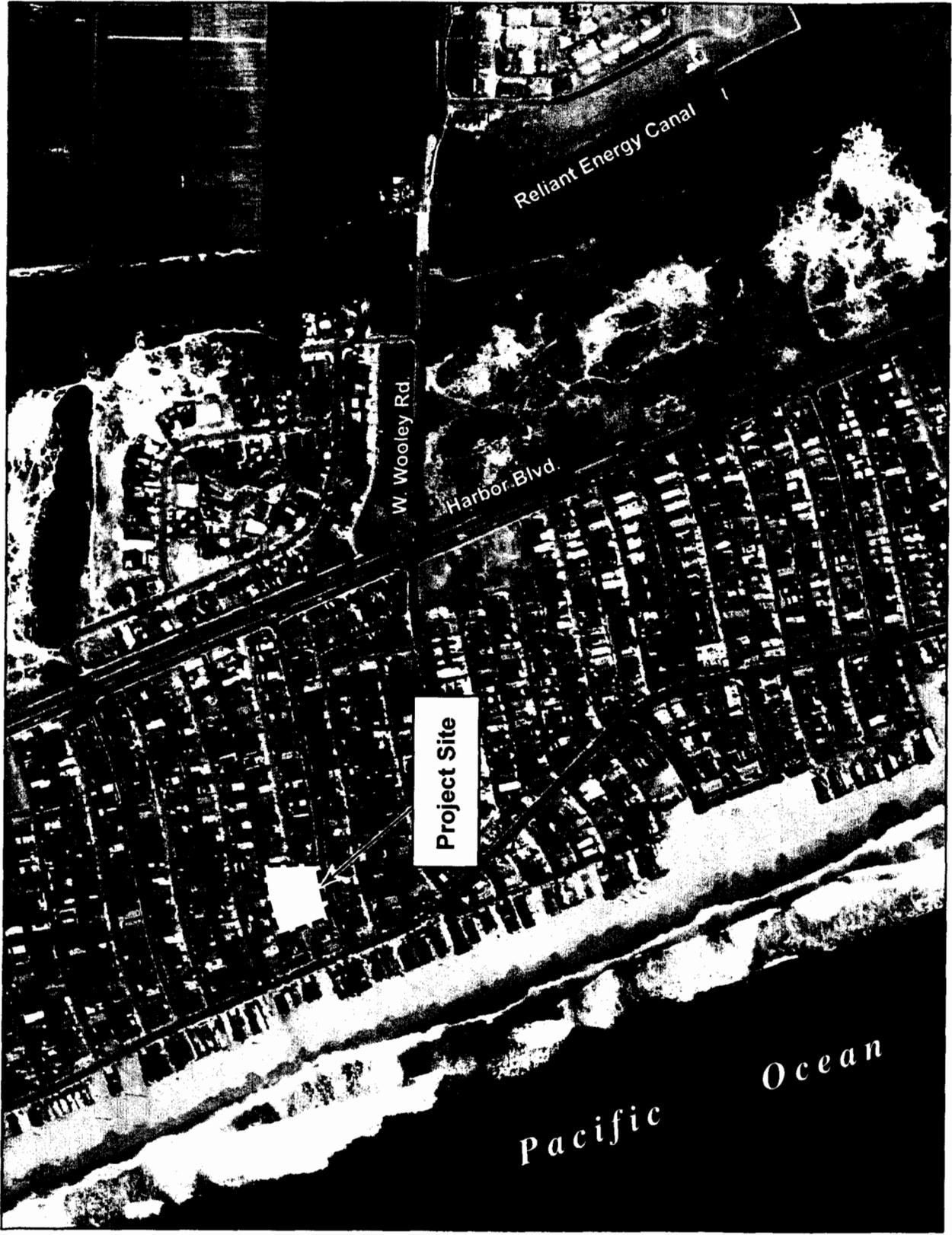
The site investigation was conducted on November 14, 2005, by Larry Lodwick, Senior Regulatory/Restoration Ecologist, and Barrett Holland, staff biologist with Impact Sciences, after a review of a prior "Biological Resources Analysis" that was prepared in March 2002 by Dudek & Associates. This report was reviewed prior to our conducting a site visit.

This analysis provides an update and peer review of the previous Dudek analysis and addresses whether any portion of the parcel should be considered an "environmentally sensitive habitat area," as that term is defined and used by the California Coastal Commission.

**FIELD METHODS**

This survey was conducted by traversing the entire site on foot. Impact Sciences conducted a survey and compiled a list of the plant species present, although it must be noted that this survey was conducted in mid November, having had two days of rain within the past three weeks. With few exceptions, plants were identified from their vegetative state. Conditions during the site visit were clear, with temperatures in the 60s, and the wind was calm. Given this time constraint, the number of species present was limited to those species typically present all year or in the fall. One field data sheet was completed during the site visit and is attached at the end of this report.

Wildlife presence, burrows, or other signs were noted on the attached data sheet.

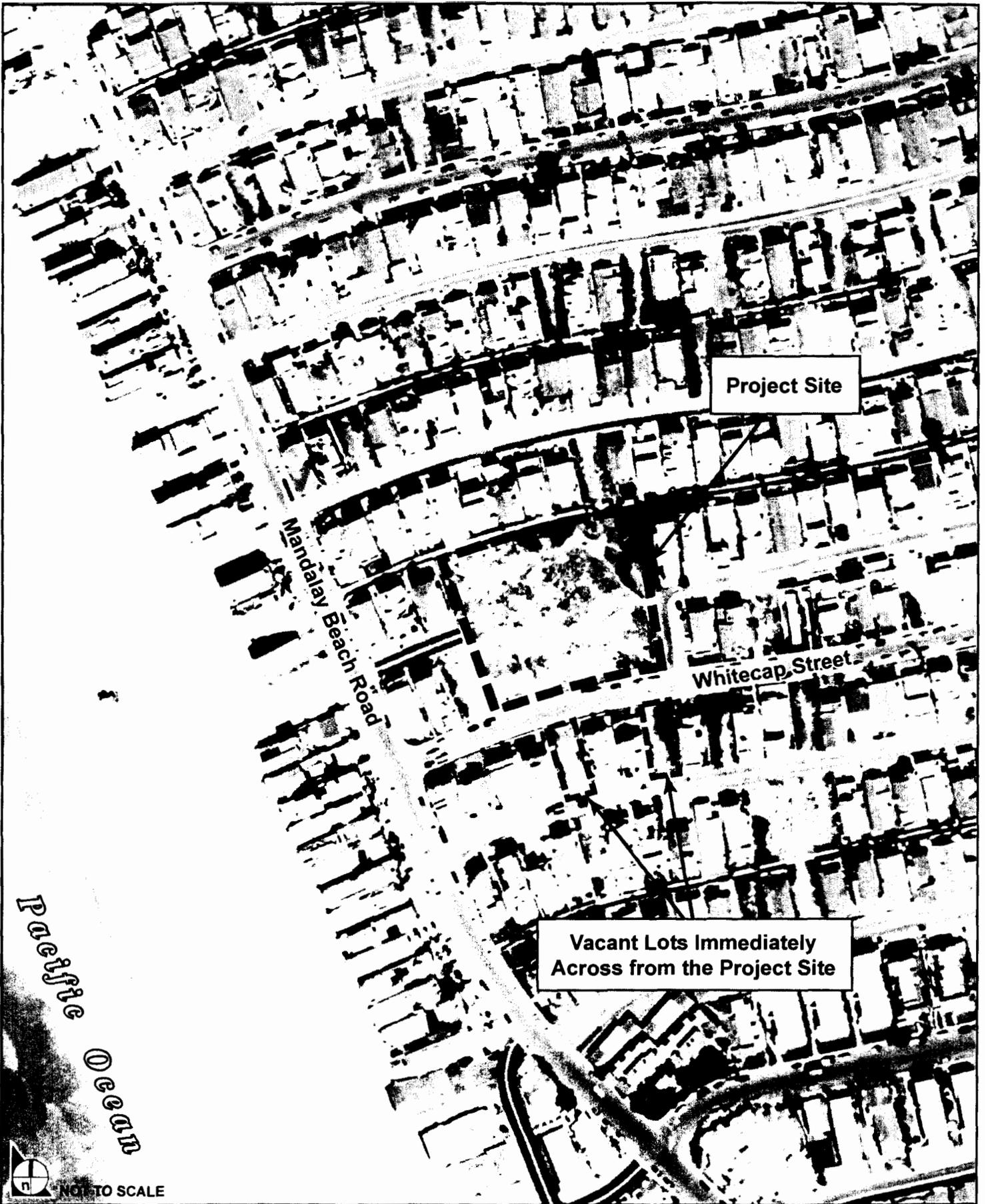


NOT TO SCALE

SOURCE: Impact Sciences, Inc. - November 2005

FIGURE 1

Vicinity Aerial Photo of Whitecap Project



SOURCE: Impact Sciences, Inc. - November 2005

FIGURE 2

Aerial Photo

The California Natural Diversity Data Base (CNDDDB) was used to determine the historical records special-status species found in the general area. The CNDDDB for the Oxnard Quadrangle on which the site is located and the two adjacent quadrangles (Ventura and Point Mugu), to the north and south along the coast were checked for potential occurrences of special-status species.

The topography and substrate of the site was examined to assist in determining the potential for various habitats to develop. Essentially, topography was examined for the variations of elevation and substrate characteristics were examined for texture and color.

## FINDINGS

Plant species, topography, and substrate of the site are characteristic of disturbed Southern Foredunes (California Department of Fish and Game [CDFG], 2003). This community is moderate-to-heavily disturbed, having been invaded, either accidentally or intentionally, with non-native species. The species present on the site can be divided into three groups: native dune scrub species, non-native invasive grasses and forbs, and landscape materials from adjacent residences, all of which can be included within the disturbed southern foredune community. Invasive grasses and forbs include Bermuda grass (*Cynodon dactylon*), riggut (*Bromus diandrus*), filaree (*Erodium cicutarium*), and iceplant (*Carpobrotus edulis*), the dominant plant on the site, which comprises approximately 50 percent of the relative cover. The native dune scrub species, approximately 30 percent of the total cover, is composed primarily beach evening primrose (*Camissonia cheiranthifolia*), pink sand verbena (*Abronia umbellata*), beach bursage (*Ambrosia chamissonis*) and California dodder (*Cuscuta californica*). Landscape species include one Norfolk Island pine (*Araucaria heterophylla*), one Monterey cypress (*Cupressus macrocarpa*), one pine (*Pinus* sp.), wattles (*Acacia* spp), and agaves (*Agave* sp.) which occupy less than 5 percent of the site and appears to have been planted by the adjacent homeowner as an extension to their backyard. Unvegetated sand comprises approximately 15 percent of the site.

The topography of the site is slightly rolling with topography varying a maximum of 3 feet from the high to the low points. There is a stubbed alley that dead ends at the property and sand has been piled up along Whitecap Street from developing the houses on the adjoining lots. There is also a walkway on the inland side of the property and a sidewalk and parking on the Whitecap Street side. The elevation is approximately 10 to 13 feet above sea level. The substrate is a medium-grained sand with an average color of 2.5Y 3.5 (Munsell notation). Sand with these characteristics is typical of the dunes of this general area.

Wildlife on the site is limited by the surrounding existing development (with residences on three sides, a public walkway and a street and sidewalk), the size of the undeveloped lot, lack of cover, the use of the area for walking and exercising pets by the surrounding residents, and the lack of any connectivity to other open space habitat. There is the potential use of the site by various insects and small lizards, because of the type of substrate, cover, and available food plants, but any populations of these species are likely restricted by the size of the site and by adjacent land use, and none were observed on the site. One bird species, a Mourning dove (*Zenaida macroura*), was observed on the site, and other transient bird species can be expected to land on the site occasionally. Birds adapted to urban conditions and shore birds can be expected to be observed, due to the proximity of the shoreline. No nesting or significant use of the site is likely due to the lack of cover and proximity to and continued disturbances from adjacent residents.

In addition to the lack of cover for wildlife species, there is no surface water due to the highly permeable soils. Groundwater is not available due to the elevation and the Reliant Energy Canal, which intercepts any shallow freshwater groundwater movement from the Oxnard Plain to the east.

Other disturbances to the site include deposition of some gravel on the northwest part of the site, scattered broken building tiles and glass, some asphalt and the washings of a concrete truck in evidence, and considerable pet wastes.

### **Special-Status Species**

No special-status species were observed on the site. Of the seven plant species listed by the CNDDDB, two are two have a potential to occur, one of which, the Orcutt's pincussion (*Chaenactis glabriuscula*) is common within the dunes of the area and is likely to occur.

No special-status fish species are present due to the absence of any water body associated with the site.

The Dudek report suggested that the silvery legless lizard had a potential to occur. Our experience with this species in the area suggests that the site lacks the specific characteristics of this species' habitat, and has a very low potential to occur on the site.

As with common species, a few special-status bird species could occur as transients, moving between the beach, canal, or other potential foraging areas, or may use the site as a temporary stopovers. However, no common or special-status birds are dependent on this site as nesting, roosting, or feeding habitat. No other special-status species are present, or likely to be present on the Whitecap Street site.

**Table 1**  
**Special Status Plant Species, Derived from the CNDDDB and CNPS Databases**

Common Name/ Scientific Name	Status			Habitat Requirements/ Blooming period	Potential for Occurrence
	Federal	State	CNPS		
Aphanisma <i>Aphanisma blitoides</i>	None	None	List 1B	Occurs in coastal bluff scrub, coastal dunes, and coastal scrub (sandy) at 1-305 meters. Blooms March through June.	Low potential to occur. Not observed in March or November, Known associated plant species are not present.
Ventura marsh milk-vetch <i>Astragalus pycnostachyus</i> var. <i>lanosissimus</i>	FE	SE	List 1B	Occurs in coastal scrub, coastal dunes, marshes and swamps (brackish or coastal salt) at 0-45 meters. Blooms June through October.	No potential to occur. No habitat is present on the site. This species is not present.
Late-flowered mariposa lily <i>Calochortus weedii</i> var. <i>vestus</i>	None	None	List 1B	Occurs in chaparral, cismontane woodland, and riparian woodlands (often serpentite) at 275-900 meters. Blooms June to August.	No potential to occur. No habitat is present on the site.
Orcutt's pincushion <i>Chaenactis glabriuscula</i> var. <i>orcuttiana</i>	None	None	List 1B	Occurs on coastal bluff scrub (sandy) and coastal dunes at 3-100 meters. Blooms January through August.	Potential to occur, not uncommon in the area, with the seeds being adapted for wind-borne dispersion.
Salt marsh bird's beak <i>Cordylanthus maritimus</i> ssp. <i>maritimus</i>	FE	SE	List 1B	Occurs in coastal dunes and marshes and swamps (coastal salt) at 0-30 meters. Blooms May through October.	No potential to occur. No habitat is present on the site.
Coulter's Goldfields <i>Lasthenia glabrata</i> ssp. <i>coulteri</i>	None	None	List 1B	Occurs in playas, vernal pools, marshes, and swamps (coastal salt) at 1-1220 meters. Blooms February to June.	No potential to occur. No habitat is present on the site.
Estuary sea-blite <i>Suaeda esteroa</i>	None	None	List 1B	Occurs in marshes and swamps (coastal salt) at 0-5 meters. Blooms May through October.	No potential to occur. No habitat is present on the site.
<b>STATUS KEY:</b> <u>Federal</u> FE = Federally Endangered FT = Federally Threatened FSC = Federal Species of Concern  <u>State</u> SE = State Endangered SR = State Rare  <u>CNPS</u> List 1B = plants rare, threatened, endangered in California and elsewhere List 2 = plants rare, threatened, or endangered in California List 3 = plants about which more information is needed					

Table 2  
Special Status Wildlife Species, Derived from the CNDDDB Database

Common Name Scientific Name	Status		Habitat Requirements	Potential for Occurrence
	Federal	State		
<b>Snails and Slugs</b>				
California brackish water <i>Tryonia imitator</i>	None	S2S3	Occurs in coastal lagoons, estuaries and salt marshes	<i>Not Expected:</i> no suitable habitat on or bordering the project site.
<b>Other Insects</b>				
Sandy beach tiger beetle <i>Cicindela hirticollis grvida</i>	None	S1	Occurs in habitats near the coast and brackish water. Requires clean, dry, light sand and moist sand for their larvae (not affected by wave action).	<i>Not Expected:</i> no suitable habitat exists on the site.
Tiger beetle <i>Cicindela sensillis frosti</i>	None	S1	Occurs in salt marshes in dark colored mud in the lower zone and dried salt pans in the upper zone.	<i>Not Expected:</i> no suitable habitat exists on the site.
Globus dune beetle <i>Coelus globosus</i>	None	S1	Occurs in the fore dunes of coastal sand dune habitats. Found beneath the sand surface and under dune vegetation.	<i>Low Potential:</i> Little suitable habitat exists on the site and disturbances have lessened site suitability for this species.
<b>Butterflies and Moths</b>				
Monarch butterfly <i>Danus plexippus</i>	None	S3	Roosts located in wind-protected tree groves, such as eucalyptus, Monterey pine, and cypress, with nectar and water sources nearby.	<i>Not expected:</i> (roosting); The preferred roosting trees of this species does not occur on or bordering the project site.
Wandering skipper <i>Panoquina errans</i>	None	S1	Occurs in coastal salt marshes. Requires salt marsh for larvae development.	<i>Not Expected:</i> no suitable nesting habitat on the project site.
<b>Fishes</b>				
Tidewater goby <i>Eucyclogobius newberryi</i>	FE	CSC	Occur in shallow lagoons and lower stream reaches, i.e., still but not stagnant bodies of water with high oxygen levels.	<i>Not Expected:</i> no suitable habitat on or bordering the project site.
Arroyo chub <i>Gila orcutti</i>	None	CSC	Occurs in slow water stream sections (mud or sand-bottoms). Feeds on invertebrates and aquatic vegetation.	<i>Not Expected:</i> no suitable habitat exists on or bordering the site.
Southern steelhead <i>Oncorhynchus mykiss irideus</i>	FE	S1	Central and southern California rivers and tributaries.	<i>Not Expected:</i> no suitable habitat on or bordering the project site.
<b>Reptiles</b>				
Southwestern pond turtle <i>Clemmys marmorata pallida</i>	None	CSC	Occurs in streams, ponds, freshwater marshes, and lakes with growth of aquatic vegetation.	<i>Not Expected:</i> no suitable habitat on or bordering the project site.
Silvery legless lizard <i>Anniella pulchra pulchra</i>	None	CSC	Occurs on stabilized dunes with legumes, especially if moist soil present. Also present along beaches, dry washes, pine, oak, and riparian woodlands, and chaparral; associated with sparse vegetation with sandy or loose, loamy soils.	<i>Not Expected:</i> No legumes are present although other aspects of suitable habitat do occur on the site.
Coast horned lizard <i>Phrynosoma coronatum</i>	None	CSC	Occurs in arid to semi-arid coastal sage scrub and chaparral habitats with friable, rocky, or sandy soils.	<i>Not Expected:</i> no suitable habitat on or bordering the project site.

Common Name Scientific Name	Status		Habitat Requirements	Potential for Occurrence
	Federal	State		
<b>Birds</b>				
Tricolored blackbird <i>Agelaius tricolor</i>	None	CSC	A colonial nester found in habitats near open water. Requires protective nesting substrate and insect prey within a few km of nesting area.	<i>Not Expected:</i> no suitable habitat on or bordering the project site.
Burrowing owl <i>Athene cunicularia</i>	None	CSC	Occurs in open annual or perennial grasslands, desert, and scrublands with low growing vegetation. Utilizes ground squirrel burrows commonly for nesting.	<i>Not Expected:</i> no suitable nesting habitat exists on the site.
Ferruginous hawk <i>Buteo regalis</i>	None	CSC	Occurs in open grasslands, sagebrush flats, desert scrub, low foothills, and pinyon-juniper habitats.	<i>Not Expected:</i> no suitable habitat on or bordering the project site.
Western snowy plover <i>Charadrius alexandrinus nivosus</i>	FT	CSC	Occurs on sandy beaches, salt pond levees, and shores of alkali lakes and flats. Needs gravelly or friable soils for nesting.	<i>Not Expected:</i> no suitable nesting habitat on the project site.
Western yellow-billed cuckoo <i>Coccyzus americanus occidentalis</i>	FC	SE	Occurs in riparian forests and flood bottoms of large river systems. Nests in willow trees with and understory association of blackberry, stinging nettle, and wild grape.	<i>Not Expected:</i> no suitable habitat on or bordering the project site.
Belding's sparrow <i>Passerculus sandwichensis beldingi</i>	None	SE	Occurs in coastal salt marshes. Nests in salicornia and on tidal flat margins.	<i>Not Expected:</i> no suitable habitat on or bordering the project site.
Light-footed clapper rail <i>Rallus longirostris levipes</i>	FE	SE	Found in salt marshes traversed by tidal sloughs in association with pickleweed and cordgrass.	<i>Not Expected:</i> no suitable habitat on or bordering the project site.
Bank swallow <i>Riparia riparia</i>	None	ST	Occurs in riparian and other lowland habitats west of the desert. Requires vertical banks for nesting.	<i>Not Expected:</i> no suitable habitat on or bordering the project site.
Least tern <i>Sterna antillarum browni</i>	FE	SE	Occurs on sandy beaches, alkali flats, landfills, and paved areas. A colonial nester who requires bare or sparsely vegetated areas for nesting.	<i>Not Expected:</i> no suitable nesting habitat on the project site.
Least Bell's vireo <i>Vireo bellii pusillus</i>	FE	SE	Occurs in riparian habitats and river bottoms associated with willows, baccharis, and mesquite	<i>Not Expected:</i> no suitable habitat on or bordering the project site.
<b>Mammals</b>				
Dulzura pocket mouse <i>Chaetodipus californicus fermoralis</i>	None	CSC	Occurs in a variety of habitats, including coastal scrub, chaparral, and grasslands.	<i>Not Expected:</i> suitable habitat cover or burrows are not present on the site.
Mexican long-tongued bat <i>Choeronycteris mexicana</i>	None	CSC	Occurs and roosts in relatively lit caves, in and around buildings.	<i>Not Expected:</i> no suitable habitat on or bordering the project site.
South coast marsh vole <i>Microtus californicus stephensi</i>	None	CSC	Occurs in tidal marshes throughout southern California.	<i>Not Expected:</i> no suitable habitat on or bordering the project site.

Common Name <i>Scientific Name</i>	Status		Habitat Requirements	Potential for Occurrence
	Federal	State		
<b>KEY:</b>				
<b>Federal</b>				
FE: Federally Endangered				
FT: Federally Threatened				
FC: Federal Candidate for listing as threatened or endangered				
FSC: Federal Species of Concern				
<b>State</b>				
CE: California Endangered				
CT: California Threatened				
CFP: California Fully Protected				
CSC: California Species of Special Concern				
<b>State Ranking</b>				
S1: Less than 6 element occurrences Or less than 1,000 individuals OR less than 809.4 ha (2,000 ac).				
S2: 6 to 20 element occurrences Or 3,000 individuals OR 809.4 to 4,047 ha (2,000 to 10,000 ac).				
S3: 21 to 100 element occurrences Or 3,000 to 10,000 individuals Or 4,047 to 20,235 ha (10,000 to 50,000 ac).				
S4: Apparently secure within California; this rank is clearly lower than S3 but factors exist to cause some concern (i.e., there is some threat, or somewhat narrow habitat). No threat rank.				
S5: Demonstrably secure to ineradicable in California. No threat rank				
* S2S3 means rank is somewhere between S2 and S3.				

**Previous Studies on the Site**

As noted in the 2002, Dudek & Associates conducted a Biological Resources Analysis (March 2002) of the Whitecap Street site. Impact Sciences agrees with the findings of the biological surveys conducted, but offers only the following suggestions. The timing of the Dudek studies was appropriate as the flowering season began in early 2002 due to warm temperatures and lack of later rains. Additional plant species may have been found if at least one survey in late May or early June had been conducted, however, finding any of the potential special-status species during this later survey would have been unlikely due to the phenology (growth/flowering period) of the species.

Three plant communities were identified by Dudek biologists during their study: disturbed southern foredunes and annual, non-native grassland. Our report includes a single plant community, eliminating two of Dudek’s designations , because these two communities are “disturbed” and southern foredunes.

**Environmentally Sensitive Habitat Areas (ESHA)**

The Coastal Act is protective of sensitive resources as defined in Section 30107.5 of the Act. That provision defines an environmentally sensitive area as “...any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.”

The Whitecap Street site is situated on an isolated remnant of southern foredunes. The site is bounded on three sides by existing residential development and on the fourth side by Whitecap Street. There are several vacant lots in the surrounding area that are similar in nature (Figure 2). Two such lots are directly

across from the project site, and, because of their proximity, provide a useful comparison. Both vacant lots contain similar vegetation to that found on the subject site, but clearly do not qualify as ESHA. This disturbed site is physically separated from other large intact open space dune areas, specifically the beach to the west, the dunes between the Reliant Energy Canal and Harbor Boulevard to the east. In general, the dunes on this site have a very limited potential to support a common or special-status species.

In this case, the subject site does not amount to an *environmentally sensitive habitat area* due to isolation and alteration of the biota and natural functions. The site has been modified by various kinds of impacts, from vehicle use, deposition of gravel, and the introduction of non-native plants. The plant community is largely exotic and depauperate. As indicated, the annual, non-native forbs on site have invaded and dominated much of the remaining foredunes habitat. No special-status species were found by either Impact Sciences or by the earlier study by Dudek & Associates. Normal processes of dune communities and prevailing winds, which functions in the replenishment and sculpting of the sand topography are precluded due to isolation or blockage from sources of material by residential development. Finally this small fragment is spatially isolated from natural communities by residential development, and the divided streets bordering the site.

In sum, the site does not contain species that are rare or of such local significance as to be especially valuable due to its special nature or role in the ecosystem, and, in our opinion, it does not constitute or support ESHA under the Coastal Act.

<b>BIOLOGICAL CONSTRAINTS ASSESSMENT</b>		Impact Sciences, Inc. Project Number:
Project / Site Name: Whitecap Street Site		Size (acres): 1.60 acre
Biological Staff: Larry Lodwick, Barrett Holland		Field Date/Time of Day: November 14, 2:00- 3:00pm
Site Disturbance? <input checked="" type="checkbox"/> Yes; <input type="checkbox"/> No; Approx % Disturbed 70 %		Lat./Long.:
Time Spent on site: 2 hours		County: Ventura
Adjacent land use: Residential		State: California
Weather: <input checked="" type="checkbox"/> Sunny/Clear; <input type="checkbox"/> Cloudy/Overcast; <input checked="" type="checkbox"/> Light Winds; <input type="checkbox"/> High Winds; <input type="checkbox"/> Calm; <input type="checkbox"/> Raining; Other:		

<b>Dominant Vegetation:</b>		
<input type="checkbox"/> Forest (Greater than 50% Canopy)	<input type="checkbox"/> Savanna (20 - 50 % Canopy)	<input type="checkbox"/> Scattered Trees (1-20% Canopy)
<input type="checkbox"/> Chaparral	<input type="checkbox"/> Coastal Sage Scrub	<input type="checkbox"/> Scattered Shrubs
<input type="checkbox"/> Native Grassland	<input type="checkbox"/> Non-native Grassland	<input type="checkbox"/> Ruderal/ Abandoned Agriculture
<input checked="" type="checkbox"/> Exposed Soils / SAND-Miscellaneous rocks and tiles	<input checked="" type="checkbox"/> Non-native Landscaping	Non-native species dominating.

<b>Native Trees Present:</b>		
<input type="checkbox"/> Oaks: <input type="checkbox"/> Mature; <input type="checkbox"/> Heritage	<input type="checkbox"/> Walnuts: <input type="checkbox"/> Mature; <input type="checkbox"/> Heritage	<input type="checkbox"/> Sycamores: <input type="checkbox"/> Mature; <input type="checkbox"/> Heritage
<input type="checkbox"/> Cottonwoods	<input type="checkbox"/> Willows	<input type="checkbox"/> Others, Specify
<b>Non-native Trees:</b>		
<input type="checkbox"/> Eucalyptus	<input type="checkbox"/> Pepper tree	<input checked="" type="checkbox"/> Others, Specify
<i>Myoporum laetum, Acacia longifolia, Callistemon citrinus, Eucalyptus nicholi, Leptospermum sp., Melaleuca nesophila. Araucaria heterophylla.</i>		

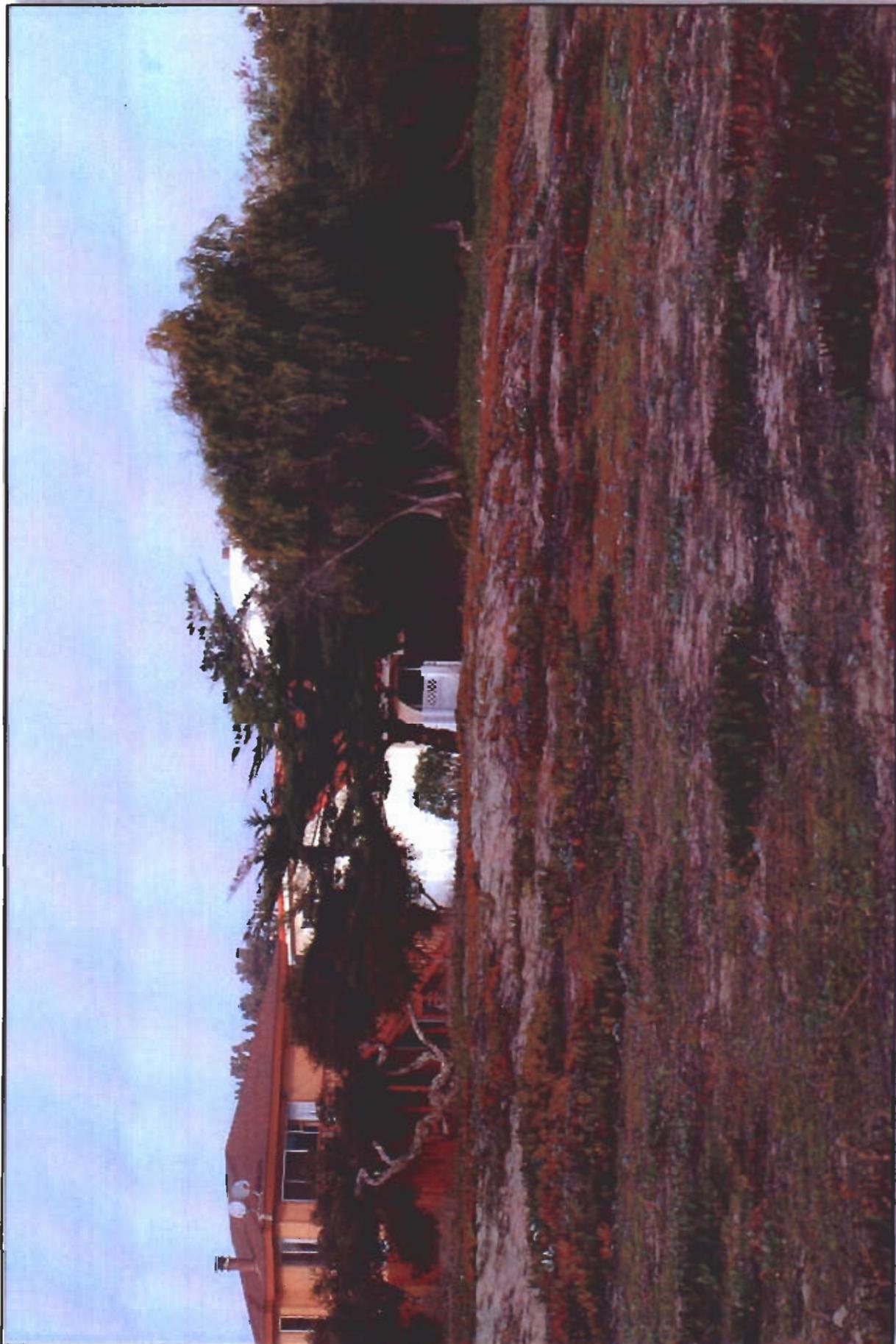
<b>Slopes</b>	<input checked="" type="checkbox"/> Flat to Slight	<input type="checkbox"/> Moderate	<input type="checkbox"/> Severe	<b>Aspect:</b>	<input type="checkbox"/> North; <input type="checkbox"/> East; <input type="checkbox"/> South; <input type="checkbox"/> West
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<b>Jurisdictional Waters/Streambeds Present</b>	<input type="checkbox"/> Ordinary High Water Mark Present	<input type="checkbox"/> Streambed / banks Present
<input type="checkbox"/> Perennial Stream	<input type="checkbox"/> Intermittent Stream	<input type="checkbox"/> Ephemeral Stream
<input type="checkbox"/> Seeps or Springs	<input type="checkbox"/> Wetlands: <input type="checkbox"/> Hydrology; <input type="checkbox"/> Hydric soils; <input type="checkbox"/> Hydrophytic vegetation	
<input type="checkbox"/> Pond or Lakes	<input type="checkbox"/> Recent Erosion obvious	<input type="checkbox"/> Man-made drainage
Culverts downstream edge of property - Diameter _____ inches; Culverts upslope edge of project - Diameter _____		
If located on a drainage course, what is the drainage named?		
What is the drainage a tributary to?		How far away is confluence?
Evidence of a hydrological connection available?		
How was above information obtained? <input type="checkbox"/> Site visit; <input type="checkbox"/> maps or aerial photos; <input type="checkbox"/> other (specify)		
<input type="checkbox"/> Corps of Engineers Jurisdiction	<input type="checkbox"/> Ca. Dept Fish and Game Jurisdiction	<input type="checkbox"/> RWQCB Jurisdiction

<b>Present Land Uses of Site:</b>	<input type="checkbox"/> Residential	<input type="checkbox"/> Commercial	<input type="checkbox"/> Industrial
<input checked="" type="checkbox"/> Open Space	<input type="checkbox"/> Agricultural	<input type="checkbox"/> Private, Undeveloped	

<b>Adjacent Land Uses:</b>	<input checked="" type="checkbox"/> Residential	<input type="checkbox"/> Commercial	<input type="checkbox"/> Industrial
<input type="checkbox"/> Public Open Space	<input type="checkbox"/> Agricultural	<input type="checkbox"/> Private, Undeveloped	

Species Observed (Plants)	(Wildlife)
Iceplant ( <i>Carpobrotus edulis</i> ) 50% *	Mourning dove ( <i>Zenaida macroura</i> )
Pink sand verbena ( <i>Abronia umbellata</i> )	Brown garden snails
Rippgut ( <i>Bromus diandrus</i> ) *	Earwigs
Telegraph weed ( <i>Heterotheca grandiflora</i> )	
California dodder ( <i>Cuscuta californica</i> )	
Jade plant ( <i>Crassula argentea</i> )	
American agave ( <i>Agave americana</i> )	
Broad-lobbed filaree ( <i>Erodium cicutarium</i> ) 20% *	
Beach evening primrose ( <i>Camissonia cheiranthifolia</i> )	
Gazania ( <i>Gazania linearis</i> ) *	
Goldenbush ( <i>Ericameria ericoides</i> )	
<i>Gnaphalium ramosissimum</i>	
Monterey cypress ( <i>Cupressus macrocarpa</i> )	
Star pine ( <i>Araucaria heterophylla</i> )*	
Beach-bur ( <i>Ambrosia chamissonis</i> )	
Coyote brush ( <i>Baccharis pilularis</i> )	
Sea rocket ( <i>Cakile maritima</i> )*	
Jade plant ( <i>Crassula argentea</i> )	
Dwarf stonecrop ( <i>Crassula connata</i> )	
Fountain grass ( <i>Pennisetum setaceum</i> )*	
Bermuda grass ( <i>Cynodon dactylon</i> )*	
Bluegrass ( <i>Poa sp.</i> ) *	
<i>Aloe sp.</i> *	
Bermuda buttercup ( <i>Oxalis pes-caprae</i> )*	
Sweet clover ( <i>Melilotus albus</i> ) *	
California-aster ( <i>Lessingia filaginifolia</i> )	
<i>Myoporum laetum</i> *	
Willow leafed peppermint ( <i>Eucalyptus nicholii</i> )*	
Lemon bottlebrush ( <i>Callistemon citrinus</i> )*	
Golden wattle ( <i>Acacia longifolia</i> )*	
Pink melaleuca ( <i>Melaleuca nesophila</i> )*	
Tea tree ( <i>Leptospermum sp.</i> *)	
Sea dahlia ( <i>Coreopsis maritima</i> )	



The landscape plants in the background are on the project site.

SOURCE: Impact Sciences, Inc. - November 2005

PHOTO 1

# Typical Site Conditions



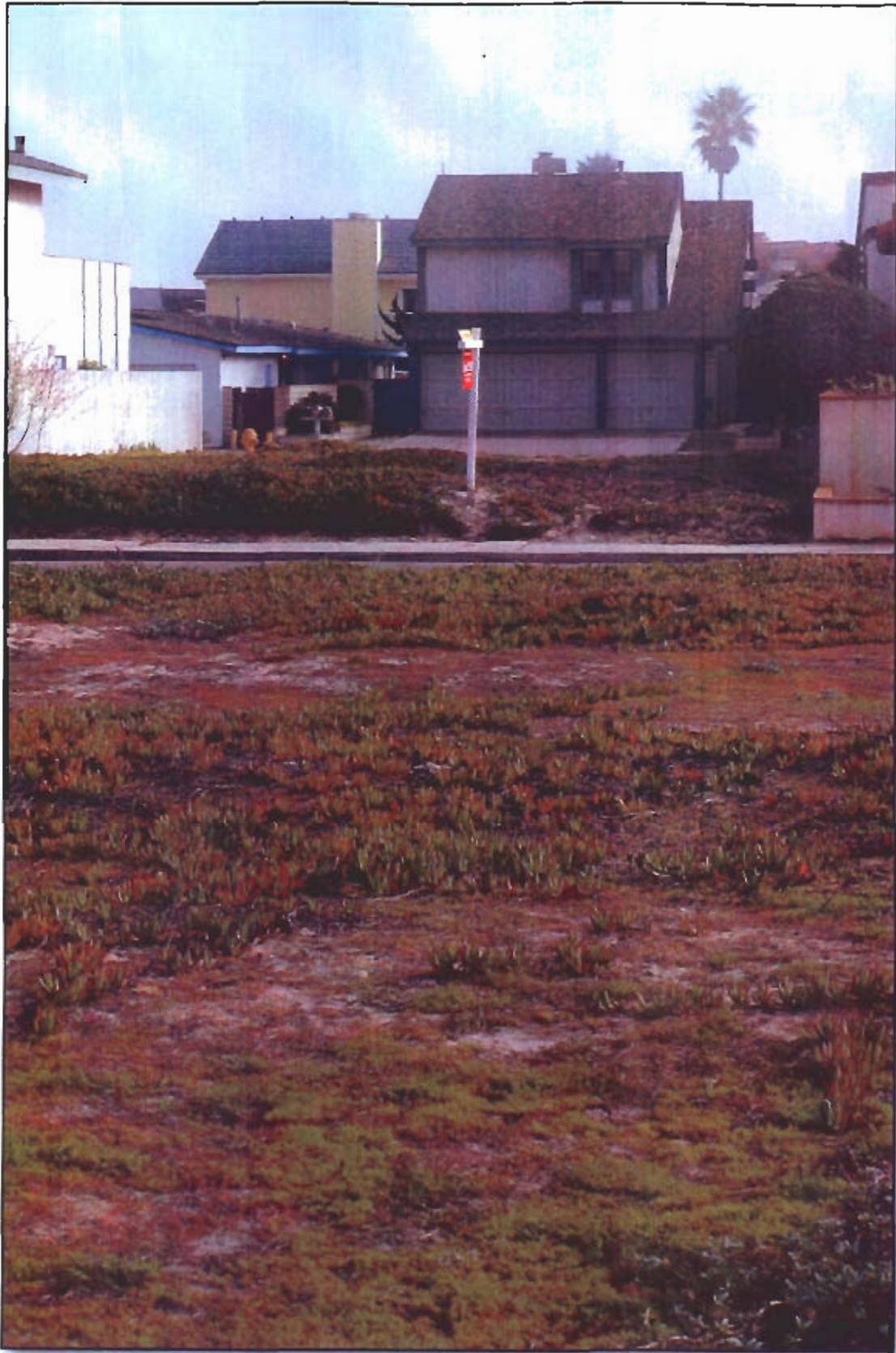


SOURCE: Impact Sciences, Inc. - November 2005

PHOTO 2

Typical Site Conditions





The lot with the sign in the background is a vacant lot with similar habitat conditions.

SOURCE: Impact Sciences, Inc. - November 2005

PHOTO 3

Typical Site Conditions



## IMPACT SCIENCES

803 Camarillo Springs Road, Suite A  
Camarillo, California 93012  
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www.impactsciences.com

April 26, 2006

City of Oxnard  
305 West Third Street  
Oxnard, California 93030

Attn: Matthew Winegar, Development Services Director

Re: **Site Assessment: 6.343-Acre City of Oxnard Property South of West Fifth Street**

At the City's request, Impact Sciences, Inc. has conducted a site assessment of the City of Oxnard's 6.343-acre property, consisting of three parcels (Parcel numbers 196-0-010-145, 196-0-010-155, and 196-0-010-165) located south of West Fifth Street with regards to the habitats, condition, development and restoration potential.

### Habitats:

The site is composed largely of southern foredune habitat that is partially stabilized by a well developed, native dune plant community, consisting of goldenbush (*Ericameria ericoides*), California sagebrush (*Artemisia californica*), coyote brush (*Baccharis pilularis*), California croton (*Croton californicus*), beach bur (*Ambrosia chamissonis*), California broom (*Lotus scoparius*), and beach sand verbena (*Abronia umbellata*), interspersed by dense clumps of arroyo willow (*Salix lasiolepis*) in the interdunal areas. The site has small amounts of non-native, invasive species, notably iceplant (*Carpobrotus edulis*), ripgut brome (*Bromus diandrus*), and European beach grass (*Ammophila arenaria*), which together are estimated to comprise roughly five percent of the total cover. The site almost certainly supports a substantial number of silvery legless lizards (*Anniella pulchra*), the only potentially occurring state sensitive wildlife species, but will also support an abundance of common dune-associated wildlife species.

The site is criss-crossed with trails created by off road vehicles, with vegetation damaged on between 50 to 70 percent of the site (see attached figures).

The parcels to the east of the site are primarily vegetated by arroyo willows which extend to the Reliant Energy Canal, and south, west and north of the site, the vegetation is predominantly arroyo willow and southern foredune scrub, similar to the vegetation on the City's property. Scattered patches of willows are present in the interdunal areas of this undeveloped area.

Access to this site is via a sand road suitable for off-road vehicles, from West Fifth Street.

As noted, off road vehicle tracks criss-cross the site and are the major disturbance to an estimated 50-70 percent the site, or 3.15 - 4.4 acres of areal impact. Off road vehicle tracks not only affect the area being driven on, but the adjacent habitat values are reduced, vegetation removed, and habitat created suitable for invasion by invasive species as well. Fencing of the City property would be highly beneficial. Fencing would allow for the rapid recovery of the tracks and improve the overall habitat quality for wildlife. With the elimination of off road vehicles, the ecological functions of the site would be enhanced significantly. For example, judging from populations of silvery legless lizards, a state sensitive species on an nearby site and from other coastal California areas where legless lizards have been studied, the City's 6.3-acre property would likely support a high density of legless lizards under current conditions, but with protection from off road vehicles and with restoration of the habitat, particularly with California broom and lupines, the site could support perhaps a much greater number of legless lizards. Very large, dense populations of legless lizards in such habitat have been recorded in the literature. Habitat for other species would increase, perhaps not as significantly as the legless lizard habitat, but improvements could be expected.

Revegetation of off road vehicle tracks on this site can be expected to occur naturally within two years after fencing because of the seed bank present in the sand and seed dispersal methods of the plant species present. Natural seeding has several advantages in that the genetic diversity is preserved, plants develop in the habitats suited for their development, minimizes maintenance needs and reduces the need for additional encroachment into the site.

Fencing should be of a type that allows wildlife to move freely onto adjacent parcels. Several strands of wire between posts should suffice, however, the wire should be visible to any off road vehicle users for safety reasons.

If this site is to be used for mitigation, we also recommend that it be permanently protected by way of a conservation easement.

Please call with any questions you might have regarding this evaluation.

Very Truly Yours,

Mr. Matt Winegar  
April 26, 2006  
Page 3

IMPACT SCIENCES, INC.

Larry Lodwick  
Associate Principal/  
Director, Regulatory/Restoration Ecology

Primary Telephone (805) 437-1900  
llodwick@impactsociences.com

cc: Mike More  
Sue Martin



City of Oxnard Property, off road tracks and iceplant (reddish)

SOURCE: Impact Sciences, Inc. - April 2006

PHOTO 1



Typical Site Conditions



City of Oxnard Property, off road tracks, looking east

SOURCE: Impact Sciences, Inc. - April 2006

PHOTO 2



Typical Site Conditions

764-002-04/06



City of Oxnard Property, southern dune scrub

SOURCE: Impact Sciences, Inc. - April 2006

PHOTO 3

Typical Site Conditions



764-002-04/06



## IMPACT SCIENCES, INC.

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### MEMORANDUM

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**TO:** Mathew Winegar, Development Services      **JOB NAME:** Whitecap Street Property  
Director

**FROM:** Larry Lodwick      **DATE:** June 30, 2006

**SUBJECT:** 6.4 acre - mitigation site      **JOB NO.:** 764-02

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### COMMENTS

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#### Whitecap Street Property 6.4 Acre -Mitigation Site Oxnard, California

The 6.4 acre-mitigation site for the Whitecap Street property is predominately a disturbed southern foredune plant community (Holland 1986) with isolated patches of southern dune scrub occurring where off road vehicles have not yet driven. The southern foredunes habitat on site is composed of native dune species such as, beach-bur (*Ambrosia chamissonis*), croton (*Croton californicus*), beach evening primrose (*Camissonia cheiranthifolia*), pink sand verbena (*Abronia umbellata* ssp. *umbellata*), (*Artemisia californica*), deerweed (*Lotus scoparius*), and sea-cliff buckwheat (*Eriogonum parvifolium*). Other invasive non-native species such as, ice plant (*Carpobrotus edulis*), sea rocket (*Cakile maritima*), wild oats (*Avena fatua*), filaree (*Erodium* spp.), and rippgut (*Bromus diandrus*) occur where sandy substrate has been disturbed by off road vehicles.

Isolated patches of southern dune scrub are present where off road vehicles have not driven. Southern dune scrub is known to occur relatively in the same geographic area as southern foredunes (Holland 1986). Patches of southern dune scrub consists of goldenbush (*Ericameria ericoides*), California sagebrush (*Artemisia californica*), dune bush lupine (*Lupinus chamissonis*), deerweed, branching phacelia (*Phacelia ramosissima*), California-aster (*Lessingia filaginifolia*) poison oak (*Toxicodendron diversilobium*), sea-cliff buckwheat, and coyote brush (*Baccharis pilularis*). The invasive European beach grass (*Ammophila arenaria*) occurs commonly on these isolated patches of southern dune scrub.

A dense stand of arroyo willows (*Salix lasiolepis*) occurs along the south boundary of the mitigation site.



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### ADDITIONAL ANALYSIS OF SILVERY LEGLESS LIZARD AND SAN DIEGO HORNED LIZARD ON THE WHITECAP PROJECT SITE, OXNARD, CALIFORNIA

July 15, 2006

#### Introduction

This analysis discusses the methods and results of a focused survey on July 11, 2006, to determine presence/absence of silvery legless lizard (*Anniella pulchra pulchra*) and San Diego horned lizard (*Phrynosoma coronatum blainvillii*), both considered Species of Concern by the California Department of Fish and Game, on the approximate 1.6-acre project site located on Whitecap Street, near the intersection of Whitecap Street and Mandalay Beach Road in Oxnard, California. A previous assessment of the site determined that the habitat was generally not typical of that known to support these species and because of the small and completely isolated nature of the site from other natural habitat areas in the region, the potential of the site to support viable populations of these two species was considered low (Impact Sciences 2005).

#### Methods

##### *Silvery Legless Lizard*

Methods utilized for surveying for presence of silvery legless lizards included carefully raking within the top ten inches of soils in suitable habitats, as well as areas considered non-suitable for this species, e.g., areas covered with iceplant (*Carpobrotus edulis*) and compacted soils. Although biologists focused searches more thoroughly in areas where native plants (especially leguminous species) occur, all habitats on the site were surveyed. Additionally, the perimeter of adjacent residences to the north was surveyed for silvery legless lizard. Surveys were conducted by four Impact Sciences biologists.

Because silvery legless lizards are typically associated with moist soils, soil moisture was recorded at 31 random locations on the site with the use of an Aquaterr Instruments soil moisture and soil temperature probe. In addition, nine hand borings were drilled on the property on July 12 by Construction Testing and Engineering, Inc. (CTE), utilizing a 3-inch diameter hand auger to determine depth to moist soils. Three of the borings were drilled to the water table to determine depth to groundwater. All borings were backfilled with soil cuttings.

##### *San Diego Horned Lizard*

Four Impact Sciences biologists walked line transects across the entire site in search of San Diego horned lizards. Transects were spaced approximately 10 feet apart in order to obtain 100 percent visual coverage of the site. In areas where ice plant occurred (primarily along the eastern border of the site), biologists lifted the mat-like plants from the surface of the sand in order to inspect for presence of horned lizards. As with the silvery legless lizard, the perimeter of residences adjacent to the north were also surveyed for the presence of San Diego horned lizards. During

raking surveys for silvery legless lizard in sandy areas of the site (see discussion below), biologists looked for San Diego horned lizards potentially occurring below the surface.

San Diego horned lizards are surface active generally during April-July, after which time most adults aestivate (CDFG 1994). These lizards typically emerge from nocturnal burial sites in the morning to catch the first rays of the sun, thermoregulating by shifting the orientation of their bodies relative to the sun. By late morning, body temperatures are usually elevated enough to allow the horned lizards to feed or engage in other activities on the surface. The ambient air temperature on the day of the survey was generally in the low 70s (degrees F) and the soil temperature was approximately 80 degrees F. The surveys conducted on July 11 began at approximately 11:15 AM. Consequently, the time of day, the air and soil temperatures, and the month of the year the survey was conducted was highly optimal for observing horned lizards.

## Results and Discussion

### *Silvery Legless Lizard*

No silvery legless lizards were observed on the site during the July 11 survey. However, given this species' affinity for moist soils, the time of year this survey was conducted is not ideal for finding legless lizards near the top layers of sand/soil. Based on the soil moisture readings and data taken on both July 11 and July 12, moist soils were found at depths ranging from 3.5 to 6 feet. While it is not known to what depths silvery legless lizard will burrow to be near moist soils, the raking and surface digging that was conducted on July 11 did not reach the depths indicated by the borings at which soils become moist.

A fossorial animal, silvery legless lizards rarely spend time on the surface (CDFG 1994). Several snail tracks or trails were observed on the sandy portions of the site, which may have been mistaken for legless lizard tracks by others. Raking and digging surveys conducted earlier on July 11 at a location within a mile of the Whitecap site that is known to contain silvery legless lizards found no individuals of this species. Legless lizards have consistently been found on this nearby site after large rain events, generally in the spring. The habitat on this larger site (approximately 90 acres) in which the legless lizards have been found are characterized by stabilized dunes with sandy soils and sparse vegetation dominated by deer weed (*Lotus scoparius*), mock heather (*Eriogonum parvifolium*), and bush lupine (*Lupinus arboreus*), species that this lizard is typically associated with.

From a habitat perspective, the Whitecap site as a whole is generally not considered suitable for this species. Silvery legless lizard are known to occur in areas with sandy or loose loamy soils under the sparse vegetation of dunes, chaparral or pine-oak woodland, or under sycamores, cottonwoods, or oaks that grow on stream terraces. The sandy loam soils of stabilized dunes on which bush lupine, mock heather, deer weed, mock aster (*Ericameria ericoides*), and other native coastal shrubs occur seems especially favorable habitat (CDFG 1994). While the site does contain some habitat elements (loose sandy substrate in some areas, some native plant species) often associated with silvery legless lizard habitat, the site has been historically dominated by ice plants; other invasive plant species such as Bermuda grass (*Cynodon dactylon*), rippgut (*Bromus diandrus*), gazania (*Gazania linearis*), and filaree (*Erodium cicutarium*) occur widely across the site. Before being hand-removed by neighbors in May and June, 2006, ice plant comprised approximately 50 percent of the total cover of the site. Exotic, invasive plant species decrease soil moisture and support only a limited arthropod food base for silvery legless lizard, likely because they replace the native vegetation which supports more significant arthropod populations (CDFG 1994). In particular, ice plants build up the salt concentration in the soil that may create habitat unsuitable for legless lizards because this species has difficulty osmoregulating in such a

substrate, or indirectly, by limiting the arthropod food base. Disturbed and isolated dune areas with a lack of leaf litter from native legumes, such as deer weed (*Lotus scoparius*) or bush lupine (*Lupinus arboreus*), is generally unsuitable habitat for legless lizards (CDFG 1994).

Most limiting about the site for silvery legless lizard is the fact that the 1.6-acre site is completely surrounded by residential homes (directly on three sides and by Whitecap Street and more homes on the fourth side). Such fragmentation, particularly on a small parcel such as this, is generally very deleterious to the persistence of wildlife populations, even if suitable habitat is present. Fragmented and isolated populations of animals are more vulnerable to decline and eventual extirpation due to increased edge effect, catastrophic events such as fire or flood, reduced genetic diversity, increased susceptibility to disease and predation, and increased competition for limited resources (Harris 1984; Saunders et al 1991). The fact that the site has been dominated by ice plant and other non-native plants, the general lack of dune plant species typically associated with silvery legless lizard, susceptibility to potential predators such as cats and dogs and more urban-adapted wildlife such as crows and gulls, the lack of immigration or emigration to sustain genetic diversity, trampling by human use of the site (as evidenced by bicycle tracks and footprints during various surveys), and the very limited amount of suitable habitat elements (i.e., loose sand and exotic free plant areas) all point to a site that is very inhospitable to silvery legless lizard. Even if a relict few lizards were to be found on the site during a survey period more conducive to finding the species, the potential for such a population to persist on this particular site is essentially nonexistent.

#### *San Diego Horned Lizard*

No San Diego horned lizards were observed during the focused surveys conducted on July 11. In addition, during reconnaissance surveys conducted on May 16 and June 7, 2006, to determine if site conditions had changed since the November 2005 surveys, no San Diego horned lizards were observed. The only reptile observed during the July 11 survey was one California alligator lizard (*Elgaria multicarinata multicarinata*) under an ice plant patch next to the fence of a residence located immediately to the north of the Whitecap site.

The San Diego horned lizard is found in a wide variety of habitats including coastal sage, annual grassland, chaparral, oak woodland, riparian woodland, and coniferous forest (CDFG 1994). The key elements within such habitats are loose, fine soils with a high sand fraction; an abundance of native ants or other insects; and open areas with limited overstory for basking and low, but relatively dense, shrubs for refuge. Other than the sandy friable soils located in select areas of the site, the overall habitat quality for supporting San Diego horned lizards is considered poor. The overstory plants that would provide refuge from gulls, ravens, and other predators are lacking on the site, other than a single coyote brush plant and a mock heather plant, which could provide adequate shelter for this species if denser vegetation stands occurred. While some native ants (*Pogonomyrmex* sp.) were observed on the site during the July 11 survey, non-native Argentine ants (*Iridomyrmex humilis*) were also observed. These ants, typically found near and within urbanized areas, out-compete and ultimately displace and/or eliminate native ant colonies. While up to 90 percent of the horned lizard's diet consists of ants, this species avoids eating Argentine ants (Fisher, Suarez, and Case 2002). In fact, horned lizard presence on a particular site has been shown to be positively associated with the absence of Argentine ants and the presence of sandy soils and chaparral floristic components (Fisher et al, 2002). Argentine ants were the most highly correlated variable and provided a negative effect.

It should be noted that horned lizards have been observed by Impact Sciences biologists on a site within one half mile from the Whitecap site. This site (the same one on which silvery legless lizards have been found, as discussed above) supports both stabilized dune formations as well as

flat open areas intermixed with coastal scrub and dune scrub plant species such as goldenbush (*Ericameria ericoides*), California sagebrush (*Artemisia californica*), deerweed, branching phacelia (*Phacelia ramosissima*), and coyote brush, habitat much more typical of that associated with San Diego horned lizard. A horned lizard was observed on this site within one week of the July 11 surveys on the Whitecap site.

As with the silvery legless lizard, the most limiting factor for San Diego horned lizard on the site is the fact that the highly fragmented nature and small size of the site results in high edge effect that would, for any horned lizards potentially occurring on the site, increase susceptibility to disease and predation and increase competition for limited resources. In addition, the lack of immigration and emigration (that would inhibit the potential for genetic diversity and population stability), recreational use and subsequent trampling of the site by children and adults, and susceptibility to potential predators such as cats and dogs and more urban-adapted wildlife such as crows and gulls, make persistence of any relict population of horned lizards potentially occurring on the site very unlikely.

## References

- California Department of Fish and Game. 1994. Amphibian and Reptile Species of Special Concern in California.
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- Harris, L.D. 1984. *The fragmented forest: island biogeography theory and the preservation of biotic diversity*. University of Chicago Press, Chicago, Illinois.
- Impact Sciences. 2005. *Biological Resources Evaluation and Analysis, the Whitecap Street Site, Tract Numbers 5063 and 5064*. Report prepared for the City of Oxnard. 16pp.
- Saunders, D.A., R.J. Hobbs, and C.R. Margules. 1991. Biological consequences of ecosystem fragmentation: A review. *Conservation Biology* 5: 18-32.

**Lawrence E. Hunt  
Consulting Biologist**

Lillian Ford, Staff Analyst  
California Coastal Commission  
89 South California Street, Suite 200  
Ventura, California 93001

17 July 2006

**Subject: Proposed Re-zoning of Parcel Located on Whitecap Street, Oxnard Shores, Ventura County, California**

Dear Ms. Ford,

I am writing to urge the Commission to deny the proposed City of Oxnard request to re-zone a 1.6-acre parcel from open space to residential development. The parcel is located northwest of the intersection of Wavecrest Way and Whitecap Street in Oxnard Shores in Ventura County. I wish to discuss the biological and geological merits of the parcel as a remnant of a formerly much more extensive wind-blown dune system.

I visited the parcel between 0945 hrs and 1145 hrs on 13 July 2006 to assess site conditions. The following statements are based on these observations, conversations with neighbors regarding the status of the parcel (Patricia Einstein and Robert Murphy), and my knowledge of the coastal dune systems of central and southern California.

**Subject Parcel.** The parcel is surrounded by residential development, although there are several vacant 75-foot x 150-foot (about 0.25-acre) residential lots in close proximity to (but not abutting) the subject parcel. The subject parcel covers approximately 1.6 acres and is bordered by Wavecrest Way on the north and east, by Whitecap Street on the south, and by housing on the west. My impression is that portions of the subject parcel have been previously disturbed by human activities, possibly oil-field development. I found asphalt or oil sands about 6-10 inches below the surface, along with foreign soils and indurated native soils in the northeastern quadrant of the parcel, suggesting that an old roadbed and/or fill soils were placed in this area. An east-west trending foot trail bisects the parcel.

The subject parcel shows the subdued topography typical of the foredunes that formerly occurred throughout this area. This topography is characterized by scattered, low-relief sand hills vegetated with dune "pioneer" vegetation, here dominated by prostrate, mat-forming species--beach evening primrose (*Oenothera cheiranthifolia*), beach-bur (*Ambrosia chamissonis*), and sticky sand-verbena (*Abronia maritima*). Native woody shrubs, characteristic of stabilized dunes, are almost completely absent here and are represented only by one or two individuals of coyote bush (*Baccharis pilularis*) and mock heather (*Ericameria ericoides*). Other common native herbaceous species observed on the parcel include telegraph weed (*Heterotheca grandiflora*) and California dodder (*Cuscuta californica*). Non-native vegetation comprises about 35% of the plant cover on the site and includes both herbaceous species (e.g., ice plant [*Carpobrotus* sp.]),

brome grasses, and ornamental trees. The latter include Monterey cypress (*Cupressus macrocarpa*) and non-native species that are confined to the northeastern quadrant of the parcel.

The parcel offers good-quality habitat for at least two special-status wildlife species: the coast horned lizard (*Phrynosoma coronatum*) and the silvery legless lizard (*Anniella pulchra pulchra*). The California Department of Fish and Game and the U.S. Fish and Wildlife Service lists both species as California Species of Special Concern (CSC) and Federal Species of Concern (FSC), respectively (CDFG 2006. Special Animals, CNDDDB, Sacramento, CA. 54 pp.). At least one horned lizard has been recently photographed on the parcel and other individuals have been sighted there in the past (P. Einstein and R. Murphy, neighbors, pers. comm.). Considering the location, size, and surrounding land use of the subject parcel, I am surprised that horned lizards continue to inhabit this patch of habitat after development of the area in the 1970s and 1980s. These lizards are easily captured by humans and pets (especially cats) and have relatively large home ranges, so that they are susceptible to extirpation from isolated patches of habitat (pers. observ.). Horned lizards also have been sighted on other vacant lots in the neighborhood (P. Einstein, pers. comm. 12 July 2006). A loose network of habitat patches could be sufficiently connected by dispersal to allow horned lizards to persist on vacant lots in this neighborhood. The fact that horned lizards are present on the subject parcel demonstrates not only the inherent attributes of the parcel, but also its potential importance in allowing horned lizards to persist in this neighborhood. With restoration, this parcel could be capable of supporting higher densities of horned lizards than currently found there.

I searched suitable microhabitats on the subject parcel for legless lizards during my site visit but did not find this species. I was told that several biologists from Impact Sciences, Inc. also searched the parcel for legless lizards on 11 July 2006, who also failed to find them (R. Murphy, pers. comm., 13 July 2006). This is the wrong time of year to be looking for this species near the surface. Near-surface activity of legless lizards is correlated with seasonally low soil temperatures and elevated soil moisture (Hunt, L.E. 1997. Geostatistical modeling of species distributions: Implications for ecological and biogeographical studies. Pp. 427-438, In: Soares, A. et al. (eds.). Geostatistics for Environmental Applications, Kluwer Acad. Press, New York. 503 pp.). Search efforts have the greatest likelihood of finding this species between December and May. The failure to find legless lizards last week does not mean they are absent from the site. They are common in stabilized dunes 1,500 feet northeast of the subject parcel and in foredunes at McGrath State Beach about 1.2 air miles north-northwest of the parcel (Hunt, pers. observ.). Anecdotal evidence indicates they have been seen on the subject parcel (R. Murphy, pers. comm. 13 July 2006). In contrast to horned lizards, legless lizards have very low dispersal abilities and can attain high densities in rather small patches of habitat, even in urban areas (Hunt, 1997; Hunt, L.E. and M. Zander 1997. Status of the black legless lizard (*Anniella pulchra nigra*) on City of Marina lands, Monterey County, California. Prep. for City of Marina Planning Dept., Marina, CA. 16 p. plus map). The subterranean lifestyle of this species could also protect them from the sources of mortality that befall horned lizards and other surface-dwelling lizards.

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The subject parcel provides the last best hope for retaining both of these species in the neighborhood because it is at least six times larger and supports relatively higher quality habitat than the other vacant lots in this area. I noted during my site visit that most of the other vacant lots had "For Sale" signs posted on them. With habitat restoration, the subject parcel could become a receptor site for lizards of both species that may currently inhabit these small vacant lots in the neighborhood. The neighbors apparently have "adopted" this parcel and have recently begun restoration by removing ice plant. Native plants present in the soil seed bank have responded to this action with vigor. If protected, the ability of this parcel to support both horned lizards and legless lizards could rapidly improve.

For its inherent quality as foredune habitat, its relatively large size in relation to what remains of this type of habitat in this area, and its place in the larger context of coastal dune landforms, I urge the Commission to retain the current zoning status on the subject parcel. This would allow the parcel to be restored through a neighborhood effort as well as protect special-status wildlife for the enjoyment and education of current and future residents.

**Regional Context.** On a larger scale, the subject parcel is a remnant of an unbroken band of wind-blown dunes that formerly extended from the Ventura River southward to Point Mugu (Cooper, W.S. 1967. Coastal dunes of California. Geological Soc., Mem. No. 104, Geol. Soc. Amer., Boulder, Co. 131 pp.). Three zones of dunes can be identified on this dune sheet: the beach, a middle zone of foredunes (including the subject parcel), and stabilized dunes, such as the sand hills east of Harbor Boulevard. The geologic age of these zones increases sharply eastward from their source (the beach). The foredunes are Recent in age (0-5,000 yrs BP) and are actively being formed, although the remaining foredune habitat in the Oxnard Shores area has mostly been cut off from its source by rows of houses lining the beach. In many places the foredunes were bordered interiorly by lagoons and McGrath Lake is one such remnant lagoon. The stabilized dunes are old—Holocene to Pleistocene in age, and represent the accumulation of wind-blown sand over a period of 5,000 to 50,000 yrs+ BP. The eastern edge of these sand hills terminate abruptly on the Santa Clara River alluvial plain less than 1,500 feet east of Harbor Boulevard because the river, as it meandered progressively northward across the Oxnard Plain to its current location, was an ancient erosional feature of the backside of this dune system. Consequently, the stabilized dunes formed a narrow strip of sand hills less than 2,000 feet wide.

The subject parcel is part of only six dune systems found between San Francisco and the Mexican border. Of these dune systems, only three (Monterey Bay, Santa Maria Basin, and Ventura River-Point Mugu) still retain all three zones (Cooper 1967; Hunt, pers. observ.). On this distinction alone the subject parcel is worth protecting. Moreover, the loss of the subject parcel cannot be mitigated by preserving a larger parcel of dune habitat inland, such as the trade-off proposed for degraded sand hill habitat southeast of the intersection of Harbor Boulevard and W. 5<sup>th</sup> Street. The subject parcel and the proposed

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mitigation parcel are geologically and floristically different. In my opinion, both areas should be protected on their individual merits.

I roughly estimated during my site visit that the oldest portions of the dune sheet, that is, the sand hills east of Harbor Boulevard, extend discontinuously only from:

- Eastbourne Bay Drive northward to Wooley Street (about 70 acres);
- Beachcomber Street northward to West 5<sup>th</sup> Street (about 55 acres);
- West 5<sup>th</sup> Street northward to the SCE-Reliant Energy Canal (about 135 acres);
- SCE-Reliant Energy Canal northward to farmland on alluvial plain (about 35 acres), and;
- 700-foot wide band of sand hills extending northward to just north of Gonzales Road (about 60 acres).

By my estimate, no more than 355 acres of sand hill habitat remains east of Harbor Boulevard. **These interior dunes are the largest vestiges of ancient, wind-blown sand hills remaining between Point Arguello in Santa Barbara County and El Segundo in Los Angeles County.** The oldest parts of the dune sheet have been separated from their younger coastal counterparts by Harbor Boulevard, fragmented by several east-west transportation corridors, and degraded by decades of agricultural, oil field, and, more recently, residential development (e.g., Channel Islands "Harbor"). Moreover, the largest contiguous parcel of old sand hill habitat currently is slated for residential development--the North Shore Development Project. As much as I hate to see prime agricultural land disappear, sand hill habitats are impossible to replace and in much shorter supply. I urge the Commission to adopt a forward-thinking policy of requiring very significant mitigation ratios (15:1 or 20:1) in order to preserve large, contiguous pieces of habitat. A systematic regional plan that recognizes and protects all of the elements of this landform is essential because these dunes are too unique to be bulldozed into oblivion simply for piecemeal residential or commercial development.

The special places that make California so amazing on so many levels, such as this dune system, are disappearing under a flood of development. Once bulldozed, features that took thousands of years to form are gone forever. Please act now and in future deliberations to protect what remains of the Oxnard Dune Sheet, an important part of California's incredible geological and biological heritage. I would be glad to discuss this issue with you further. Thank you for your time and consideration.

Sincerely,

Lawrence E. Hunt

**c: Morgan Boucke, Calif. Dept. Fish and Game; David Magney and Patricia Munro, California Native Plant Society; Patricia Einstein and Robert Murphy, Oxnard, CA.**

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20 July 2006

Lillian Ford, Coastal Program Analyst  
California Coastal Commission  
89 South California Street, Suite 200  
Ventura, California 93001

**Subject: Biological Resources on the Whitecap Street Site Proposed for Rezoning, Oxnard Shores, City of Oxnard, Ventura County, California (Tract Number 5064, 1.60 acres)**

Dear Ms. Ford,

David Magney Environmental Consulting (DMEC) was retained by residents of the neighborhood near the Whitecap Street parcel to assess the biological resources of the site in the context of the proposed change in zoning from "Resource Protected" (RP) to "Single Family Beach" (R-B-1). This report summarizes the results of the biological resource surveys conducted for the City of Oxnard by Dudek and Associates, Inc., and Impact Sciences. Additional information based on recent onsite observations and from existing DMEC knowledge and in-house files is also included.

## Background

The property is located on the north side of Whitecap Street in the Oxnard Shores area of the City of Oxnard. It is identified as Tract Number 5064, is 1.60 acres in area, and is found in the Oxnard Quadrangle of the U.S. Geological Survey 7.5 minute topographic map. The site provides open space for the neighborhood, and the foredune habitat found there supports a diversity of plant and animal species. Many residents are opposed to changing the RP zoning to R-B-1 and the subsequent development of the property.

## Biological Resources

**Vascular Plants.** The vascular plants that have been observed on the site in surveys by DMEC (2002), Dudek (2002), and Impact Sciences (2005 and 2006) are listed in **Table 1**, Vascular Plants Observed on the Whitecap Site. The surveys found a total of at least 50 distinct plant species, including 16 native species (32%) and 34 non-native species (68%). If the trees and shrubs that were deliberately planted as ornamentals are not included, there are 36 total species, with 15 natives (42%) and 21 non-natives (58%). Though the high proportion of non-natives is an indication that the site has been disturbed, a significant number of native species has persisted onsite. No special-status plants have been found on the site.

Both the Dudek and Impact Sciences bioresource reports characterize the site as disturbed Southern Foredune. **Table 2**, Whitecap Site Plant Community Characterization, lists the plants in the California Native Plant Society (CNPS) Sand-verbena – Beach Bursage Series that are known to occur in Ventura County, and the plants characteristic of Holland's Southern Foredune community. There are five (5)

Scientific Name	Common Name	DMEC 2002 <sup>1</sup>	Dudek 2002 <sup>2</sup>	Impact Sciences 2005 & 2006 <sup>3</sup>
<i>Euphorbia splendens</i> *	Crown of Thorns		X	
<i>Gazania linearis</i> *	Gazania	X	X	X
<i>Gnaphalium californicum</i>	Green Everlasting	X		
<i>Gnaphalium ramosissimum</i>	Pink Everlasting			X
<i>Gnaphalium</i> sp.			X	
<i>Hedypnois cretica</i> *		X		
<i>Heterotheca grandiflora</i>	Telegraph Weed	X		X
<i>Hordeum murinum</i> ssp. <i>leporinum</i> *	Hare Barley	X		
<i>Hordeum</i> sp.*	Barley		X	
<i>Lamarckia maritima</i> *	Goldentop	X		
<i>Lavatera assurgentiflora</i>	Beach Mallow	X		
<i>Lepidium</i> sp.	Peppergrass		X	
<i>Leptospermum</i> sp.*	Tea Tree		X	X
<i>Lessingia filaginifolia</i> var. <i>filaginifolia</i>	California Cudweed-aster	X		X
<i>Lobularia maritima</i> *	Sweet Alyssum	X		
<i>Lotus salsuginosus</i> var. <i>salsuginosus</i> ?	Coastal Lotus	X		
<i>Lotus</i> sp.			X	
<i>Lupinus succulentus</i>	Fleshy Lupine		X	
<i>Medicago polymorpha</i> *	Common Burclover	X	X	
<i>Melaleuca quinquenervia</i> +	Paperbark Tree	X		
<i>Melaleuca nesophila</i> +	Pink Melaleuca		X	X
<i>Melaleuca</i> sp. +	Melaleuca	X		
<i>Melilotus alba</i> *	White Sweetclover	X		X
<i>Myoporum laetum</i> *	Myoporum	X	X	X
<i>Oxalis pes-caprae</i> *	Bermuda Buttercup		X	X
<i>Pennisetum setaceum</i> *	Fountain Grass		X	X
<i>Pinus</i> sp.*	Pine			
<i>Poa</i> sp.*	Bluegrass		X	X
<i>Polypogon monspeliensis</i> *	Rabbitsfoot Beardgrass		X	
<i>Sonchus oleraceus</i> *	Common Sow-thistle	X	X	

The Long-billed Curlew, a CSC species when in its nesting habitat, has been regularly observed on the site. The most recent sighting occurred on 3 July 2006 by resident Randy Haines and others, and there is a photograph to support this observation. Though the bird is not considered special status when in coastal areas, the use of the site by this species is an indication of the site's value in providing habitat and resources. The Whitecap site supports a functional habitat that contributes resources for the Long-billed Curlew and other species in this area.

**Special Status Biological Resources.** A search of five (5) quadrangles (Oxnard and the adjacent quads of Ventura, Saticoy, Camarillo, and Point Mugu) using CNDDDB RareFind3 found fifty-three (53) special-status biological resources listed. **Table 4**, Special Status Biological Resources Currently Present or With the Potential to Occur on the Whitecap Site, lists eight (8) resources occurring or potentially occurring on the site. The three (3) special-status resources occurring onsite, Southern Fore-dune, San Diego (Coast) Horned Lizard, and Long-billed Curlew, have been discussed above.

Silvery Legless Lizard has not been found despite recent efforts to establish its presence on the Whitecap site. Finding the lizard at this time of year is not likely, and failure to find it does not mean that it is not present (Dr. Lawrence E. Hunt, personal communication). Ciliate Dune Beetle has been found on the Whitecap site (see **Table 3**), indicating that it may also be possible for the Globose Dune Beetle, a closely related species with very similar habitat requirements, to occur there. Special-status plants such as Orcutt's Pincushion can be expected to be successfully established if reintroduced to the site. Additional plants characteristic of the Southern Fore-dune plant community can be reintroduced as well, helping to restore this sensitive habitat type.

**Table 4. Special Status Biological Resources Currently Present or With the Potential to Occur on the Whitecap Site<sup>15</sup>**

Scientific Name	Common Name	Global Rank	State Rank	Fed. List	State List	CDFG	CNPS List	RED Code	Habitat Conditions
<i>Anniella pulchra pulchra</i>	Silvery Legless Lizard	G3G4 T3T4Q	S3			CSC			SANDY OR LOOSE LOAMY SOILS UNDER SPARSE VEGETATION. SOIL MOISTURE IS ESSENTIAL. THEY PREFER SOILS WITH A HIGH MOISTURE CONTENT.
<i>Aphanisma blitoides</i>	Aphanisma	G2	S1.1				1B	222	COASTAL BLUFF SCRUB, COASTAL DUNES, COASTAL SCRUB. ON BLUFFS AND SLOPES NEAR THE OCEAN IN SANDY OR CLAY SOILS. IN STEEP DECLINE ON THE ISLANDS AND THE MAINLAND. 1-305M.
<i>Chaenactis glabriuscula</i> var. <i>orcuttiana</i>	Orcutt's Pincushion	G5T3	S2.1				1B	232	COASTAL BLUFF SCRUB, COASTAL DUNES. SANDY SITES. 3-100M.
<i>Coelus globosus</i>	Globose Dune Beetle	G1	S1						INHABITANT OF COASTAL SAND DUNE HABITAT, FROM BODEGA HEAD IN SONOMA COUNTY SOUTH TO ENSENADA, MEXICO. INHABITS FOREDUNES AND SAND HUMMOCKS; IT BURROWS BENEATH THE SAND SURFACE AND IS MOST COMMON BENEATH DUNE VEGETATION.
<i>Delphinium parryi</i> ssp. <i>blochmaniae</i>	Dune Larkspur	G4T2	S2.2				1B	323	CHAPARRAL, COASTAL DUNES (MARITIME), ON ROCKY AREAS AND DUNES. 30-375M.
<i>Numenius americanus</i> <b>Present onsite, not nesting</b>	Long-billed Curlew	G5	S2			CSC			(NESTING) BREEDS IN UPLAND SHORTGRASS PRAIRIES & WET MEADOWS IN NORTHEASTERN CALIFORNIA. HABITATS ON GRAVELLY SOILS AND GENTLY ROLLING TERRAIN ARE FAVORED OVER OTHERS.
<i>Phrynosoma coronatum</i> ( <i>blainvillii</i> ) <b>Present onsite</b>	Coast (San Diego) Horned Lizard	G4T3T4	S2S3			CSC			INHABITS COASTAL SAGE SCRUB AND CHAPARRAL IN ARID AND SEMI-ARID CLIMATE CONDITIONS. PREFERS FRIABLE, ROCKY, OR SHALLOW SANDY SOILS.
Southern Foredune <b>Present onsite</b>		G2	S2.1						

<sup>15</sup> California Department of Fish and Game. 2006. California Natural Diversity Database search of RareFind3. (Updated 4 April 2006) The Resource Agency, State of California, Sacramento, CA.

**FELICITY A. HARPER**  
5225 Wavcrest Way  
Oxnard, California 93035-1844  
805-985-4335

April 18, 2006

RECEIVED  
APR 20 2006  
CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

California Coastal Commission  
89 S. California Street, 2<sup>nd</sup> Floor  
Ventura, CA 93001

RE: LCP Amendment OXN-MAJ-1-05

Dear Commissioners:

I am writing to protest the development of the parcel of land known as the McGrath site, located between Reef Way and Whitecap Street in the Oxnard Shores area of the City of Oxnard. My home is located on Wavcrest Way approximately 300 feet east from that site.

When I purchased this property in 1976, I was told that the McGrath site had been donated to the city with the caveat that it would not be developed. That was a selling point, since lots on this way are small, and the system of ways and streets in the Oxnard Shores neighborhood greatly reduces the parking available for both residents and guests. Parking is difficult already and will worsen dramatically with the addition of 11 new homes.

This site is the only open area of dunes-type land remaining on the west side of Harbor Boulevard that is suitable for a small park or to leave in its natural state. Our beach-front is gradually filling, and has few coastal access points. This remaining open space is valued for its ability to improve the quality of life in our local area.

Furthermore, the City of Oxnard has not been diligent in keeping the neighborhood informed of the status of this project or the site postings updated. City spokespersons do not have all the facts when they come to open meetings.

Please consider the needs and desires of the current residents when deciding whether to permit development of this site.

Sincerely,



Felicity A. Harper

EXHIBIT NO. 12
APPLICATION NO.
OXN-MAJ-1-05
CORRESPONDENCE

California Coastal Commission  
89 So. California St 2<sup>nd</sup> floor  
Ventura, Ca. 93001  
April 17, 2006

RECEIVED  
APR 20 2006  
CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

To Whom It May Concern,

I moved to a wonderful house on Whitecap St. last year .  
When considering the purchase, I was told by my realtor and  
the local association that the vacant lots down the block  
were to be turned into a small park. What a wonderful  
change from all the building-to enjoy some open space.  
With the plans to develop the area east of Harbor, I would  
hope some area would be preserved as open space. I am  
dreading the traffic and parking problems and pollution  
that comes with an over crowded community.  
Please listen to the residents of Oxnard Shores and do not  
build on Whitecap or Reef Way.

Susan Seaberry  
5153 Whitecap St.  
Oxnard, Ca. 93035

Robert V. McCabe  
5201 Wavecrest Way  
Oxnard Shores, CA 93035  
(805) 985-1011

April 17, 2006

RECEIVED  
APR 20 2006

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

**TO : California Coastal Commission**

**RE: OXN-MAJ-1-05**

**I am opposed to the development on Whitecap-Wavecrest Way, and also the further development on Reef Way for the same following reasons.**

**The traffic in the Oxnard Shores area has become horrific. Harbor Blvd, in the morning and evening hours has almost become a parking lot. The majority of the beach lots have been developed to the point of making it difficult to access the beach. The neighborhood is going to be further affected when the several developments on the eastside of Harbor Blvd, are completed.**

**Several months ago I sent an e-mail to the Oxnard City Council expressing my opposition to developing Wavecrest-Whitecap with an additional twelve or thirteen homes. I have been a resident of Wavecrest Way for over thirty years and had heard many times in the past that the parcel was going to be used as a park for the residents as most homes do not have back yards and very small front yards. I did receive a phone call in reply to my e-mail from a member of the city council, I inquired as to the reasoning of developing this parcel of land to single family dwellings I was told that the money generated by the sale of this property would be sufficient to build new facilities for the Oxnard City Council, plus the added money to the tax base. I can not adequately explain how upset I became when hearing from a council member that the reason he voted for the approval was to solely benefit the city council with new meeting and office facilities, without a thought to the residents or the added congestion this project would cause to the neighborhood.**

**I pray that the members of the Coastal Commission will see thru the charade that the Oxnard City Council is trying to place upon the residents of Oxnard Shores and vote not to pass on the development of these properties.**

**Thanking you in advance for your cooperation and understanding.**

**I remain respectfully,**



**Robert V. McCabe**

**April 22, 2006**

**Dennis Doherty  
5249 Reef Way  
Oxnard, Ca 93035**

**California Coastal Commission  
89 So. California Street 2<sup>nd</sup> floor  
Ventura, CA. 93001**

**RECEIVED**

**APR 25 2006**

**CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT**

**Regarding LCP Amendment OXN-MAJ-1-05**

**As a homeowner that lives next to this site, I see everything that goes on here. Children playing ball, residents walking their Pets.**

**There are a lot of apartment and condo's on the next street over and children should have a place to go and play after school. It would be nice to have a place for the children to play and a sitting park for older residents. Parents would feel a lot safer If their children were playing in a park then down at the beach where there are no life guards.**

**Oxnard Shores has grown so much in the past five years and every street lot is almost filled with a new homes, and where is The extra parking "there is no parking" when guest come to visit where should they park?**

**We are in need of "PARKING"**

**I deeply feel that we should keep some of the land open for our future.**

**Thank you,  
Dennis Doherty**



**Gregory C. Fast**  
5303 Surf Rider Way • Oxnard, CA 93035

April 24, 2006

California Coastal Commission  
89 So. California Street, 2d Floor  
Ventura, CA 93001

RECEIVED

APR 25 2006

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

Re: OXN-MAJ-1-05

Dear Coastal Commission:

I write to voice my opposition the development of the property on Wavecrest Way and Whitecap in Oxnard Shores. I would also like to oppose development on Reef Way.

With regard to both proposals, additional housing will bring more vehicles to surface streets that are already fully utilized. There is a proposed major home development project at the northeast corner of Harbor and West Fifth Street and many condominiums and townhomes are currently under construction around the expanded marina (along Wooley and, then, south along Victoria). The cars of the new residents of these houses, townhomes and condominiums will create gridlock on Harbor, West Fifth, Wooley and Victoria.

Meanwhile, Oxnard Shores has become virtually fully developed (i.e., there are very few remaining vacant lots) and there are more beachfront homes than were ever contemplated when the subdivision was first created. Thus, the residential surface streets of the Oxnard Shores subdivision are becoming more and more congested. Developing housing on the Wavecrest-Whitecap property and the Reef property will unnecessarily add to this congestion.

More importantly, as a twenty-year resident, I have been told by many people of the several promises that have been made by Oxnard City leaders over the years. Oxnard Shores residents were told specifically that the Wavecrest-Whitecap property would be used for a park. I understand that assurances were made that the Reef Way property would never be developed.

The residents of Oxnard Shores would benefit significantly from two "pocket parks." Our homes are built on small lots and, so, we have small yards. Given the extensive building of three-level mega-homes along beachfront of Mandalay Beach Blvd., few narrow pathways to the beach afforded the "common people" who do not live directly on the beach and the steady erosion of sand, we are increasingly deprived of the beach as a play area.

The current Oxnard City Council appears to not care about promises and representations made by those who came before them. If the Coastal Commission were to disapprove housing development in the two areas mentioned above, the City might become motivated to keep its word and, at the same time, diminish slightly the major street congestion all Oxnard Shores residents will soon have to endure.

Thank you for your consideration.



David and Susan Yovanno  
1030 Mandalay Beach Rd  
Oxnard, CA 93035  
(805) 382-6980

May 6, 2006  
Opposed

TO: John Ainsworth, Deputy Director  
Barbara Carey, Supervisor, Planning and Regulation  
Lillian Ford, Coastal Program Analyst

FROM: David and Susie Yovanno

SUBJECT: City of Oxnard Coastal Program Amendment 1-05 (Oxnard Shores)  
for public hearing and Commission action at the May 11<sup>th</sup>, 2006  
Commission meeting in Costa Mesa. Item Th16b. Case # PZ 98  
-5-107.

We are requesting the 1.60-acre parcel at Whitecap Street not be rezoned from RP to R-B-1. The proposal for rezoning states that the aforementioned area is not inhabited by rare or endangered plant or animal species. The Whitecap Street parcel is vegetated with Ventura Marsh Milk-Vetch, which was thought to be extinct until 2002. The parcel is also home to the Pacific Pocket Mouse (we know this as a pocket mouse mom had her babies in our garage a year ago). Also, we have seen Kangaroo Rats on the Whitecap lot. There are plants and animals that are not on the endangered list that are enjoying life on this parcel of land as well. Please help sustain the survival of these endangered and not-endangered plants and animals. Developing the lot would erase the existence of all creatures and plant life that live there.

Again, we are asking the Whitecap parcel to remain RP as the site does meet the Coastal Act definition of an Environmentally Sensitive Habitat Area.

Thank you for your consideration,

David and Susan Yovanno

California Coastal Commission  
89 South California St. 2<sup>nd</sup> Floor  
Ventura, CA. 93001  
May 6, 2006

Subject: Regarding LCP Amendment OXN-MAJ-1-05

We've lived on Seabreeze Way in Oxnard Shores for the last 19 years. The last 9 years the back of our house faces the 1.60-acre parcel immediately north of Whitecap Street and east of Mandalay Beach Road. We were told by our Realtor that this open parcel would not be developed. We were under the impression that the McGrath family left the land to the city with the stipulation it remain as open space. This is one reason some folks in the neighborhood felt it necessary to go to court on the matter, three years ago.

Both of our sons have grown up in this neighborhood and played with their friends on this open space. We allowed them to play in this space rather than the beach since this area was safer than the unguarded beach. Since most residents don't have front or backyards we've all taking advantage of this open space, particularly with our dogs and young children. This area is very beautiful in the spring time with all the groundcover in bloom. This area has been a playground for many of the neighborhood children over the years: playing ball, hide and seek, or climbing the trees. It's also been a retreat for dogs, cats and their owners, and over the years clean up has become standard.

This area has been home to many lizards including a few horned lizards, Genus PHRYNOSOMA, and a few rabbits. We have also seen many types of hawks, Red tail Cooper's, and Kestrel, lots of Finches, Doves, Blue Jays, Blue Herons Robins, Orioles. A few species of Shore birds will stroll this parcel through out the day including Curlews Avocets and Sandpipers.

There has been tremendous growth in Oxnard and especially the beach areas over the last 5-6 years. The city council seems to be selling all open land and has little concern for quality of life for the residents. We need open space beyond the beach in this area. We need more streets for people to park their cars. We need less development in our already overcrowded city and beach area. We have not even begun to feel the impact from the new developments on Victoria and Wooley, the proposed development at Harbor and 5<sup>th</sup> Street, the continued development on 5<sup>th</sup> Street and Patterson. The new River Park area is going to brings thousands of people, cars and even more frustrating traffic. All these new areas are sold with the premise they are minutes from the beach. If these lots are developed, 20 or more curb side parking places would be lost.

The City Council doesn't need to take away any open space especially when it was originally given to them to leave as open space.

Please, once this parcel is developed it can't be returned to open space. Let's move cautiously so that this beach community's needs are truly met.

Sincerely,

Randy & Peggy Haines  
5310 Seabreeze Way  
Oxnard, CA. 93035

Ben Abadian-Sharif  
5110 Whitecap St.  
Oxnard, CA 93035

Date: 05/09/06

Re: LCP Amendment OXN-MAJ-1-05

Dear California Coastal Commission:

I am a resident in this area, which has property that is being considered for rezoning and sale. My wife and I ask that you do not rezone or sell these areas for the following reasons:

- 1) It is uncertain how the area will be affected if several developments on the east side of the Harbor are completed.
- 2) Parking is already difficult and an increase of residence and their guests will make the area even more crowded.
- 3) Since most residence do not have front yards it is better to have some open space, especially if it can be left in its natural state or developed into a park for the community.
- 4) The number of public accesses to the beach is only a few and it would be better to keep the remainder and not decrease the number anymore.

I thank you for your time and I hope you really do consider leaving these areas the way they are in their natural beautiful state.

Sincerely,



Ben Abadian-Sharif

Net@address<sup>®</sup> by USA\*NET<sup>®</sup>

Folder: Inbox

Message 3 of 217 (NEW)

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**To:** mehwood@usa.net

**Bcc:**

**Subject:** coastal commission [Allow Subject](#)

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To the California Coastal Commission,

I am a resident of the Mandalay Shores, I live on Reef Way. It is my understanding the city of Oxnard has 3 options regarding the property at the end of Reef Way.

I do not want more housing, neither do any of my neighbors. Reef Way would not be able to handle the traffic increase.

I would rather you left it as an open space, I do not even agree with a park.

Please don't add any more stress to our easy way of life on Reef Way.

Thank you for your time, Anne Scott

# WHOMIES

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## 1 New Homes Resource

SFRN / SUNDAY, MAY 7, 2006



Standard Pacific's Celadon, Daybreak and The Avenue are now selling at RiverPark

### STANDARD PACIFIC HOMES

## GRAND OPENING MAY 13 & 14 FOR STANDARD PACIFIC NEIGHBORHOODS

OXNARD, CA - Standard Pacific Homes will host a May 13 & 14 Grand Opening for two fashionable new residential neighborhoods, Daybreak and Celadon at RiverPark. New beautifully decorated model homes will be open for viewing, and visitors may also take a "dusty shoe" tour at a third neighborhood, The Avenue. These are the first of five neighborhoods Standard Pacific Homes will introduce at RiverPark—Ventura County's new master-plan community featuring a traditional hometown ambiance with schools, parks and shopping all within an easy walk. RiverPark has convenient freeway access and is located just minutes from the Pacific Ocean.

- BEDROOMS: UP TO 4
- BATHS: 2.5
- PRICES: FROM THE \$500,000s

Standard Pacific's sales gallery offers visitors a state-of-the-art virtual tour of the new neighborhoods and Sales Counselors Debbie Vasquez, Linda Bernard, Sherryanne Renker, Bruce Smith and Viviana Ruiz are available daily to answer questions. Visitors may pick-up brochures and view floor plans for each neighborhood, or sign up for the interest registry and complete a prequalification application.

See STANDARD PACIFIC, Page 2



### SIENA

## FINAL PHASE JUST RELEASED AT SIENA

Woodland Hills - The final phase at Siena, the gated hillside village of luxury view homes, has just been released for sale.

According to Jeff Lee, principal of Lee Homes, "Siena has captivated discriminating buyers in large part because of its unique, very private location that offers spectacular views of the San Fernando Valley below." Siena sits atop a hillside overlooking Warner Center with its wide variety of dining and shopping experiences, exceptional employment opportunities and several health, fitness and recreational possibilities. "Our 'hidden' location has worked in our favor with buyers who cherish their privacy, yet don't want to sacrifice spectacular views," concluded Lee.

"Our spectacular architecture and interior finishes, trademarks

- BEDROOMS: 3 & 4
- BATHS:
- PRICES: FROM HIGH \$800,000s

of Lee Homes for decades, are also moving buyers to make this gated community their home," stated Ellen Pauli, Siena Sales Manager. "The design team created three distinctive floor plans, two of which have three levels, in European and Contemporary styles that maximize enjoyment of the views here," Pauli continued. "Siena is as beautiful looking inward as it is gazing outward to the twinkling lights below."

Architecturally, the exteriors of the Siena residences are richly textured and detailed with traditional as well as contemporary touches. Buyers can choose

See SIENA, Page 2

Th 16 b

May 8, 2006 - 5:05pm  
DEAR Calif. Coastal Commission

Please hold the hearing in  
Ventura, not in Costa Mesa, for  
the property we live adjacent to in  
Oxnard (LCP Ammendment 1-05).  
We want to comment in person  
on this project to remain as  
open space land

Sincerely,  
Brett Karsh

5318 BREAKERS WAY

Oxnard, CA 93035

May 8, 2006, 5:05pm - Brett Karsh lives one block away

Witnesses - Robert Roy van de Hoek

Marcia Hanson

Patricia Einstein

Law Offices of  
**DEIRDRE FRANK**  
A Professional Corporation

1280 South Victoria Avenue, Suite 200  
Ventura, California 93003  
(805) 650-1200 (805) 988-8833

Deirdre Barkley Frank  
Jill A. Singer

Sandra C. Vigil, Paralegal

May 5, 2006

RECEIVED  
MAY 08 2006

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

California Coastal Commission  
89. S. California Street 2<sup>nd</sup> Floor  
Ventura, CA 93001

Re: Oxnard Amendment to LCP Thursday Item 16B OXN-MAJ-1-05

Dear Commissioners:

We are not a "handful" of opponents to these amendments. We have been debating and fighting with the city for years over these parcels. A group of us sued the city, spending thousands of dollars and expending a lot of time. We lost the court case but continue to believe that these parcels were intended to remain open, to relieve the congestion that was anticipated when the original annexation was done in 1958-1959.

Enclosed are the historical documents not provided to you by the city.

Were we, the residents who moved, built and live in Oxnard Shores misled? Were we entitled to rely on maps when we purchased our land? Did we detrimentally rely on representations made concerning the past and future use of these drill sites? Yes.

On February 11, 1958 the City of Oxnard passed Resolution 1939 permitting the City to accept and consent to deeds or grants conveying to the City of Oxnard any interest in or easements upon real estate for public purposes.

In July, 1958, in preparation for the Petition for Annexation, Resolution 2162 was passed by the Oxnard City Council. (Exhibit 1) It states ". . .and the size and shape of said drill sites #1 and 2 have BEEN SELECTED AND SUBDIVISION PLANS DESIGNED FOR THE ULTIMATE USE OF SUCH SITES AS PARKS, PLAYGROUNDS OR PARKING LOTS on cessation of drilling activity. . ."

The original December 9, 1958 contract (EXHIBIT 2) which discussed these lots says the City would get title after certain things were done. Attached to the contract was an exemplar deed, Exhibit B to the contract. That exemplar states that title was to be held by Title Insurance and Trust Company, as Trustee for the City of Oxnard, a Municipal Corporation, FOR PUBLIC PLAYGROUND AND RECREATIONAL PURPOSES AND ALL PURPOSES INCIDENTAL THERETO AND PUBLIC PARKING PURPOSES. (EXHIBIT 3).

On February 27, 1959, a Trust Agreement was entered into between the City of Oxnard and the Trustors McGrath. (EXHIBIT 4) That agreement references the December 9, 1958 contract and then states, “. . .the Trustors desire to execute a Grant Deed in favor of the Trustee herein, in and to certain real properties described in said deed, a copy of which is attached hereto and marked Exhibit “B”, and by reference thereto made a part hereof as if fully set forth herein”. This is the deed to the Title Insurance and Trust Company to hold as trustee for the City. This deed attached to this trust agreement did not follow the exemplar deed attached to the December 9, 1958 contract BUT it DID incorporate the contract itself by indicating drilling rights will cease “at such time as title to the property passes to the City of Oxnard pursuant to contract between the City, the Grantors hereof, and the Oxnard Shores Development Co. with respect to the aforesaid described real property, WHICH CONTRACT IS ON FILE IN THE OFFICE OF THE CITY CLERK OF THE CITY OF OXNARD”.

The Trustee transferred title to the City in 1995.

In 1996, the City declared the property surplus. NOTE that there was NO NOTICE of this to anyone in the Shores. The notice was published in LA VIDA, a Spanish newspaper.

In 1998, the City attempted to rezone and approve tentative tract maps in order to sell the sites as a complete package to developers. The residents outcry filled the city council chambers. None of those minutes or written communications have been provided to you by the City so I enclose the January 26, 1999 minutes of the City Council meeting as EXHIBIT 5. Note the reference to Dorothy Maron who was a former member of the City Council and stated that she recalled the Council indicating these sites would be parks during her tenure. Her exact comments were omitted from the minutes.

The matter was tabled.

In February, 2003, a representative group of residents sued the City to reform the deeds and to finally get to the bottom of the legalities involving these sites. The ruling was against us and to be complete, I enclose a copy of the Decision by Judge Hutchings for your review. (Exhibit 6).

This rezoning is not similar to the rezoning of the Seahorse property as City represents. That site was never considered one of the "drill sites" thought to be reserved for park space. Drill sites 1 and 2 were the only sites referenced in any documents referring to park land.

Thank you very much for your consideration of these important issues.

Very truly yours,

A handwritten signature in black ink, appearing to read "Deirdre Frank". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

DEIRDRE FRANK

1

RESOLUTION NO. 2112

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD GRANTING A VARIANCE AND A DRILLING PERMIT TO THE STANDARD OIL COMPANY OF CALIFORNIA FOR THE EXPLORATION, DRILLING AND PRODUCTION OF OIL, GAS OR OTHER HYDROCARBON SUBSTANCES ON SITES WEST OF McGRATH ROAD AND SOUTH OF WEST FIFTH STREET, SUBJECT TO CERTAIN CONDITIONS.

WHEREAS, Standard Oil Company of California has requested a Variance and a Drilling Permit for use of drilling sites, located south of West Fifth Street and west of McGrath Road within the City limits of Oxnard, to explore, drill into and produce oil, gas and other hydrocarbon substances from Drilling Districts # 1 and # 2, as established by Ordinance 416 of the City of Oxnard, and from unincorporated areas adjacent thereto; and

WHEREAS, the lands embraced in the above request, being a part of lands recently annexed to the City of Oxnard, are located westerly of the City of Oxnard as its boundary existed prior to such annexation and are far removed from the area of the City described in Section 8191 of the Oxnard Ordinance Code; and

WHEREAS, the ownership of the mineral estate of all of the lands (except scattered parcels aggregating approximately 1 acre, more or less) included within the said request and all of the lands adjacent thereto (excluding tidelands) and within an excess of 1,000 feet of the exterior boundaries of the subject Districts are the same; and

WHEREAS, the conditions incorporated in the County of Ventura land use permits #472 and #602 for drilling on such adjacent lands are comparable to those hereinafter provided for the subject district, and the shape of the area as annexed is an exceptionally unusual circumstance; and

WHEREAS, no residence exists at present within 2,000 feet of the proposed district (or districts) and the size and shape of said drill sites #1 and 2 have been selected and subdivision plans designed for the ultimate use of such sites as parking, playgrounds or parking lots on cessation of drilling activity; and

WHEREAS, the drill sites which are the subject of said request are necessary to the recovery of oil, gas and other hydrocarbons from beneath the land included within the aforesaid drilling districts and contrary to the situation with other land similarly situated, it appears that oil, gas and other

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hydrocarbons beneath said drilling districts could not be recovered by slant drilling from the eastern or southern areas of the City and that to withhold permission to use said drill sites would result in unnecessarily severe hardship to the owners of minerals within said drilling districts and would be inconsistent with the general purpose of the zoning laws of the City, and it is necessary in order to insure the spirit and purpose of the zoning law will be observed, the public safety and welfare secured and substantial justice done, that the variance and permit requested be granted; and

WHEREAS, it appears possible that portions of the oil, gas and other hydrocarbons underlying said drilling districts might be recovered from wells drilled into said districts from sites outside the City, and that in the event such recovery proved practical, possible future residential use of the land within said districts could best be protected by permitting drilling from outside the City into said districts, and that the location of said districts close to the shoreline of the Pacific Ocean and almost entirely bounded by territory outside the limits of the City of Oxnard are exceptionally unusual circumstances, and it is determined that the public health, comfort, safety, welfare and property values within the City will best be protected by also granting said petition in respect to the subsurface drilling from surface sites outside the City for which permission is requested; and

WHEREAS, the City Council has determined that the granting of this permit and variance will not result in material damage or prejudice to other property in the same zone and vicinity and will not adversely affect the Master Plan of the City; and

WHEREAS, the City Council has carefully studied said application and finds the granting of said Variance and Drilling Permit to be in accordance with the best interests of the City;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OXNARD DOES HEREBY RESOLVE that said Variance and Drilling Permit be granted, subject to the following conditions:

1. All standard conditions for establishment of a drilling district, as set forth under Section 8191.32 of the Oxnard Ordinance Code except as modified by this permit and variance. The controlled drilling sites established hereunder shall be of the size and location designated on the attached map, marked Exhibit "1" and by this reference made a part hereof.

2. Surface drilling and production operations of the wells hereby permitted, including all equipment and other appurtenances accessory thereto, shall be limited to three drilling sites located as described herein:

Drilling Site Number 1: (Herein insert description of site shown on Exhibit C)

*Site description of site is provided in Ordinance 615.*

Drilling Site Number 2: (Herein insert description of site shown on Exhibit C)

*Site description of site is provided in Ordinance 615.*

Drilling Site Number 3: (Herein insert description of site shown on Exhibit C)

*Site description of site is provided in Ordinance 615.*

No surface drilling or production equipment or appurtenances accessory thereto shall be outside of said drilling sites. Upon a particular well being placed on production, the permittee shall file with the City Clerk a town lot map verified by the permittee or a responsible official thereof, showing location of the production interval and route of the well between said interval and the particular controlled drilling site. All wells passing through or bottomed under residential or commercial zones shall be below a depth of 500 feet.

3. All operations within the City shall be conducted in accordance with good and safe town lot oil drilling and production practices and in accordance with applicable governmental regulations.

4. A City building permit shall be secured for any permanent or temporary structure to be used in connection with the production of oil and constructed on the controlled drilling site, which structure shall conform to the City Building Code. A drilling permit shall not be construed to authorize any use requiring a special use permit under the Oxnard Ordinance Code, other than drilling for and production only of oil, gas and other hydrocarbon substances. Refineries, dehydration plants, absorption plants, tank farms and other uses not necessary to the production, cleaning and shipping of oil at the well head shall not be considered authorized by the drilling permit.

5. The entire controlled drilling site shall be adequately landscaped except for those portions occupied by any required structure, appurtenance or driveway, and all such landscaping shall be maintained in good condition at

all times. Plans showing the type and extent of such landscaping shall be first submitted to and approved by the City Council. Except for the derrick and temporary tanks above eight feet all machinery, tools, pipe and other equipment used in connection with any drilling operations shall be screened from view, and all drilling operations shall be conducted or carried on behind an eight foot solid fence, which shall be painted or stained so as to render such fence as unobtrusive as practicable and shall be maintained in good condition at all times. The requirements of conditions five shall not become effective until such time as required by the City Council.

6. No oil, gas or other hydrocarbon substances may be produced from any well hereby permitted unless all equipment necessarily incident to such production is either screened from view or countersunk. A plot plan showing the type and extent of such screening shall be subject to the approval of the City Council. Electrical power only shall be utilized in all pumping and production operations, which power shall not be generated on the controlled drilling site. Production shall be by the gas lift or hydraulic method or other approved methods when the hydraulic method is not practicable, such other methods to be to the reasonable satisfaction of the Director of Public Works.

7. Unless authorized by a special use permit as set forth above, there shall be no tanks or other facilities for the storage of oil erected or maintained on the premises, except closed gauging and shipping tanks. All oil produced shall be transported from the well by means of an underground pipe line without venting products to the atmospheric pressure at the production site, except when venting is necessary in the interest of safety.

8. Sumps for cuttings and drilling mud from wells on the particular drilling site shall be permitted on the drill site provided that (a) such sumps are enclosed within the eight foot fence referred to in paragraph 5 above, (b) no obnoxious odors result therefrom, and (c) such sumps are removed and the soil restored to natural condition and level within sixty days from placing said well on production or abandonment thereof. No other earthen sump shall be used within the District, and all waste water, oil or any other waste products from the drilling operations shall be accumulated in steel tanks. Such steel tanks or sumps shall not be permitted to overflow at any time. Such tanks or the waste material therein shall be hauled away from the drilling site for the disposal at any

approved waste disposal site. If such disposal is done by other than the permittee, the permittee shall inform the hauling or disposal contractor or agent of the requirements of this condition.

9. This permit shall automatically terminate when drilling and production operations have ceased for a consecutive period of six months and the City of Oxnard has acquired title to said Drilling Sites Nos. 1 and 2 pursuant to contract between the City and the Thomas Francis McGrath Trusts A and B, et al., dated December 7, 1952. Upon expiration of the drilling permit or the abandonment of any well or other facility, the premises shall be restored by the applicant to the conditions existing prior to the issuance of said permit, as nearly as practicable so to do.

10. All operations under the permit shall conform in all respects to the regulations and requirements of the California State Regional Water Pollution Control Board No. 4, the State of California, and the Federal Government. The water supply of the City of Oxnard shall not be wasted, polluted or contaminated by any operations of the permittee or his successors in interest. During drilling and production and upon abandonment of each well, effective means shall be used to prevent vertical movement of ground water.

11. All installations of whatever kind or nature and the maintenance thereof shall meet all reasonable requirements of the Chief of the Oxnard Fire Department not inconsistent herewith. Permittee shall at all times use extreme caution to prevent the occurrence of fire, explosion and blow-out of wells. Permittee, shall install and maintain in good condition the most modern and effective equipment in general use in the oil industry for the prevention, control, and extinction of fire, explosion and blow-out of wells.

12. All drilling and production equipment used shall be so constructed and operated that no noise, vibration, dust, odor or other harmful or annoying substances or effect which can be eliminated or diminished by the use of reasonable care shall be permitted to result from drilling or production operations carried on at any drilling site or from anything incident thereto to the injury or annoyance of persons in the vicinity; nor shall the site or structures thereon be permitted to become dilapidated, unsightly or unsafe. Proven technological improvements in methods of drilling and production shall be adopted as they, from time to time become available if capable of reducing factors of nuisance or annoyance.

13. If at the time of commencement of drilling operations, any occupied residential or commercial structure is at any time located within 500 feet of any well, any derrick used in connection with the drilling of said well, and all machinery or equipment used to operate such derrick, shall be enclosed with fire-resistant and soundproofing material to the extent that the same may be accomplished without unduly interfering with the functioning thereof. Once commenced, drilling operations shall be prosecuted with reasonable diligence to completion or abandonment of the well.

14. Within sixty (60) days after the drilling of each well has been completed, and said well placed on production, the derrick, all boilers and all other drilling equipment shall be entirely removed from the premises unless such derrick and appurtenant equipment is to be used within a reasonable time limit determined by the City Council for the drilling of another well on the premises.

15. At all reasonable times, City officials shall be permitted to review and inspect the controlled drilling site and the methods used in the drilling and production operations and disposal of waste. Records of the permittee relating to operations conducted under this permit shall be open to inspection by the City Assessor.

16. All vehicles of the permittee in excess of three tons shall be restricted to the use of the following public roads, now or hereafter located in the City of Oxnard, in connection with this permit: Highway 101 north of Gonzales Road or south of Pleasant Valley Road, Gonzales Road, Beach Road, Ventura Road, Fifth Street west of Ventura Road, Pleasant Valley Road, Hueneme Road, McGrath Road, and roads abutting the controlled drilling sites. The permittee shall repair all damage to City roads caused by his operations. This permit shall not be construed to restrict applicant in the use of County Roads.

17. Upon issuance of a drilling permit and prior to drilling operations thereunder, the permittee shall provide and file with the City Council a bond issued by a company authorized to do business in the State of California, conditioned upon the faithful performance of each and every condition set forth in the permit. Said bond shall be maintained constantly until released by the City Council or this permit expires. The amount of the bond shall be \$50,000.00 for each controlled drilling site. The surface of the roads to be used are to be examined prior to use in connection with the permit and an additional bond in

the amount of \$25,000 for each controlled drilling site, made payable to the governmental agency having jurisdiction, shall be posted guaranteeing the repair of all damage caused by oil and gas operations. No extension of time that may be granted or any change of specifications or requirements that may be approved or required by any officer or department of this City or any other alterations, modification or waiver affecting any of the obligations of the permittee made by any City authority or by any other power or authority whatsoever shall be deemed to exonerate either the permittee or the surety on any bond posted pursuant to this requirement. The provisions of this paragraph shall not apply to wells existing at time of issuance of this permit, but shall be effective at such time as additional wells are drilled on the particular controlled drill site.

18. Written notice to the City Manager of transfer of interest of the permittee is required within thirty days of such transfer. Prior to commencement of operations by a transferee, the transferee shall post the required bonds and agree in writing to comply with all provisions of this ordinance and the drilling permit issued thereunder. If said notice, agreement and bonds are not filed, the drilling permit shall be automatically suspended until such time as said documents are filed.

19. By signature herebelow, permittee agrees on behalf of himself and his successors and assigns, to comply with all applicable terms and conditions of the Oxnard Ordinance Code as of the date hereof, as modified by this variance and permit, and all conditions prescribed in this drilling permit.

20. The permittee shall hold the City of Oxnard and all officers and employees thereof harmless against any claims of third parties for bodily injury or death and claims for property damage resulting from permittee's operations within the City under this permit.

Any permittee must at all times be insured to the extent of One Hundred Thousand Dollars (\$100,000) against liability in tort arising from drilling or production, or activities or operations incident thereto, conducted or carried on under or by virtue of the conditions prescribed in the drilling permit. The policy of insurance issued pursuant hereto shall be subject to the approval of the City Attorney, and duplicates shall be furnished to him. Each such policy shall be conditioned or endorsed to cover such agents, lessees or representatives of the permittee as may actually conduct drilling, production or incidental

operations permitted by such drilling permit. The provisions of this paragraph of condition 20 shall not apply to wells existing at the time of issuance of this permit, but shall be effective at such time as additional wells are drilled on the particular drill site.

21. This permit is subject to cancellation or suspension as set forth in Section 8191.6 of the Oxnard Ordinance Code.

22. If any occupied residential structure is at any time located within 500 feet of the drilling site, no materials, equipment, tools or pipe used for either drilling or production operations shall be delivered to or removed from the controlled drilling site except between the hours of 6:00 A.M. and 8:00 P.M. on any one day, except in case of emergency incidental to unforeseen drilling or production operations.

23. An internal combustion engine or electrical equipment may be used in the drilling operation of the wells, and if an internal combustion engine is used, mufflers shall be installed on the mud pumps and engine so as to reduce noise to a minimum, all of said installations to be done in a manner satisfactory to the Fire Chief. The requirements of condition 23 shall not become effective until such time as required by the City Council.

24. While this permit is issued to Standard Oil Company of California, in event that Standard surrenders its lease to the mineral owners, said owners or the Lessees of said owners shall be deemed the successor-transferee for the purposes of this permit, providing that said owners or said Lessees of owners comply with the terms of condition 18 above.

AND IT IS FURTHER RESOLVED that a variance to Oxnard Ordinance Code Section 8191.23 is hereby granted to permit drilling into or through and production from Drilling District #7 from drill sites located outside the City, provided operations of permittee in connection with such drill sites comply with all the conditions of this Resolution, except Condition 4 and the first two sentences of Condition 2.

Passed and adopted this 21st day of July, 1958. To  
witness the hand of the Mayor and the City Clerk, the following signatures of the City Council are hereunto appended.

CARL E. WARD, Mayor

ATTEST: ETHEL DALE, City Clerk

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THIS AGREEMENT, made and entered into as of this 9TH day of DECEMBER, 1958, by and between CITY OF OXNARD, a municipal corporation, hereinafter sometimes referred to as "City" and John Francis McGrath and Thomas Francis McGrath, Jr., as Trustees of Trusts "A" and "B", respectively, created under and by virtue of the Last Will of Thomas Francis McGrath deceased, and Oxnard Shores Development Co., a partnership, hereinafter sometimes referred to as "Owners,"

W I T N E S S E T H:

1. That said Owners desire to petition for annexation to the City of Oxnard of the property shown on the attached map, (designated Exhibit "A"), in order that the Subdivision (shown in red on said map) can receive municipal services, providing, however, the Owners can be assured of certain matters pertaining to the use of said property after annexation.

2. That in order to assure themselves that the City will take necessary steps to enable the owners to use the property in the manner desired, as set forth herein, the Owners concurrently deliver herewith to the Title Insurance and Trust Company as Trustee a Grant Deed in the form of Exhibit "B" attached hereto, of the property described in the attached permit as drilling sites Nos. 1 and 2. A trust indenture shall be entered into by and between the Owners herein, as Trustors, and the Title Insurance and Trust Company, as Trustee, authorizing said Trustee to convey to the City of Oxnard the same interest acquired in the aforementioned deed, five (5) years after the happening of all of the following events:

- a. Within the Subdivision, and for a period of not less than five (5) years from the date hereof, the City has permitted the use of septic tanks which are constructed in such a manner as to meet the present requirements of the County of Ventura for septic tanks located in unincorporated subdivisions, providing that in each subdivided lot the septic tank and leach lines are located in that portion of the particular lot which is adjacent to a dedicated public street or alley. For said period of not less than five (5) years, the City has not required the use of sewers within the Subdivision.
- b. In the final subdivision map of the said Subdivision, the City did not require that any R-1 or R-1-B lot within the Subdivision be larger than 4,000 sq. ft.

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EXHIBIT A Page 1 of 20

- c. In the ordinance of annexation, interim zoning within the Sub-division was established as indicated on the attached map, marked Exhibit "C" and by reference made a part hereof. It is understood that Owners or their successors intend to incur expenses and to otherwise rely upon said zoning. The City Council and Planning Commission knew of no reason why said zoning should be changed, except that special beach zones may be established to permit the same types of uses as indicated on the attached map and also providing that within said beach zones no sewers will be required and single family residential lots shall be of a minimum of 4,000 sq. ft. in size.
- d. Standard Oil Company of California has surrendered its lease as now or hereafter amended or extended covering all the land within said Subdivision.
- e. Drilling and/or producing operations upon Drilling Sites Nos. 1 and 2 have ceased for a period of ten (10) consecutive years.
- f. An oil drilling district has been established for property within said Subdivision, within six months from the date of annexation of said Subdivision, in accordance with existing Sections 8190 through 8191.32 (h) of the Oxnard Ordinance Code as follows:

Sec. 8190 - Purpose of Article. The purpose of this Article is to regulate and restrict the location of certain types of uses, the requirements of which cannot be adequately provided for in Article 2 above. These uses, the boundaries of the districts wherein they are permitted, the limitations governing their operations and the procedure for the establishment of new districts, are provided for in this Article. Except for the supplemental uses, exclusively permitted by this Article, all property within the districts hereby established is subject to the provisions of Article 2 above.

Sec. 8191 - "O" Oil Drilling Districts. It is hereby declared to be the object and purpose of this Section to establish reasonable and uniform limitations, safeguards and controls for the future drilling for and production of oil, gas and other hydrocarbon substances within the City. Limitations, safeguards and controls are deemed necessary in the public interest in order to effect practices which will provide a community plan for the orderly development and conservation of such mineral resources so important to the economy, and which will also protect the surface uses of the land, as such uses are indicated by the Master Plan of the City, City zoning regulations, the value and character of improvements in or near districts where oil drilling or production is hereinafter permitted, and the desirability of certain areas for residential, commercial or other uses. It is recognized that many citizens with substantial property investments do not own mineral rights and would not profit directly from oil or gas development. The Council finds that uncontrolled

drilling and production would be detrimental to the general welfare of the residents of the City and to the public health, safety, comfort, convenience and prosperity. It is contemplated that areas within the City may be explored for oil by directional drilling methods, with surface drilling and production operations limited to a minimum of controlled drilling sites in M-2 Zones which now exist or may hereafter be created in the eastern and extreme southerly portions of the City, so located, spaced and regulated that the prevailing westerly winds will not carry oil odors into the residential and commercial areas of the City. In this manner, necessary oil development operations will cause the least possible detriment to the community and to the general welfare.

(It is agreed that the sentence above underlined is not to be interpreted as mandatory, and that it is impractical to drill the area west of Patterson Road from the eastern and extreme southerly portions of the City.)

Sec. 8191.1 - Definitions.

"Applicant" or "Permitter" shall mean said person or persons, his or their successors in interest, and any parent company or subsidiary thereof.

"Controlled Drilling Site" shall mean the location upon which surface operations incident to oil well drilling or deepening and the production of oil or gas or other hydrocarbon substances may be permitted under the terms of Section 8191 et seq. subject to conditions prescribed by the Council.

"Directional Drilling" shall mean whipstocking, or slant drilling from a controlled drilling site.

"Oil" shall be construed to include oil, gas or other hydrocarbon substances.

"Oil Well" shall mean any well or hole already drilled, being drilled or to be drilled into the surface of the earth which is used or intended to be used in connection with coring, or the drilling for, prospecting for, or producing petroleum, natural gas, or other hydrocarbon substances; or is used or intended to be used for the subsurface injection into the earth of oil field waste, gases, water or liquid substances; including any such existing hole, well or casing which has not been abandoned in accordance with the requirements of this Code.

Sec. 8191.2 -- Prohibitions. Future drilling for oil, gas or other hydrocarbon substances within the City of Oxnard shall be conducted only in accordance with the provisions of Section 8191 of this Code, and the subsections thereunder, and any future drilling operations not in conformity therewith are determined public nuisances and shall be prohibited.

Sec. 8191.21 -- Existing Wells. For wells located in territory annexed to the City after the effective date of this ordinance, the City shall have authority to enforce all of the conditions of any permit granted by the County. Certain provisions of Sec. 8191.4, hereunder, are designed to protect the public safety and to prevent public nuisances, and shall be construed as regulations upon such existing wells and the owners and operators thereof. Failure to comply with said regulations shall be considered a violation of this Code. Said regulatory sections are as follows: Section 8191.4 (c) through (i); (j) -- restoration of premises upon abandonment only; (k) through (p); (q) -- roads to be specified by the City Council; (r) -- if a bond has been posted for the protection of the County, the City shall be substituted for the County under

the same conditions; (t) and (v). Regardless of any County permit, new wells shall not be drilled except in a City Drilling District under a City drilling permit as hereinafter set forth. Prior to granting of a permit for such new well, the applicant shall agree to substitute his permit for any existing wells for a drilling permit as set forth hereunder.

Sec. 8191.22 — Location of Controlled Drill Sites. It is determined that the location of drill sites on property within the City zoned as residential (R-1, R-2, R-3), commercial (C-1, C-2), light manufacturing (M-1), or agricultural (A-1) would be contrary to the purposes for which said zones were established and would be contrary to the interests of the community and to the public health, safety, comfort and general welfare. On the basis of information received from major oil companies, it is determined that modern drilling techniques make it practicable for oil or gas deposits under such zones to be developed by directional drilling from sites in the M-2 Zones of the City. Drill sites in the residential, commercial, light manufacturing or agricultural zones of the City are therefore prohibited.

Sec. 8191.23 — Drilling from Outside City Limits. Because oil operations in County areas are not ordinarily as carefully supervised or controlled as is necessary in City areas and as is contemplated by this Code, and because oil operations in such adjacent areas may adversely affect areas of the City, it is determined that the public health, comfort, safety, welfare, and property values within the City of Oxnard can best be protected by this comprehensive plan for orderly drilling operations within the City. Drilling into the City limits from a drill site located outside the City limits is prohibited, except in exceptionally unusual circumstances under which the Council and Planning Commission establish a City Drilling District and grant a subsurface City drilling permit as set forth hereunder, after first determining that residential uses in the City can best be protected by permitting drilling from outside the City. The decision of the Council as to whether such circumstances exist shall be final. In no event will such drilling be permitted where the drilling site outside the City is within 1,000 feet of a residential zone in the City. An applicant for such a permit shall apply for formation of a Drilling District and drilling permit in the manner set forth hereunder, and shall specify in his application the unusual circumstances which require granting of the permit. Increased cost of drilling by whipstocking from a controlled drilling site in the M-2 Zone in the eastern or extreme southerly sections of the City shall not be deemed an unusual circumstance. The application shall be granted or denied in accordance with the procedure and conditions set forth hereunder for drilling within the City Limits, except that City property owners within 2,000 feet of the proposed drilling site shall be notified of the Planning Commission public hearing in the manner hereinafter provided. The applicant shall agree to comply with every condition of the drilling permit, in the same manner as if the surface drilling site of the well were located within the City limits.

(It is agreed that the shape of the area to be annexed pursuant to this agreement is an exceptionally unusual circumstance and that the residential uses in the City can be protected by permitting the drilling into said area from drill sites located outside the City limits.)

Sec. 8191.24 -- Drainage of Oil from Properties Within City. In order to prevent drainage of oil from property within the City, if the producing interval of a well producing oil or gas in paying quantities should be in unincorporated territory within 660 feet of the City limits, and if any holder of a City drilling permit should own an interest in such a well and should also then own an interest in property, as to which such permittee has or shall obtain the right to drill, within the City and within 660 feet of such well, said permittee shall, within one year from the time the well in unincorporated area is placed on production, offset each such well with a well located on said property within the City limits, to at least the same depth as the well to be offset, or to such lesser depth at which oil is obtained in paying quantities. Said offset well shall be located within 330 feet of a projection of a line from the well to be offset through the City limits at the nearest point and located at least as close to the City boundary as the producing interval of the well to be offset, providing permittee has the right to drill in this area. Otherwise the offset well shall be drilled within 660 feet of the well to be offset. The fact that the producing interval of any such well outside the City is within 660 feet of property within the City shall be prima facie evidence that said property within the City is being drained of oil. All wells in the City shall be drilled from an approved controlled drilling site into an approved drilling district. Permittee shall make application therefor in accordance with the procedure set forth in this Article 9 of the Ordinance Code, and Permittee shall not be required to drill said offset well unless a District is established and the permit to drill said offset well is issued by the Council. If an existing well or wells within the City already fulfill this offset requirement, or if the City permittee has already drilled the maximum number of wells required under the lease or leases in connection with which the offset is required, or if another permittee who owns an interest in the well to be offset drills a well to fulfill this offset requirement, then an additional well shall not be required by this section. Permittee shall not be required to drill such offset well if all the property within the City limits and within 660 feet of the producing interval of the well to be offset is included in the same single ownership oil and gas lease, as that under which the well to be offset was drilled. Upon request of said permittee or of owners of mineral rights within said area within the City, the provisions of this subsection may be waived by the City Council, if the Council finds that no drainage of oil from City Districts will result from the well to be offset, or if the Council finds that drilling of the offset well is impracticable or undesirable. The permittee may submit evidence regarding such matters to the Council. The decision of the Council thereon shall be final.

(It is agreed that pursuant to Section 8191.24, Permittee shall not be required to drill such offset well if all the property within the City limits and within 660 feet of the producing interval of the well to be offset is included in the same single ownership oil and gas lease, as that under which the well to be offset was drilled, and that in said circumstance the provisions of Section 8191.24 are waived.)

Sec. 8191.3 -- Establishment of Drilling Districts. Whenever the public necessity, convenience or general welfare justify

such as on, the Council may establish by ordinance an Oil Drilling District.

Sec. 8191.31 -- Procedure.

Sec. 8191.311 -- Initiation. The proceedings for the establishment of an Oil Drilling District may be initiated by a verified application of one or more of the owners or lessees of property within the boundaries of the proposed district, or by resolution of the Planning Commission or Council. An application for the establishment of a district shall be filed with the Planning Commission upon a form prescribed for that purpose by the Planning Commission and shall be accompanied by a filing fee of \$100 which shall not be refundable. In said application, the applicant shall agree that he shall be bound by the provisions of Section 8191 et seq. of this Code, and all provisions of any Drilling District Ordinance and drilling permit adopted or granted as a result of said application. Each application shall contain a statement that the applicant has the proprietary or contractual authority to drill for and produce oil, gas or other hydrocarbon substances under the surface of at least 51% of the property to be included in said district. Except in the M-2 Zone of the City, the district described in said application shall be more than 70 acres but not more than 100 acres in area, including all streets and alleys within the boundaries thereof. Districts in the M-2 Zone shall be not less than 35 acres or more than 100 acres in area. Districts shall include all property within their boundaries and shall be compact in area. The boundaries thereof shall so far as practicable follow property lines, public streets or alleys and the boundaries of previously created districts, thereby avoiding leaving areas between districts which cannot be later formed into districts of the minimum size. Land under such authority of the applicant and located outside the boundaries of the City and contiguous with the proposed district may be included for the purpose of calculating said minimum areas. Smaller districts may be created in situations where there is not contiguous property within the City which could be included to create a district of minimum size. Each application shall contain a description of the controlled drilling site, located in the M-2 Zone of the City, from which the applicant has or can secure access to the proposed district and which he proposes to use to develop the proposed district. A map and legal description of each proposed district or districts and the controlled drilling site proposed to be used in developing said district or districts shall accompany the application, such map to be in sufficient copies to be mailed to each property owner within the proposed district and within 300 feet of the exterior boundaries thereof, with six additional copies for City files.

Sec. 8191.312 -- Public Hearing. A proposal to establish a district shall be set for public hearing before the Planning Commission or its Hearing Officer. Notice of the time, place and purpose of such hearing shall be given by the following methods:

- (a) By at least one publication in a newspaper of general circulation in the City not less

thirty-two days prior to the date of the hearing; and

(b) By mailing a postal card or letter notice not less than five days prior to the date of such hearing, to the owners of all property within the proposed district and within 300 feet of the area proposed to be included within the district, using for this purpose the last known name and address of such owners as shown upon the records of the City Assessor as of the first of the month previous to the month in which the public hearing is held.

The affidavit of the Secretary of the Planning Commission affirming that such notice was mailed as prescribed above shall be prima facie evidence of the mailing of the notice. Proof of failure to mail notice to a particular owner shall not invalidate, as to other property owners, any district created hereunder. After the termination of any hearing or continuation thereof conducted by said Hearing Officer, he shall submit his report thereon to the Commission within such period of time as may be fixed by the Commission.

Sec. 8191.111 -- Decision of Planning Commission and Council. The Planning Director shall investigate all proposals to establish districts and shall make a report thereon to the Commission. Upon receipt of the reports of the Planning Director and Hearing Officer, the Planning Commission shall consider the proposal to establish the district, and may approve, conditionally approve or disapprove the same, either in whole or in part. If approved, either in whole or in part, an ordinance to establish the district and controlled drilling site, as approved by the Planning Commission, shall be presented to the Council and on the basis of the general welfare may be adopted or disapproved by a majority vote of the Council. The Planning Commission or the Council may enlarge the proposed boundaries of a District, providing that notice is given to owners within the enlarged areas and a public hearing is held thereon, as set forth in Section 8191.112 above. The Planning Commission shall act on any application for the establishment of a district within 40 days from the date the public hearing is terminated. This time limit may be extended, by mutual consent of the applicant and the Planning Commission, for an additional period. In the event the Planning Commission shall fail to act within the specified time limit, the Planning Commission shall be deemed to have approved the establishment of the district as requested in the application, and the Secretary of the Commission shall advise the Council accordingly. Maps showing boundaries of approved districts shall be on file in the office of the City Clerk. Said maps and the notations, references and other information shown thereon which pertain to the boundaries of these districts are made as much a part of this Code as if fully described herein. Reference is hereby made to such maps, notations, references and other information for full particulars.

Sec. 8191.114 -- Disapproval and Appeal to Council. If a proposed district is disapproved by the Planning Commission, its action thereon shall be final,

except that any applicant, owner or lessee of mineral rights included in such a disapproved proposed district may appeal to the Council. Such appeal shall be filed in duplicate with the City Clerk within 20 days from the date of mailing the notification of disapproval to the applicant, or within 20 days from the action of the Planning Commission disapproving a proposal initiated by the Planning Commission or Council. An appeal shall set forth specifically wherein it is alleged that the Planning Commission's findings and decision were in error. The City Clerk shall transmit one copy of the appeal to the Planning Commission and thereupon the Planning Commission shall transmit the file with a report to the Council disclosing why the proposal to establish the district was disapproved. The Council shall then review the action of the Planning Commission and in its discretion may enact an ordinance establishing the district and designating the controlled drilling site from which the district is to be developed.

Sec. 8191.32 - Standard Conditions for Establishment of an Oil Drilling District. Establishment of each oil drilling district shall be in accordance with the requirements and procedure set forth above and shall be subject to the following conditions. Reference to "Applicant" in said conditions shall be construed as meaning "Grantee" in those districts which may be established after initiation by the Planning Commission or Council.

(a) Controlled Drilling Site. Not more than one controlled drilling site shall be permitted for each district and such site shall not be larger than two acres when used to develop a district approximately the minimum size; provided, however, that where such site is to be used for the development of larger oil drilling districts or where the Planning Commission and City Council require that more than one oil drilling district be developed from one controlled drilling site, such site may be enlarged, at the discretion of the Council. Said site shall be located only in the M-2 Zone of the City and shall be subject to the approval or reasonable disapproval of the City Council. The site shall be situated not less than 200 feet from any state highway and not less than 200 feet from any residence or commercial establishment located in a residential or commercial zone.

(It is agreed that the controlled drilling sites to be established hereunder shall be of the size and location designated on the attached map, marked Exhibit B and by this reference made a part hereof.)

(b) Number of Wells. Except for wells above required to be drilled to offset wells drilled outside the City limits, the number of oil wells which may be drilled and operated from any controlled drilling site may not exceed one well to each five acres in the district or districts to be explored from said site.

(c) Authority of Applicant. Each applicant, requesting a drilling permit as provided in Section 8191.4 hereunder, must have the proprietary or contractual

authority to drill for oil under the surface of at least 51% of the property in the district to be explored.

(d) Offer to Lease. Each applicant or his successor in interest shall, within ninety days from the date the ordinance establishing the particular district becomes effective, (1) file a declaration of pooling, pooling all property within the district which is then under lease to the applicant and which may be pooled under the terms of the particular lease, said pooling to be in accordance with the terms of the particular lease, and (2) execute an offer in writing giving to each record owner and lessee of mineral rights located in said oil drilling district who has not joined in the lease, or other authorization to drill, the right to join in the lease or authorization and thereafter to share in rental payments, bonus payments and the proceeds of production from wells boreholes in said district. Said share shall be computed upon the same basis, as that of the average of property owners (by surface area) who have by lease or other legal consent, agreed to the drilling for and production of oil, gas or other hydrocarbon substances by the applicant from the subsurface of said district at the time the district was created. The offer shall provide that the lessee shall have no right in the surface of the land, nor in the subsurface thereof except below a depth of 500 feet. The applicant shall file said offer with the City Clerk and cause it to be recorded in the office of the Ventura County Recorder. The offer hereby required must remain open for acceptance for a period of five years after the date the drilling permit is issued. During the period said offer is in effect, said applicant, or his successors in interest, shall improve all proceeds of production to which said owners or any of them may become entitled, in a bank or trust company in the State of California, with proper provisions for payment to the said record owners and lessees of mineral rights in the district who had not signed the lease or other authorization at the time such drilling district was created, but who accept such offer in writing or who are deemed included pursuant to Public Resources Code Section 3608 within the said five-year period. Any such payments remaining in any bank or trust company at the time said offer expires, which are not due or payable as hereinabove provided, and future payments as they would otherwise become due to said owners who have not joined in the lease or other drilling authorization, shall be paid to the City of Oxnard Fund for Acquisition and Operation of Parks and Recreational Facilities in order that those otherwise entitled shall receive through municipal improvements some benefit from the proceeds of such production.

(e) Access to Oil Drilling Districts. In order that wherever possible owners or lessees of oil deposits located in property zoned other than M-2 shall have the opportunity to develop said deposits and reach said deposits from controlled drilling sites located in the M-2 Zone, each applicant shall agree that he and his successors in interest, so far as he or they have any right and may legally do so, and as a condition to the granting of said applicant's request for formation of any drilling district

or issuance of any drilling permit hereunder, shall assign to any other successful applicant for establishment of an oil drilling district hereunder co-equal rights in and to subsurface rights of way or subsurface easements through premises in which said applicant-assignor then has an interest. The assignee shall agree to hold the assignor harmless from any and all liability which may be incurred as a result of the assignee's use of said rights of way or easements.

(f) Operations in Unincorporated Areas. Each applicant shall agree to comply with the provisions of Sec. 819L.23 and Sec. 819L.24 above with respect to drilling into or draining oil from under property within the City limits from drilling operations in unincorporated areas.

(This requirement shall be construed in accordance with the agreements set forth in parenthesis after Sections 819L.23 and 819L.24 above.)

(g) Quitclaim of a Portion of a District. If the Grantee should quitclaim or otherwise release any portion of a District, said quitclaimed or released lands shall continue to share pro-rata in the proceeds of production from any wells bottomed in the District, provided however that this provision shall not be deemed to abrogate or supersede any contractual relationship entered into by the particular owner. A Grantee shall not quitclaim or release lands in any District, except in a compact parcel or parcels of not less than five acres each so shaped that the quitclaimed or released lands could be formed into a separate District or Districts.

(h) Termination of Drilling Districts. At any time after one year from formation of a district, upon request of any owner or lessee of mineral rights within the district, or at any time upon initiation of reviewing action by the Council or Planning Commission, any district may be reviewed and the Council may by ordinance dissolve, reduce the size or partition the district as follows. Prior to the production of oil within a district, the district may be dissolved if it does not appear that drilling operations are being diligently prosecuted or if any person does not hold proprietary or contractual authority to drill for and produce oil under the surface of at least 51% of the property within the district, providing said action is reasonable under the particular circumstances. After the production of oil within a district and subsequent to quitclaiming of portions of a district, the district may be reduced in size by elimination of quitclaimed and non-leased or non-controlled acreage.

All matters heretofore set forth in parenthesis shall be construed as a part of this agreement, and matters set forth in this agreement shall be construed as Findings of Fact.

Neither the City Council nor Planning Commission know of any reason why drilling districts and drilling sites should not be established as indicated on the attached map, and oil

production within the subdivision unitized in Drilling

Districts established pursuant to the Oxnard Ordinance Code.

- g. A variance and drilling permit, in the form attached hereto as Exhibit "D", has been issued by the City of Oxnard, within two weeks from the effective date of the ordinance establishing the said Drilling District.

When the events described in paragraphs 2a, 2b, 2c, 2f, and 2g, hereof have occurred and even though the balance of the conditions of paragraph 2 hereof have not at such time occurred, the Trustee shall nevertheless deliver said deed to the City twenty (20) years after the death of all of the now living lawful issue of William H. McGrath; Thomas Francis McGrath, Jr.; George D. McGrath and Charles J. Cooney.

If the events described in paragraphs 2a, 2b, 2c, 2f, and 2g above have not occurred within five (5) years from the date hereof, or if the drilling district or permit or variance should be rescinded or amended by the City, without agreement of the parties hereto, the Trustee shall convey drilling sites Nos. 1 and 2 to the owners.

3. That as a further consideration of annexation by the City of Oxnard and performance of the conditions as set forth above, Owners do agree as follows:
- a. Owners will petition for annexation to the City of Oxnard of the territory included within Annexation 58-1, as said annexation was approved by the Ventura County Boundary Commission, and will sign the annexation petition attached hereto marked Exhibit "E". Owners agree not to protest said annexation.
  - b. The City is causing a water line to be constructed to the corner of McGrath Road and Fifth Street, of sufficient capacity to deliver sufficient quantities of domestic water to the Subdivision. Prior to water being furnished to the Subdivision, Owners will pay to the City the sum of 10% of the cost of a 16" reinforced concrete steel cylinder pipeline being constructed on West Fifth Street between Ventura Road and McGrath Road, to defray in part the expenses of the said water line. It is understood that said payment

shall not relieve owners or their successors of the obligation to pay to the City the fees as required by the Oxnard Ordinance Code, and future amendments thereto to defray the cost to the City of construction of the distribution system within or immediately adjacent to the Subdivision.

4. This agreement may be executed in any number of counterparts with the same force and effect as if all parties hereto signed the same document.

5. Wherever the word "District" is used in this agreement said word shall be construed to mean "Districts" if more than one oil drilling district is established for property within the said Subdivision.

6. Any notice or other document or writing to be delivered from the City of Oxnard to the other parties to this agreement may be given by sending the same by registered mail, one copy addressed to each of the following persons, at the following addresses, unless the Oxnard City Attorney is otherwise notified in writing.

- a. Oxnard Shores Development Co., a partnership  
8600 La Tijera Boulevard  
Los Angeles, California
- b. John Francis McGrath and Thomas Francis McGrath, Jr.,  
as Trustees of Trusts "A" and "B", respectively, created  
under and by virtue of the Last Will of Thomas Francis  
McGrath Dec'd  
1732 East Gonzales Road  
Oxnard, California

Any notice to be given from any of the other parties to said agreement to the City of Oxnard shall be signed by:

Fred W. Marlow, as partner of Oxnard Shores Development Co.

John Francis McGrath and Thomas Francis McGrath, Jr. as Trustees of Trusts "A" and "B", respectively, created under and by virtue of the Last Will of Thomas Francis McGrath, Dec'd

7. This agreement and permit, a copy of which is attached hereto, shall be irrevocable excepting upon the terms provided therein and shall be binding upon the City and the owners, and their heirs, executors, administrators, successors and assigns.

WITNESS our hands as of the day and year first above written.

CITY OF OXNARD

By Carl E. Ward, Mayor

ATTEST:  
Ethel Dale  
ETHEL DALE, City Clerk

OWNERS:

Trustees of Trusts "A" and "B",  
respectively, created under and by  
virtue of the Last Will of Thomas  
Francis McGrath, Dec'd.

John Francis McGrath  
John Francis McGrath, Trustee

3

*Handwritten mark*

PLACE INTERNAL REVENUE STAMPS IN THIS SPACE

# Grant Deed

Affix I. R. S. \$ .....

298 11-55

THIS FORM FURNISHED BY TITLE INSURANCE AND TRUST COMPANY

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,  
 JOHN FRANCIS McGRATH and THOMAS FRANCIS McGRATH, Jr., as Trustees of  
 Trust "A" and as Trustees of Trust "B", Under the Will of Thomas  
 Francis McGrath, Deceased, as Trustee,  
 hereby GRANT(S) to  
 The TITLE INSURANCE AND TRUST COMPANY, /for the City of Oxnard,  
 a Municipal Corporation, for public playground and recreational  
 purposes and all purposes incidental thereto, and public parking purposes  
 the following described real property in the state of California, county of Ventura, and more  
 particularly described as follows:



(Herein set forth the legal descriptions of the two  
 drill sites, Nos. 1 and 2).

**SUBJECT TO:-**

Reservations, easements, rights-of-way and restrictions of record, and

~~Also reserving to the grantor herein, his heirs, assigns and assigns, all oil and gas and  
 other minerals and petroleum substances in, on, or under said land, as reserved by  
 Deed No. 100,000, of the Company Corporation, in deed recorded June 11,  
 1940, as Document No. 100,000 in Book 329 page 351 of said Official Records.~~

ALSO reserving an undivided 1/8th interest in and to all of the oil,  
 minerals and petroleum substances in, on, or under said land as granted to  
 John Francis McGrath, Helen Aileen Loucks, Marian Elizabeth Graham,  
 Geraldine Ann McGrath and Thomas Francis McGrath Jr. in equal shares by  
 deed recorded January 5, 1951, as Document No. 251 in Book 972, page 494  
 of Official Records.

ALSO reserving the present interest of the grantor herein, in and  
 to the oil, all rights, minerals, mineral rights, natural gas, natural  
 gas rights, and other hydrocarbons by whatsoever name known that may be  
 within or under the parcel of land hereinabove described together with the  
 perpetual right of drilling, mining, exploring and operating therefor and  
 removing the same from said land or any other land, including the right  
 to whipstack or directionally drill and mine from lands other than those  
 hereinabove described, oil or gas wells, tunnels and shafts into, through  
 or across the subsurface of the land hereinabove described, and to bottom  
 such whipstacked or directionally drilled wells, tunnels and shafts under  
 and beneath or beyond the exterior limits thereof, and to re-drill, re-  
 tunnel, equip, maintain, repair, deepen and operate any such wells or mines,  
 without, however, the right to drill, mine, explore and operate upon or  
 through the surface or the upper 100 feet of the subsurface of the land  
 hereinabove described when title passes to the City of Oxnard.

WHEN RECORDED MAIL TO

Title Order No. ....  
 Escrow or Loan No. ....

*EX 3*

**RECEIVED**  
 MAY 08 2006

CALIFORNIA  
 COASTAL COMMISSION  
 SOUTH CENTRAL COAST DISTRICT

*EXHIBIT B*

4

TRUST AGREEMENT

TRUST NO. PR-13637

THIS TRUST INDENTURE entered into this 21<sup>st</sup> day of February 1959, by and between the Trustees of Trusts "A" and "B", respectively, created under and by virtue of the Last Will of Thomas Francis McGrath, Deceased, herein called Trustors; the Title Insurance and Trust Company, a California corporation with its principal place of business at Los Angeles, California, herein called the Trustee, and the City of Oxnard, a municipal corporation, herein called Beneficiary,

W I T N E S S E T H:

That WHEREAS the Trustors have heretofore, to-wit on the 9th day of December 1958, entered into a contract with the City of Oxnard, a municipal corporation, a copy of which is attached hereto, marked Exhibit "A", and by reference thereto made a part hereof as if fully set forth herein, and

WHEREAS in order to execute the terms of said agreement referred to herein as Exhibit "A", the Trustors desire to execute a Grant Deed in favor of the Trustee herein, in and to certain real properties described in said deed, a copy of which is attached hereto marked Exhibit "B", and by reference thereto made a part hereof as if fully set forth herein, and

WHEREAS said Trustee shall hold said deed for the primary benefit of the City of Oxnard, a municipal corporation, the Beneficiary herein, and the Trustors upon the happening of the conditions herein-after set forth.

NOW, THEREFORE, IT IS UNDERSTOOD AND AGREED as follows:

1. That said Trustors have concurrently with the execution of this Trust Indenture delivered to said Trustee a deed purporting to

RECEIVED  
MAY 08 2006

CALIFORNIA  
COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

1.

Original in Vault

EX 4

1 convey to it certain real property described in that certain deed  
2 hereinbefore referred to as Exhibit "B".

3 2. The beneficial interest above as aforesaid under this  
4 trust hereby is vested in the City of Oxnard, a municipal corporation,  
5 organized and existing under and by virtue of the laws of the State  
6 of California herein sometimes referred to as the "Beneficiary".

7 3. That the Trustee holds such title as was thus received by  
8 it in and to the said real property referred to as Exhibit "B" in  
9 trust under the conditions set forth in this instrument and for the  
10 following purposes:

11 SECTION I

12 To convey said real property hereinabove described in Exhibit  
13 "B" to the City of Oxnard, a municipal corporation, when said City of  
14 Oxnard shall have complied with all of the terms, provisions and  
15 conditions to be performed by it of that certain agreement dated  
16 December 9, 1958, and hereinbefore referred to as Exhibit "A".

17 SECTION II

18 That in the event the City of Oxnard, a municipal corporation,  
19 shall fail to perform any and/or all of the provisions of said con-  
20 tract dated December 9, 1958, and hereinabove referred to as  
21 Exhibit "A", said Trustee shall re-convey said real property described  
22 in Exhibit "B" to the Trustors or their successors or the owners of  
23 said real property as of the date of said reconveyance in the event  
24 of the prior termination of that certain trust created under and by  
25 virtue of the Last Will of Thomas Francis McGrath, Deceased.

26 SECTION III

27 That in order to execute the provisions of Section I and II,  
28 ROBERT BLINN MAXWELL, Lawyer, whose address is 326 South A Street,  
29 Oxnard, California, is hereby appointed as the person who shall de-  
30 termine whether the said real property described in Exhibit "B" shall  
31 be conveyed to the City of Oxnard, a municipal corporation, in accord-

1     ance with the provisions of Section I, or reconveyed in accordance  
2     with the provisions of Section II. Before arriving at such deter-  
3     mination the said ROBERT BLINN MAXWELL shall consult with the Trus-  
4     tee and thereafter his decision shall be final and binding upon the  
5     Trustors and Beneficiary.

6     In the event that the said ROBERT BLINN MAXWELL shall here-  
7     after for any reason whatsoever become incompetent or die prior to  
8     the termination of this Trust Indenture, then the Trustee herein is  
9     appointed as the person to determine whether or not said real property  
10    shall be conveyed in accordance with the terms and provisions of  
11    Section I, or in accordance with the terms and provisions of Section  
12    II of this Trust Indenture, and the decision of said Trustee shall be  
13    final and binding upon the Trustors and Beneficiary.

14                    SECTION IV

15     The Trustee shall neither be required to pay or to attend to  
16     the payment of any taxes or assessments levied or assessed against  
17     said real property hereinbefore described in Exhibit "B"; PROVIDED,  
18     HOWEVER, that upon the receipt of the funds the Trustee shall pay all  
19     taxes and assessments levied or assessed against the said real  
20     property.

21     The Trustee shall not be required to commence or defend any  
22     suit or suits with respect to the real property now held in this  
23     trust unless requested so to do in writing by the said Trustors and/or  
24     the Beneficiary, accompanied by money and indemnity sufficient, in  
25     the Trustee's opinion to cover all costs, damages and liabilities in  
26     connection therewith.

27                    SECTION V

28     a) To abandon, compromise, contest and arbitrate claims and  
29     demands, to institute, compromise and defend actions at law (but  
30     without obligation so to do as recited in the foregoing section); to  
31     require of the Trustors and/or Beneficiary money and indemnity suf-  
32

1 ficient in the Trustee's opinion to cover all costs, charges and  
2 liabilities in connection therewith; and to employ such counsel as  
3 the Trustee shall deem advisable; all at the risk of the trust es-  
4 tate.

5 capacity <sup>b)</sup> To disclose the trust when the Trustors' fiduciary  
6 capacity requires.

7 SECTION VI

8 This trust shall cease and terminate upon the non-compliance  
9 by the City of Oxnard, a municipal corporation, with any and/or all  
10 of the terms of that certain agreement dated December 9, 1958, and  
11 hereinabove referred to as Exhibit "A", and upon said Trustee being  
12 so advised of said non-compliance by ROBERT BLINN MAXWELL or upon  
13 determination of said non-compliance by said Trustee in a manner  
14 provided in Section III hereof.

15 SECTION VII

16 Unless otherwise sooner terminated, this trust shall cease  
17 and terminate upon the full compliance by the City of Oxnard, a  
18 municipal corporation, with that certain agreement dated December 9,  
19 1958 and hereinbefore referred to as Exhibit "A". Thereupon the  
20 property described in Exhibit "B" shall be conveyed, transferred and  
21 delivered (without collection of consideration therefor and subject to  
22 all matters then against the same) to the City of Oxnard, a muni-  
23 cipal corporation.

24 SECTION VIII

25 The fees of the Trustee shall be such as shall be agreed upon  
26 between the Trustors and the Trustee from time to time. All fees,  
27 expenses and advancements with seven percent (7%) interest of the  
28 Trustee are a first lien upon the trust estate.

29 The provisions hereof shall bind the Trustors, Trustee and  
30  
31  
32

1 the Beneficiary, their successors and assigns.

2 Dated: February 27 1959.

3  
4 John F. Francis McGrath  
5 John Francis McGrath

6 Thomas Francis McGrath, Jr.  
7 Thomas Francis McGrath, Jr.  
8 as Trustees of Trusts "A" and "B", res-  
9 pectively, created under and by virtue of  
10 the Last Will of Thomas Francis McGrath,  
11 Deceased.

12 TRUSTORS

13 TITLE INSURANCE AND TRUST COMPANY,

14 By Alan C. ...  
15 Vice President

16 (CORP. SEAL)  
17 JUN 9 - 1959

18 By Harold P. ...  
19 Assistant Secretary

20 TRUSTEE

21 CITY OF SNYDER, a Municipal Corporation

22 By Carl E. Ward  
23 Carl E. Ward, Mayor

24 ATTEST:  
25 By Ethel Dale  
26 Ethel Dale, City Clerk

27 BENEFICIARY

28 Declaration of  
29 Trust No. PR-13637

Office of  
D. C. MAXWELL  
of California

1  
2  
3 AMENDMENT TO TRUST INDENTURE (PR-13637)

4 THIS AGREEMENT made and entered into this 2d day of March,  
5 1959, by and between JOHN FRANCIS McGRATH and THOMAS FRANCIS  
6 McGRATH, Jr., as Trustees of Trusts "A" and "B", respectively, cre-  
7 ated under and by virtue of the Last Will of Thomas Francis McGrath,  
8 Deceased, herein called Trustors; the Title Insurance and Trust  
9 Company, a California corporation, with its principal place of busi-  
10 ness at Los Angeles, California, herein called the Trustee and the  
11 City of Oxnard, a municipal corporation, herein called Beneficiary,

12 **W I T N E S S E T H:**

13 THAT WHEREAS the parties hereto have heretofore entered into  
14 a Trust Indenture in writing dated February 27, 1959; and

15 WHEREAS it is the desire of all the parties hereto that the  
16 name of EDWIN L. CARTY shall be substituted in place of ROBERT BLINN  
17 MAXWELL in all portions of said Trust Indenture wherein the latter's  
18 name appears; and

19 WHEREAS there was not set forth in said Trust Indenture the  
20 person or person obligated to pay the taxes and any other assessments  
21 levied upon the real property to be held by said Trustee, under and  
22 by virtue of the said Trust Indenture; nor was there any provision in  
23 said Trust Indenture as to who would be liable for payment of said  
24 Trustee's fees; and

25 WHEREAS it is the desire of the parties hereto that said  
26 Trust Indenture be amended to provide that the Trustors shall pay all  
27 taxes and assessments levied against real property involved in this  
28 trust and Trustee's fees in connection with the performance of said  
29 Trust Indenture for the entire duration of said trust.

30 NOW, THEREFORE, IT IS UNDERSTOOD AND AGREED as follows:

31 1. That said Trust Indenture dated February 27, 1959, betwee  
32 the aforesaid parties shall be amended as follows:

2. That wherever the name ROBERT BLINN MAXWELL shall appear

1 in said Trust Indenture, the name of EDWIN L. CARTY shall be substi-  
2 tuted in place thereof.

3 3. That said Trustors shall pay all taxes and any other  
4 assessments levied upon said real property held by said Trustee  
5 under and by virtue of said Trust Indenture for the duration of said  
6 trust.

7 4. Said Trustors shall pay all Trustee's fees and costs  
8 in connection with the administration of said trust estate for the  
9 duration of said trust.

10 The provisions hereof shall bind the Trustors, Trustee  
11 the Beneficiary, their successors and assigns.

12 Dated: March 2, 1959.

13  
14 John Francis McGrath  
15 John Francis McGrath

16 Thomas Francis McGrath Jr.  
17 Thomas Francis McGrath Jr.  
18 as Trustees of Trusts "A" and "B",  
19 respectively, created under and by  
20 virtue of the Last Will of Thomas  
21 Francis McGrath, Deceased.

22 TRUSTORS

23 TITLE INSURANCE AND TRUST COMPANY

24 By Clay Bennett  
25 Vice President

26 By Harold Tracy  
27 Assistant Secretary

28 TRUSTEE

29 CITY OF OMAHA, a Municipal  
30 Corporation

31 By Carl E. Ward  
32 Carl E. Ward, Mayor

33 ATT&ST:

34 By Ethel Dale  
35 Ethel Dale, City Clerk

36 BENEFICIARY

37 (CORP. SEAL)

38 JUN 9 - 1959

39 Amendment to  
40 Trust No. PR-13637

No. 6-71-109

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**TRUST DEED**

**JOHN FRANCIS McGRATH and THOMAS FRANCIS McGRATH Jr., as Trustees of Trusts "A" and "B", respectively, under the Last Will and Testament of Thomas Francis McGrath, Deceased, do hereby grant to THE TITLE INSURANCE AND TRUST COMPANY, a California corporation, the following described real property in the state of California, county of Ventura, and more particularly described as follows:**

Part of Mandalay Unit No. 1, in the county of Ventura, state of California, as per map thereof recorded in Book 13, Page 58 of Maps, in the office of the County Recorder of said county, described as follows:

**PARCEL I: (Drill Site No. 1)**

Commencing at the most Northerly corner of Lot 15, Block 149 of said Mandalay Unit No. 1; thence South 24° 48' 56" East along the Northeasterly line of said lot, 10 feet; thence South 65° 13' 04" West and parallel with the Northwesterly line of said lot, 40 feet to the true point of beginning; thence continuing South 65° 13' 04" West, 40 feet; thence Southwesterly along a tangent curve, concave Northwesterly and having a radius of 1690 feet, an arc distance of 265 feet; thence North 15° 47' 53" West and radial to said curve, 210 feet; thence Northeasterly along a curve having a radius of 1480 feet and being concentric with and distant 210 feet measured radially from the hereinbefore mentioned curve having a radius of 1690 feet, an arc distance of 232.07 feet; thence North 65° 13' 04" East and tangent to said curve, 40 feet; thence South 24° 48' 56" East, 210 feet to the true point of beginning.

**PARCEL II: (Drill Site No. 2)**

Commencing at the most easterly corner of Lot 53, Block 143, of said Mandalay Unit No. 1; thence North 65° 13' 04" East along the northeasterly prolongation of the Southeastery line of said Lot 53, 100 feet; thence North 24° 48' 56" West and parallel with the North-easterly line of said Lot 53, 216 feet; thence Northeasterly along a curve, tangent at its point of beginning to a line bearing North 65° 13' 04" East, concave southerly, and having a radius of 1252 feet an arc distance of 80 feet to the true point of beginning; thence continuing Northeasterly along said curve, an arc distance of 257 feet; thence North 9° 21' 36" West and radial to said curve, 226 feet; thence Southwesterly along a curve having a radius of 1478 feet and being concentric with and distant 226 feet measured radially from the hereinbefore mentioned curve having a radius of 1252 feet, an arc distance of 303.39 feet; thence South 21° 07' 16" East and radial to said curve, 226 feet to the true point of beginning.

1 RIGHTS in the aforesaid described real property all  
2 oil, gas, hydrocarbon substances and other minerals and fissien-  
3 able substances lying below a depth of 500 feet from the surface of  
4 said land, and reserving unto Grantors, their successors and  
5 assigns, the right to produce and take substances from the aforesaid  
6 described real property and other property, by means of wells lo-  
7 cated on the aforesaid described real property and drilled into the  
8 aforesaid described real property and/or other property. Said  
9 right of Grantors, their successors and assigns, to use the afore-  
10 said described real property above a depth of 500 feet below the  
11 surface thereof, shall terminate at such time as title to the  
12 property passes to the City of Oxnard, pursuant to contract between  
13 the City, the Grantors hereof, and the Oxnard Shores Development Co.  
14 with respect to the aforesaid described real property, which con-  
15 tract is on file in the office of the City Clerk of the City of  
16 Oxnard.

17 IN WITNESS WHEREOF this instrument has been executed this  
18 24th day of February 1959.

19 *John Francis McGrath*  
20 John Francis McGrath  
21 *Thomas Francis McGrath Jr.*  
22 Thomas Francis McGrath Jr.  
23 as Trustees of Trusts "A" and "B",  
24 respectively, under the Last Will  
25 and Testament of Thomas Francis  
26 McGrath, Deceased.

27 STATE OF CALIFORNIA }  
28 County of Ventura } ss:

29 On February 24, 1959, before me, the undersigned, a Notary  
30 Public in and for said County and State, personally appeared  
31 JOHN FRANCIS McGRATH and THOMAS FRANCIS McGRATH Jr., known to me to  
32 be the persons whose names are subscribed to the within instrument  
and acknowledged that they executed the same.

WITNESS my hand and official seal.

22659  
RECORDED AT REQUEST OF  
TITLE INSURANCE & TRUST CO.  
AT 8:01 A. M.  
OFFICIAL RECORDS VENTURA COUNTY  
JUN 11 1959  
BOOK 1744 PAGE 493

*Edward C. Mays*  
Notary Public in and for said county,  
and state.

*Robert L. Mays* 125

San Office of  
EDWARD C. MAYS  
Notary Public

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**ACTION:** Mayor Pro Tem Zaragoza moved to adopt **Resolution No. 11,497.**  
Councilmember Maulhardt seconded; and the motion was adopted by the following vote:  
Ayes: Councilmembers Holden, Lopez, Maulhardt, Pinkard and Zaragoza.

- 2. **SUBJECT:** Presentation of the Tezcatlipoca Awards.  
**DISCUSSION:** The Resident Services Coordinator described the program, which works with at risk youth and stated that the awards recognize individuals and community-based organizations for their participation and support of the program.

**P. APPOINTMENT ITEMS**

- 1. **SUBJECT:** Presentation of The Greater Oxnard Economic Development Corporation Five-Year Plan by Steven L. Kinney.  
**RECOMMENDATION:** Continue to February 2, 1999.  
**ACTION:** Mayor Pro Tem Zaragoza moved approval as recommended. Councilman Pinkard seconded; and the motion was unanimously adopted.

**R. STUDY SESSION**

Public Safety

- 2. (071) **SUBJECT:** Ordinance Authorizing Imposition of an Administrative Fine for Violations of the Oxnard City Code ("OCC").  
**RECOMMENDATION:** Continue to February 2, 1999.  
**ACTION:** Mayor Pro Tem Zaragoza moved approval as recommended. Councilman Pinkard seconded; and the motion was unanimously adopted.

**F. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA**

Mr. Bernard Dunhom spoke about Oxnard's veterans preference in hiring policies and flying of POW/MIA flags.

Speaking against Cornell Corrections being located at 425 "D" Street and the City's issuance of a certificate of occupancy were Mr. Steve Buratti, Alan Wingo, Louise Ann Noeth, Marsha Maulhardt, Barbara Higgins, Tina Hurley, Rebecca Barkley, Peter Erdos, Al Barkley (petition submitted).

**K. PUBLIC HEARINGS**

Community Development and Conditions

- 1. (039) **SUBJECT:** Vacation of a portion of Wavecrest Way, Zone Change, Tentative Subdivision Maps, and Coastal Development Permits for two lots in the Coastal Zone, Filed by the City of Oxnard.  
**RECOMMENDATION:** (1) Adopt a resolution approving an amendment to the certified Local Coastal Program and direct staff to forward the amendment to the California Coastal Commission for consideration of an amendment to the Coastal Zoning Ordinance by reclassifying specified property on the zone map from R-P (Coastal Resource Protection) to R-B-1 (Single-Family Beach) for two parcels, approximately 1.39 and 1.42 acres each, located on the west side of Harbor Boulevard between

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COASTAL COMMISSION  
SOUTH CENTRAL COAST DISTRICT

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EX 9

Breakers and Reef Ways and on the north side of Whitecap Street east of Mandalay Beach Road, respectively; (2) Adopt a resolution approving Tentative Subdivision Map No. 5063, subject to certain findings and conditions; (3) Adopt a resolution approving vacation of a portion of Wavecrest Way and approving Tentative Subdivision Map No. 5064, subject to certain findings and conditions; and (4) Adopt a resolution upholding the Planning Commission's approval of PZ Nos. 98-5-106 and 107, subject to certain findings and conditions.

**ACTION:** Mayor Lopez declared the public hearing open.

**DISCUSSION:** The Assistant City Clerk stated the affidavits of publication are on file and one written communication was received in opposition to the recommendation.

The Public Services Director ("Director") described the proposal and discussed how the properties were received by the City, adding that there is nothing which restricts the property to park purposes, and the properties have never been designated as park properties. He stated 1) the properties have been designated for residential development since 1982 when the City Council adopted the Local Coastal Program and Land Use Plan; 2) the density of the subdivisions is consistent with the balance of the Oxnard Shores neighborhood; 3) tests have confirmed there is no contamination on these lots; 4) all the streets and ways will receive a new slurry coat to restore and upgrade the streets upon completion of the current underground utility project, scheduled in early June. The Director then discussed the storm drain system and proposed improvements to the Harbor Boulevard landscape medians, parkway and wall and stated that improvements would be funded from the potential sales of the lots.

Speaking against City Council's approval of the recommendation were: Ms. Dierdre Frank, Robert Murphy, Bodine Elias, Debra Tyhurst, Sally Orbas, Lee Bartosh, Suzanne Schecter, Robert Chandler, Sal Penza, Mina Carr, Ted Kuepper, Nick Strangio, Guy Yamashige, Brenda Ryan, Donna Biess, Dick Chaiclin, Bob Bartosh, Gary Spritz, Don Abbott, Sam Goe, Clyde Meis, Ken Barrabee, Holly Hoberg, and Ray Anderson. Some speakers requested that if City Council intends to sell the parcels, the funds from the proceeds of the sale be prioritized for use in upgrading the Oxnard Shores neighborhood.

Mr. Joe Ruscio suggested the item be continued and staff be directed to meet with the neighborhood.

**ACTION:** Councilman Pinkard moved to close the public testimony portion of the public hearing. Mayor Pro Tem Zaragoza seconded; and the motion was unanimously adopted.

**DISCUSSION:** The Director stated the sites were never used as oil drilling sites and that any legislative action of the City Council would be subject to consideration by the State Coastal Commission.

Ms. Dorothy Maron commented on her recollection of City Council discussions regarding the sites when she was on the City Council.

**ACTION:** Councilmember Holden made a motion that staff conduct an audit of what is required to address the concerns of the residents: sound wall, streets, drainage and landscaping, provide an estimate of the costs of improvements, versus the revenue that would be generated from the sale of the lots and return to City Council. Mayor Pro Tem Zaragoza seconded; and the motion was adopted by the following vote: Ayes: Councilmembers Lopez, Maulhardt, Pinkard, Zaragoza and Holden.

CX00377

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

JUDGE: THOMAS J. HUTCHINS DATE MAY 10, 2004

CLERK: SANDY MCCARTY CASE NO.: CIV 217306

TITLE OF CASE:

DEIRDRE FRANK, RANDY HAINES,  
MARGRET HAINES, and MARY SUSAN KYROPOULOS,  
TRUSTEE of the BETTY M. KYROPOULOS TRUST

Plaintiffs,

v.

CITY OF OXNARD, a Municipal Corporation,  
and DOES 1 through 10,

Defendants.

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**NATURE OF PROCEEDINGS: STATEMENT OF DECISION**  
**RE: COURT TRIAL**  
(Taken under Submission 05/07/04)

This action came on regularly for trial before Superior Court Judge Thomas J. Hutchins on February 13, 2004. Mark T. Barney and Jacquelyn K. Phlegar of Ferguson, Case, Orr, Paterson & Cunningham LLP appeared as attorneys for plaintiffs DEIRDRE FRANK, RANDY HAINES, MARGARET HAINES, and MARY SUSAN KYROPOULOS, TRUSTEE of the BETTY M. KYROPOULOS TRUST, and David K. Hughes of Price, Postel & Parma LLP appeared as attorneys for defendant CITY OF OXNARD (the "City").

The matter was tried to the Court over the course of two days (February 13, 2004 and May 7, 2004) and in less than eight hours. The Court received oral and documentary evidence on February 13<sup>th</sup> and the attorneys appeared for oral argument on May 7<sup>th</sup>, 2004. In the interim, the attorneys filed their closing trial briefs.

On May 7, 2004, at the time set for oral argument, the parties submitted the matter to the Court for its decision. Neither side requested a Statement of Decision (CCP 632); nonetheless, the Court now issues its Statement of Decision setting forth the factual and legal basis for its decision as to each of the principal controverted issues at trial:

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SOUTH CENTRAL COAST DISTRICT

EXC

TITLE OF CASE:

FRANK, et al. v. CITY OF OXNARD, et al.**Issue No. 1: Do the Plaintiffs Have Standing to Bring this Action for Reformation?**

Citizens and taxpayers have standing to bring an action to enforce a public right or to procure enforcement of a public duty. White v. Davis (1975) 13 Cal.3d 757, 764; Green v. Obledo (1981) 29 Cal.3d 126, 144. Plaintiffs have brought this action for reformation in order to compel the City to perform an alleged public duty to maintain two properties transferred to the City by John Francis McGrath and Thomas Francis McGrath, trustees of two McGrath family trusts (the "McGraths") pursuant to an agreement entered into by the McGraths, their development company Oxnard Shores Development Co, and the City in December 1958 (Sites Nos. 1 and 2), for public playground, recreational and parking purposes (the "1958 Agreement") (Ex. 2). Code of Civil Procedure § 526a accords standing to a taxpayer to bring "[a]n action...preventing any illegal expenditure of, waste of, injury to, the estate, funds or other property of a ...city and county of the state." Plaintiffs FRANK and KYROPOLOUS testified to having paid taxes to the City within the year prior to the filing of this action, entitling them to bring this action as taxpayers under that statute.

In general, a party has standing to bring an action in which that party has a "*personal stake in the outcome of the controversy.*" Baker v. Carr (1962) 369 U.S. 186, 204. In the instant action, plaintiffs FRANK and KYROPOLOUS testified that the plaintiffs have homes adjacent to or looking out upon Sites Nos. 1 or 2, and that plaintiffs' children and neighborhood children play on the currently vacant lots. This testimony establishes that plaintiffs have a sufficient interest in the City's proper use of the properties for purposes of standing.

This Court notes that the City did not aggressively dispute plaintiffs' standing to bring this action in its trial brief, merely asserting by way of argument and stipulated admitted facts that plaintiffs were not parties to the 1958 Agreement, nor to the agreement dated February 27, 1959 between the McGraths as Trustors, Title Insurance and Trust Company ("TITCO") as trustee, and the City as beneficiary which clarified ambiguities in the 1958 Agreement (the "1959 Agreement") (Ex. 6), and are not successors in interest to the McGraths. (See Statement of Admitted Facts, #1, 2 and 5).

**Issue No. 2: Did Trustors John and Thomas McGrath Dedicate Lots Nos. 1 and 2 to the City for Public Purposes?**

California law is clear that where property has been granted to a municipality for a specified purpose, the property must be used for that purpose. Slavich v. Hamilton (1927) 201 Cal. 299, 302. However, the evidence admitted at trial does not establish that Sites Nos. 1 and 2 were granted to the City by the McGraths for a specified purpose.

Neither the 1958 Agreement nor the 1959 Agreement contain language specifying or limiting the use of Sites Nos. 1 and 2 after transfer to the City. Neither the February 24, 1959 Grant Deed transferring the property to TITCO to hold for the benefit of the City (the "1959 deed")(Ex. 5), nor the 1995 Quitclaim

## TITLE OF CASE:

FRANK, et al. v. CITY OF OXNARD, et al.

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Deeds (the "1995 deeds")(Exs. 8 and 9) transferring the property to the City, restrict the use of the property. The 1959 deed merely reserved specified oil and mineral rights to the McGraths, as did the 1995 deeds.

A grant is to be interpreted in the same manner as any other contract, so as to give effect to the intention of the parties. Civil Code §§ 1066 and 1635; Boyer v. Murphy (1927) 202 Cal. 23, 29-30. For purposes of ascertaining that intention "the whole of the contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." Civil Code § 1641, Id at 30. There is a legal presumption that executed documents, such as the 1959 Agreement and the 1959 deed, correctly express the intention of the parties. The prevailing rule is that a conveyance of land that describes the use to be made of the land, without limiting the conveyance with words such as "only" or similarly restrictive words, or by words of reversion, does not constitute a limitation on the grant or the use of the land. Manhattan Beach v. Superior Court (1996) 13 Cal.4<sup>th</sup> 232, 243-244.

This Court looked to the entire deeds and their underlying agreements to determine if the McGraths had clearly manifested an intent to limit the City's use of Sites Nos. 1 and 2. The only documentary evidence admitted at trial of an alleged intention by the McGraths to limit the use of Sites Nos. 1 and 2 by the City is an incomplete, unexecuted form deed attached as Exhibit B to the 1958 Agreement ("Exhibit B") which contains language stating that the grantors grant the property to the trustee for the City "*for public playground and recreation purposes and all purposes incidental thereto, and public parking purposes.*" However, the 1958 Agreement merely references Exhibit B as a "form" of deed, and it is clear from a review of the form that Exhibit B is neither formal nor finalized. Exhibit B does not contain the property description, but the words, in parenthesis, "(Herein set forth the legal description of the two drill sites, Nos. 1 and 2)." Exhibit B references the retention of rights in fractional interests of oil and minerals rights to non-party predecessors in interest. The incomplete deed at Exhibit B could not have been used by the parties for the formal transfer of the properties to the City in accordance with the 1958 Agreement, and appears to have been no more than an exemplar, without legal effect.

This interpretation finds support in a comparison of the suggested language of Exhibit B and the final language of the 1959 Grant Deed. The language of the deed prepared and executed by the McGraths in 1959 deviated significantly from the form of the deed at Exhibit B, with the use language deleted entirely, the number of reservations reduced from three to one, and the remaining reservation being significantly reworded to limit access to oil, gas and minerals on the properties. The Court finds that the incomplete form of a deed at Exhibit B to the 1958 Agreement, and the multiple and express deviations from that form in the executed 1959 deed, establish that Exhibit B was intended by the McGraths as a non-binding exemplar only.

The 1959 deed incorporates the 1958 Agreement (containing Ex. B) into the section reserving certain rights in the property to the grantors, but the incorporation of an agreement imposing pre-conditions on

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FRANK, et al. v. CITY OF OXNARD, et al.

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transfer does not raise proposed post-transfer language in an exhibit to the level of a use restriction. Neither the 1958 Agreement, nor the 1959 Agreement, contain powers of termination tied to the City's use of Lots Nos. 1 and 2. The lack of a reversionary interest conditioned upon use of the property suggests that the McGraths did not intend to convey the property subject to a use restriction. See, e.g., Welton v. City of Red Bluff (1991) 2 Cal.App.4<sup>th</sup> 117. The reference to the 1958 Agreement in the reservation clause of the 1959 deed does not evince an intent by the McGraths to restrict the use of Sites Nos. 1 and 2 to the terms in the exemplar attached as Ex. B thereto, and does not create a use restriction thereby.

The Court may look to the facts and circumstances surrounding the transaction involving a deed, to determine if there appears to be an express intention on the part of the grantors to dedicate property for a specific purpose. See Slavich v. Hamilton (1927) 201 Cal. 299, 305. In the instant action, the facts referenced in the agreements entered into by the McGraths reveal an intention on the part of the McGraths to develop a beach front subdivision, while also leasing Sites Nos. 1 and 2 to Standard Oil for drilling purposes. The 1958 Agreement included many express provisions concerning the establishment by City of Oil Drilling Districts within the annexed subdivision. [Ex. 2, par 2(f)]. No transfer of the property to the City was to take place until drilling had been abandoned for a period of ten years. [Ex. 2, par 2(e)]. The focus of the agreement was upon the McGrath's use of the property, not the City's use, and the property transfer to the City was an incentive "to assure [the McGraths] that the City will take necessary steps to enable the owners to use the property in the manner desired..." [Ex. 2, par 2 (emphasis added)]. It does not appear that the McGraths, or their development, would have benefited from a restriction on use of Sites Nos. 1 and 2 upon transfer to the City, as the transfer was conditional and remote in time, and drilling within the development would continue on the properties for the immediate future.

The plaintiffs point to the City Council's Resolution No. 1939, [Ex. 1] dated February 11, 1958, authorizing the City's Mayor to "accept and consent to deeds or grants conveying to the City of Oxnard any interest in or easements upon real estate for public purposes," as evidence of an intent by the City to use Sites Nos. 1 and 2 for public purposes. However, this resolution was passed almost one year prior to the execution of the 1958 Agreement in December 1958, and makes no reference to Sites Nos. 1 or 2, and is not evidence of an express intention on the part of the City or the McGraths to restrict the use of Sites Nos. 1 and 2.

Neither do the resolutions from December 1958, Nos. 2055 [Ex. 3] and 2056 [Ex. 4], contain language restricting the use of Sites Nos. 1 and 2. The parties did not admit into evidence a resolution of the City Council regarding the 1959 Agreement executed by the McGraths and the City clarifying the terms of the 1958 Agreement. This Court finds that there are no facts or circumstances surrounding the deed transferring the property in 1959 demonstrating an express or implied intent by the McGraths or the City to restrict the use of Sites Nos. 1 and 2, let alone to restrict that use to playground, park or parking lot purposes.

## TITLE OF CASE:

FRANK, et al. v. CITY OF OXNARD, et al.

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In summary, upon consideration of the documentary evidence, and the facts and circumstances surrounding the 1958 and 1959 agreements and deeds, this court finds that the McGraths did not intend to restrict the City's use of Sites Nos. 1 and 2 as part of their agreement to grant the properties to the City.

**Issue No. 3: Did the City Accept the Property with a Use Restriction?**

It is a general rule that a grant of land for restricted public use must be accepted by the public entity for the use restriction to apply. Baldwin v. City of Los Angeles (1999) 70 Cal.App.4<sup>th</sup> 819, 836. Here, there is no evidence that the City accepted the properties for restricted use.

Five months after the transfer of the property to TITCO on behalf of the City without express use limitations, the City Council made a reference to subdivision plans "designed for the ultimate use of such sites as parks, playgrounds or parking lots on cessation of drilling activity" in the recitals of its passage of a drilling variance to Standard Oil. [Resolution No. 2162]. [Ex. 7] Recitals have no legal force or effect, and can be used to interpret a document only if the operative words are in doubt. CCP 1068. However, the City's reference to use of the properties was made well after the transfer, in the form of a non-binding recital, and evinces no more than a possible future zoning restriction on the properties. Zoning restrictions do not constitute a deeded limitation on the use of property, and can be readily changed by a municipality, as demonstrated by the City's passage of a zoning variance on the application of Standard Oil. This Court finds that the reference to designs by the City for the use of Sites Nos. 1 and 2 as parks, playgrounds or parking lots does not establish an intent by the McGraths or the City to dedicate Sites Nos. 1 and 2 to such exclusive use.

The evidence establishes that the City did not take any action during acceptance of the property amounting to an irrevocable dedication of Sites Nos. 1 and 2 to public use for park, playground or parking lot purposes.

**Issue No. 4: Did the City's Post-Transfer Offers of Sale Create a Dedication of Lots Nos. 1 and 2 to Public Use?**

A municipality may irrevocably dedicate property to a public purpose by their acts, express or implied. Slavich at 306. Plaintiffs assert that the City, by its subsequent attempts to sell Sites Nos. 1 and 2 to public agencies for open-space purposes, expressed an intent to, and did thereby, restrict the use of that property for such purposes. The evidence submitted does not support plaintiffs' position.

The memo [Ex. 10] written by Deanna Walsh, City's Coastal Planner to the City's Mayor after the transfer of the property to the City, and dated October 14, 1996, clearly stated that "The property is no longer necessary for public purposes. Staff is recommending that the subject property be offered for sale which will return the property to the tax rolls. Funds received from the sale of the property will go

## TITLE OF CASE:

FRANK, et al. v. CITY OF OXNARD, et al.

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to the City. The sale of the property would be in the best interest of the City and would be sold in conformance with Government Code Section 54220 et seq." [Ex. 10, p.1]. The property was declared surplus by adoption of Resolution No. 11,141 at the publicly-held Oxnard City Council meeting on October 22, 1996. [Ex. 11, p. 8]. Neither of these actions by the City's staff or council members demonstrates an intent to restrict the use of Sites No. 1 and 2. To the contrary, these actions express an intention to sell the properties for purposes of using these parcels to generate and collect taxes.

The day after the adoption of Resolution No. 11,141, the City's Coastal Planner, Deanna Walsh, mailed identical letters to a number of agencies offering to sell Sites No. 1 and 2, explaining that "This real property is hereby offered for sale or lease to your agency for park and recreation purposes or open-space purposes pursuant to the mandate of Government Code (Govt C) Sections 54220, et seq., subject to the priorities as set forth thereunder." [Exs. 12-18]. Govt C 54222 requires that any local agency (which includes cities by definition at Govt C 54221(a)) "disposing of surplus land shall, prior to disposing of that property, send a written offer to sell or lease the property as follows:....(b) A written offer to sell or lease for park and recreational purposes or open space purposes...." The City's compliance with Govt C 54222 as a prerequisite to disposing of Sites Nos. 1 and 2 does not evince an intent by the City to restrict the use of those parcels by the City or subsequent purchasers, except as to those purchasers receiving statutory priority pursuant to Govt C 54222(b).

**Issue No. 5: Are the Plaintiffs Barred from Bringing this Action for Reformation by the Statute of Limitations?**

This action was brought beyond the statute of limitations. The statute of limitations imposed on actions for relief from mistake is three years from accrual of the action, i.e., upon discovery by the aggrieved party of the facts constituting the mistake. CCP 338(d). Welsher v. Glickman (1969) 272 CA2d 134, 140. In general, a plaintiff's ignorance of a cause of action does not toll the running of the statute, but the delayed discovery rule is an exception that has been adopted to protect plaintiffs who are ignorant of their right of action through no fault of their own. Naftzger v. American Numismatic Society (1996) 42 Cal.App.4<sup>th</sup> 421, 428.

The recent case of Hogar v. Community Development Comm of the City of Escondido (2003) 110 CA4th 1288, explained the applicability of this rule in situations involving actions by public agencies. Where an individual plaintiff does not asserted any individual loss, and a public entity's violation of a statutory duty has been disclosed in public hearings and public records, then the delayed discovery rule is not applicable to protect the plaintiff's substantive rights. In the instant action, the plaintiffs have not asserted any enforceable individual loss, but are seeking enforcement of a public duty for the benefit of their neighborhood community. The evidence submitted indicates that, at least since 1998, the City has disclosed in public hearings and public records that it was approving development of Sites Nos. 1 and 2 for residential housing.

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In Cumming v. City of San Bernardino Redevelopment Agency (2002) 101 Cal.App.4<sup>th</sup> 1229, the Court of Appeal determined that an agency's notice of sale of ten acres referred to documents "describing the full scope of the project, including the proposed collection of solid waste," which documents were available for review. Cumming at 1235. Although the issue was whether the notice was adequate to trigger the 180 day statute of limitations of the Public Resources Code, section 21167, in dicta the Cumming court noted that delayed discovery only extended a statute of limitations to when the complaining party either knew or reasonably should have known of the facts underlying the legal challenged. The evidence in the instant action establishes that full disclosure of the City's intentions was made, although not until 1998.

The City declared the property surplus on October 22, 1996 by adoption of Resolution 11,141. The property was subject to disposal through the statutorily mandated procedures of Govt C 54220, et seq, and in fact the City offered Sites No. 1 and 2 for sale or lease to other public agencies the very next day, October 1998, "for park and recreation purposes or open-space purposes." There was no evidence presented that the City offered the property for any other purpose, and these City documents would not place the public on notice that the City was planning to take action with regard to these properties for purposes contrary to the alleged use restriction.

However, beginning in 1998, the City's Planning Commission held public hearings and adopted resolutions giving the public clear notice of the City's intent to allow residential development on Sites Nos. 1 and 2. [See Ex. 22, p.5, Minutes regarding attendance at public meeting of the Planning Commission on November 19, 1998]. On November 19, 1998, the Planning Commission adopted Resolution No. 98-68 approving the application of a developer for a coastal development permit, which permit would terminate in twenty-four months "unless the proposed development or use has been diligently pursued." [Ex. 19, p.2]. Also on November 19, 1998, the Planning Commission adopted Resolution 98-69, setting forth development requirements, such as paying fees, submitting construction plans, submitting a grading plan, and installing public improvements. [Ex. 20]. That day it also approved the Tentative Subdivision Map submitted by the developer. [Ex. 21]. Plaintiffs correctly note that the developer is not identified by name in these resolutions, however, these resolutions clearly put the public on notice that a developer had applied for, and been granted, a development permit for residential homes on Sites Nos. 1 and 2. (Plaintiff DIERDRE FRANK attended the November 19, 1998 meeting).

On January 26, 1999, the City Council held a public meeting to consider a resolution to approve an amendment to the Local Coastal Program, to be forwarded to the Coastal Zoning Commission for further review and approval. [Ex. 23]. The partial minutes of that meeting submitted by the parties indicate that plaintiff DIERDRE FRANK and twenty-three neighbors attended the meeting and spoke to the council, with some "request[ing] that if the City Council intends to sell the parcels, the funds from the proceeds of the sale be prioritized for use in upgrading the Oxnard Shores neighborhood." In

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addition, one council member requested an audit that sought an accounting, in part, of "the revenue that would be generated from the sale of the lots." [Ex. 23]. The proposed resolutions and the discussion at that public meeting made it very clear that the City intended to sell the property as well as develop it, and plaintiffs were on notice of the both the planned residential development and intended sale of Sites Nos. 1 and 2 no later than the date of that meeting.

This Court finds one case cited by the City, Utility Cost Mgmt v. Indian Wells Valley Water District (2001) 26 Cal.4th 1185, to be limited to the context of challenges to public utility fees. However, in that matter the California Supreme Court reasoned that when information is made publicly available, "a diligent plaintiff should be able to discover, within the statutory period, whether a cause of action exists," and that reasoning, which is echoed in Hogar, is applicable here. See Utility Cost Management at 1197.

Development of residential homes on Sites Nos. 1 and 2 would not be in compliance with a use restriction limited to playground, recreation and parking purposes, and the court finds that plaintiffs' cause of action for enforcement of such a use restriction through reformation accrued no later than November 19, 1998. This Court finds that the City repeatedly informed the public that it intended residential development and sale of Sites Nos. 1 and 2 from November 19, 1998. The public record gave sufficient notice to start the statute of limitations running.

The Court also finds that plaintiffs, through plaintiff DIERDRE FRANK, had actual notice of the City's intentions to use Sites Nos. 1 and 2 for purposes other than as a playground or recreation no later than November 19, 1998. The delayed discovery rule is intended to protect plaintiffs who are ignorant of their right of action through no fault of their own, and is inapplicable here, where plaintiffs were put on public notice of the City's intentions, and even participated in the discussions with regard to residential development. However, regardless of whether or not the delayed discovery rule is applied here, plaintiffs' complaint filed February 4, 2003 was more than three years after public and actual notice to plaintiffs on November 19, 1998, and beyond the three-year statute of limitations of CCP 338(d). Plaintiffs' action is barred.

Accordingly, the Court finds in favor of the defendant and against the plaintiffs. The Court directs the defendant to prepare, serve, and submit for signature by June 1<sup>st</sup>, 2004, a (Proposed) Judgment consistent with this decision. The defendant is the prevailing party entitled to costs per cost memo.

The clerk is directed to give notice.

**MICHAEL D. PLANET**  
Executive Officer and Clerk

By:   
Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA**

**CASE NO. CIV 217306**

**CASE NAME: FRANK, et al. v. CITY OF OXNARD, et al.**

**I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the above-entitled action. My business address is 3855-F Alamo Street, Simi Valley, CA 93063. On May 11, 2004, I served the following document described as:**

**ORDER ON RULING ON SUBMITTED MATTER**

**RE: COURT TRIAL**

**(Taken under submission 05/07/04)**

**By placing a true copy thereof for collection and mailing so as to cause it to be mailed on the above date, following standard court practices, in sealed envelopes addressed as follows:**

**Jacqueline K. Phlegar, Esq.  
Ferguson, Case, Orr, Paterson  
& Cunningham LLP  
1050 South Kimball Road  
Ventura CA 93004**

**David K. Hughes, Esq.  
Price, Postel & Parma LLP  
200 East Carrillo Street 4<sup>th</sup> Floor  
Santa Barbara CA 93101**

**I am readily familiar with the County's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service and/or interoffice mail on that same day with postage thereon fully prepaid at Simi Valley, California in the ordinary course of business.**

**I declare under penalty of perjury under the laws of the State of California that the above is true and correct.**

**Dated and executed at Simi Valley, California on May 11, 2004.**

**MICHAEL D. PLANET,  
Executive Officer and Clerk**

By:   
**Judicial Secretary**

**Declaration of Mailing**