

Mon 7a

STATE OF CALIFORNIA -- THE RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

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



RECORD PACKET COPY

DATE: May 22, 2002

TO: Commissioners and Interested Parties

FROM: Chuck Damm, Senior Deputy Director
John Ainsworth, Supervising Coastal Program Analyst
Kara Kemmler, Coastal Program Analyst

SUBJECT: CITY OF OXNARD LOCAL COASTAL PROGRAM AMENDMENT NO. OXN-MAJ-1-00: NORTH SHORE AT MANDALAY BAY ANNEXATION for Public Hearing and Commission Action on Revised Findings at the California Coastal Commission Hearing on June 10-14, 2002 to be held in Long Beach.

DATE OF COMMISSION ACTION: April 12, 2002 in Santa Barbara

COMMISSIONERS ON THE PREVAILING SIDE: Dettloff, Allgood, Hart, Susskind, McClain-Hill, McCoy, Nava, Potter and Woolley

SUMMARY OF LCP AMENDMENT REQUEST NO. OXN-MAJ-1-00

The City of Oxnard ("City") proposes to amend the City's certified Local Coastal Program (includes proposed changes to both the Land Use Plan, which is known as the Oxnard Coastal Plan (hereafter referred to as the "LUP/CP"), and to the Implementation Program, which is known as the Oxnard Coastal Zoning Ordinance (hereafter referred to as the "IP/CZO") to (1) amend Land Use Plan maps to reflect annexation of the North Shore site: Coastal Zone Map (map no. 2) for the McGrath-Mandalay area; Urban Rural Boundary (map no. 6) to include the recently annexed North Shore property; proposed Sensitive Habitats Map (map no. 7) to show Ventura Marsh Milk-Vetch habitat; proposed Coastal Access Map (map no. 12) to show linear park and trail along Reliant Energy Canal; and Land Use Map for the McGrath-Mandalay area to designate site as Planned Unit Development Residential; (2) add site specific development and access and recreation policies; (3) add site specific resource policies to include habitat preservation, restoration, mitigation and monitoring elements of the certified Final EIR, the MOU with CA Dept. of Fish & Game, the settlement agreement with CA Native Plant Society, and remediation and mitigation in the RAP approved by the Regional Water Quality Control Board; (4) amend Coastal Zoning Ordinance map to reflect zoning for the site; and (5) add site specific zoning ordinances to implement proposed Land Use Plan policies.

LCP Amendment OXN-MAJ-1-00 involves several changes to the certified LUP/CP and to the certified IP/CZO. On October 2, 2000, the Commission's South Central Coast office received copies of the Amendment, OXN-MAJ-1-00, from the City. On March 1, 2001, pursuant to section 13553 of the Commission's regulations, the Executive Director of the Commission determined the City's proposed changes to be "in proper order" and thus "submitted". On May 8, 2001, pursuant to Section 30517 of the Coastal Act, the Commission extended the 90-day time limit for action on amendment OXN-MAJ-1-00 for up to one year.

TABLE OF CONTENTS

| | |
|---|-----------|
| EXECUTIVE SUMMARY | 3 |
| 1.0 STAFF RECOMMENDATION, MOTIONS, AND RESOLUTIONS ON THE LAND USE PLAN/COASTAL PLAN (LUP/CP) | 9 |
| 2.0 STAFF RECOMMENDATION, MOTIONS, AND RESOLUTIONS ON THE IMPLEMENTATION PLAN/COASTAL ZONING ORDINANCE (IP/CZO) | 9 |
| 3.0 SUGGESTED MODIFICATIONS TO THE LUP/CP | 11 |
| 3.1 SUGGESTED MODIFICATIONS TO THE IP/CZO | 19 |
| 4.0 FINDINGS AND DECLARATIONS FOR THE LAND USE PLAN/COASTAL PLAN (LUP/CP) | 21 |
| 4.1 STANDARD OF REVIEW FOR THE LAND USE PLAN AMENDMENTS | 21 |
| 4.2 HISTORY AND BACKGROUND OF THE NORTH SHORE AT MANDALAY BAY SITE | 21 |
| 4.3 PROPOSED CHANGES TO THE MAPS AND POLICIES OF THE LUP/CP AND CONSISTENCY WITH CHAPTER 3 POLICIES OF THE COASTAL ACT | 24 |
| 4.4 DISCUSSION AND FINDINGS | 24 |
| 4.4.1 NEW DEVELOPMENT & CUMULATIVE IMPACTS | 24 |
| 4.4.2 SENSITIVE RESOURCES | 33 |
| TABLE 4.1 | 42 |
| SOIL AND GROUNDWATER CONTAMINATION | 43 |
| SENSITIVE RESOURCES | 44 |
| WETLANDS | 45 |
| COASTAL ACT POLICY CONFLICT | 54 |
| ENVIRONMENTALLY SENSITIVE HABITAT AREA: MILK-VETCH | 56 |
| NORTH SHORE SENSITIVE RESOURCES | 57 |
| SPECIAL-STATUS WILDLIFE SPECIES | 60 |
| IMPACTS TO OFFSITE SENSITIVE RESOURCES | 61 |
| WATER QUALITY | 66 |
| 4.4.3 COASTAL ACCESS AND RECREATION | 68 |
| 5.0 FINDINGS AND DECLARATIONS FOR THE IMPLEMENTATION PROGRAM/COASTAL ZONING ORDINANCE (IP/CZO) | 72 |
| 5.1 STANDARD OF REVIEW FOR THE IP/CZO | 72 |
| 5.2 LUP/CP POLICIES AND THE STRUCTURE OF THE CERTIFIED IP/CZO | 72 |
| 5.3 PROPOSED CHANGES TO THE CERTIFIED IP/CZO | 72 |
| 5.4 DISCUSSION AND FINDINGS | 73 |

EXECUTIVE SUMMARY

The proposed LCP amendment addresses a specific property known as the North Shore at Mandalay Bay in the City of Oxnard. The amendment addresses changes and additions to the land use plan maps, zoning maps, land use policies and implementing ordinances of the City of Oxnard's LCP on a site specific basis. The North Shore at Mandalay Bay will be a master planned residential community consisting of about 300 homes, resource protection areas and bike paths.

The project site encompasses approximately 90 acres located at the corner of Harbor Boulevard and West Fifth Street in the City of Oxnard. For thirty years the site utilized as an oil field waste disposal facility. Some 50 drilling companies disposed of approximately 8.1 million barrels of oil waste on the site. As a result the soil and groundwater on the site are severely contaminated with petroleum hydrocarbons, some volatile organic compounds, metals and other chemicals. In order to clean up the hydrocarbon contamination, avoid additional contamination to the groundwater and make the site suitable for residential use the landowner is proposing to remediate the contamination on the site. This will be accomplished through above ground bioremediation which will involve the excavation of 400,000 cubic yards of soil and introducing bacteria into the soil to degrade the hydrocarbon contamination.

The North Shore site also contains a small area (approximately 0.4 acres) of a special status plant species, the Ventura Mash Milk-vetch, which was previously thought to be extinct. The milk-vetch population will be preserved and enhanced in place onsite within a designated resource protection zone.

The LCP amendment was continued from the February 2002 Commission hearing so staff could more fully investigate and analyze potential wetland areas on the site. In addition, the Commission directed staff to address the following issues and questions:

- Can the access road bisecting the designated resource protection area be relocated outside of this area?
- What are the indirect impacts of this residential project on nearby sensitive resources and State Park property? Is the expansion of the urban/rural boundary appropriate in this case?
- How is site remediation and mitigation assured if the landowner goes bankrupt in the middle of the remediation, mitigation or some other phase of the development?
- If the site remains in its current state what will happen to the existing native plant communities on site?
- What are the potential risks of groundwater contamination if no remediation is done?
- Further analyze the presence or potential presence of sensitive animal species on the site in the context of determining environmentally sensitive habitat on the site.

A more detailed wetland delineation study was conducted on the site by Impact Sciences, Inc., in consultation with the Commission's staff biologist, Dr. Jon Allen. The wetland delineation study determined that 3.0 acres of saltgrass and 1.2 acres of willow scrub area have a prevalence of wetland vegetation and therefore are considered wetland pursuant to Commission's wetland criteria. The fill of wetlands for residential development is not a

permitted use in wetlands under Coastal Act section 30233. However, to deny the proposed LCP amendment based on this inconsistency would result in significant adverse impacts to water quality because remediation of the hydrocarbon contamination on the site would not occur which would not be consistent with Section 30231 of the Coastal Act. If the contamination is not remediated the hydrocarbon contamination will eventually reach the groundwater basin and will adversely impact groundwater supplies for agriculture and drinking water. This situation creates a conflict between the wetland fill policy, section 30233 of the Coastal Act, and water quality policies, sections 30230 and 30231 of the Coastal Act.

Section 30007.5 of the Coastal Act provides that where such conflicts exist, such conflicts should be resolved in a manner that on balance is most protective of coastal resources. In this case the remediation of the soil and groundwater contamination in combination with the wetland and sensitive resource mitigation measures are most protective of coastal resources. The Commission is suggesting modifications to the LCP that require the disturbed and degraded wetlands on the site be mitigated at a 4:1 ratio on a nearby site appropriate for wetland creation. The newly created wetlands will be of a much higher biological value and create a more functional, self-sustaining wetland habitat than what currently exists on the North Shore site. In addition, the other disturbed and degraded sensitive plant communities on North Shore site will be reestablished along the reliant canal and surrounding the milk-vetch preserve which will also provide for a more contiguous, higher quality and more functional habitat than what currently exists on the site. Therefore, as required under the Coastal Act, the proposed LCP amendment as modified, is most protective of coastal resources and will not adversely effect or significantly degrade the sensitive habitats on the subject site

In order to mitigate for fill of wetlands on the site a suggested modification requiring the creation of wetlands, at a 4:1 mitigation ratio, on a nearby site is required. A suitable wetland creation site has been identified across the Harbor Boulevard north of the Reliant power plant. This 28 acre parcel is adjacent to McGrath Lake and is highly disturbed by past grading activities associated with oil production. The site contains a go-cart track next to Harbor Boulevard and approximately 18 acres of the site is extensively covered with invasive ice plant. The North Shore landowner currently has an option to purchase the site. The recreated wetlands will have a much higher biological value than the disturbed wetlands on the North Shore site and will form a logical extension of the McGrath lake wetland complex. Pursuant to the requirements of suggested modifications the recreated wetland will have a 100 foot restored buffer around it and the go-cart track will be removed and restored to a dune habitat. Dr. Allen has visited the site and has determined the site is suitable for wetland creation and will create a logical extension of the adjacent wetland complex.

In order to insure the hydrocarbon contamination is fully remediated, wetland mitigation and on-site habitat mitigation is completed, and maintenance and monitoring of these recreated habitats are carried out should the developer go bankrupt or walk away from the project, performance bonding for the completion of these activities is required pursuant to suggested modifications. As specified in the suggested modifications, the performance bonds will be adequate to fund site remediation, creation of offsite wetlands, restoration of on-site habitats and maintenance and monitoring of these areas for a period of 10 years.

The access road that previously bisected the resource protection area has been relocated outside of the resource protection designation on the site. The access road from Fifth Street will avoid the designated resource protection area and will be located outside of a 50 foot native landscaped buffer surrounding the resource protection area.

There are five distinct offsite sensitive resource areas in proximity to the North Shore site: 1) the Reliant Canal/wetland; 2) a sensitive disturbed dune area on the Edison property to the north; 3) a disturbed sensitive dune area located directly across Fifth street to the south; 4) Mandalay State Beach located directly across Fifth Street from the site; and 5) McGrath State Beach located across Harbor Boulevard approximately one mile north of the North Shore.

Suggested policy modifications regarding onsite restoration of sensitive habitats along the Reliant Canal in combination with a 50 foot buffer surrounding this area will provide an adequate buffer to the canal wetlands and sensitive dune habitat on the Edison site to the north. In addition, a suggested policy modification requiring fencing and informational signage between the 50 foot buffer and resource protection area will restrict access to the canal and sensitive dune area. Therefore these adjacent offsite sensitive habitat areas will not be adversely impacted by the proposed residential development on the North Shore site.

The sensitive dune area south of the North Shore site will be protected from disturbance from residents and domestic animals from the North Shore site through a suggested modification requiring the City to install fencing and signage fronting this area along the right-of-way of Fifth Street from the intersection of Harbor Boulevard to the seaward edge of the bridge crossing the canal fronting this area. The fencing and signage will insure the sensitive dune resources on this site area not disturbed by residents or domestic animals from the North Shore development.

Mandalay State Beach, operated by Ventura County, is located directly across Harbor Boulevard from the North Shore site. This property contains sensitive dune and wetland habitats. In addition, western snowy plovers, a federally threatened species, nest in the foredune area of this beach. The north, east and western boundaries of the site are fenced and existing signage indicates no trespassing and restoration is in progress. This fencing restricts any public access from Harbor Boulevard and Fifth Street. The beach side of the park starting at the end of Fifth Street is not fenced. State Parks and the County have recently installed temporary lateral "symbolic" fencing on the beach to provide some protection of the nesting area. Mandalay State Beach is adjacent to an existing high density residential area known as Oxnard Shores. Therefore, there is already an existing level of human and animal disturbance occurring on this beach. There is no question that the North Shore Development will result in the incremental increase of people and dogs accessing this beach and contribute to the disturbance of the plover nesting area and sensitive dune area. In order to mitigate the potential for additional disturbance and degradation of the plover habitat and sensitive back dune areas a suggested modification requiring funding for installation and maintenance of protective fencing, additional directional and informational signage and a daily ranger patrol during the plover nesting season is necessary. These protective measures will insure the sensitive habitats of Mandalay State Beach are not significantly degraded by the incremental increase in public use resulting from the North Shore development. Furthermore, given there is already a certain level of existing disturbance from the public using the beach from the downcoast residential area, the above resource protection measures are reasonable and proportional to mitigate the incremental adverse impacts on sensitive resources at this beach resulting from residential development at the North Shore site.

McGrath State Beach is located north of the Reliant power plant approximately one mile north of the North Shore site. This State park unit also contains sensitive dune and wetland habitats, including McGrath Lake, the only back dune lake in southern California. Given this area is

located some distance from the North Shore site, across from a busy, high speed roadway and is for the most part fenced off from Harbor Boulevard the indirect impacts on the State Park from North Shore residents using this area on a routine basis will be minimal. In addition, lateral beach access to this area is impeded by the cooling water outflow that runs across the beach from the Reliant power plant. The lateral beach access route from the North Shore site is in excess of one and a half miles. Furthermore, access through the proposed 28 acre wetland mitigation site located adjacent to McGrath State Beach will be restricted pursuant to the wetland creation and restoration plans required as a suggested modification. Therefore, the residential development at North Shore will not result in significant adverse impacts to McGrath State Beach as required pursuant to sections 30240 and 30250 of the Coastal Act.

The extension of the urban/rural boundary to capture the North Shore site establishes a stable logical boundary between the agricultural areas to the east of the site and sensitive resource areas to the north, west and south of the site. The surrounding land uses include a mobile home park, single-family residential and visitor-serving commercial to the south, resource protection and recreation areas to the west, and energy facilities to the northwest. Agricultural land to the east is separated and buffered by the Reliant Energy Canal and will be further buffered by the proposed resource protection area in combination with the native landscaped 50 foot buffer area. The proposed resource protection area and 50 foot buffer will also provide a significant buffer to the sensitive wetland habitat in and along the canal and the disturbed sensitive dune area on the neighboring Edison property. The North Shore site has not historically sustained agricultural uses and the soils on the site do not meet the definition of prime agricultural land. The North Shore site is in close proximity to existing development and urban services such as water, sewer, electrical services and two major public roadways as required under Section 30250 of the Coastal Act. The LCP amendment, as modified to include policies to preserve sensitive habitat areas on Mandalay State Beach and the sensitive dune areas to the south will ensure the residential development of the North Shore site will not significantly degrade these environmentally sensitive areas as required under Section 30240 and 30250 of the Coastal Act.

If the site remains as it is, the existing native plant communities will continue to be adversely impacted by aggressive exotic invasive vegetation on the site and the contaminated soils. The site would remain a highly disturbed low quality habitat with high levels of hydrocarbon contamination.

If the hydrocarbon contamination on the site is not remediated it will eventually reach the groundwater aquifer that supplies both agricultural and drinking water to the City of Oxnard. If the landowner was not proposing to remediate the site voluntarily it is possible the Regional Water Quality Control Board could issue an order to remediate the contamination on the site. However, because over fifty oil companies were involved in disposal at this site it is likely this order would be tied up in litigation for many years. In the mean time the hydrocarbon contamination would continue to pollute the groundwater basin.

There are two sensitive animal species that have been observed on the North Shore site the Globose dune beetle and the San Diego black-tailed jackrabbit. In addition, the site also provides potential habitat for the slivery legless lizard another sensitive species. However, the legless lizard was not observed on the North Shore site. Given the existing habitat utilized by these species, dune scrub and coyote/willow scrub, are so fragmented and degraded, Dr. Allen has concluded that these degraded and fragmented habitats should not be considered ESHA. Although there will be temporal impacts to these species, as a result of site remediation, the

restored habitat on the site will provide a much higher quality contiguous habitat for such species. In addition, a suggested modification requiring site surveys and development of plans to capture, relocate and reintroduce any special status species prior to ground disturbing activities is necessary to insure protection and preservation of these species.

Finally, the proposed LCP amendment in combination with suggested modifications provides a comprehensive set of policies to protect and preserve the milk-vetch onsite surrounded by minimum 50 foot buffer areas. In addition, the LCP amendment contains policies for the establishment of offsite milk-vetch populations to insure the continuation of this previously thought to be extinct plant species.

The Oxnard LCP amendment, with the suggested modifications outlined in this report, is consistent with Chapter Three policies of the Coastal Act and the implementing ordinances are adequate to carry out the land use plan policies as modified.

Description of the Proposed Amendments in OXN-MAJ-1-00

City of Oxnard's submitted LCP amendment OXN-MAJ-1-00 includes the following proposed changes:

Amend the Land Use Plan (LUP/CP) of the Oxnard Local Coastal Program to:

1. Amend the following maps:
 - Map No. 2- *The Coastal Zone Map*
 - Map No. 6- *The Urban-Rural Boundary Map*
 - Map No. 7- *The Sensitive Habitats Map*
 - Map No. 12- *The Coastal Access Map*
 - Map No. 19- *The Coastal Plan Land Use Map*
2. Propose Resource Policies specific to the North Shore at Mandalay Bay site.
3. Propose Development Policies specific to the North Shore at Mandalay Bay site.
4. Propose Coastal Access and Recreation Policies specific to the North Shore at Mandalay Bay site

Amend the Implementation portion (IP/CZO) of Oxnard's Local Coastal Program to:

1. Amend the existing Coastal Zoning Map (Appendix B-3) to reflect proposed zoning for the North Shore at Mandalay Bay site.
2. Revise Ordinance for Single-family Beach Sub-zone to include a provision for North Shore at Mandalay Bay site.
3. Revise Ordinance for Coastal Recreation Sub-zone to include a provision for North Shore at Mandalay Bay site and an additional permitted use.
4. Revise Ordinance for Coastal Resource Protection Sub-zone to include a provision for North Shore at Mandalay Bay site.

5. Incorporate the proposed site-specific policies into the Coastal Zoning Ordinance Appendix (4): Local Coastal Policies.

Staff Recommendation

The staff recommends denial of the LUP/CP amendments as submitted, followed by the approval of the amendments with suggested modifications. Similarly, the staff recommends denial of the IP/CZO amendments as submitted, followed by approval of the amendments with suggested modifications.

Some of the proposed changes are minor in nature and can be certified as submitted. However, some of the proposed changes will result in an amended LUP/CP that will be inconsistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission staff has recommended suggested modifications to bring the proposed LUP/CP changes into conformity with the Coastal Act Chapter 3 policies, and to enable the proposed IP/CZO changes to adequately carry out the LUP/CP policies.

Public Participation

Section 30503 of the Coastal Act requires public input in preparation, approval, certification and amendment of any LCP. The City held a public hearing and received written comments regarding the project from concerned parties and members of the public. The hearing was duly noticed to the public consistent with Sections 13552 and 13551 of the California Code of Regulations. Notice of the subject amendment has been distributed to all known interested parties.

Procedural Requirements

Pursuant to Section 13551 (b) of the California Code of Regulations, the City resolution for submittal may submit a Local Coastal Program Amendment that will either require formal local government adoption after the Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513, and 30519. In this case, because this approval is subject to suggested modifications by the Commission, if the Commission approves this Amendment, the City must act to accept the certified suggested modifications before the Amendment will be effective. Pursuant to Section 13544, the Executive Director shall determine whether the City's action is adequate to satisfy all requirements of the Commission's certification order and report on such adequacy to the Commission. If the Commission denies the LCP Amendment, as submitted, no further action is required by either the Commission or the City.

Additional Information

For additional information, contact Kara Kemmler or John Ainsworth at the South Central Coast District Office: 89 S. California St., Ste. 200 Ventura, CA 93001 or 805-585-1800.

1.0 STAFF RECOMMENDATION, MOTIONS, AND RESOLUTIONS ON THE LAND USE PLAN/COASTAL PLAN (LUP/CP)

1.1 STAFF RECOMMENDATION TO ADOPT REVISED FINDINGS TO CERTIFY THE LUP/CP IF MODIFIED

MOTION I:

I move that the Commission adopt the revised findings in support of the Commission's action on July 13, 2000, concerning certification of Amendment OXN-MAJ-1-00 to the City of Oxnard Land Use Plan/Oxnard Coastal Plan as submitted by the City, if it is modified as suggested in the staff report.

STAFF RECOMMENDATION TO ADOPT REVISED FINDINGS TO CERTIFY IF MODIFIED

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings, as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the April 12, 2002 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

RESOLUTION TO ADOPT REVISED FINDINGS

The Commission hereby adopts the findings set forth below for approval of City of Oxnard Land Use Plan/Oxnard Coastal Plan as submitted by the City, if it is modified as suggested in the staff report on the ground that the findings support the Commission's decision made on April 12, 2002, and accurately reflect the reasons for that decision.

2.0 STAFF RECOMMENDATION, MOTIONS, AND RESOLUTIONS ON THE IMPLEMENTATION PLAN/COASTAL ZONING ORDINANCE (IP/CZO)

2.1 STAFF RECOMMENDATION TO ADOPT REVISED FINDINGS TO CERTIFY THE IP/CZO IF MODIFIED

MOTION II:

I move that the Commission adopt the revised findings in support of the Commission's action on July 13, 2000, concerning certification of Amendment OXN-MAJ-1-00 to the City of Oxnard Implementation Program/Coastal Zoning Ordinance as submitted by the City, if it is modified as suggested in the staff report.

STAFF RECOMMENDATION TO ADOPT REVISED FINDINGS TO CERTIFY IF MODIFIED

Staff recommends a **YES** vote on the motion. Passage of this motion will result in the adoption of revised findings, as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the April 12, 2002 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

RESOLUTION TO ADOPT REVISED FINDINGS

The Commission hereby adopts the findings set forth below for approval of City of Oxnard Implementation Plan/Coastal Zoning Ordinance as submitted by the City, if it is modified as suggested in the staff report on the ground that the findings support the Commission's decision made on April 12, 2002, and accurately reflect the reasons for that decision.

3.0 SUGGESTED MODIFICATIONS TO THE LUP/CP

Note: The Commission's recommended modifications for changes to the City's LUP/CP as submitted in OXN-MAJ-1-00 are shown in underline for added text and ~~strikethrough~~ for deleted text.

Suggested LUP/CP Modification #1

2.2.3 Amendment to Proposed Sensitive Habitats Map

The ~~area of~~ Ventura Marsh Milk-vetch habitat preservation area and dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush restoration area within the North Shore at Mandalay Bay site and the offsite wetland habitat restoration area ~~are~~ LCP is added to Map No. 7 (see Exhibit 2.3 in City's LCP Amendment document and Exhibit 4 of this staff report, which reflects the Commission's suggested modifications).

Suggested LUP/CP Modification #2

2.2.4 Amendment to Proposed Coastal Access Map

The proposed linear park and public bicycle/hiking trail adjacent to the resource protection area along the Reliant Energy canal within the North Shore at Mandalay Bay site and the public bicycle lane on Harbor Blvd and West Fifth Street along the edges of the North Shore site ~~are~~ added to Map No. 12 (see Exhibit 2.4 in City's LCP Amendment document and Exhibit 5 of this staff report, which reflects the Commission's suggested modifications).

Suggested LUP/CP Modification #3

2.2.5 Amendment to LCP Land Use Map

The LCP Land Use Map for McGrath/Mandalay Beach, Map No. 19, is amended (see Exhibit 2.5 in City's LCP Amendment document and Exhibit 6 of this staff report, which reflects the Commission's suggested modifications) to designate the North Shore at Mandalay Bay project site for Resource Protection Area, Recreation Area, and Planned Unit Development Residential. These Planned Unit Development Residential designation has historically been applied to new planned developments in the City, including the Mandalay Bay project south of the North Shore site, and the Colony Project north of Channel Islands Boulevard, with site specific policies for development. This designation is also consistent with the City of Oxnard's 2020 General Plan Land Use designation for the North Shore at Mandalay Bay project site of "Residential-Low", which permits a density of 3-7 dwelling units per gross acre.

Suggested LUP/CP Modification #4

SECTION 3.2: RESOURCE POLICIES

Subsection 3.2.2: Habitat Areas

Local Coastal Policies:

(Add Policy #10.1 following existing Policy #10)

"10.1. The North Shore at Mandalay Bay project site, an 82.7 net 94-acre property located north of West Fifth Street, east of Harbor Boulevard and south and west of the Reliant Energy canal, has been designated Resource Protection Area, Recreation Area, and Planned Unit Development. The following policies shall apply specifically to this development area:

- a. Existing soil and groundwater contamination on the site shall be remediated in accordance with the Remedial Action Plan approved by the Regional Water Quality Control Board - Los Angeles Region (RWQCB). All other permits and authorizations from other agencies having oversight responsibility for the remediation process shall be obtained as required. A performance bond shall be required prior to issuance of a CDP equal to the value of the labor and materials necessary to carry out the remediation plan. The performance bond shall be released upon completion of the remediation to the satisfaction of the RWQCB. If the applicant fails to complete the remediation according to the approved plan, the City shall collect the security and complete the remediation work.
- b. Ventura Marsh Milk-vetch on-site habitat shall be protected and enhanced onsite within the 1.65 acre preservation area. The preservation area shall lie within a 23.8 acre resource protection area. preservation and mitigation shall be performed as set forth in the Memorandum of Understanding between the land owner and the California Department of Fish & Game (CDFG), dated July 27, 1999.

Onsite preservation and mMitigation shall include but not be limited to:

- 1) Establishment of a 100-foot soil remediation/excavation limit line around the existing Milk-vetch population. No ex-situ soil remediation shall occur within this 100-foot soil remediation/excavation limit line encompassing the 1.65 acre Milk-vetch preservation area.
- 2) Permanent protection and preservation of a 1.65 40.4-acre Milk-vetch preservation area within a 23.8 acre resource protection area and (5.2 acres under the Memorandum of Understanding between the Landowner and State of California Department of Fish & Game, dated July 27, 1999, and an additional 4.9 acres under the Settlement Agreement between the City of Oxnard, California Native Plant Society, and North Shore at Mandalay Bay LLC, dated August 29, 2000) which includes the existing Milk-vetch and a 50 foot wide landscaped buffer between the resource protection area plants and planned residential development. A fence shall be constructed around the 1.65 acre Milk-vetch preservation area to protect the Milk-vetch from human and/or domestic animal activities.
- 3) Restoration, management, maintenance and monitoring plans shall be developed for the Milk-vetch preserve area by a qualified biologist and/or resource specialist and shall be reviewed and approved by CDFG and the City of Oxnard. The plans shall at a minimum include procedures and technical specifications for planting; soil engineering and soil amendment criteria; identification of plant species and density; maintenance measures and schedules; temporary irrigation measures; restoration success criteria; measures to be implemented if success criteria are not met; and long-term adaptive management of the restored areas for a period of not less than 10 years.
- 4) Off-site Milk-vetch population locations and plans for establishment shall be performed as set forth in the Memorandum of Understanding between the landowner and approved by the California Department of Fish and Game, dated July 27, 1999.

- 5) Conservation easements (or other equivalent document) which serve to permanently protect the Milk-vetch preserve area shall be recorded prior to ground-disturbing activities.
- 6) The status of below-surface contaminants in the area around the Milk-vetch plants that will not be remediated (in order to avoid impacts to the plants) shall be monitored by groundwater monitoring wells installed around the preserve area.
- 7) Land use within the restoration area around the Milk-vetch preservation buffer area shall be restricted to the development and use of interpretive nature trails.
- c. The loss of Dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush habitat preservation and restoration shall be mitigated onsite at a replacement ratio of 1:1, performed as set forth in the Memorandum of Understanding between the Landowner and the State of California Department of Fish & Game, dated July 27, 1999.

Mitigation shall include, but not be limited to:

- 1) ~~Dune scrub habitat creation at a maximum 1:1 ratio, through enhancement/restoration of preserved on-site habitat and enhancement/restoration of preserved off-site habitat.~~
- 2) ~~On-site restoration which partially satisfies the mitigation requirement may be located on open space areas adjacent to West Fifth Street and surrounding the Milk-vetch Resource Protection area.~~
- 3) 1) Dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush habitat within the Milk-vetch preserve but outside of the fenced Milk-vetch setback shall be restored, enhanced and permanently protected.
- 4) ~~Off-site restoration areas shall be identified and plans submitted for approval not later than 12 months after ground-disturbing activities are initiated.~~
- 5) 2) Dune scrub - Restoration, maintenance and monitoring plans shall be developed for the dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush restoration areas by a qualified biologist and/or resource specialist and shall be reviewed and approved by CDFG and the City of Oxnard. The plans shall at a minimum include procedures and technical specifications for planting; soil engineering and soil amendment criteria; identification of plant species and density; maintenance measures and schedules; temporary irrigation measures; restoration success criteria; measures to be implemented if success criteria are not met; and long-term adaptive management of the restored areas for a period of not less than 10 years.
- 6) 3) Conservation easements (or other equivalent document) which serve to permanently protect the restored areas shall be recorded over the on-site areas prior to ground-disturbing activities.
- 4) A landscaped 50 foot wide buffer area shall be established between the dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush restoration/resource protection areas and the planned residential development. The landscaped buffer area adjacent to the resource protection area shall also serve as a linear parkway and include the public trail. The landscaped buffer areas shall be landscaped with plants native to the Ventura coastal region.

5) Performance bonds shall be required prior to the issuance of a CDP to guarantee the compliance with the restoration of the onsite resource protection area prior to occupancy clearance as follows: a) one equal to the value of the labor and materials and b) one equal to the value of the maintenance and monitoring for a period of 10 years for the restoration of the dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush habitat/resource protection area. Each performance bond shall be released upon satisfactory completion of the applicable items (a) and (b) above. If the applicant fails to either restore or maintain and monitor according to the approved plans, the City shall collect the security and complete the work on the property.

d. ~~Willow scrub and saltgrass grassland revegetation~~ Wetland habitat impacted by development shall be mitigated as set forth in the Memorandum of Understanding between the land owner and the State of California Department of Fish & Game, dated July 27, 1999 at a 4:1 creation ratio offsite on the "McGrath" parcel (Assessor's Parcel No. 1380805).

Mitigation shall include but not be limited to:

1) ~~Replacement habitat creation at a 1:1 ratio, unless lower quality habitat is restored to yield a significantly higher biological value than the habitat that is affected by project development.~~

2) ~~On-site restoration which satisfies or partially satisfies the mitigation requirement may be located in the 70-foot wide easement along the Reliant Energy Canal, an open space lot in the northern portion of the site, and the northeastern portion of open space surrounding the Milk-vetch Resource Protection area.~~

3) ~~Off-site restoration areas shall be identified within six months of any CDFG determination that on-site restoration did not adequately mitigate impacts to willow scrub and saltgrass grassland.~~

4)1) ~~Willow scrub and saltgrass~~ Wetland habitat creation, restoration, management, maintenance and monitoring plans shall be developed for the restored mitigation areas on the "McGrath" parcel by a qualified biologist and/or resource specialist and shall be reviewed and approved by CDFG and the City of Oxnard. The plans shall provide a 100 foot restored buffer as measured from the upland limit of the wetland area, and at a minimum include ecological assessment of the mitigation site and surrounding ecology; goals, objectives and performance standards; procedures and technical specifications for wetland and upland planting; methodology and specifications for removal of exotic species; soil engineering and soil amendment criteria; identification of plant species and density; maintenance measures and schedules; temporary irrigation measures; restoration success criteria; measures to be implemented if success criteria are not met; and long-term adaptive management of the restored areas for a period of not less than 10 years. The plans shall also provide for removal and restoration of the existing go-cart facility and fencing and signage to prevent uncontrolled public access.

5)2) Conservation easements (or other instruments) which serve to permanently protect the restored areas shall be recorded over the on-site areas "McGrath" parcel (Assessor's Parcel No. 1380805) prior to ground-disturbing activities on the North Shore site.

- 3) Performance bonds shall be required prior to the issuance of a CDP to guarantee the compliance with the restoration of wetland habitat on the "McGrath" parcel prior to occupancy clearance as follows: a) one equal to the value of the labor and materials and b) one equal to the value of the maintenance and monitoring for a period of 10 years for the restoration of wetland habitat on the "McGrath" parcel. Each performance bond shall be released upon satisfactory completion of the applicable items (a) and (b) above. If the applicant fails to either restore or maintain and monitor according to the approved plans, the City shall collect the security and complete the work on the property.
- e. The following landscape requirements, resource protection area maintenance and monitoring responsibilities, resource information disclosure requirements, and covenants, conditions and restrictions for the North Shore development are required:
- e-1) Preparation, review, and implementation of landscaping plans for the project shall include provisions for the control of invasive plant species to address the potential impacts of non-native plants colonizing adjacent native habitats. Covenants, Conditions and Restrictions shall be recorded specifying that landscaping for individual housing lots shall not include any exotic invasive plant species. The Covenants, Conditions and Restrictions shall be binding on each of the lots in the subdivision, shall run with the land affected by the subdivision, and shall be included or incorporated by reference in every deed transferring one or more of the lots in the subdivision.
- 2) The Covenants, Conditions and Restrictions shall assign the responsibility for long-term maintenance and monitoring of the resource protection area to the homeowners association, which shall work in cooperation with CDFG. The landowner or the homeowners association may assign these long-term obligations to CDFG, a special district or a non-profit association acceptable to the Executive Director of the Commission.
- 3) The project applicant shall provide, in connection with the sale of each housing unit, an information packet that explains the sensitivity of the natural habitats onsite and nearby and the need to minimize impacts on the designated resource protection areas, the limits on public trail access within or adjacent to such areas, the prohibition on landscaping that includes exotic invasive plant species, and the limits on exterior residential lighting. The Covenants, Conditions and Restrictions shall include the same explanation and restrictions.
- f. Reliant Energy canal habitat protection measures shall be reviewed and approved by CDFG and the City of Oxnard as follows:
- 1) The public trail to be provided within the landscaped buffer/linear parkway adjacent to the resource protection area along the Reliant Energy canal shall be located ~~away from the water area~~ and as close to the housing lots as possible. In addition, native shrubs and other native vegetation shall be planted between the trail and the canal to serve as a visual buffer between human activity and wildlife associated with the canal.
- 2) Interpretive signs shall be placed in appropriate locations along the edges of ~~nearby natural habitat~~ resource protection areas explaining the sensitivity of natural habitats and the need to minimize impacts on these adjacent areas.
- 3) Adequate fencing will be provided between the designated recreation areas and resource protection areas ~~edge of development and the banks of the Reliant Energy canal~~ for the

purpose of minimizing human and domestic animal presence in the restoration areas and along the canal.

- 4) ~~Best runoff management practices will be utilized in drainage plans throughout the development and to minimize runoff of toxic wastewater and sedimentation into the Reliant Energy canal and street level water collection basins.~~

4) A Water Quality Control Plan (WQCP) shall be developed and implemented for the North Shore at Mandalay Bay project site to ensure that all approved development:

- ◆ Protect areas that provide important water quality benefits, that are necessary to maintain riparian and aquatic biota and/or that are particularly susceptible to erosion and sediment loss.
- ◆ Limit disturbance of natural drainage features and vegetation.
- ◆ Minimize the creation of impervious surfaces.
- ◆ Reduce post-development loadings of Total Suspended Solids (TSS) so that the average annual TSS loadings are no greater than pre-development loadings.
- ◆ Incorporate a combination of Best Management Practices (BMPs) best suited to reduce pollutant loading and minimize runoff and erosion. Source control BMPs shall be emphasized over treatment BMPs where feasible. The BMPs utilized shall be designed to treat, infiltrate, or filter stormwater runoff to meet the standards of the 85th percentile, 24-hour runoff event for volume-based BMPs and/or the flow of runoff produced from a rain event equal to at least two times the 85th percentile, 1-hour event for flow-based BMPs.
- ◆ Include construction phase erosion control and polluted runoff control plans.
- ◆ Include post-development phase drainage and polluted runoff control plans designed to control runoff using natural drainage and vegetation to the maximum extent practicable.

5) A Water Quality Monitoring Plan (WQMP) shall be developed and implemented for the North Shore at Mandalay Bay project site to evaluate the effectiveness of the WQCP in protecting the quality of surface and groundwater. The WQMP shall include, at a minimum, the following:

- ◆ Annual inspection and maintenance of the condition and operational status of all required BMPs. Major observations to be made during inspections shall include: location of discharges of sediment or other pollutants from the site; BMPs that are in need of maintenance; BMPs that are not performing, failing to operate, or inadequate; and locations where additional BMPs are needed. Verification of maintenance shall include the permittee's signed statement accepting responsibility for all structural and treatment control BMP maintenance until such a time as the property is transferred and another party takes responsibility.
- ◆ Monitoring to ensure that average annual TSS loadings are maintained at pre-development levels and do not exceed water quality standards. The WQMP shall specify sampling locations, sampling protocols, pre-development TSS levels and permitted standards for

TSS. Monitoring shall be conducted annually for the first five years following the commencement of development and shall occur during the first significant storm event of the rainy season and each following month through the end of the rainy season. Following this initial monitoring period, monitoring shall be conducted at five-year intervals during the first significant storm event of the rainy season, provided average annual TSS loadings are determined not to exceed pre-development levels and/or water quality standards. If it is determined that pre-development levels and/or water quality standards are exceeded, the permittee shall conduct annual monitoring for a period of at least five years, or until it is determined that pre-development levels and water quality standards for TSS are not exceeded. The permittee shall assess the potential sources of the excessive TSS loadings, including inadequate or failed BMPs, and take corrective actions to remedy the water quality impacts. Verification of monitoring shall include the permittee's signed statement accepting responsibility for all monitoring until such a time as the property is transferred and another party takes responsibility.

g. Special status wildlife protection measures shall be reviewed and approved by the City of Oxnard and CDFG as follows:

- 1) The street lighting and exterior residential lighting shall be limited in intensity and shielded in order to minimize impacts to wildlife within the designated resource protection areas and along the Reliant Energy Canal.
- 2) Prior to any ground disturbing activities, surveys shall be conducted for special status wildlife species. A plan shall be developed for the collection and relocation of individual animals to an appropriate location offsite during site disturbance and reintroduction onto the site upon completion of soil remediation and habitat restoration.

h. Offsite resource protection measures shall include the following:

1) Prior to the issuance of a CDP, the City and/or developer shall provide funding to Ventura County Parks Department and/or the California Department of Parks and Recreation adequate to implement the following resource protection measures at Mandalay State Beach:

- ♦ Construction and maintenance of seasonal and/or permanent fencing adequate to delineate and protect snowy plover nesting areas and sensitive dunes areas on Mandalay State Beach.
- ♦ Installation and maintenance of informational and directional signage at 100 foot intervals along the beach and perimeter of the property to direct and inform people of the sensitive resources on Mandalay State Beach. The signage shall specifically prohibit dogs on Mandalay Beach.
- ♦ Daily ranger patrols of Mandalay State Beach from March thru September to ensure compliance with the protective measures cited above. The funding obligation for the patrol shall not exceed the cost for a half-time ranger from March thru September.

Specific funding mechanisms to implement the above resource protection measures shall be established through a CDP. The above resource protection measures shall be in place prior to the construction of residences on the North Shore site at Mandalay Bay.

- 2) The City shall install fencing in the City's right-of-way along West Fifth Street between Harbor Boulevard and seaward end of the bridge over the Reliant Energy Canal to prevent public access into the sensitive dune area located west of the canal and south of Fifth Street. Signage shall be affixed to the fence at maximum interval of 100 feet indicating this area is private property, no trespassing and is a sensitive habitat area.

Suggested LUP/CP Modification #5

SECTION 3.5: DEVELOPMENT POLICIES

Local Coastal Policies:

(Add Policy #49.1 following existing Policy #49)

"49.1. The North Shore at Mandalay Bay project site, an 82.7 net 94-acre property located north of West Fifth Street, east of Harbor Boulevard and south and west of the Reliant Energy canal, has been designated Resource Protection Area, Recreation Area, and Planned Unit Development. The following policies shall apply specifically to this development area:

- a. Land uses shall consist of: single-family residential development; a Milk-vetch habitat preserve area; dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush restoration area; and landscaped buffer area; and a public trail within a the landscaped buffer/linear parkway along the Reliant Energy canal. The linear parkway shall serve as a landscape buffer to the resource protection areas, Reliant Energy canal and agricultural lands beyond the canal, and as a native habitat planting area.
- b. Existing overhead utility lines on and adjacent to the development on this property shall be placed underground in accordance with City ordinances in effect at the time of grading permit issuance.
- c. The maximum number of development units shall be limited to 300.

Suggested LUP/CP Modification #6

SECTION 3.7: COASTAL ACCESS AND RECREATION POLICIES

Subsection 3.7.1: Access and Recreation

Local Coastal Policies:

(Add Policy #82.1 following current Policy #82)

"82.1. The North Shore at Mandalay Bay project site, an 82.7 net 94-acre property located north of West Fifth Street, east of Harbor Boulevard and south and west of the Reliant Energy canal, has been designated Resource Protection Area, Recreation Area, and Planned Unit Development. The following policy shall apply specifically to this development area:

- a. Public coastal access and recreation facilities shall include:

- 1) a 750-foot-wide landscaped buffer/linear parkway between the resource protection area along the Reliant Energy canal and the residential development, that includes a 15-foot-wide bicycle/pedestrian path; and
- 2) a 6-foot-wide bicycle lane on both Harbor Boulevard and West Fifth Street, along the outside edges of the project site.

3.1 SUGGESTED MODIFICATIONS TO THE IP/CZO

IP/CZO Suggested Modification #1

Note: The Commission's recommended modifications for changes to the City's IP/CZO as submitted in OXN-MAJ-1-00 are shown in underline for added text and ~~strikethrough~~ for deleted text.

2.3.1 Proposed LCP Zoning Map Amendment

As part of the LCP's Implementation Program, the proposed Zoning Map Amendment (see Exhibits 2.6 and 2.7 in City's LCP Amendment document and Exhibits 7 & 8 of this staff report, which reflects the Commission's suggested modifications) implements the LCP Land Use Plan and Policies, and applicable mitigation measures identified in the Final EIR, as well as the MOU, and RAP. In particular, LCP Land Use Plan policies for resource protection and the provision of coastal access and public open space and recreational opportunities are reflected in this Zoning Map Amendment for the property.

The three zones utilized on the Zoning Map Amendment for the North Shore at Mandalay Bay project already exist within the City's Coastal Zoning Ordinance, the purposes of which are summarized as follows:

•RP — Coastal Resource Protection Zone:

"The purpose of the RP zone is to protect, preserve, and restore environmentally sensitive habitat areas within the coastal zone of the City of Oxnard. The major resource or habitat areas within the City's coastal zone include but are not limited to wetlands, sand dunes, riparian habitats, endangered species habitats and marine habitats. Development within the RP zone shall be consistent with Policy Nos. 6, 11, 12, 13, 16, and 20 of the certified Oxnard Coastal Land Use Plan and Section Nos. 30230, 30231, 30236, and 30240 of the 1976 Coastal Act."

(Oxnard Coastal Zoning Ordinance Section 37-2.14.1)

•RC — Coastal Recreation Zone:

"The purpose of the RC zone is to provide open space for various forms of outdoor recreation of either a public or private nature. The intent is to encourage outdoor recreational uses which will protect and enhance areas which have both active and passive recreation potential. Such uses should offer recreational activities which complement and are appropriate to the area because of their natural resources and beauty. This zone is designed to implement the recreational policies of the Oxnard Coastal Land Use Plan, as outlined in Chapter 3.7.1." "Nothing in this [zoning] section shall restrict public or private access to recreational opportunities provided within the coastal zone of the City of Oxnard."

(Oxnard Coastal Zoning Ordinance Section 37-2.13.1)

•R-B-1 — Single-Family Beach Zone:

"The purpose of the R-B-1 zone is to provide areas in which the low-profile, small scale character of existing single-family beach-oriented neighborhoods may be, preserved to provide reasonable protection to existing low to moderate income housing. Development within the R-B-1 zone shall be consistent with the policies of the Oxnard Coastal Land Use Plan."
(Oxnard Coastal Zoning Ordinance Section 37-2.1.1)

The portions of the property which have been zoned Resource Protection contains the Ventura Marsh Milk-vetch and a 100-foot-wide fenced soil remediation/excavation limit preservation area and dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush restoration area. Additional area has been zoned Coastal Recreation to provide a substantial buffer between the Milk-vetch resource protection area and the planned residential development on the property and to preserve as much of the existing vegetation and topography around the Milk-vetch plants as possible. These areas Milk-vetch preservation area and surrounding restoration area together comprise a 40.4 23.8 acres resource protection area ~~(5.2 acres under the MOU and an additional 4.9 acres under the Settlement Agreement).~~

~~Additional areas zoned Coastal Recreation include: an open space area adjacent to West Fifth Street to preserve additional dune scrub (.88 acre as provided in the Settlement Agreement), an open space area on the northerly portion of the site (1.24 acres) and a linear park along the Reliant Canal (5.84 acres).~~

The balance of the Project site has been zoned Single-Family Beach.

IP/CZO Suggested Modification #2

Note: The Commission's recommended modifications for changes to the City's IP/CZO as submitted in OXN-MAJ-1-00 are shown in underline for added text and ~~strikethrough~~ for deleted text. The City's recommended modifications to the IP/CZO as submitted in OXN-MAJ-1-00 are shown in double underline for added text.

2. Ordinance Section 37-2.13.0: RC (Coastal Recreation Sub-zone)

Add a new Subsection 8 under Section 37-2.13.3 (Conditionally Permitted Uses) as follows:

8. Improved (paved) riding, hiking, biking and walking trails for North Shore at Mandalay Bay.

IP/CZO Suggested Modification #3

Note: The Commission's recommended modifications for changes to the City's IP/CZO as submitted in OXN-MAJ-1-00 are shown in underline for added text and ~~strikethrough~~ for deleted text. The City's recommended modifications to the IP/CZO as submitted in OXN-MAJ-1-00 are shown in double underline for added text.

4. Coastal Zoning Ordinance Appendix (4): City of Oxnard Municipal Code (Local Coastal Policies; pp. LCP-1 through LCP-22)

Add to this comprehensive policy set all of the new LCP Land Use Plan Policies adopted for the LCP Amendment for the North Shore at Mandalay Bay project, specifically Resource Policy No. 10.1 (a) through (fh); Development Policy No. 49.1 (a) through (bc); and Coastal Access and Recreation Policy 82.1(a).

4.0 FINDINGS AND DECLARATIONS FOR THE LAND USE PLAN/COASTAL PLAN (LUP/CP)

The Commission hereby finds and declares as follows:

4.1 STANDARD OF REVIEW FOR THE LAND USE PLAN AMENDMENTS

The Coastal Act provides:

The commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200)... (Section 3051(c))

The standard of review that the Commission uses in reviewing the adequacy of the land use plan is whether the land use plan is consistent with the policies of Chapter 3 of the Coastal Act.

4.2 HISTORY AND BACKGROUND OF THE NORTH SHORE AT MANDALAY BAY SITE

The Coastal Commission certified the City of Oxnard LCP (consisting of both the Coastal Plan ("CP") and Coastal Zoning Ordinance ("CZO")) in February of 1982, most recently amended by the City and certified by the Coastal Commission on July 1988. The purpose of this LCP Amendment is to annex the North Shore at Mandalay Bay site into the City and apply coastal land use policies and zoning specific to the site. This LCP Amendment was recommended for adoption by the Oxnard Planning Commission on August 3, 2000 (Resolution No. 2000-42) and adopted on September 12, 2000 by the Oxnard City Council (Ordinance No. 2537 and Resolution No. 11,817).

The City of Oxnard's LUP/CP is structured to correspond to the four geographic areas of the City of Oxnard coastline: McGrath-Mandalay, Oxnard Shores, Channel Islands, and Ormond Beach. The LUP/CP contains background information that describes the types of development and coastal zone resources located within each of the four geographic areas. It also provides the land use designations and development policies for development specific to the each of the geographic areas. This LCP Amendment will amend the maps and policies for the McGrath-Mandalay area through inclusion of the recently annexed North Shore at Mandalay Bay property with applicable coastal zone land use designations and site specific policies.

The proposed LCP amendment addresses a specific property known as the North Shore at Mandalay Bay. The project site encompasses approximately 90 gross (82.7 net) acres located at the northeastern corner of the intersection of Harbor Boulevard and West Fifth Street, within the incorporated city limits of the City of Oxnard, California. Harbor Boulevard forms the western boundary and West Fifth Street is the southern boundary of the site. The Reliant Energy canal (formerly Southern California Edison) borders the site on the east and north (Exhibit 1).

The proposed LCP amendment addresses changes and additions to land use plan maps, zoning map, land use plan policies and implementing ordinances of the City of Oxnard LCP on a site specific basis. The North Shore at Mandalay Bay will be a master planned residential community consisting of approximately 300 residential units, resource protection areas and a linear park and bike path. Circulation will be provided by a series of looped internal residential

streets with access onto Harbor Boulevard and West Fifth Street. The planned residential lots will range in size from 4,000 square feet to 6,000 square feet. The homes will be single family detached for-sale housing. The homes will range in size from 1,700 square feet to 3,200 square feet.

On April 19, 2000, the Ventura County Local Agency Formation Commission (LAFCO) approved the annexation of the North Shore site into the City of Oxnard, including the Reliant Energy Canal. This action was challenged and reconfirmed, exclusive of the Reliant Energy Canal on June 21, 2000. Prior to annexation of the North Shore site into the City, the site was under the jurisdiction of Ventura County. The site was designated as Open Space in the Ventura County Coastal Plan. For approximately thirty years the site was utilized in an oil field waste disposal facility from 1955 until its closure in 1982. This facility was a permitted use under the open space designation in the County's LCP. As a result of the historical oil waste disposal operations soil and groundwater on the site are contaminated. It is estimated that approximately 400,000 cubic yards of soil is contaminated with primarily petroleum hydrocarbons. In addition, volatile organic compounds have been found along with small amounts of metals and other chemicals. Site records indicate that over the 28 years the site was operated as a disposal area, approximately 50 drilling companies deposited over 8.1 million barrels of waste at the site.

In order to clean up the petroleum hydrocarbon contamination from the soil, avoid additional contamination of the groundwater and make the site suitable for residential development the landowner is proposing to remediate the existing soil and groundwater contamination. A Remedial Action Plan (RAP) was approved by the Los Angeles Regional Water Quality Control Board in January, 1997. This plan defines the soil and groundwater remediation actions planned for the site. The primary objective of the RAP is to reduce the specific chemical concentrations in the soil and groundwater to levels that protect human health and the environment. Soil remediation is planned to prevent further contamination of groundwater as contaminated soil is the source of groundwater contamination on the site. Soil remediation will consist of above ground bioremediation. This method involves enhancing the naturally occurring bacteria in the soils which degrade petroleum hydrocarbons. Essentially, the entire site, with the exception of a preserve area, will be excavated in stages to an approximate depth of 20 feet and involve some 400,000 cubic yards of soil. Once the soil is remediated the soil will be used as compacted fill for future residential development and for resource mitigation areas.

The North Shore at Mandalay Bay site contains a small area (approximately 0.4 acre) of a special status plant species, the Ventura Marsh Milk-vetch, which was previously thought to be extinct. The milk-vetch population onsite consists of approximately 280 individual plants. The milk-vetch is growing in clay fill material brought on the site during the closure process of the oil waste facility. This clay material contains visible amounts of construction debris and rubble. It is postulated that the seed stock for these plants were contained in the clay material brought in and deposited as final cover material for the site. At some point, when moisture conditions in the clay were appropriate, the seeds germinated and established the population on the site. Petroleum hydrocarbon contamination in high concentrations exist at a depth of approximately 5 feet under the plant population. The contamination appears to be adversely impacting the health of the adult milk-vetch plants because the deeper tap roots are extending into the contaminated soil zone. Although the milk-vetch population is growing in a contaminated and disturbed environment this plant species is so rare and unique that this population is considered an Environmentally Sensitive Habitat Area as defined in the Coastal Act (discussed in detail in

the Sensitive Resources Section below). The milk-vetch population will be preserved and enhanced in place and the area onsite is designated as a resource protection area/zone in the amended LCP.

The historical operation of the site as an oil field waste disposal facility substantially affected the original soil characteristics, topography and biological value of the site. The vegetation and wildlife currently on the site represent species that have re-established themselves on the site since the site was graded in 1982 as part of the closure of the oil field disposal operations. Prior to use of the site as an oil waste disposal facility, the property was part of a larger dune complex which is evident on adjacent properties. The plant communities onsite are difficult to categorize because of the overlap and mixture of exotic and native vegetation types. The dominant vegetation on the site is disturbed ice plant vegetation (approximately 36.4 acres). Other plant communities on site include willow scrub and saltgrass wetlands, coyote brush/willow scrub, willow/myoporum, coyote brush, dune scrub, dune/iceplant scrub, coastal sagebrush, myoporum, buckwheat and mixed scrub communities in fragmented and isolated patches. As a result of the past site disturbance these plant communities are severely degraded. In addition, invasive species, such as iceplant and myoporum exist onsite. In their current form and distribution, these plant communities have minimal ecological function and value. The soils supporting these plant communities are contaminated with petroleum hydrocarbons and do not provide a good substrate to sustain a healthy plant community.

There are basically three habitat groups onsite that are considered sensitive and have ecological resource value. Those groups include ESHA: milk-vetch, wetlands: willow scrub and saltgrass, and disturbed sensitive resources: dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush. These disturbed sensitive plant communities have established themselves on the artificial landfill cap that was placed on the site when the oil waste disposal site was closed. These plant communities are all typically considered ESHA due to their limited extent and high biological value within an ecosystem. However, in this case, because of the disturbed and dispersed nature of these plant communities on the site in conjunction with a highly contaminated soil and groundwater environment, the biological and ecological value of these communities is greatly diminished. Therefore, as described in detail in the Sensitive Resources Section below, the disturbed sensitive resources group vegetation types do not qualify as ESHA as defined by the Coastal Act. However, because these plant communities do provide some limited ecological function and biological value the loss of these plant communities to residential development or remediation activities requires mitigation. As described in detail below, the proposed LCP amendment includes policies that require mitigation for the loss of the dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush plant communities.

The annexation of the North Shore site and planned residential use requires the City to amend the urban-rural boundary to incorporate the property into the urban development area within the City as a part of this LCP amendment. The site was historically coastal sand dunes prior to oil waste disposal activities and has never been utilized for agricultural uses. The soils onsite are unsuitable for agriculture and the existing agricultural fields in the area lie east of the Reliant Energy Canal, which forms the eastern and northern border of the North Shore site, thus creating a logical border rural areas and urban development areas. The native habitat restoration area and the adjacent landscaped buffer zone along the canal, which are part of this amendment will provide a substantial buffer between the site's planned residential development and the existing agricultural uses. (See the New Development and Cumulative Impacts Section below for a more detailed discussion.)

Also included as a part of this LCP amendment are three bike/pedestrian paths and a linear parkway to provide recreational opportunities for new residents and the general public. A 6 foot wide public bike path will be constructed on Harbor Blvd and West Fifth Street along the edges of the site. In addition, the landscaped buffer zone along the Reliant Canal will serve as a linear parkway in which a 15 foot wide public bike and pedestrian trail will be provided. This trail will connect at the ends to the bike trails along Harbor Blvd and Fifth Street, thus enhancing the public recreational opportunities in the area by providing a safer, more scenic alternative within the development.

The benefits of the proposed amendment include the creation of a stable and logical urban-rural boundary with defined buffers between urban and agricultural uses, water quality enhancement onsite and prevention of pollution of coastal waters offsite, and wetland/sensitive resource restoration and protection.

4.3 PROPOSED CHANGES TO THE MAPS AND POLICIES OF THE LUP/CP AND CONSISTENCY WITH CHAPTER 3 POLICIES OF THE COASTAL ACT

LCP Amendment OXN-MAJ-1-00 is intended to amend and update the City of Oxnard's LCP to reflect annexation of the North Shore at Mandalay Bay site. Thus, the amendment proposes modifications to the LUP/CP in order to incorporate the North Shore site into the City and apply land designations and site-specific policies.

The proposed changes to the LUP/CP are as follows:

1. Amend the following maps:
 - Map No. 2- *The Coastal Zone Map*
 - Map No. 6- *The Urban-Rural Boundary Map*
 - Map No. 7- *The Sensitive Habitats Map*
 - Map No. 12- *The Coastal Access Map*
 - Map No. 19- *The Coastal Plan Land Use Map*
2. Propose Resource Policies specific to the North Shore site.
3. Propose Development Policies specific to the North Shore site.
4. Propose Coastal Access and Recreation Policies specific to the North Shore site.

4.4 DISCUSSION AND FINDINGS

4.4.1 NEW DEVELOPMENT & CUMULATIVE IMPACTS

Proposed changes to map no. 2, The Coastal Zone Map (Exhibit 2), map no. 6, The Urban-Rural Boundary Map (Exhibit 3) and map no. 19, The Coastal Plan Land Use Map (Exhibit 6) shall reflect annexation of the North Shore site into the City of Oxnard, realignment of the urban-rural boundary line to include the site within the urban development area, and the three land use designations. In addition, the City proposes to incorporate site-specific development policies into the Land Use Plan. These proposed changes effectively convert existing open space land to primarily residential land. Such a conversion must be consistent with Coastal Act Sections 30240, 30241, 30242 and 30250. In addition, the North Shore site currently exists as a vacant parcel upon which new planned residential development is proposed, thus, the development policies must be consistent with Section 30251 of the Coastal Act.

Section 30241 states, in relevant part:

The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, and conflicts shall be minimized between agricultural and urban land uses....

- (a) *By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.*

Section 30242 states:

All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.

Section 30250 states, in relevant part:

New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

Section 30251 states, in relevant part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

Section 30240 states:

- (a) *Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.*

- (b) *Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.*

Suggested Modifications

The proposed amendment text for the above mentioned changes including the Commission's suggested modifications follows:

The Coastal Zone Map for the McGrath/Mandalay Beach Coastal Zone Area, Map No. 2, is amended (see Exhibit 2.1 in City's LCP Amendment document and Exhibit 2 of this staff report) to include the North Shore at Mandalay Bay property.

The Urban-Rural Boundary, Map No. 6, is amended (see Exhibit 2.2 in City's LCP Amendment document and Exhibit 3 of this staff report) to include the North Shore at Mandalay Bay within the urban development area.

The LCP Land Use Map for McGrath/Mandalay Beach, Map No. 19, is amended (see Exhibit 2.5 in City's LCP Amendment document and Exhibit 6 of this staff report, which reflects the Commission's suggested modifications) to designate the North Shore at Mandalay Bay project site for Resource Protection Area, Recreation Area, and Planned Unit Development Residential. These Planned Unit Development Residential designation has historically been applied to new planned developments in the City, including the Mandalay Bay project south of the North Shore site, and the Colony Project north of Channel Islands Boulevard, with site specific policies for development. This designation is also consistent with the City of Oxnard's 2020 General Plan Land Use designation for the North Shore at Mandalay Bay project site of "Residential-Low", which permits a density of 3-7 dwelling units per gross acre.

"49.1. The North Shore at Mandalay Bay project site, an 82.7 net 94-acre property located north of West Fifth Street, east of Harbor Boulevard and south and west of the Reliant Energy canal, has been designated Resource Protection Area, Recreation Area, and Planned Unit Development. The following policies shall apply specifically to this development area:

- a. Land uses shall consist of: single-family residential development; a Milk-vetch habitat preserve area; dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush restoration area; and landscaped buffer area; and a public trail within a the landscaped buffer/linear parkway along the Reliant Energy canal. The linear parkway shall serve as a landscape buffer to the resource protection areas, Reliant Energy canal and agricultural lands beyond the canal, and as a native habitat planting area.
- b. Existing overhead utility lines on and adjacent to the development on this property shall be placed underground in accordance with City ordinances in effect at the time of grading permit issuance.
- c. The maximum number of development units shall be limited to 300.

Coastal Act Consistency Discussion

Fifth Street is the current northern urban/rural boundary line in the Oxnard LCP. The proposed amendment would adjust the current urban-rural boundary by extending it north at Fifth Street along the Reliant canal to Harbor Boulevard and south along Harbor Boulevard to Fifth Street, as shown in Exhibit 3. The Coastal Act policies cited above specifically require that the maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of an area's agricultural economy, and conflicts minimized between agricultural and urban land uses by establishing stable boundaries separating urban and rural areas. In addition, the Coastal Act requires that new development shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it. Furthermore, the Coastal Act requires new development adjacent to environmentally sensitive habitat areas and park and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and be compatible with the continuance of those habitats.

As shown in Exhibit 1, Harbor Boulevard borders the North Shore site on the west and Fifth Street to the south. The Reliant Energy Canal forms the eastern and a portion of the northern boundary of the site. Agricultural fields are located to the east of the canal. South of the site across Fifth Street there is a vacant sensitive dune area consisting of five parcels that are designated in the LCP as resource protection, coastal recreation and coastal visitor serving commercial. The parcel designated as coastal visitor serving commercial designation is at the intersection of Fifth Street and Harbor Boulevard. Adjacent to and just south of the disturbed dune area across Fifth Street, there is an existing residential development, the Northern Dunes, that contains 138 lots, however, most of these lots are designated for duplexes or triplexes so the actual number of housing units is at least 275. To the southwest of the site, across the intersection of Fifth Street and Harbor Boulevard, is a large residential complex known as Oxnard Shores. The 181-unit Oxnard Shores Mobile Home Park is located at the intersection of Fifth Street and Harbor Boulevard. South of the mobile home park is a high density single family residential area. This area is for the most part built out and includes 1,409 residential lots. To the west across Harbor Blvd is Mandalay State Beach which contains sensitive dune habitat as well as sensitive animal species. Directly north of the Mandalay State Beach is the Reliant power generation facility which separates Mandalay State Beach from McGrath State Beach to the north. The cooling water outflow from the power plant runs directly across the beach which creates an impediment to lateral access along this beach. Adjacent and to the north of the North Shore site is a portion of a parcel owned by the Edison company that contains dune scrub habitat that is somewhat disturbed. This site is designated in the Oxnard LCP as Coastal Energy Facilities.

The North Shore at Mandalay Bay project site has not historically sustained agricultural uses and the proposed amendment does not reduce or eliminate agricultural land use designations. The amended coastal zone map will reflect the annexation of the project site by the City of Oxnard and the resulting change in the City's boundary line. The urban-rural boundary map will also be adjusted to reflect the North Shore at Mandalay Bay annexation into the urban development area within the City of Oxnard.

The North Shore site does not meet the Coastal Act definition of prime agricultural land. The Oxnard-Ventura Greenbelt encompasses 4,600 acres of land. This Greenbelt is located east and north of the North Shore site and does not include the site or any other areas west of the canal or Harbor Blvd. The North Shore site is not suitable for agricultural use and has never been used for agricultural activities. The Soil Survey prepared by the U.S. Dept. of Agriculture Soil Conservation Service in April, 1970 classifies the soils on site as unsuitable for agricultural uses and the soils across the canal as suitable for most crops. The survey includes a map that illustrates a strip of land along the coast, which includes the North Shore site, considered unsuitable for farming while the areas to the east of the canal are considered very good to good for farming purposes. Further, the Soil Conservation Service designates the site as "other land", a non-agricultural category, while the areas east of the canal are designated as "farmland of statewide importance".

The City submitted an Urban-Rural Boundary Study prepared by Impact Sciences, Inc. dated March 2001 presenting information on the suitability of the North Shore site for agricultural use and the compatibility of the planned development/proposed land uses with existing agricultural areas located to the east of the North Shore site. This report includes historic aerial photographs, which show that in 1929, areas immediately east of the site that contained suitable soils were already under cultivation (Exhibit 18). The photograph from 1970 shows Harbor Blvd and W. Fifth St. fully constructed and the residential development that had been

established in the Oxnard Shores and Oxnard Dunes areas, while the pattern of the agricultural use in the area remains unchanged (Exhibit 19). The canal was developed along the western edge of the agricultural fields establishing a border between the rural and urban development areas. Dark ponds of oil waste are visible on the North Shore site in this photograph.

The LCPA is consistent with the City Urban Restriction Boundary (CURB) approved by City of Oxnard voters in November, 1988. The CURB boundary line was proposed as a planning tool to contain urban growth and preserve open space. The purpose of the CURB was to define an urban development area envelope for a given time period, in this case through the year 2020. Although the North Shore at Mandalay Bay project lies within the CURB, virtually all adjacent or nearby agricultural and open space land lies outside of the CURB and could be developed for other uses in the City only following a citywide vote to amend the General Plan and an annexation. Thus, in accordance with Section 30241(a), the CURB, which follows the Reliant Energy Canal along the eastern and northern borders of the North Shore site creates a logical and stable boundary between urban and rural areas. For these reasons the development of the site is not likely to be growth inducing or to produce cumulative impacts on surrounding coastal resources.

The planned development is compatible with the existing agricultural areas located to the east of the canal. The North Shore site is currently separated from the agricultural fields to the east by existing vegetation and the Reliant Energy Canal. The planned residential development as proposed in this amendment will be separated from the nearest agricultural field adjacent to the site by a distance of approximately 230 feet. This 230 foot wide buffer includes the canal, the maintenance road for the canal, existing vegetation that will be preserved and enhanced, the proposed resource protection area and the adjacent recreation area, which will be composed of a landscaped buffer and public trail. In addition, the agricultural fields are at an elevation approximately 14 feet lower than the subject site.

North Shore is a unique site, having been used for the disposal of oil field waste from the mid-1950s through 1981. The proposed amendment would mandate the remediation of the site, which contains contaminated soil and groundwater. This remediation will preserve the integrity of the groundwater that the agricultural uses in the area depend on. In addition, the proposed adjustment of the urban-rural boundary would support the logical continuation of the historical pattern of residential development in non-agricultural areas along the Oxnard coast. Residential development historically has occurred to the west of the Reliant Energy Canal while agricultural uses have been located east of the canal. As the last developable site located west of the canal the North Shore site represents a logical extension and completion of this development pattern and is consistent with the LAFCO Sphere of Influence Line, the CURB and the Oxnard-Ventura Greenbelt.

Further, site remediation required prior to residential development of the site will protect the groundwater aquifers which underlie the site but which also extend significantly inland and include coastal agricultural lands, thus enhancing rather than degrading any agricultural uses within the surrounding area. Overall, development of the site will have a positive effect on coastal resources by requiring the remediation of contaminated soils and groundwater that have the potential to migrate to Reliant Energy canal, and Pacific Ocean, and potentially to pollute deeper groundwater sources.

The proposed adjustment to the urban/rural boundary does not represent a leapfrogging of development into undeveloped areas and will not result in further urbanization or growth

inducing impacts over and above the residential development proposed for this site. The North Shore site is located adjacent to the Oxnard Shores residential community. This community includes the 181-unit Oxnard Shores Mobile Home Park, a 1,409 lot residential area south of the park, and a commercial development located at the corner of Wooley Road and Harbor Boulevard. The canal and agricultural areas to the east/northeast, the power generation station to the north/northwest, and State Parkland to the west are firm physical and land use boundaries between existing urban and rural land uses. The extension of the urban/rural boundary to capture the North Shore is a logical extension and creates a stable boundary line between rural and urban development for this area of the coastal zone. In addition, the site is in close proximity to urban public services such as water, sewer, electrical services and two major public roadways. Therefore, the site is located contiguous with and in close proximity to existing developed areas which are able to accommodate the new residential development as is required under section 30250 of the Coastal Act.

Section 30250 of the Coastal Act also requires that new residential development shall not be located in areas where it will have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, Section 30240 requires that new development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitats and recreation areas.

The North Shore site is adjacent to or in close proximity to several sensitive dune, beach and wetland habitats. In addition, Mandalay State Beach is located directly across Harbor Boulevard from the site. McGrath State Beach is located across Harbor Boulevard approximately one mile north of subject site. The Reliant Energy Canal is adjacent to the property to the east and provides a sensitive tidal wetland/mudflat habitat for a variety of plant and animal species, particularly bird species. On the Edison property directly north and adjacent to the site there is a sensitive disturbed dune habitat. To the west across Harbor Boulevard is Mandalay State Beach which contains sensitive dune and beach habitat. There is also evidence that the western snowy plover, a federally listed threatened bird species, nests in the foredunes on Mandalay State Beach. On the vacant property to the south there is a disturbed sensitive dune complex.

The Commission is suggesting policy modifications requiring a 1:1 replacement ratio for the loss of onsite (non-ESHA) sensitive resources in a configuration along the canal in combination with a 50 foot native landscaped buffer area between the resource protection area and the residential area. The restored resource area and 50 native landscaped buffer will provide an approximate 170 foot natural area between the residential areas and the sensitive wetland/mudflat areas in and along the canal as well as the sensitive dune complex on the Edison property. In addition, a suggested policy modification requiring fencing and signage between the residential area and the restored resource areas will further restrict and prevent the public and domestic animals from accessing these adjacent sensitive resource areas. Therefore, onsite sensitive resources will be restored to a higher quality habitat and the adjacent sensitive resources will not be degraded or adversely impacted by the proposed residential development on the North Shore site.

The proposed residential use of the North Shore property will result in an incremental increase in people and domestic animals accessing Mandalay State Beach located directly across Harbor Boulevard from the North Shore site. Mandalay State Beach is currently operated by Ventura County Department of Parks under a management agreement with the California

Department of Parks and Recreation. The County is conducting dune and wetland restoration activities on the property. The property is currently fenced along Harbor and Fifth Street and the northern boundary is the Reliant Power Plant. There is existing signage approximately every 100–200 feet indicating no trespassing and that the county is actively attempting to restore these sensitive dune and wetland habitats. The beach and foredune areas are not currently fenced on Mandalay State Beach. However, the County and California State Parks are currently installing temporary “symbolic” fencing laterally along the beach in front of the foredunes at the “wrack” line or debris line on the beach with informational signage to protect western snowy plovers during the nesting season which runs from March through September. The symbolic fencing consists of galvanized stakes with a cable running through the top of the stake with flagging on the cable to prevent injury. On March 21, 2002 the Executive Director of the Commission issued an emergency permit to install the temporary “symbolic fencing” on Mandalay and McGrath State Beaches.

The high density residential neighborhood of Oxnard Shores is located immediately south of Mandalay State Beach across Fifth Street. There is direct access to the beach at the end of Fifth Street. Residents of this area currently use Mandalay State Beach for passive recreation. Therefore, there is currently a low to moderate level of passive recreational use of this beach by both residents and visitors that park along Fifth Street and Oxnard Shores Boulevard. The residential development of the North Shore site will incrementally increase passive use of this beach. In order for residents from the North Shore site to access the State Beach they will have to cross Harbor Boulevard at the traffic light at Fifth Street and walk along the existing fence line approximately ½ mile to the beach. The existing fencing and signage restricts direct public access across the state park property so there will be no impacts to the sensitive back dune area from pedestrian traffic from the North Shore development.

As mentioned above, western snowy plovers nest in the foredune and forage along the shoreline at Mandalay State Beach. The Pacific Coast population of western snowy plover is a small shorebird that uses sandy beaches for nesting and roosting from southern Washington to Baja California. At most, approximately 2,000 snowy plovers may breed along the U.S. Pacific Coast with a similar number breeding along the Baja California coast (USFWS 2001 citing Page et al. 1995a). Research has indicated that there has been a general decline in the West Coast population of snowy plover, including a substantial decrease between 1962 and 1984 in the abundance of wintering snowy plovers in southern California (Lafferty 2000 citing Page et al. 1986). Information provided by Page et al. (1991) indicated that between 1981 and 1991, snowy plovers experienced at least an 11 percent decline in abundance. Lafferty (2000) further reports that more recently, there has been a decline of about 30% throughout the region (in the late 1990s). Among the factors linked to the regional decline in snowy plovers includes predation, beach erosion, encroachment of exotic vegetation and disturbance from recreation (Lafferty 2000 citing Page et al. 1995). The presence of humans can disturb roosting or nesting plovers. Lafferty (2001) studied the effects of human and domestic animals in Santa Barbara County. Lafferty's research (2001b) indicated that each wintering plover is disturbed an average of once every 27 minutes on the weekend and every 43 minutes on weekdays at Sands Beach in Santa Barbara. The research suggests that once a person walks within 15-20 meters of a wintering plover, plovers are disturbed. Plovers may become “alert, begin to walk away and displace each other from the depressions where they sit. They may elevate their wings or bob as a sign of distress and, if approached closely, run or take flight. If put into flight, flocks wheel back and forth for several minutes in tight, low altitude formations. After landing, they remain nervous and will take wing with little prompting” (Page et al. 1995).

In particular, dogs can serve as a significant source of disturbance to snowy plovers. Dogs may disturb snowy plovers by their proximity, which Lafferty (2001b) found to have a higher probability of disturbing plovers than humans, at any particular distance. In addition, some dogs may directly disturb plovers by actively chasing them.

There is no question that there will be an incremental increase of people and dogs using Mandalay State Beach as a result of the proposed residential use at the North Shore site. This incremental increase in passive recreational use of the State Beach will result in a potential increase in the level of direct and indirect disturbance to the snowy plover population on this beach. However, it should be noted that due to the large residential area located immediately down coast of the State Beach there is already a moderate level of human and domestic animal use of this beach. The County and the Department of State Parks recognize that human and animal use in this area are adversely impacting the plover population and management measures are necessary to protect and preserve this nesting area. As previously mentioned, currently State Parks and the County are installing "symbolic" fencing laterally along the beach in front of the foredunes at the "wrack" line or debris line on the beach with informational signage to protect western snowy plovers during the nesting season which runs from March through September. State Parks has also indicated that Mandalay State Beach is not routinely patrolled by rangers and therefore there is no enforcement of the protection measures or a means to inform and direct people away from these sensitive resource areas.

The additional increase of passive recreational use and public access on Mandalay beach as a result of the proposed residential development at North Shore will incrementally increase the potential for disturbance and adverse impacts to the snowy plover population and sensitive back dune areas on this beach. For this reason, the Department of Parks has informed Commission staff that it is opposed to the LCP amendment. However, Commission staff believe that mitigation measures included in the suggested modifications will prevent significant adverse impacts. In order to mitigate the potential for additional disturbance and degradation of the plover habitat and sensitive back dune areas the Commission is suggesting a resource protection policy 10.1(h) to insure these habitats are not significantly degraded by this incremental increase in public use of the State Beach. The policy requires that prior to the issuance of a coastal development permit the City and/or developer of the North Shore site shall fund specific protection measures aimed at the preservation and protection of the snowy plover habitat and back dune habitat at Mandalay State Beach. The funding shall be adequate to implement the following protection measures: 1) Construction and maintenance of seasonal and/or permanent lateral fencing on the beach adequate to delineate and protect snowy plover nesting areas and sensitive dunes areas on Mandalay State Beach; 2) Installation and maintenance of informational and directional signage at 100 foot intervals along the beach and perimeter of the property to direct and inform people of the sensitive resources on Mandalay State Beach. The signage shall specifically prohibit dogs on Mandalay Beach; and 3) Daily ranger patrols of Mandalay State Beach from March through September (western snowy plover nesting season) to ensure compliance with the protective measures cited above. The funding obligation for ranger patrol shall not exceed the cost for a half-time ranger position for the period between March and September. The policy also requires that these measures be in place prior to the construction of the residences on the North Shore site. This will ensure the mitigation measures to protect the sensitive resources on Mandalay State Beach are in place prior to the construction of residences. Given there is already a certain level of existing disturbance from the public using the beach from the downcoast residential area, the above resource protection measures are reasonable and proportional to mitigate the incremental

adverse impacts on sensitive resources at this beach resulting from the proposed residential development at the North Shore site.

Increased public use of McGrath State Beach is also of concern because of the presence of nesting snowy plovers and sensitive dune and wetland habitats. The McGrath portion of the State Beach runs from the Reliant power plant north to the Santa Clara River. This area includes McGrath Lake, the only back dune lake in southern California. This lake provides habitat for the federal and state listed endangered California Least tern.

McGrath State Beach begins approximately one mile north of the North Shore site. Access to this beach from the North Shore site would require a person to cross Harbor Boulevard and walk approximately one mile north to McGrath State Beach. There is existing fencing between the road and State Park property and private properties from the Reliant power plant north to McGrath State Beach campground area.

The 28 acre parcel located just north of the reliant power plant, known as the "McGrath" parcel, is the proposed wetland mitigation site for the North Shore project. Currently there is uncontrolled public access to the beach through pipe gates and informal trails on the site. These trails traverse the dunes directly through the snowy plover nesting sites. Public access across this site will be limited and controlled in the future as required under the wetland creation and restoration plan for the site. This restoration plan will require future approval by the Coastal Commission, through a coastal development permit, because the majority of the site is within the Commission's original permit jurisdiction. Future public access across this site will be addressed in a coastal development permit for this site and may be restricted to protect the sensitive resources on this site as well as surrounding properties.

Significant adverse impacts or disturbances to sensitive resources from additional public use of the McGrath State Beach as a result of proposed residential development at North Shore is unlikely. It is not likely a significant number of persons from the North Shore development will cross Harbor Boulevard and walk in excess of a mile and climb over fencing to access the McGrath State Beach. In addition, the proposed wetland mitigation site for North Shore will limit public access through the "McGrath" parcel to sensitive dune, wetland and snowy plover nesting sites. Therefore, potential adverse impacts to sensitive resources are not likely to occur on McGrath State Beach from North Shore residents accessing the McGrath State Beach from Harbor Boulevard because of the distance from the North Shore site and due to existing and future physical barriers into the park.

McGrath State Beach is located north approximately one mile along the beach side of Mandalay State Beach. About a ½ a mile north of Fifth Street there is the Reliant power plant cooling water outflow that runs across the beach. This outflow provides a physical impediment to lateral access from Mandalay State Beach to McGrath State Beach. Again due to a total distance of one and a half miles from the North Shore site and the physical impediment to lateral beach access barrier it is not likely a significant number of persons from the North Shore development will access McGrath beach on a routine basis. Therefore, due to physical distance and given lateral beach access is impeded residential development at the North Shore site will not result in significant adverse impacts to McGrath State Beach.

To the south of the North Shore site directly across Fifth Street there is vacant sensitive disturbed dune habitat consisting of five private properties. Currently there are no resource protection measures in place to limit public access to this sensitive dune area. In addition,

there is evidence of disturbance of the dune area from off road vehicles and other human activities. Residential development on the North Shore site will result in additional disturbance of this area by residents and domestic animals accessing the site. In order to ensure the North Shore development does not adversely impact this sensitive dune habitat, the Commission is suggesting a policy requiring the City, prior to the issuance of a coastal development permit, to install fencing in the road right-of-way from the intersection of Fifth Street to the seaward end of the bridge over the Reliant canal and install signage at a maximum interval of 100 feet indicating this is private property, no trespassing, and this area is a sensitive dune habitat. These measures will ensure this sensitive dune habitat is not adversely impacted by informal access and recreational activities from the residents of the North Shore development.

In summary, the extension of the urban/rural boundary to capture the North Shore site establishes a stable logical boundary between the agricultural areas to the east of the site and sensitive resource areas to the north and west of the site. The surrounding land uses include a mobile home park, single-family residential and visitor-serving commercial to the south, resource protection and recreation areas to the west, and energy facilities to the northwest. Agricultural land to the east is separated and buffered by the Reliant Energy canal and will be further buffered by the proposed resource protection area in combination with the landscaped buffer area. The proposed resource protection area and 50 foot buffer will also provide a significant buffer to the sensitive wetland habitat in and along the canal and the disturbed sensitive dune area on the neighboring Edison property. The North Shore site has not historically sustained agricultural uses and the soils on the site do not meet the definition of prime agricultural land. The North Shore site is close proximity existing development and urban services such as water, sewer, electrical services and two major public roadways as required under Section 30250 of the Coastal Act. The LCP amendment, as modified to include policies to preserve sensitive habitat areas on Mandalay State Beach and the sensitive dune areas to the south will insure the residential development of the North Shore site will not significantly degrade these environmentally sensitive areas as required under Section 30240 and 30250 of the Coastal Act.

Therefore, based on the above discussion, the Commission finds that the proposed adjustment to the urban/rural boundary is a logical extension of the urban/rural boundary, will not result in the degradation of adjacent environmentally sensitive habitat area and is consistent with Sections 30241, 30242, 30250 and 30240 of the Coastal Act.

4.4.2 SENSITIVE RESOURCES

The City proposes changes to the Sensitive Habitats Map to reflect the Milk-vetch preservation area, onsite resource protection area and offsite wetland restoration area, as shown in Exhibit 4. The City also proposes site-specific resource policies for the North Shore site to incorporate into the Land Use Plan. Since the North Shore site possesses unique characteristics related to sensitive resource issues: a long history of disturbance; contaminated soils and groundwater; the discovery of a rare and previously thought to be extinct plant; the presence of fragmented patches of wetland and sensitive vegetation types onsite; the existence of sensitive habitat areas adjacent to the site; and the potential occurrence of sensitive wildlife species onsite and nearby, the proposed land use policies regarding sensitive resources must be consistent with Coastal Act Sections 30230, 30231, 30233, and 30240.

Section 30230 states:

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

Section 30231 states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of groundwater supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30240 states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Section 30233(a) states, in relevant part:

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

Section 30007.5 of the Coastal Act provides the Commission with the ability to resolve conflicts between Coastal Act policies. This section provides that:

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

Suggested Modifications

The proposed changes to the sensitive habitats map and the new sensitive resource policies including the Commission's suggested modifications are laid out below:

The area of Ventura Marsh Milk-vetch habitat preservation area and dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush restoration area within the North Shore at Mandalay Bay site and the offsite wetland habitat restoration area are LCP is added to Map No. 7 (see Exhibit 2.3 in City's LCP Amendment document and Exhibit 4 of this staff report, which reflects the Commission's suggested modifications).

"10.1. The North Shore at Mandalay Bay project site, an 82.7 net 94-acre property located north of West Fifth Street, east of Harbor Boulevard and south and west of the Reliant Energy canal, has been designated Resource Protection Area, Recreation Area, and Planned Unit Development. The following policies shall apply specifically to this development area:

- a. Existing soil and groundwater contamination on the site shall be remediated in accordance with the Remedial Action Plan approved by the Regional Water Quality Control Board - Los Angeles Region (RWQCB). All other permits and authorizations from other agencies having oversight responsibility for the remediation process shall be obtained as required. A performance bond shall be required prior to issuance of a CDP equal to the value of the labor and materials necessary to carry out the remediation plan. The performance bond shall be released upon completion of the remediation to the satisfaction of the RWQCB. If the applicant fails to complete the remediation according to the approved plan, the City shall collect the security and complete the remediation work.
- b. Ventura Marsh Milk-vetch on-site habitat shall be protected and enhanced onsite within the 1.65 acre preservation area. The preservation area shall lie within a 23.8 acre resource protection area. preservation and mitigation shall be performed as set forth in the Memorandum of Understanding between the land owner and the California Department of Fish & Game (CDFG), dated July 27, 1999.

Onsite preservation and mMitigation shall include but not be limited to:

- 1) Establishment of a 100-foot soil remediation/excavation limit line around the existing Milk-vetch population. No ex-situ soil remediation shall occur within this 100-foot soil remediation/excavation limit line encompassing the 1.65 acre Milk-vetch preservation area.
- 2) Permanent protection and preservation of a 1.65 10.4-acre Milk-vetch preservation area within a 23.8 acre resource protection area and (5.2 acres under the Memorandum of Understanding between the Landowner and State of California Department of Fish & Game, dated July 27, 1999, and an additional 4.9 acres under the Settlement Agreement between the City of Oxnard, California Native Plant Society, and North Shore at Mandalay Bay LLC, dated August 29, 2000) which includes the existing Milk-vetch and a 50 foot wide landscaped buffer between the resource protection area plants and planned residential development. A fence shall be constructed around the 1.65 acre Milk-vetch preservation area to protect the Milk-vetch from human and/or domestic animal activities.
- 3) Restoration, management, maintenance and monitoring plans shall be developed for the Milk-vetch preserve area by a qualified biologist and/or resource specialist and shall be reviewed and approved by CDFG and the City of Oxnard. The plans shall at a minimum include procedures and technical specifications for planting; soil engineering and soil amendment criteria; identification of plant species and density; maintenance measures and schedules; temporary irrigation measures; restoration success criteria; measures to be implemented if success criteria are not met; and long-term adaptive management of the restored areas for a period of not less than 10 years.

- 4) Off-site Milk-vetch population locations and plans for establishment shall be performed as set forth in the Memorandum of Understanding between the landowner and approved by the California Department of Fish and Game, dated July 27, 1999.
- 5) Conservation easements (or other equivalent document) which serve to permanently protect the Milk-vetch preserve area shall be recorded prior to ground-disturbing activities.
- 6) The status of below-surface contaminants in the area around the Milk-vetch plants that will not be remediated (in order to avoid impacts to the plants) shall be monitored by groundwater monitoring wells installed around the preserve area.
- 7) Land use within the restoration area around the Milk-vetch preservation buffer area shall be restricted to the development and use of interpretive nature trails.
- c. The loss of Dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush habitat preservation and restoration shall be mitigated onsite at a replacement ratio of 1:1, performed as set forth in the Memorandum of Understanding between the Landowner and the State of California Department of Fish & Game, dated July 27, 1999.

Mitigation shall include, but not be limited to:

- ~~1) Dune scrub habitat creation at a maximum 1:1 ratio, through enhancement/restoration of preserved on-site habitat and enhancement/restoration of preserved off-site habitat.~~
- ~~2) On-site restoration which partially satisfies the mitigation requirement may be located on open space areas adjacent to West Fifth Street and surrounding the Milk-vetch Resource Protection area.~~
- 3) 1) Dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush habitat within the Milk-vetch preserve but outside of the fenced Milk-vetch setback shall be restored, enhanced and permanently protected.
- ~~4) Off-site restoration areas shall be identified and plans submitted for approval not later than 12 months after ground-disturbing activities are initiated.~~
- 5) 2) Dune scrub - Restoration, maintenance and monitoring plans shall be developed for the dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush restoration areas by a qualified biologist and/or resource specialist and shall be reviewed and approved by CDFG and the City of Oxnard. The plans shall at a minimum include procedures and technical specifications for planting; soil engineering and soil amendment criteria; identification of plant species and density; maintenance measures and schedules; temporary irrigation measures; restoration success criteria; measures to be implemented if success criteria are not met; and long-term adaptive management of the restored areas for a period of not less than 10 years.
- 6) 3) Conservation easements (or other equivalent document) which serve to permanently protect the restored areas shall be recorded over the on-site areas prior to ground-disturbing activities.
- 4) A landscaped 50 foot wide buffer area shall be established between the dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush restoration/resource protection

areas and the planned residential development. The landscaped buffer area adjacent to the resource protection area shall also serve as a linear parkway and include the public trail. The landscaped buffer areas shall be landscaped with plants native to the Ventura coastal region.

- 5) Performance bonds shall be required prior to the issuance of a CDP to guarantee the compliance with the restoration of the onsite resource protection area prior to occupancy clearance as follows: a) one equal to the value of the labor and materials and b) one equal to the value of the maintenance and monitoring for a period of 10 years for the restoration of the dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush habitat/resource protection area. Each performance bond shall be released upon satisfactory completion of the applicable items (a) and (b) above. If the applicant fails to either restore or maintain and monitor according to the approved plans, the City shall collect the security and complete the work on the property.
- d. ~~Willow scrub and saltgrass grassland revegetation~~ Wetland habitat impacted by development shall be mitigated as set forth in the Memorandum of Understanding between the land owner and the State of California Department of Fish & Game, dated July 27, 1999 at a 4:1 creation ratio offsite on the "McGrath" parcel (Assessor's Parcel No. 1380805).

Mitigation shall include but not be limited to:

- ~~1) Replacement habitat creation at a 1:1 ratio, unless lower quality habitat is restored to yield a significantly higher biological value than the habitat that is affected by project development.~~
- ~~2) On-site restoration which satisfies or partially satisfies the mitigation requirement may be located in the 70-foot wide easement along the Reliant Energy Canal, an open space lot in the northern portion of the site, and the northeastern portion of open space surrounding the Milk-vetch Resource Protection area.~~
- ~~3) Off-site restoration areas shall be identified within six months of any CDFG determination that on-site restoration did not adequately mitigate impacts to willow scrub and saltgrass grassland.~~
- 4) 1) Willow scrub and saltgrass Wetland habitat creation, restoration, management, maintenance and monitoring plans shall be developed for the restored mitigation areas on the "McGrath" parcel by a qualified biologist and/or resource specialist and shall be reviewed and approved by CDFG and the City of Oxnard. The plans shall provide a 100 foot restored buffer as measured from the upland limit of the wetland area, and at a minimum include ecological assessment of the mitigation site and surrounding ecology; goals, objectives and performance standards; procedures and technical specifications for wetland and upland planting; methodology and specifications for removal of exotic species; soil engineering and soil amendment criteria; identification of plant species and density; maintenance measures and schedules; temporary irrigation measures; restoration success criteria; measures to be implemented if success criteria are not met; and long-term adaptive management of the restored areas for a period of not less than 10 years. The plans shall also provide for removal and restoration of the existing go-cart facility and fencing and signage to prevent uncontrolled public access.

- 5)2) Conservation easements (or other instruments) which serve to permanently protect the restored areas shall be recorded over the ~~on-site areas~~ "McGrath" parcel (Assessor's Parcel No. 1380805) prior to ground-disturbing activities on the North Shore site.
- 3) Performance bonds shall be required prior to the issuance of a CDP to guarantee the compliance with the restoration of wetland habitat on the "McGrath" parcel prior to occupancy clearance as follows: a) one equal to the value of the labor and materials and b) one equal to the value of the maintenance and monitoring for a period of 10 years for the restoration of wetland habitat on the "McGrath" parcel. Each performance bond shall be released upon satisfactory completion of the applicable items (a) and (b) above. If the applicant fails to either restore or maintain and monitor according to the approved plans, the City shall collect the security and complete the work on the property.
- e. The following landscape requirements, resource protection area maintenance and monitoring responsibilities, resource information disclosure requirements, and covenants, conditions and restrictions for the North Shore development are required:
- e.1) Preparation, review, and implementation of landscaping plans for the project shall include provisions for the control of invasive plant species to address the potential impacts of non-native plants colonizing adjacent native habitats. Covenants, Conditions and Restrictions shall be recorded specifying that landscaping for individual housing lots shall not include any exotic invasive plant species. The Covenants, Conditions and Restrictions shall be binding on each of the lots in the subdivision, shall run with the land affected by the subdivision, and shall be included or incorporated by reference in every deed transferring one or more of the lots in the subdivision.
- 2) The Covenants, Conditions and Restrictions shall assign the responsibility for long-term maintenance and monitoring of the resource protection area to the homeowners association, which shall work in cooperation with CDFG. The landowner or the homeowners association may assign these long-term obligations to CDFG, a special district or a non-profit association acceptable to the Executive Director of the Commission.
- 3) The project applicant shall provide, in connection with the sale of each housing unit, an information packet that explains the sensitivity of the natural habitats onsite and nearby and the need to minimize impacts on the designated resource protection areas, the limits on public trail access within or adjacent to such areas, the prohibition on landscaping that includes exotic invasive plant species, and the limits on exterior residential lighting. The Covenants, Conditions and Restrictions shall include the same explanation and restrictions.
- f. Reliant Energy canal habitat protection measures shall be reviewed and approved by CDFG and the City of Oxnard as follows:
- 1) The public trail to be provided within the landscaped buffer/linear parkway adjacent to the resource protection area along the Reliant Energy canal shall be located away from the water area and as close to the housing lots as possible. In addition, native shrubs and other native vegetation shall be planted between the trail and the canal to serve as a visual buffer between human activity and wildlife associated with the canal.

- 2) Interpretive signs shall be placed in appropriate locations along the edges of nearby natural habitat resource protection areas explaining the sensitivity of natural habitats and the need to minimize impacts on these adjacent areas.
- 3) Adequate fencing will be provided between the designated recreation areas and resource protection areas edge of development and the banks of the Reliant Energy canal for the purpose of minimizing human and domestic animal presence in the restoration areas and along the canal.
- 4) ~~Best runoff management practices will be utilized in drainage plans throughout the development and to minimize runoff of toxic wastewater and sedimentation into the Reliant Energy canal and street level water collection basins.~~
- 4) A Water Quality Control Plan (WQCP) shall be developed and implemented for the North Shore at Mandalay Bay project site to ensure that all approved development:
 - ◆ Protect areas that provide important water quality benefits, that are necessary to maintain riparian and aquatic biota and/or that are particularly susceptible to erosion and sediment loss.
 - ◆ Limit disturbance of natural drainage features and vegetation.
 - ◆ Minimize the creation of impervious surfaces.
 - ◆ Reduce post-development loadings of Total Suspended Solids (TSS) so that the average annual TSS loadings are no greater than pre-development loadings.
 - ◆ Incorporate a combination of Best Management Practices (BMPs) best suited to reduce pollutant loading and minimize runoff and erosion. Source control BMPs shall be emphasized over treatment BMPs where feasible. The BMPs utilized shall be designed to treat, infiltrate, or filter stormwater runoff to meet the standards of the 85th percentile, 24-hour runoff event for volume-based BMPs and/or the flow of runoff produced from a rain event equal to at least two times the 85th percentile, 1-hour event for flow-based BMPs.
 - ◆ Include construction phase erosion control and polluted runoff control plans.
 - ◆ Include post-development phase drainage and polluted runoff control plans designed to control runoff using natural drainage and vegetation to the maximum extent practicable.
- 5) A Water Quality Monitoring Plan (WQMP) shall be developed and implemented for the North Shore at Mandalay Bay project site to evaluate the effectiveness of the WQCP in protecting the quality of surface and groundwater. The WQMP shall include, at a minimum, the following:
 - ◆ Annual inspection and maintenance of the condition and operational status of all required BMPs. Major observations to be made during inspections shall include: location of discharges of sediment or other pollutants from the site; BMPs that are in need of maintenance; BMPs that are not performing, failing to operate, or inadequate; and locations where additional BMPs are needed. Verification of maintenance shall include the permittee's signed statement accepting responsibility for all structural and treatment control

BMP maintenance until such a time as the property is transferred and another party takes responsibility.

- ♦ Monitoring to ensure that average annual TSS loadings are maintained at pre-development levels and do not exceed water quality standards. The WQMP shall specify sampling locations, sampling protocols, pre-development TSS levels and permitted standards for TSS. Monitoring shall be conducted annually for the first five years following the commencement of development and shall occur during the first significant storm event of the rainy season and each following month through the end of the rainy season. Following this initial monitoring period, monitoring shall be conducted at five-year intervals during the first significant storm event of the rainy season, provided average annual TSS loadings are determined not to exceed pre-development levels and/or water quality standards. If it is determined that pre-development levels and/or water quality standards are exceeded, the permittee shall conduct annual monitoring for a period of at least five years, or until it is determined that pre-development levels and water quality standards for TSS are not exceeded. The permittee shall assess the potential sources of the excessive TSS loadings, including inadequate or failed BMPs, and take corrective actions to remedy the water quality impacts. Verification of monitoring shall include the permittee's signed statement accepting responsibility for all monitoring until such a time as the property is transferred and another party takes responsibility.
- g. Special status wildlife protection measures shall be reviewed and approved by the City of Oxnard and CDFG as follows:
 - 1) The street lighting and exterior residential lighting shall be limited in intensity and shielded in order to minimize impacts to wildlife within the designated resource protection areas and along the Reliant Energy Canal.
 - 2) Prior to any ground disturbing activities, surveys shall be conducted for special status wildlife species. A plan shall be developed for the collection and relocation of individual animals to an appropriate location offsite during site disturbance and reintroduction onto the site upon completion of soil remediation and habitat restoration.
- h. Offsite resource protection measures shall include the following:
 - 1) Prior to the issuance of a CDP, the City and/or developer shall provide funding to Ventura County Parks Department and/or the California Department of Parks and Recreation adequate to implement the following resource protection measures at Mandalay State Beach:
 - ♦ Construction and maintenance of seasonal and/or permanent fencing adequate to delineate and protect snowy plover nesting areas and sensitive dunes areas on Mandalay State Beach.
 - ♦ Installation and maintenance of informational and directional signage at 100 foot intervals along the beach and perimeter of the property to direct and inform people of the sensitive resources on Mandalay State Beach. The signage shall specifically prohibit dogs on Mandalay Beach.

- ♦ Daily ranger patrols of Mandalay State Beach from March thru September to ensure compliance with the protective measures cited above. The funding obligation for the patrol shall not exceed the cost for a half-time ranger from March thru September.

Specific funding mechanisms to implement the above resource protection measures shall be established through a CDP. The above resource protection measures shall be in place prior to the construction of residences on the North Shore site at Mandalay Bay.

- 2) The City shall install fencing in the City's right-of-way along West Fifth Street between Harbor Boulevard and seaward end of the bridge over the Reliant Energy Canal to prevent public access into the sensitive dune area located west of the canal and south of Fifth Street. Signage shall be affixed to the fence at maximum interval of 100 feet indicating this area is private property, no trespassing and is a sensitive habitat area.

Coastal Act Consistency Discussion

The amendment as proposed includes policies to address potential impacts to sensitive resources onsite: a remediation plan to clean up the existing contamination of the soil and groundwater underlying the site; preservation measures for the Ventura Marsh Milk-vetch community, mitigation measures for impacted willow, dune scrub and saltgrass habitats, landscaping plan provisions and canal habitat protection measures. The Commission's suggested modifications add to and enhance the resource policies in order to bring the proposed amendment into consistency with the Coastal Act. Listed in the table below (Table 4.1) are the highlights of the sensitive resource policies under the amendment as proposed and with suggested modifications.

TABLE 4.1

| Sensitive Resource Issues | Proposed Amendment | Suggested Modifications |
|---|--|---|
| Sensitive Habitats Map (Exhibit 4) | reflect milk-vetch location | reflect location of milk-vetch preservation area, onsite resource protection area, and offsite wetland restoration area |
| Land use designations (Exhibit 6) | entire site: planned unit development | add resource protection area (23.8 acres) & recreation area (11 acres) |
| Soil and groundwater remediation | bioremediation in accordance with Remedial Action Plan | add performance bond provision to ensure completion of remediation |
| Preservation of Ventura Marsh milk-vetch | 1.65 acre fenced preservation area with surrounding 8.45 acre buffer area, maintenance and monitoring plan, offsite mitigation measures, conservation easement to protect preservation area | change surrounding buffer area to resource protection area for dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush habitat restoration and add adjacent recreation area to serve as 50 foot wide buffer |
| Non-ESHA habitat mitigation measures | maximum 1:1 mitigation ratio for willow scrub, dune scrub and saltgrass allowing on and offsite mitigation, maintenance and monitoring plans, conservation easements to protect restoration areas, total of 15.4 acres onsite restoration area | require mitigation onsite at a ratio of 1:1 for dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush (total 23.4 acres), designate mitigation area as resource protection area, add adjacent 50 foot wide native landscaped buffer, add performance bond provision to ensure habitat restoration and maintenance & monitoring, add CC&Rs provision to assign responsibility to homeowners for maintenance & monitoring and educational packet to inform residents about sensitive resource areas on & offsite |
| Landscaping plans | provision for control of invasive plant species to address impacts of non-native plants on native habitats | add CC&Rs provision to require landscaping plans for each individual housing lot |
| Offsite sensitive habitat protection measures | trail to be located in linear parkway as far from canal/close to housing lots as possible, planting between trail and canal, interpretive signs along habitat areas, fencing between canal and development | designate restoration area along canal and expand linear parkway/native landscaped buffer to resource protection area, thereby creating a large buffer area along canal, require offsite resource protection measures |
| Water quality | provision for drainage plans to minimize runoff and sedimentation | add more specific provisions for the development and implementation of a water quality control plan and a water quality monitoring plan |
| Wildlife protection measures | none proposed | add lighting provision to limit intensity & direction to minimize wildlife impacts, require recovery & relocation plan for special status wildlife species prior to ground disturbance |
| Wetland habitat (willow scrub and saltgrass) mitigation | none proposed, no wetland previously delineated onsite, mitigation required for willow scrub and saltgrass (see above) | require wetland creation at a ratio of 4:1 offsite with 100 foot buffer; restoration, management, maintenance and monitoring plan; conservation easement over restoration area; and performance bond to ensure completion of wetland mitigation |

Sections 30230 and 30231 of the Coastal Act require that the biological productivity and quality of coastal waters, streams and the marine environment be maintained and, where feasible, restored through among other means, minimizing adverse effects of waste water discharge and entrainment, controlling runoff, preventing depletion of groundwater supplies and substantial interference with surface water flows, and maintaining natural buffer areas. Section 30240 states that environmentally sensitive habitat areas (ESHAs) must be protected against disruption of habitat values. Further, Section 30233 sets forth limitations on uses allowable in wetlands. Finally, Section 30007.5 of the Coastal Act provides the Commission with the ability to resolve conflicts between Coastal Act policies.

SOIL AND GROUNDWATER CONTAMINATION

Prior to any uses occurring on the North Shore site, it was a segment of a natural coastal sand dune complex (Exhibit 18). Transforming it from its natural state, approximately 50 drilling companies utilized the site as an oil field waste disposal facility and deposited over 8.1 million barrels of waste over approximately thirty years until its closure in 1982. As a result of the historical oil waste disposal operations soil and groundwater on the site are highly contaminated.

As confirmed by studies completed between 1981 and 1996, due to continuous dumping operations conducted for almost a thirty year period, contaminants threaten both the perched and semi-perched aquifers on the site. Soil and groundwater samples reveal that other wastes that were not permitted have also been dumped at the North Shore site. The non-permitted waste materials are primarily VOCs. A total of 18 VOCs have been found in groundwater samples collected from the site. VOCs are problematic because many are toxic and have specific gravities greater than 1.0, which is heavier than water, making them very mobile in the environment. The VOCs tend to migrate to deeper depths, often to the bottom of groundwater aquifers. If not addressed through remediation, the site will constitute a serious threat to groundwater resources. Most Volatile Organic Compound (VOC) contaminants detected during the 1st Quarter 2002 are higher than levels detected during 4th Quarter 2001 sampling. VOCs have been and continue to be detected in the Reliant Canal.

The soils at North Shore are contaminated to a depth of about 20 feet, which is the approximate upper surface of the first groundwater. The zone below the ground surface and above the groundwater table is where all of the disposal activities were conducted. This zone at the North Shore site is highly porous and was not compacted when the site ceased disposal operations. This porous nature further contributes to the migratory tendencies of the VOCs. The first groundwater beneath this zone exists in an aquifer at a depth of approximately 18 to 20 below the surface over most of the site. This aquifer has been referred to as the 'perched aquifer'. The perched aquifer is contaminated with VOCs and petroleum hydrocarbon compounds from the past disposal activities. This aquifer is reported to have a high vertical permeability, which also contributes to the migratory tendencies of the VOCs. Beneath the perched aquifer lies a less permeable layer over the 'semi-perched aquifer'. Analyses of groundwater samples show that surface VOC contaminants have reached the semi-perched aquifer. Beneath the semi-perched aquifer lies another less permeable layer above the Oxnard Aquifer. Groundwater from the Oxnard Aquifer is primarily used for agricultural purposes. Further down, in order of depth, the deeper aquifers are: the Mugu Aquifer, the Hueneme Aquifer, the Fox Canyon Aquifer and the Grimes Canyon Aquifer. The Reliant Canal is located at a depth, which corresponds to the perched aquifer and analyses of water samples from the canal also detected VOC contaminants. Hydrological studies conducted at the North Shore site indicate

that the general direction of groundwater flow of the perched aquifer is toward the southwest (toward the ocean).

In addition, there are many improperly abandoned monitoring wells on the property. Construction of these wells is unknown and may cause the wells to function as direct conduits for contaminants to reach groundwater. These wells would be properly removed during the site remediation as a requirement of the Waste Discharge Requirements issued by the RWQCB. Further, problems related to horizontal migration may be exacerbated by the number of groundwater wells located in the vicinity of the site. The draw from the wells may cause groundwater contamination to migrate considerable distances in directions that are opposite or at angles to normal flow.

If the site soils and groundwater do not undergo remediation, further migration of contaminants into the groundwater supply would taint the aquifers used for drinking water and agricultural uses. Further, onsite vegetation would continue to be exposed to petroleum hydrocarbons, volatile organic compounds and other forms of contaminants. The existing habitat onsite would not likely sustain healthy, viable vegetation communities on a long term basis if left to the course of nature. The dominant vegetation existing onsite is iceplant, a non-native, invasive plant species, which is encroaching upon the native vegetation onsite. Iceplant has been observed within the willow vegetation, dune scrub vegetation, and the milk-vetch community. Myoporum, a non-native, invasive tree species also occurs in various areas throughout the site, particularly in association with willow vegetation. Both iceplant & myoporum are fast growing species, are characterized by aggressive growth patterns, and can grow in a variety of habitat and soil conditions. Due to the adaptive abilities of non-native plants, such species tend to outcompete native plant species for available water, nutrients, sun and habitat.

The first phase of the development of the site will prioritize the protection of coastal water quality consistent with Coastal Act §30231 through implementation of the Remedial Action Plan approved by the Regional Water Quality Control Board. The primary objective of the Remedial Action Plan is to reduce the specific chemical concentrations in the soil and groundwater to levels that protect human health and the environment. Soil remediation is planned to prevent further contamination of groundwater as contaminated soil is the source of groundwater contamination on the site. Soil remediation will consist of above ground bioremediation. This method involves enhancing the naturally occurring bacteria in the soils which degrade petroleum hydrocarbons. Essentially, the entire site with the exception of the milk-vetch preservation area, will be excavated in stages to an approximate depth of 20 feet and involve some 400,000 cubic yards of soil. Site remediation will eliminate pollutants from the terrestrial environment and prevent further contamination of groundwater and marine environments. Thus, the Commission finds that as proposed Policy 10.1(a) regarding the remediation of the site is consistent with Coastal Act §30230 and §30231.

SENSITIVE RESOURCES

In order to assess the biological value of current resources on the site, Coastal Commission staff biologist/ecologist, Jon Allen, visited the site on more than one occasion. Dr. Allen has reviewed the Environmental Impact Report, as well as, a number of other biological and environmental studies relative to the North Shore site. Dr. Allen's ecological analysis of the site is attached as Exhibit 15. The 90.3 acre North Shore Project site is without question a very strange and unique biological situation. The soil consists of a hydrocarbon-polluted deep layer covered with about five feet of clay and topsoil brought in as an artificial landfill cap when the

when the oil waste disposal site was closed. The source of this fill material and the seed bank within it is unknown. Since the closing of the site in 1982, various plants have become established on the landfill in an almost random fashion that does not fit scientific classification schemes very well. The disturbed vegetation that occurs on site has been mapped in the Impact Sciences Report (Vegetation Communities Map, March 2002) (Exhibit 20) as:

ESHA

1. Ventura Marsh milk-vetch: 0.4 acres

Wetland

2. Willow scrub: 1.2 acres
3. Saltgrass: 3.2 acres (3.0 acres delineated wetlands, 0.2 acres non-wetland- see discussion in wetlands section below)

Disturbed Sensitive Resources

4. Disturbed dune scrub: 5.7 acres
5. Disturbed dune/Iceplant scrub: 2.0 acres
6. Buckwheat: 0.7 acres
7. Coastal Sagebrush: 0.1 acres
8. Coyote brush/Willow scrub: 14.6 acres
9. Willow/Myoporum: 0.3 acres

Not Sensitive

10. Coyote brush: 4.1 acres
11. Myoporum: 2.6 acres
12. Disturbed mixed scrub: 0.4 acres
13. Iceplant/bare ground: 36.4 acres

WETLANDS

Wetlands are defined in Section 30121 of the Coastal Act as follows:

'Wetland' means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

The Commission regulations provide a more explicit definition of wetlands. Section 13577(b) of Title 14 of the California Code of Regulations defines wetlands as follows:

Wetlands are lands where the water table is at, near or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent or drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salt or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep water habitats.

The above definition requires the presence of one of three common wetland attributes of hydrology, hydrophytic vegetation, or hydric soils. There are no areas onsite that qualify as wetlands as defined by the Army Corps of Engineers or the U.S. Fish & Wildlife Service.

However, it should be noted that the Coastal Act definition is more inclusive than those of other agencies, such as Army Corps of Engineers, which requires a site to exhibit all three of those attributes to be considered a wetland, and U.S. Fish & Wildlife Service, which requires the presence of proper hydrology and either hydric soils or hydrophytic vegetation.

Due to the foreign clay soil, which was deposited as an artificial landfill cap upon the closure of the oil waste disposal facility, an impermeable subsoil layer created a suitable substrate to allow the growth of the moisture-loving plant types present onsite. The wetland associated vegetation that occurs onsite is scattered with no obvious zonation or supporting hydrology. Most of the existing vegetation was probably brought onto the site as a seed bank in the fill material. Moreover, much of this vegetation is stunted and does not appear to be surviving well. As discussed earlier, the contamination levels of the soils are such that they cannot support healthy, functional habitat and the occurrence of these plant communities are haphazard and not indicative of naturally occurring wetland habitat. The underlying contaminated hydrocarbon waste extends to a depth of approximately twenty feet that would pose a high risk of pollution to any consistently wet area. In addition, the historic aerial photographs of the site show that prior to the oil waste disposal activities the site used to be sand dunes, not wetlands. While there are vegetation types present onsite that are typically associated with wetland habitat, the previous biological studies provided by the City indicated that no wetlands presently exist onsite. However, the previous assessment did not apply the inclusive definition of wetlands found in the Coastal Act. It had been determined that none of the areas onsite met the soils or hydrology criteria. However, questions were raised as to whether or not some of the areas might meet the vegetation criterion. The question was raised in relation to the patches of vegetation onsite that appear to be composed of primarily wetland indicator species: arroyo willow (*Salix lasiolepis*) and saltgrass (*Distichlis spicata*). Dr. Allen reviewed the wetland delineation forms used by the City and found them to be inconclusive as to whether or not the vegetation samples met the prevalent hydrophytic vegetation standard. Thus, the proposed amendment was continued from the February 2002 hearing to further assess whether wetlands exist onsite pursuant to the Coastal Act definition.

Subsequent to the hearing, the applicant's consulting biologist, Impact Sciences, conducted a more detailed and specific wetland delineation onsite to collect data in order to determine if any areas onsite meet the vegetation criterion. Because hydric soils and hydrological features have historically not been identified on the site, the analysis focused on hydrophytic vegetation. Impact Sciences consulted with Commission staff biologists, Dr. Jon Allen and Dr. John Dixon, regarding the approaches, methodology and results documentation for the wetland analysis. In addition, the entire effort was overseen by the staff biologist, Dr. Jon Allen and peer reviewed by Terry Huffman, co-owner of The Huffman-Broadway Group, Inc. Dr. Huffman is an acknowledged expert in wetland delineation and has been developing and conducting wetland delineation courses for over 20 years. All three of the individuals that were consulted have visited the North Shore site.

The applicant submitted a North Shore Wetlands Analysis prepared by Impact Sciences, which discusses the methodology, data and results of the investigation. With respect to the willow vegetation, only one patch of willow habitat (1.2 acres), designated willow scrub on the vegetation map (see Exhibit 20), qualifies as wetland. This willow scrub community occurs in a very shallow swale bordered by a remnant dune, similar to willow/dune swale habitat that occurs naturally in the surrounding area. The remaining willow vegetation onsite is located in highly disturbed areas along with other non-wet type species. Most of this willow vegetation occurs as single shrubs or small clumps sporadically in areas dominated by coyote brush, an

upland species. The understory of these willow clusters are dominated by iceplant or bare ground. The areas designated willow/myoporum on the vegetation map (Exhibit 20) consist of co-dominating arroyo willow and myoporum in the overstory with poison oak, coyote brush and other shrub species growing along the edge and within the understory. The patches designated saltgrass on the vegetation map (Exhibit 20) occur primarily in the westernmost portion of the site. There are eleven polygons/patches of saltgrass surrounded by iceplant or barren ground. One of those polygons was found to be co-dominated by a bromus grass species, and therefore did not meet the prevalent hydrophytic vegetation standard. The other ten patches did meet the standard, therefore, 3 acres of saltgrass out of the existing 3.2 acres onsite qualify as wetland based on the vegetation criterion.

Thus, the wetland analysis identified 4.2 acres of vegetation onsite that meet the hydrophytic vegetation criteria and are, therefore, determined to be wetland pursuant to the Coastal Act definition. The proposed amendment includes soil and groundwater remediation for the entire North Shore site save the Milk-vetch preserve and, thus, would result in the removal of soil to a depth of 20 feet from 4.2 acres of wetland area and fill of those areas after the soil is remediated.

Section 30233 of the Coastal Act specifically addresses the allowable uses for placement of fill in Wetlands. Section 30233 (a) states, in relevant part, that:

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

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial facilities.***
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.***
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.***
- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.***
- (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.***
- (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.***

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities.

As previously described, the proposed amendment involves the remediation of approximately 400,000 cu. yds. of soil including excavation to 20 ft. below the surface of the site.

The above policies set forth a number of limitations on which projects may be allowed in wetland areas. For analysis purposes, the limitations can be categorized into three tests:

1. The purpose of the project is limited to one of eight allowable uses
2. The project has no feasible less environmentally damaging alternative; and
3. Adequate mitigation measures to minimize the adverse impacts of the proposed project on habitat values have been provided.

1. Allowable Use for Fill

The first general limitation set forth by the above mentioned policies is that only proposed fill for specific limited uses is allowable. The proposed amendment is not consistent with Section 30233 as the planned residential development does not qualify as one of those eight explicit allowable uses under Section 30233(a). Therefore, the amendment does not meet the requirement of the first test. The Commission finds that the amendment is inconsistent with §30233(a) (See additional discussion regarding Coastal Act consistency and policy conflict below).

2. No Feasible Less Environmentally Damaging Alternative

Section 30233 allows fill in a wetland only where there is no feasible less environmentally damaging alternative to the proposed project. Alternatives to the project as proposed must be considered prior to finding that a project satisfies this provision of Section 30233. Four potential project alternatives were considered in the environmental documents prepared for the North Shore project. For the purpose of this discussion we have eliminated two of those alternatives as the environmental impacts are similar to or greater than those of the proposed amendment (alternative c). In addition, staff notes that one potential alternative was not previously considered and that is included as alternative b. The relevant project alternatives include: a) the no project alternative, b) the habitat restoration alternative and c) the proposed amendment alternative. For the reasons discussed below, the Commission finds that there is no identified feasible less environmentally damaging alternative to the proposed amendment.

a) No Project Alternative

The No Project Alternative would allow the site to remain in its present condition. The land use designation for the site would remain "open space" and no development would occur. The onsite soils and groundwater would not undergo remediation.

The soil and groundwater contamination at the site poses a threat to human health and the environment. The existing contamination onsite has already migrated into the canal adjacent to the site and could also potentially migrate down to the upper and lower aquifers in the Oxnard Plain Groundwater Basin. The Commission notes that the remediation would not be undertaken by the current property owner without the financial incentive of constructing the proposed residential development. Should the development not be allowed, the RWQCB could then issue an order to the responsible parties involved with the contaminated site. The list of

such parties exceeds 280 in total and includes the City of Ventura, County of Ventura, Camarillo High School and the U.S. government. It is also speculative whether the RWQCB would consider this site a priority for issuing a cleanup order and subsequently pursuing litigation necessary to enforce such an order. If so, it is likely that litigation would ensue that could take many years to resolve. Therefore, it is unlikely that remediation of the site would occur within a reasonable length of time, if at all. As a result, further migration of contaminants into the groundwater supply would taint the aquifers used for drinking water and agricultural uses. Further, onsite vegetation would continue to be exposed to petroleum hydrocarbons, volatile organic compounds and other forms of contaminants.

Further, onsite vegetation would continue to be exposed to petroleum hydrocarbons, volatile organic compounds and other forms of contaminants. The existing habitat onsite would not likely sustain healthy, viable vegetation communities on a long term basis if left to the course of nature. The dominant vegetation existing onsite is iceplant, a non-native, invasive plant species, which is encroaching upon the native vegetation onsite. Iceplant has been observed within the willow vegetation, dune scrub vegetation, and the milk-vetch community. Myoporum, a non-native, invasive tree species also occurs in various areas throughout the site, particularly in association with willow vegetation. Both iceplant & myoporum are fast growing species, are characterized by aggressive growth patterns, and can grow in a variety of habitat and soil conditions. Due to the adaptive abilities of non-native plants, such species tend to outcompete native plant species for available water, nutrients, sun and habitat.

It also appears that the presence of hydrocarbon contaminated soils are contributing to the deteriorated health of some of the willow and milk-vetch plants. Both the willow and milk-vetch species on the site typically have deep taproots that are used to draw water and other nutrients from soils that along the coast can be relatively sandy. It has been postulated that these taproots enter the contaminated soil layers below the surface more quickly and more often than other plant species, including the non-natives, that have more shallow root systems. Consequently, the current site conditions create an environment in which the non-natives, which adapt more readily to adverse conditions, are more likely to thrive while the native species struggle to mature and survive.

Given the above observations, non-native invasive plant characteristics, and the contamination present in the soils, it is speculated that if the site were left in its current state, the non-native species onsite will eventually overtake the native vegetation onsite such that the existing vegetation communities will be eliminated or exist in fragmented and small, isolated areas.

Thus, the no project alternative would result in negative impacts to water quality and sensitive coastal resources. As such, this alternative is inconsistent with Section 30230, 30231 and 30240 of the Coastal Act. In addition, the no project alternative would result in more significant adverse environmental impacts than the proposed project.

b) Habitat Restoration Alternative

This alternative would replace the impacted habitat in its original location upon completion of the remediation process. Destruction of the existing wetlands onsite would still occur to carry out the soil remediation. Due to the scattered dispersal of the wetland habitat onsite, restoration of these areas following soil remediation would greatly reduce the available area for development on the site. The City and the property owner assert that the remediation would not be economically feasible without a reasonable amount of residential development that

includes the areas where the wetland patches are located. In addition, the replacement/restoration of the impacted habitats in their current location is not the environmentally preferable alternative because 1) post-remediation/natural soil conditions are not suitable for wetland vegetation and 2) the scattered, fragmented nature of the existing habitat provides paltry shelter and foraging area for wildlife while leaving restored native vegetation vulnerable to encroachment along the edges by non-native, invasive species. It is Dr. Allen's professional opinion that the vegetation at the North Shore site is an atypical situation because of the history of the site. And that the occurrence of some wetland plants there is a result of being imported within fill material and is not the result of a naturally occurring or normally functioning wetland. The environment in which the wetland is proposed to be restored offsite will be of much higher quality than where the wetlands currently exist. The relocation and reconfiguration of the small pockets of vegetation on and offsite would also serve to create more contiguous, functional habitat. The replacement of impacted vegetation in the same location would not have significant ecological benefits. Thus, this alternative would provide less environmental benefit than the proposed project.

c) The Proposed Amendment Alternative

The proposed project is the most environmentally preferable alternative due to the need for site remediation and milk-vetch preservation and habitat restoration aspects. In addition to the threat to human health due to groundwater contamination, environmental health is of serious concern. Without site remediation, it is postulated that the health and abundance of the existing native vegetation onsite will continue to decline. It is necessary to allow some residential development in order to attain site remediation benefits. The milk-vetch, which is considered to be ESHA shall be preserved under this alternative in the context of the existing community plus a 50 foot buffer within a surrounding habitat restoration area that will include dune scrub species compatible in nature with the vetch further buffering the sensitive plant from non-native species currently encroaching on the vetch community. Fencing around the restoration area will also serve to prevent adverse impacts on the vetch from humans and domestic animals. The resource protection designation, required conservation easement, restoration, maintenance and monitoring plan and performance bond will ensure that the vetch is permanently protected. The vegetation types located onsite, which are typically considered sensitive habitat area, are suffering poor health and vigor due to the encroachment of invasive vegetation and a contaminated substrate. The small isolated patches of vegetation do not provide functional habitat for normally associated sensitive wildlife species, however, the implementation of this alternative would correct this deficit. The replacement ratio of the vegetation types will yield as much habitat as and of much higher ecological value than what is proposed to be impacted. The proposed restoration of impacted habitat in a more suitable location as a contiguous sensitive habitat area with a 50 foot native landscaped buffer to add further protection to adjacent wetland habitat along the canal as well as to onsite restored habitat will create a more ecologically desirable habitat area, which will have significant benefits for sensitive resident and migratory species. The resource protection designation, required conservation easement, restoration, maintenance and monitoring plan and performance bond will ensure that the restored habitat is protected in perpetuity.

The existing wetlands onsite are occurring on artificial substrate, which holds water due to hydrocarbon contamination and placement of a fill cap. Once the site is remediated, the soils will return to their sandy, porous natural state. The wetlands that are currently supported onsite will not survive on the new soils. Soil manipulation will be necessary to recreate such habitat and sustain it on a long term basis. Creating wetland at a more suitable location (McGrath

parcel, Exhibit 14) is preferable for several reasons: 1) In the central low area of the proposed mitigation site there is currently extensive cover by invasive iceplant (18.6 acres) and small amounts of saltgrass, bullrush and willow scrub suggesting that the area has the potential for wetland creation, 2) located up coast is McGrath Lake and State Beach and down coast is the Mandalay State Beach, both of which support natural dune and wetland type habitats indicating that these habitats are characteristic of the surrounding environment and would be appropriate for this site, 3) the southern tip of McGrath Lake extends to the border of this parcel and wetland creation in this area would form a logical extension of and natural buffer for that wetland complex, 4) the current situation allows trespass across the site with impacts to snowy plover habitat, but this could be controlled by fencing, signage, etc. if the site is restored, 5) the site is adjacent to the snowy plover protected (fenced) area on State Parks property, so the snowy plover protected area could be expanded, and 6) restoration of the site would remove the existing go-cart track and the noise and disturbance from that facility. In summary, the use of this offsite location for wetland mitigation would compliment and enhance the existing habitat and provide further protection of the area. The required conservation easement, creation, restoration, maintenance and monitoring plan and performance bond will ensure that the created wetland habitat is permanently protected. Thus, the Commission finds that the proposed project is has less adverse environmental impacts than the other alternatives..

3. Adequate Mitigation

The third limitation imposed on projects proposing fill in a wetland set forth by section 30233 requires that adequate mitigation measures to minimize adverse impacts of the proposed project on habitat values shall be provided. It is critical that proposed development projects in a wetland include a mitigation plan, which when enacted will result in no net loss of wetland area or function.

As noted above, the entire project involves placement of fill in 4.2 acres of wetland area in order to remediate the soil and groundwater contamination, develop a residential community and create habitat restoration areas, thereby eliminating the habitat value of the wetland areas onsite. The City was unaware of the presence of wetland areas on the site at the time of the proposed amendment submittal, however, the City has been working in cooperation with Staff throughout the review process and, since the determination that those delineated areas onsite qualify as wetland under the Coastal Act, has agreed with suggested mitigation measures in order to mitigate for the loss of wetland onsite, which are incorporated into the suggested modifications to the proposed amendment. The proposed remediation and subsequent relocation and restoration of habitat offers benefits to the sensitive resources on and off site.

The wetland onsite, as discussed above, is subsisting on artificial fill brought in as a cap upon closure of the oil waste disposal facility. The delineated willow scrub wetland area is located in an area with lower contaminant levels and appears to occur in a manner consistent with historical habitat onsite and in the surrounding area. The saltgrass areas, on the other hand, are composed of almost 100% saltgrass, a monoculture. These patches are located on soils containing some of the highest levels of hydrocarbon contamination found onsite. This contamination occurs within inches of the surface and it is speculated that this layer of contamination suspends water longer at the surface during rain and fog events than would normally occur. During the soil remediation process, these soil conditions will be eliminated and the original sandy soils will characterize the site again. Because saltgrass needs relatively moist soils to survive, it is supposed that the elimination of oil contaminants will return the soils to their natural, more sandy and porous state, which will not allow rainfall and moisture to

persist in the supporting soils. Therefore, manipulation of the soils would be necessary to create a suitable substrate with adequate soil moisture and nutrients in order to support saltgrass over the long term. Based on the less than suitable native soils underlying the North Shore site, it is the opinion of Staff biologists as well as the applicant's consulting biologist, that a more suitable location for the wetland mitigation is the proposed offsite mitigation site, known hereafter as the "McGrath" parcel, given the excellent potential of this site to support both saltgrass and willow vegetation and connect with and compliment adjacent wetland areas.

The McGrath parcel is approximately 28 acres and is located in Oxnard, bordered by an electric generation plant on the south, the sandy beach and ocean to the west, McGrath State Park to the north and Harbor Blvd on the east (Exhibit 1). There is a go-cart facility located in the southeastern corner of the parcel, which shall be removed to eliminate the noise and other impacts on nearby sensitive resources from the facility. The parcel is located across Harbor Blvd to the northwest of the North Shore site. The majority of the site is relatively flat and characterized by a nearly continuous cover of iceplant. The site has been disturbed by past development activities such as historic oil drilling operations and the go-cart facility development and operation. Plant communities existing on the site, as shown on Exhibit 13, include the following:

- A subset of the Iceplant Series, encompassing approximately 18.6 acres. On the site, this series is dominated by iceplant. Subdominant, or locally dominant non-native species include bromes (*Bromus* sp.), short-pod mustard (*Hirschfeldia incana*), and myoporum.
- A subset of the Saltgrass Series encompasses approximately 0.4 acre of the site, dominated by saltgrass (*Distichlis spicata*). Subdominants consist of silver beachweed (*Ambrosia chamissonis*), poison oak (*Toxicodendron diversilobum*), mulefat (*Baccharis salicifolia*), and coyote brush (*Baccharis pilularis*).
- The Arroyo Willow Series, consisting of a dense thicket of nearly monotypic arroyo willow, comprises 0.9 acre and occurs within the dune hollows of the site.
- The Bullrush Series occupies 0.2 acre within a dune hollow. This community consists of emergent hydrophytic species consisting of flowering plants that may be temporarily to permanently flooded. The dominant species is American bulrush, with a subdominant plant being an unknown species of dock (*Rumex* sp.).
- An Unclassified designation was given to approximately 4.6 acres of the site. Most of this area consists of sand dunes and beach. Barren ground and dirt roads comprise a small portion of this area as well. Several native forbs are present on the dunes, but do not contribute much overall plant cover. These species include sand verbena (*Abronia* sp.), ice plant, sea rocket (*Cakile maritima*), beach primrose (*Camissonia cheiranthifolia*), and sea-cliff buckwheat (*Eriogonum parvifolium*); a very small amount of European beach grass (*Ammophila arenaria*) also occurs within these areas.

The remaining acreage, approximately 3.3 acres, is an operational go-cart racing track development in the southeast portion of the site.

Suitable habitat, as well as documented occurrences of three special-status wildlife species – western snowy plover (*Charadrius alexandrinus nivosus*), California least tern (*Sterna antillarum browni*), and sandy tiger beetle (*Cicindela hirticollis grvida*) – occurs on McGrath State Beach,

adjacent to the site. While occurrences on the McGrath parcel of these species have not been documented, weed abatement, restoration of native vegetation, and effective removal of non-native species such as iceplant and myoporum would result in an increased area of habitat for the snowy plover and the sandy beach tiger beetle.

The offsite mitigation parcel is considered severely degraded due to the presence of approximately 18.6 acres of iceplant and other non-native plants and 3.3 acres of the go-cart/race track facility. The site possesses a high overall wetland creation potential for three essential reasons: 1. native plant communities, including some minimal wetland vegetation (saltgrass, bullrush, and willow scrub) currently exist on the site that indicate that additional areas could be potentially created contiguous with the existing vegetation; 2. the site is bordered to the north by McGrath State Park, in which there is a freshwater lake (McGrath Lake) immediately adjacent to the site. The lake provides shelter, water, food, and other life cycle resources for insects, fish, reptiles, birds, and mammals. Creation of wetland habitat on the McGrath parcel that is adjacent to the lake can substantially enhance the value of the lake and surrounding wetland habitats (Exhibit 14). The parcel can also serve as a buffer to the lake and the State Park in general from human activities associated with the Edison plant; 3. the replacement of non-native plant communities and other disturbed areas with native plants will serve to enhance and enlarge the extent of native vegetation currently on the site, reduce the potential of existing areas to be further fragmented by non-native species that could eventually overtake the site, and provide habitat value for a larger diversity of wildlife species, including special-status species.

The required wetlands mitigation would include the elimination of non-native and invasive species on the site (essentially iceplant and myoporum), that if left would quickly recolonize the site and negate restoration efforts. Conceptually, saltgrass and willow wetlands would be created as an addition to the current willow and bullrush vegetation in the center of the site and would extend to McGrath Lake, and as an addition to the current saltgrass area adjacent to McGrath Lake in the northwestern portion of the site. Additional willows could be planted adjacent to and within the dune hollows (as an enhancement to the existing willow vegetation in these areas) to enlarge and possibly connect the dune/willow swale community on the site. Saltgrass vegetation could be planted as an addition to the existing saltgrass in the northeastern corner of the site that could extend into the current go-cart track. In addition, depending upon the type (species, function, etc.) of wetlands currently associated with McGrath Lake, other wetland vegetation could be created (in lieu of some of the saltgrass and/or willow scrub) to create a more complex, diverse wetland habitat on the McGrath parcel such that wetlands on this parcel are much healthier than the existing wetlands on the North Shore site and compatible with those associated with surrounding wetland habitat.

Other enhancement efforts could include constructing an access trail to the beach along the southern boundary with the Edison plant to encourage visitors to stay out of the restoration/creation area. Fencing and signage along the path could be installed as a further deterrent. The location of the trail on the southerly side of the parcel would allow the remainder of the site to act as a habitat buffer for McGrath Lake and the State Park. In addition, the suggested modifications require that the applicant develop a wetland mitigation and restoration plan to mitigate for the loss of wetland area due to the project.

In summary, the McGrath parcel is a highly suitable site to create and restore wetland habitat as mitigation for loss of 4.2 acres of wetland areas on the North Shore site. The total of approximately 22 acres of non-native vegetation and disturbed habitat will adequately

accommodate the approximately 16.8 acres of wetland habitat (to provide a 4:1 mitigation ratio) plus a 100 foot buffer that will need to be created as a result of soil remediation and development on the North Shore site (Exhibits 13 & 14). Because of the location of the site adjacent to McGrath State Park, and immediately adjacent to McGrath Lake, preserving and improving the McGrath parcel will serve to enhance the biological value of the lake and surrounding state park areas as larger and more contiguous native wetland habitat areas will be created and preserved. Ultimately, these created areas will provide more habitat for both common and special-status wildlife species known to occur in the vicinity.

In past permit actions, the Commission has found that in order to assure the success of wetland mitigation and to mitigate for the loss of wetland during the period of time it takes for the wetland habitat to be established, it is appropriate to require a 4:1 mitigation ratio to create wetland habitat as specified in the resource policies. A conservation easement over this parcel prior to ground disturbance on the North Shore site is required to permanently protect the wetland restoration area and the surrounding 100 foot buffer, which is proposed to be native dune habitat. Wetland creation, restoration, maintenance and monitoring plans shall be developed for the offsite wetland mitigation. These plans include such measures as, an ecological assessment of the surrounding area, a 100 foot restored native habitat buffer, removal of non-native species, maintenance and monitoring for not less than 10 years and the removal and restoration of the existing go-cart facility on the property. To ensure that all of the mitigation measures will be carried out, a performance bond provision is included to cover the labor and materials of the creation/restoration and the maintenance and monitoring. Therefore, the Commission finds that, as conditioned, the project will provide adequate mitigation measures to minimize adverse impacts on habitat values and no net loss of wetland area or function will occur as a result as required by the third test of §30233.

COASTAL ACT POLICY CONFLICT

In order for the Commission to utilize the conflict resolution provision of Section 30007.5, the Commission must first establish that there exists a substantial conflict between two statutory directives contained in Chapter 3 of the Coastal Act. The fact that an amendment is consistent with one policy of Chapter 3 and inconsistent with another policy does not necessarily result in a conflict. Rather, the Commission must find that to deny the amendment based on the inconsistency with one policy will result in coastal zone effects that are inconsistent with another policy.

In this case, as described above, the proposed amendment is inconsistent with the wetland protection policies of the Coastal Act because it is not an allowable wetland fill activity as identified by Section 30233(a)(1-8). However, to deny the project based on this inconsistency with Section 30233(a)(1-8) would result in significant adverse impacts inconsistent with Coastal Act water quality and sensitive resource policies, specifically Sections 30230, 30231 and 30240. The soil and groundwater remediation activities proposed under this LCP amendment will prevent adverse impacts to surface and ground water quality and sensitive coastal resources due to contamination. As such the project is consistent with Section 30230, 30231 and 30240 of the Coastal Act. Without the project, significant adverse impacts on water quality and sensitive coastal resources will occur.

If the Commission were to deny the amendment based on its nonconformity to the wetland fill provisions of Section 30233, the water quality would be threatened and sensitive resources would suffer worsened health and loss of native habitat, including the potential loss of a previously thought to be extinct plant species, thus resulting in adverse impacts on these

resources and directly contradicting Sections 30230, 30231 and 30240, which mandate protection of said resources. Therefore, the no project alternative would have unavoidable significant adverse impacts on coastal resources. The second alternative presented does not eliminate the need for wetland fill that is not an allowable use, and in addition, this alternative is not feasible or environmentally preferable.

The proposed amendment involves fill in degraded wetland areas that have been created as a result of past disturbance by the operation and closure of an oil waste disposal facility, nevertheless, fill in a wetland for the purpose of the proposed amendment to include residential development is inconsistent with the wetland policies of the Coastal Act. However, this amendment will preserve water quality, protect a previously thought to be extinct plant community and restore highly degraded sensitive habitats. Much of the sensitive habitat onsite is dying back and appears generally unhealthy. Because of the contaminated condition of the site, Dr. Allen does not believe that over time this site would regenerate to a healthy dune habitat representative of the area. The existence of very contaminated materials just beneath the surface prevents deep-rooted plants from growing to maturity over most of the site, and this will not allow this site to regenerate naturally without soil remediation. The amendment will also serve to enhance habitat values of the wetland created offsite. Therefore, the Commission finds that the proposed amendment creates a conflict among Coastal Act policies.

After establishing a conflict among Coastal Act policies, Section 30007.5 mandates that the Commission resolve the conflict in a manner that is on balance most protective of coastal resources. In this case the proposed amendment would result in the fill of approximately 4.2 acres of wetland. The critical factors in the Commission's assessment of the conflict resolution are the following: that the soils onsite are highly contaminated and pose a threat to human health and the environment; soil remediation is required to eliminate these threats; the soil remediation will impact 4.2 acres of wetlands that have formed due to past industrial uses that modified the site; and following the soil remediation, these areas will no longer exhibit the conditions that are required to support wetland habitat. In addition, approval of the proposed project, as opposed to denial, will result in more healthy functional wetland habitat areas through relocation and restoration offsite in more suitable locations, which will in turn benefit sensitive wildlife species. The amendment incorporating the suggested modifications will result in the creation of 4:1 wetland habitat as mitigation for impacted wetland area which will be located offsite at a more suitable location creating a more diverse and larger wetland habitat than those existing onsite and will also serve to enhance surrounding resources.

Therefore, the Commission concludes that impacts on coastal resources that would result from denial of the amendment would be more significant than the impact on wetland habitat allowed under the amendment. Therefore, the Commission finds that approving the amendment is, on balance, most protective of coastal resources and is consistent with Section 30007.5 of the Coastal Act.

This finding is in part based on the assumption that the wetland habitat enhancement and creation measures are carried out as intended and continually managed and maintained in perpetuity. Therefore, the suggested modifications impose a performance bond requirement to ensure the completion of creation, maintenance and monitoring. Further, the Commission notes that the proposed offsite mitigation site lies within the Commission's post-LCP jurisdiction, hence, the Commission will be the permitting authority over the creation, restoration, maintenance and monitoring plan for the McGrath parcel.

ENVIRONMENTALLY SENSITIVE HABITAT AREA: MILK-VETCH

By far the most unique and valuable biological resource on the North Shore site is a plant previously thought to be extinct, the Ventura marsh milk-vetch (*Astragalus pycnostachyus* var. *lanosissimus*). The last known population of this rare dune scrub plant was at McGrath State Beach, approximately 2 miles north of the North Shore site on Harbor Boulevard. The population at McGrath State Beach was reported destroyed in 1967, and since that time the species was presumed to be extinct. However in 1997 a population of this species was discovered in the North Shore site by USFWS biologist, Kate Symonds (USFWS, Federal Register, May 2001, 66(98):27901-27908). This initial population was believed to have germinated from the fill material brought in during the closure of the oil waste facility. The actual origin of this soil is unknown but is likely local considering the cost of transporting fill. Apparently the fill material contained a seed bank including the milk-vetch seeds that may have lain dormant for many (30 or more) years. Apparently, when the optimal conditions occurred on the site (an El Nino year?), many of the dormant seeds germinated. In 1997, 374 plants were discovered, 260 of which were small and thought to have germinated in the last year.

Since that time the milk-vetch plant community on the North Shore site has been preserved in a fenced off area (about 0.4 acre). Studies on the biology of the milk-vetch, funded by the landowner, are being conducted by Christina Sandoval at Coal Oil Point, UC Santa Barbara. These studies have shown that it is normal for this plant to produce predominately dormant seeds. Normally, only about 5% of the seeds germinate spontaneously, 95% being dormant. Most of the seeds have a heavy seed coat that must be broken open before germination can occur. At North Shore this may have occurred when earth-moving equipment moved the soil containing the milk-vetch seeds that then germinated during the wet winter of 1997.

Species that live in very harsh and uncertain conditions such as coastal dunes often evolve a "spreading of risk" or "hedging of bets" strategy that spreads reproduction over a very long time. That is, these species are reproductive opportunists that develop strategies in which the emergence of their offspring is spread over long time periods. Thus, it may be normal for the milk vetch to have many seeds that lie dormant in the coastal dune soil seed bank waiting for a opportune year to germinate. We do not know for sure how long these seeds can lie dormant. In the case at North Shore it was probably on the order of thirty years, but much longer time periods are certainly possible.

The milk-vetch preserve area including the existing plants and a surrounding soil excavation limit area (about 1.65 acres) must be declared ESHA in spite of the degraded nature of the site in other respects. This area must be protected from any type of disturbance, specifically soil remediation must not be conducted in this area. The area should be preserved in perpetuity because of the long-term seed bank strategy that this species employs. This strategy has saved it from apparent extinction and that serves as an example of why the whole area surrounding the milk-vetch plants should be considered sensitive. There are probably many seeds still remaining in this soil that will germinate in the coming years, not to mention more that have been deposited from the current crop of adult plants.

The Ventura Marsh Milk-vetch plant community that exists onsite is designated an environmentally sensitive habitat area due to the rare occurrence and sensitive nature of this plant species, and thus, will be preserved and protected in its current location, which lies within a designated resource protection area pursuant to the suggested modifications. Policy 10.1(b) 1-7 speaks to the preservation and mitigation of the Ventura Marsh milk-vetch. These policies

are designed to preserve and protect the milk-vetch onsite and to establish a population of milk-vetch offsite in a more suitable environment to promote the health and distribution of the vetch. Overall, these policies are found to be protective of the sensitive milk-vetch as required under Section 30240 of the Coastal Act. However, some suggested modifications are proposed to enhance the proposed protective measures and reflect changes resulting from the modifications to the policies regarding other sensitive resources onsite, such as the willow scrub, dune scrub and saltgrass communities, as described below.

The Memorandum of Understanding (MOU) between the landowner and the California Department of Fish and Game (CDFG) (Exhibit 11) and the Settlement Agreement between the landowner and the California Native Plant Society (Exhibit 12) were incorporated by reference into the proposed amendment policies. The Commission finds that the offsite mitigation required in the MOU involving the establishment of milk-vetch populations in more suitable environments is integral in preventing extinction of the milk-vetch species in conjunction with the preservation of the onsite population. However, the buffer required around the milk-vetch under those agreements, while protective of the milk-vetch, does not conform to the sensitive resource protection policies in regards to the other habitats onsite, which is discussed further below. In cooperation with the suggested modifications for other sensitive resource policies, the buffer around the milk-vetch preserve is composed of onsite restoration of willow, dune scrub and saltgrass habitats, thereby establishing a 10 acre resource protection area including and surrounding the 1.65 acre milk-vetch preservation area.

Included among the protective policies regarding the milk-vetch is the delineation of a 100 foot wide, 1.65 acre area designated as the milk-vetch preservation area, which shall be permanently protected, as proposed. No ex-situ remediation or other soil disturbing activities shall occur within this limit line. Fencing shall be constructed, as set forth in suggested modifications, around this delineated area to prevent any disturbance from humans or domestic animals. Since the vetch area will not be remediated due to the sensitive nature of the species, the installation of monitoring wells is proposed to monitor the status of below-surface contaminants in order to avoid future impacts to the plant population. Land use around the milk-vetch preserve is limited to interpretive nature trails to minimize impacts to the habitat area. Additionally, in order to ensure effective and lasting preservation of the milk-vetch, the proposed amendment requires maintenance and monitoring plans to be developed. The suggested modifications boost the effectiveness of those plans by incorporating additional requirements, such as having the plans prepared by a qualified biologist and/or resource specialist, specifying a 10 year period for the long term management of the restored areas, and including additional criteria in the plans. A conservation easement over the preservation areas is proposed to be recorded prior to any ground disturbing activities. The Commission finds that such protective measures, as modified, are adequate to carry out the intent of Section 30240 of the Coastal Act.

NORTH SHORE SENSITIVE RESOURCES

Because of the unique requirements for remediation of the project site, preservation of existing dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush is not feasible, nor preferable. As such, there are 23.4 acres of dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush habitats present onsite that will be impacted by the bioremediation of the site (revised vegetation map, Mar. 2002). These plant communities are in a degraded, disturbed state and thus, have reduced biological value. However, these vegetation types are typically considered to be ESHA due to their limited extent and high

biological value within an ecosystem. Notably, the southern dune scrub is normally considered a sensitive biological resource because it has been severely depleted in Southern California and because of its value in supporting several special-status plant and wildlife species. In this case, however, because of the degraded and dispersed nature of these plant communities on the site in conjunction with the highly contaminated soil and groundwater environment, the biological and ecological value of these communities is greatly diminished. Therefore they do not fully qualify as ESHA in this situation. However, because these plant communities do provide some ecological function and biological value, their loss to residential development or soil remediation activities requires mitigation.

Since the impacted habitat does not possess full ecological value, a 1:1 mitigation ratio onsite for habitat loss due to site remediation has been imposed via suggested modifications to sensitive resources policies. The proposed amendment originally included two separate sets of policies to deal with dune scrub habitat and willow scrub and saltgrass grassland habitats. Pursuant to the recent wetland delineation which determined that 1.2 acres of willow scrub and 3 acres of saltgrass meet the vegetation criterion to qualify as wetland under the Coastal Act, the suggested modifications propose appropriate mitigation measures for those habitats considered to be wetlands under the policies previously dealing with willow scrub and saltgrass as non-wetland habitat (see Wetlands section above for more detail). In addition, the suggested modifications propose to change the dune scrub mitigation policies to address dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush habitats as they are found to have equal biological value, and thus, mitigation is deemed necessary for the additional vegetation types not previously included, and the mitigation and protection measures are universal. Both proposed sets of policies incorporated the mitigation measures in the MOU by reference. The Commission notes that the MOU allows for offsite mitigation for these habitats at undetermined locations in combination with possible onsite mitigation to result in a total mitigation ratio of 1:1, unless the created or restored habitat yields habitat of higher biological value, then the ratio may be less than 1:1. The Commission through past actions on LCPs and coastal development permits has found that mitigation should occur onsite where feasible, and as it is feasible and preferable to mitigate for the loss of sensitive resources onsite, the incorporation of the MOU into the amendment is not appropriate. Therefore, the suggested modifications eliminate the reference to mitigation requirements as set forth in the MOU and replace it with a requirement of mitigation onsite at a ratio of 1:1 for the loss of dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush habitats (Policy 10.1(c)). Next, Policy 10.1(c) 1 & 2 set forth provisions for carrying out a combination of on and offsite mitigation to satisfy a mitigation ratio of 1:1 maximum, which the Commission finds to be inadequate to protect sensitive resources, thus those are deleted through suggested modifications. As a result of the onsite mitigation at a replacement ratio of 1:1, restoration onsite will consist of dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush habitats along the canal and around the milk-vetch area for a total of 23.4 acres (equal to the impacted area). The restoration efforts within the project site will be located so as to create a contiguous habitat with existing dune habitat across West Fifth Street and on the adjacent parcel to the north as well as existing willow and wetland habitat along the canal. The restoration and creation of continuous dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush habitats adjacent to the wetlands of the canal area and the dune areas on adjacent properties will result in habitats with higher ecological function and value. As such, these restored habitats will qualify as environmentally sensitive habitat areas. The proposed amendment includes a policy stating that these dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush habitats shall be restored, enhanced and permanently protected. In order to ensure this level of protection the restored areas will be designated as

resource protection areas and identified along with the milk-vetch preservation area as well as the offsite wetland restoration area on the Sensitive Habitats Map (Exhibit 4).

Additionally, in order to ensure effective and lasting restoration of these habitats, the proposed amendment requires maintenance and monitoring plans to be developed. The suggested modifications boost the effectiveness of those plans by incorporating additional requirements, such as having the plans prepared by a qualified biologist and/or resource specialist, specifying a 10 year period for the long term management of the restored areas, and including additional criteria in the plans. Conservation easements over the restoration areas are proposed to be recorded prior to any ground disturbing activities. Such permanent protection measures are found to carry out the intent of sensitive resource policies under the Coastal Act.

The Commission finds that buffer zones are critical to the protection of sensitive habitat areas from disturbance. The suggested modifications require 50 foot wide buffers designated as recreation areas located adjacent to the designated resource protection areas to reduce impacts from the planned residential development. The recreation area/landscaped buffer adjacent to the resource protection area along the canal shall also serve as a linear parkway including the proposed public trail.

It should be noted that the existing LCP policy (LUP Policy no. 6.d) requires a buffer of 100 feet in width for new development adjacent to wetlands or resource protection areas. However, the policy permits the buffer to be reduced to a minimum of 50 feet only where the applicant demonstrates the larger buffer is unnecessary to protect the resources of the habitat area. The applicant opposes a 100 foot buffer requirement, which is illustrated on Exhibit 8, asserting that a 50 foot wide buffer is adequate to protect the resource onsite, as shown on Exhibit 9. The City submitted a report from Impact Sciences, which analyzes this issue and concludes that a 50 foot buffer is appropriate to protect the sensitive resources and finds this consistent with standards for buffer width in the LCP policy. The City also submitted letters from the California Department of Fish and Game and the wetland peer reviewer, Dr. Huffman, which concur with that conclusion. In addition, the overall buffer to the canal, which is over 150 feet plus the planting of willows will serve to protect the mudflats along the canal where many sensitive bird species feed at low tide. Therefore, the Commission finds that the 50 foot landscaped buffer will be adequate to protect the restored sensitive resource areas and the sensitive wetland habitat in and along the canal. Finally, the suggested modifications allow for a 15 foot wide bicycle path on the outer margin of the buffer.

The entrance road to the site will be located in the southern portion of the site off Fifth Street below the restoration area. The road must be constructed in this location because it is the preferable alternative with respect to public safety due to traffic and visibility issues on Harbor Blvd and Fifth Street. The road will not have adverse impacts on the resource area as it is located beyond the 50 foot buffer and the public trail. The Commission notes that there is a small triangular area in the southeastern corner of the resource protection area that has been designated residential. This is the most logical and preferable location to construct the North Shore sewer lift station, which will serve to sewer the residential lots. The sewage from the site will collect in a series of underground pipes and gravity drain, following the proposed contour of the site from northwest to east, and collect at the pump station. The pump station is necessary to pump the sewage from the site to a 21" sewer line located at the intersection of West Fifth Street and Victoria Avenue. The City of Oxnard has requested this location for accessibility reasons and because it is the closest point onsite to the tributary sewer pipeline in Victoria Avenue, thus reducing the chance of hydrogen sulfide production. Since it is located on the

edge of the resource protection area and setback from the canal, the Commission finds that constructing the sewer station in this location will not have adverse impacts to sensitive resources.

The 50 foot wide buffer adjacent to the resource protection area in conjunction with landscaping, lighting and fencing requirements to minimize disturbance to the sensitive habitat areas are found to be adequate to ensure protection of sensitive resources and therefore, consistent with Coastal Act Section 30240.

The Commission also finds that potential adverse effects to the value and quality of the sensitive habitat within the resource protection areas onsite will be minimized through the implementation of landscaping plans utilizing native plant species within the landscaped buffer areas as well as on individual housing lots. The proposed amendment requires preparation and implementation of landscaping plans to include provisions for the control of invasive plant species and to address the impact of non-native plant on native habitats. This policy is insufficient to prevent the use of exotic invasive plant species onsite and does not address the landscaping on individual housing lots. The use of exotic plants in the landscaped buffer areas adjacent to the resource protection areas and for residential landscaping results in both direct and indirect adverse effects to native habitats. Adverse effects from such landscaping result from the direct occupation or displacement of native plant communities by new development and associated non-native landscaping. Indirect adverse effects include offsite migration and colonization of native plant habitat by non-native/invasive plant species (which tend to outcompete native species) adjacent to new development. The Commission notes that the use of exotic plant species for residential landscaping has already resulted in significant adverse effects to native plant communities in the coastal zone. Therefore, in order to prevent adverse effects to the onsite resource protection areas including the Milk-vetch preservation area and nearby sensitive habitat areas, such as the adjacent wetland area, suggested modifications to the landscaping plan requirements state that all landscaping consist primarily of native plant species and that invasive plant species shall not be used in the development of individual housing lots. Therefore, as proposed with suggested modifications, Policy 10.1(d) regarding landscaping plans is consistent with Coastal Act Section 30240.

Finally, suggested modifications address the long term maintenance of the sensitive habitat areas on the site and dissemination of information to future homeowners regarding sensitive resources both on and off site. The responsibility for long term maintenance and monitoring of the onsite resource protection area is assigned to the homeowners association, working in cooperation with CDFG, via CC&Rs. In addition, information packets shall be distributed along with the sale of each housing unit, which explains the sensitivity of natural habitat areas onsite and nearby and the need to minimize impacts on those sensitive areas. These policies will insure long term maintenance of the sensitive habitat areas on site and provide information to future residents that will help to protect and preserve of both on and off site sensitive resources.

SPECIAL-STATUS WILDLIFE SPECIES

Ten special status invertebrate and vertebrate wildlife species, including 1 state and federally listed endangered species, were observed on or immediately adjacent to the North Shore site during recent surveys. In addition, a number of other special-status wildlife species are known to occur in the site vicinity and may potentially occur at some point on or in the immediate area of the site in the future based on the presence of suitable habitat, their known geographical range or historical observations in the vicinity.

Two species were observed on the North Shore site: the Globose dune beetle (*Coelus globosus*) and the San Diego black-tailed jackrabbit (*Lepus californicus bennetii*). The Globose dune beetle, a federal species of concern (proposed to be listed) was found onsite and in the immediate area. Coastal sand dune habitat for this species has been declining due to human disturbance and development. The San Diego black-tailed jackrabbit, a federal & state species of concern, was also observed onsite within the sagebrush scrub vegetation. There are several other sensitive animal species that occur in the area and could potentially occur onsite, but have not been observed onsite, such as the silvery legless lizard (*Anniella pulchra*), which has been noted across Fifth St. Thus, there may be some temporal impacts to sensitive wildlife species, however, the suggested modifications require that prior to ground disturbance, surveys shall be conducted for such species and any animals found shall be collected, relocated and reintroduced upon completion of site remediation and habitat restoration. The existing onsite habitat is so fragmented and degraded that not many animals have been observed onsite. The site remediation and habitat restoration will correct this and create a much healthier, more functional habitat area for sensitive wildlife species into which those species can then be reintroduced. The good dispersal ability of the jackrabbit will allow this animal to relocate to adjacent habitat area and reintroduce itself to the restored habitat later.

In addition, numerous special status bird species were observed foraging in the canal area adjacent to the site, including the California least tern, a federal and state listed endangered species. This species has declined statewide due to extensive loss of habitat, particularly nesting sites. The North Shore site does not serve as rookery or nesting habitat for any of the observed sensitive bird species, nor does the adjacent canal. The canal provides saltwater habitat sheltered from ocean surge and winds that is ideal for supporting large schools of topmelt, the primary forage species of least terns. The proposed habitat restoration area and native landscaped buffer along the canal area will serve to enhance surrounding habitat to the canal area and act as a visual buffer to minimize impacts from human activity on the canal area. In addition, the lighting provision, which limits the direction and intensity of lighting around the development, prevents impacts from artificial light on avian activities. Moreover, the fencing provision will prevent intrusion into the canal area from humans and domestic animals, thereby providing further protection to the canal and associated wildlife.

Another special status species found in the surrounding area is the western snowy plover (*Charadrius alexandrinus nivosus*), a federally listed threatened species. The snowy plover nests on Mandalay and McGrath State Beaches, which are located across Harbor Blvd from the North Shore site. Although the proposed amendment will not directly impact the snowy plover, an incremental increase in residential development is likely to create indirect adverse impacts to plovers via recreation on the nearby beach. See Impacts to Offsite Sensitive Resources section below for further discussion.

IMPACTS TO OFFSITE SENSITIVE RESOURCES

The Commission notes that nearby sensitive resources, such as the canal area located east and north of the subject site, must be protected from adverse impacts due to proposed development. There are three general areas near the North Shore site that provide important habitat for sensitive plant and animal species. These areas include the Reliant Canal, which borders the site on the east and partially the north, a sensitive disturbed dune area on the Edison property to the north, a sensitive dune complex across Fifth St. to the south of the site, and the State Beaches located across Harbor Blvd to the west of the site, as shown on Exhibit 1.

The canal area has been identified as a wetland area and new development adjacent to wetlands results in potential adverse impacts to sensitive habitat and marine resources from increased erosion, contaminated storm runoff, introduction of non-native and invasive plant species, disturbance of wildlife, and loss of sensitive plant and animal habitat. The proposed amendment includes protective policies for the Reliant Energy Canal adjacent to the North Shore property. The canal area is a wetland that hosts several special status wildlife species, thus protection of water quality and sensitive habitat area along the canal from the planned residential development in conformance with Section 30240 is essential. Policies included in the proposed amendment require the proposed public trail to be located as close to the housing lots as possible and vegetation to be planted between the trail and the canal to serve as a visual and sound buffer between human activity and wildlife associated with the canal. The Commission supports this concept and only suggests minor modifications in order to accommodate the designated resource protection area between the canal and the adjacent recreation area, which will include the trail. As a result of the suggested modifications, the trail will still be located as close to the housing lots as possible and a buffer will still exist between the canal and any human or domestic animal activity, however, the designated recreation area will serve as this landscaped buffer. The recreation area will consist of native landscaping along the inner edge adjacent to the dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush restored habitat/resource protection area and the trail along the outer edge closest to the residential development.

In addition, these policies provide for interpretive signs along the habitat areas to explain the sensitive nature of those areas and the need to minimize impacts on those habitats. Moreover, provisions are included for adequate fencing between the edge of development and banks of the canal for the purpose of minimizing disturbance in and along the canal. The suggested modifications alter the location of the fencing such that it lies between the designated resource area and the recreation area, completely outside of the canal area, to minimize disturbance from humans and domestic animals in the resource protection area as well as the canal area. Finally, the Commission has found that night lighting adjacent to sensitive habitat areas may alter or disrupt feeding, nesting, and roosting activities of native wildlife species. The planned residential development will be located adjacent to designated environmentally sensitive habitat area onsite and the canal just offsite, which acts as a foraging area for numerous resident and migratory special status bird species. As the proposed amendment did not address the issue of lighting, the Commission suggested modifications to the resource policies to include limits on the street and exterior residential lighting as outlined in policy 10.1(g)1. in order to minimize impacts to wildlife within the sensitive habitat areas on and adjacent to the site. Thus, the Commission finds that Policy 10.1(g)1. imposing lighting restrictions as a suggested modification, is consistent with Section 30240 of the Coastal Act. The Commission notes that these policies with suggested modifications are protective of sensitive resources and consistent with Coastal Act resource protection policies.

The suggested policy modifications regarding onsite restoration of sensitive habitats along the Reliant Canal in combination with a 50 foot buffer surrounding this area will provide an adequate buffer to the canal wetlands (minimum 170 feet) and sensitive dune habitat on the Edison site to the north. In addition, the suggested policy modification requiring fencing and informational signage between the 50 foot buffer and resource protection area will restrict access to the canal and sensitive dune area. Therefore these adjacent offsite sensitive habitat areas will not be adversely impacted by the proposed residential development on the North Shore site.

To the south of the North Shore site directly across Fifth Street there is vacant sensitive disturbed dune habitat consisting of five private properties. Currently there are no resource protection measures in place to limit public access to this sensitive dune area. In addition, there is evidence of disturbance of the dune area from off road vehicles and other human activities. Residential development on the North Shore site will result in additional disturbance of this area by residents and domestic animals accessing the site. In order to ensure the North Shore development does not adversely impact this sensitive dune habitat, policy 10.1(h)2. requires the City, prior to the issuance of a coastal development permit, to install fencing in the road right-of-way from the intersection of Fifth Street to the seaward end of the bridge over the Reliant canal and install signage at a maximum interval of 100 feet indicating this is private property, no trespassing, and this area is a sensitive dune habitat. These measures will ensure this sensitive dune habitat is not adversely impacted by informal access and recreational activities from the residents of the North Shore development.

In relation to the State Beaches located west of the North Shore site, the California Department of Parks and Recreation submitted a letter to Staff on March 19, 2002 voicing opposition to the proposed LCP amendment (Exhibit 16). The City of Oxnard responded to the concerns of State Parks in a subsequent letter dated March 26, 2002 and is attached as Exhibit 17. The State Parks letter laid out a number of potential adverse impacts to resources at the two parks located across Harbor Blvd from the North Shore site. These are listed below followed by discussion.

Extension of Urban Rural Boundary

The proposed adjustment to the urban/rural boundary does not represent a leapfrogging of development into undeveloped areas and will not result in further urbanization or growth inducing impacts over and above the residential development proposed for this site. The North Shore site is located adjacent to the Oxnard Shores residential community. This community includes the 181-unit Oxnard Shores Mobile Home Park, a 1,409 lot residential area south of the park, and a commercial development located at the corner of Wooley Road and Harbor Boulevard. The canal and agricultural areas to the east/northeast, the power generation station to the north/northwest, and State Parkland to the west are firm physical and land use boundaries between existing urban and rural land uses. The extension of the urban/rural boundary to capture the North Shore is a logical extension and creates a stable boundary line between rural and urban development for this area of the coastal zone. In addition, the site is in close proximity to urban public services such as water, sewer, electrical services and two major public roadways.

State Parks has argued that North Shore was once part of the dune complex system in the area and that the connectivity of the area will be significantly changed by this development. While the North Shore site was once part of the dune complex in the area, its use as an oil waste disposal facility for thirty years has made it significantly different than the surrounding habitats. In addition, on the west it is isolated from the Mandalay State Beach property by two chain link fences and Harbor Blvd. On the east (the other side) it is blocked by two more chain link fences and the Mandalay Canal. So while birds might fly over these obstacles, ground-moving animals are essentially blocked now on both east and west sides of the property. In fact, it would not be difficult for such animals (e.g., coyotes, foxes, raccoons, etc.) to move around this property across the existing agricultural areas, and probably do so now to avoid the obstacles associated with the North Shore site.

Impacts to Critical Habitat for Threatened Species

Section 30240 requires that new development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitats and recreation areas. There is evidence that snowy plover foraging and nesting habitat exists at Mandalay and McGrath State Beaches. Human and dog activity along the coast is known to have adverse effects on shorebird foraging and nesting behavior.

The high density residential neighborhood of Oxnard Shores is located immediately south of Mandalay State Beach across Fifth Street. There is direct access to the beach at the end of Fifth Street. Residents of this area currently use Mandalay State Beach for passive recreation. Therefore, there is currently a low to moderate level of passive recreational use of this beach by both residents and visitors that park along Fifth Street and Oxnard Shores Boulevard. The residential development of the North Shore site will incrementally increase passive use of this beach. In order for residents from the North Shore site to access the State Beach they will have to cross Harbor Boulevard at the traffic light at Fifth Street and walk along the existing fence line approximately ½ mile to the beach. The existing fencing and signage restricts direct public access across the state park property so there will be no impacts to the sensitive back dune area from pedestrian traffic from the North Shore development.

Staff biologist, Dr. Allen, who is also a resident of the area and has used the McGrath-Mandalay area as a recreating spot, analyzed this issue. McGrath State Beach is over 1 mi. down Harbor Blvd, a very pedestrian-unfriendly busy highway with no parking. Another access route is along the shore, and this route is blocked upcoast by the outflow from the Santa Clara River and downcoast by the outflow from the Reliant Canal blocking the path of beach walkers into this area. This is probably why the plover uses this stretch of beach now. The only other primary access is through the State Park entrance, which is under the Parks Dept. control, as well as the subsequent access within the park. This will not change due to this development. Thus, it is not likely that future residents of the North Shore site would travel to that beach very often. However, Mandalay Beach is located directly across from the North Shore site and is fenced along Harbor Blvd and Fifth St., but open at the end of Fifth Street where most of the current and future residents as well as the visiting public would access the beach as it is the most convenient and safest route (see Exhibit 1). From the access point at the end of Fifth Street, beach walkers turning upcoast are discouraged by the Reliant Canal outflow after about ½ mile, and the only unimpeded route is to go downcoast, away from the plover area. While the plover habitat on McGrath State Beach is afforded some natural protection via difficult access in combination with existing fencing and signage, the foredunes along Mandalay Beach remain open and thus, vulnerable to disturbance from visitors. Fencing along those areas in concert with signage to prevent uncontrolled access could reduce current levels of disturbance to birds and destruction of nesting areas. In addition, dogs are a recognized agitator to snowy plover causing the birds to alter their foraging and nesting behavior. Staff notes that prohibiting dogs on these beaches would minimize disturbance to the plovers. These protective measures are necessary regardless of the proposed development to attenuate impacts from beach users on the sensitive resources. In order to mitigate the potential for additional disturbance and degradation of the plover habitat and sensitive back dune areas a suggested modification requiring funding for installation and maintenance of protective fencing, additional directional and informational signage and a daily ranger patrol during the plover nesting season is necessary. These protective measures will ensure the sensitive habitats of Mandalay State

Beach are not significantly degraded by the incremental increase in public use resulting from the North Shore development. Furthermore, given there is already a certain level of existing disturbance from the public using the beach from the downcoast residential area, the above resource protection measures are reasonable and proportional to mitigate the incremental adverse impacts on sensitive resources at this beach resulting from residential development at the North Shore site. In summary, the whole area is already partially protected by fencing and signage, and the mitigation measures from this project would serve to compliment and complete the existing protection. With such management elements in place along with enforcement, the incremental impacts on the snowy plovers and their habitat associated with the proposed development would be insignificant.

Compromise of Public Natural Resource Investment

State Parks is concerned that the influx of new users will severely compromise the investment in resource enhancement and protection in the McGrath-Mandalay area. In addition to providing funding for protection measures of these sensitive resources, the proposed amendment includes the restoration of a parcel, which was characterized by a representative of State Parks (pers comm, V. Gardener) as a severely degraded site. This parcel abuts McGrath Lake and the restoration and protection of sensitive resources at this site would inherently enhance and protect the lake habitat area.

Further, concerns were expressed regarding a potential modification of the airport flight path to avoid the North Shore site and the impacts that such a modification might have on the avian refuge at McGrath Lake. In fact, the City previously proposed a slight modification to one of the flight paths during the Oxnard Airport Master Plan update process in 1997, however, the change was considered and rejected at that time. The project did undergo environmental review and was approved by the City with the flight path in its current configuration. If the airport authority were to consider such a modification in the future, it would entail a number of time consuming steps including public participation and the concurrence of several entities. Even if such a change was approved, it would not have adverse impacts on birds or habitat restoration plans for the lake area. The aircraft overflying the lake would be at an altitude of approximately 1500 feet. Impact Sciences asserts that waterfowl and shorebird species that are likely to occur in this area do not typically soar in circles over a desired area before landing, but rather start descending toward the lake prior to reaching the area at altitudes far less than 1500 feet. The comparison that State Parks applies with Santa Barbara Airport and Goleta slough conflicts does not apply in this case because while Oxnard Airport is located over a mile away from McGrath Lake (see Exhibit 1), S.B. Airport is located adjacent to the Goleta Slough, therefore due to the habitat's proximity to the runway, the planes are at lower altitudes when flying over the slough allowing interaction with birds and creating conflicts.

Recreational Impacts

State Parks states that the sensitive resources at the park units are protected in part by the low numbers of people currently using the facilities. However, on November 16, 2001 the Coastal Commission approved the construction of a levee involving fill in a disturbed wetland area in order to protect the existing recreation facilities at McGrath State Beach Park stating in the findings that: "The existing campgrounds are extensively used by visitors of both local, regional, national, and international origin. The proposed levee and associated enhancements will preserve coastal recreational opportunities for visitors and provide public access to the coast while protecting natural resource areas from overuse." This suggests that the State Park

currently supports at least a moderate level of recreational use and Parks invested in the protection of those recreational facilities in order to maintain that level of use, which contradicts the above contention.

As stated above, it is not likely that residents of the North Shore development will use McGrath State Beach Park very often due to the distance from the site and lack of safe or convenient access routes. Mandalay State Beach is adjacent to an existing high density residential area known as Oxnard Shores. Therefore, there is already an existing level of human and animal disturbance occurring on this beach. In addition, the Commission finds that the incremental impacts on Mandalay State Beach will be adequately mitigated via the suggested policy that requires the City and/or developer of the North Shore site to provide funding for offsite resource protection measures to attenuate the cumulative impacts due to the proposed development and that the limit imposed on the number of residential units minimizes new cumulative impacts to resources due to the proposed development.

The proposed amendment requires the new development to be designed to prevent impacts which would significantly degrade parks and recreation areas, and be compatible with the continuance of those habitats and recreation areas, and thus, is consistent with Section 30240 of the Coastal Act.

WATER QUALITY

The Commission recognizes that new development in the coastal zone has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources. As mentioned above, the proposed amendment includes restoration and protection of sensitive habitat areas, construction of three public trails and planned residential development, which will involve construction of roads, development of approximately 300 individual housing lots and other associated development.

The planned development will result in an increase in impervious surface, which in turn decreases the infiltrative function and capacity of existing permeable land on site. The reduction in permeable space therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. Further, pollutants commonly found in runoff associated with residential use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals including paint and household cleaners; soap and dirt from washing vehicles; dirt and vegetation from yard maintenance; litter; fertilizers, herbicides, and pesticides; and bacteria and pathogens from animal waste. The discharge of these pollutants into coastal waters can cause cumulative impacts such as eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size; excess nutrients causing algae blooms and sedimentation increasing turbidity which both reduce the penetration of sunlight needed by aquatic vegetation which provide food and cover for aquatic species; disruptions to the reproductive cycle of aquatic species; and acute and sublethal toxicity in marine organisms, leading to adverse changes in reproduction and feeding behavior. These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes; reduce optimum populations of marine organisms; and have adverse impacts on human health.

In addition, sedimentation directly affects wetland ecology by increasing water turbidity. Turbidity reduces the penetration of sunlight needed by aquatic vegetation, which translates to negative effects on plant establishment and overall productivity, which in turn impacts aquatic species that depend on such vegetation for food and cover. Further, aquatic animals are affected by turbidity in the following ways: reduced visibility for visual predators, such as birds and mammals; and inhibited feeding effectiveness for benthic filter feeding organisms. As such, it is imperative the water quality control and monitoring occurs as included in the suggested modifications to the resource policies to minimize impacts to coastal waters and sensitive habitat areas. The Commission notes that the water quality policy included in the amendment as proposed only required the use of best management practices in drainage plans throughout the development and did not include specific water quality measures and best management practices to fully address the protection of coastal water quality and the biological environment.

In order to find the proposed development consistent with the water and marine resource policies of the Coastal Act, the Commission suggests modifications to the proposed water quality measures to require the development and implementation of a water quality control plan and a water quality monitoring plan, which includes minimizing the creation of impervious surfaces. The plan also includes provisions for the incorporation of Best Management Practices designed to control the volume, velocity and pollutant load of stormwater leaving the developed site. Critical to the successful function of post-construction structural BMPs in removing pollutants in stormwater to the Maximum Extent Practicable (MEP), is the application of appropriate design standards for sizing BMPs. The majority of runoff is generated from small storms because most storms are small. Additionally, storm water runoff typically conveys a disproportionate amount of pollutants in the initial period that runoff is generated during a storm event. Designing BMPs for the small, more frequent storms, rather than for the large infrequent storms, results in improved BMP performance at lower cost.

The Commission finds that sizing post-construction structural BMPs to accommodate (infiltrate, filter or treat) the runoff from the 85th percentile storm runoff event, in this case, is equivalent to sizing BMPs based on the point of diminishing returns (i.e. the BMP capacity beyond which, insignificant increases in pollutants removal (and hence water quality protection) will occur, relative to the additional costs. The plan also requires the selected post-development drainage and polluted runoff plans be designed to control runoff using natural drainage and vegetation to the maximum extent practicable, and finds this will ensure the proposed development will be designed to minimize adverse impacts to coastal resources in a manner consistent with the water and marine policies of the Coastal Act.

Furthermore, interim erosion control measure implemented during construction will serve to minimize the potential for adverse impacts to water quality resulting from drainage runoff during construction and in the post-development stage. Therefore, the suggested modifications require construction phase erosion control and polluted runoff control plans. Finally, the maintenance of water quality measures, including annual inspection and maintenance of BMPs, and monitoring of water quality at the site is necessary to evaluate the effectiveness of the water quality control plan.

The development and implementation of a water quality control plan and a water quality monitoring plan, as described in detail above, to reduce pollutants, minimize runoff and erosion, and monitor and maintain the quality of surface and groundwater, will serve to ensure the protection of coastal water quality and biological productivity. Also as set forth in the proposed

resource policies, buffer areas will isolate sensitive habitat areas to provide additional protection for biological productivity and the quality of the coastal environment. The natural vegetation that occurs along the Reliant Energy canal will be retained where possible and otherwise restored and enhanced in conjunction with the creation of the resource protection area adjacent to the canal. The habitat restoration buffer along the edge of Reliant Energy canal along with best runoff management practices serves to minimize potential wastewater runoff and discharge into the waterway. Thus, the Commission finds that as proposed with suggested modifications, Policy 10.1(e) related to the Reliant Energy Canal habitat protection is consistent with Sections 30230, 30231 and 30240 of the Coastal Act.

4.4.3 COASTAL ACCESS AND RECREATION

The City proposes to amend the Coastal Access Map to show the public biking and pedestrian trails along Fifth St. and Harbor Blvd. And on site. In addition, the City proposes site-specific coastal access and recreation Land Use Plan policies for the North Shore site.

Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30213 states, in relevant part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30214(a) states:

The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place and manner of public access depending on the facts and circumstances in each case including but not limited to, the following:

- (1) Topographic and geologic site characteristics.*
- (2) The capacity of the site to sustain use and at what level of intensity.*
- (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.*
- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.*

Section 30252 states, in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by....(3) providing nonautomobile circulation within the development,...(6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Suggested Modifications

The following are land use map and land use policy suggested modifications related to access and recreation.

The proposed linear park and public bicycle/hiking trail adjacent to the resource protection area along the Reliant Energy canal within the North Shore at Mandalay Bay site and the public bicycle lane on Harbor Blvd and West Fifth Street along the edges of the North Shore site are added to Map No. 12 (see Exhibit 2.4 in City's LCP Amendment document and Exhibit 5 of this staff report, which reflects the Commission's suggested modifications).

"82.1. The North Shore at Mandalay Bay project site, an 82.7 net 94-acre property located north of West Fifth Street, east of Harbor Boulevard and south and west of the Reliant Energy canal, has been designated Resource Protection Area, Recreation Area, and Planned Unit Development. The following policy shall apply specifically to this development area:

a. Public coastal access and recreation facilities shall include:

- 1) a 750-foot-wide landscaped buffer/linear parkway between the resource protection area along the Reliant Energy canal and the residential development, that includes a 15-foot-wide bicycle/pedestrian path; and
- 2) a 6-foot-wide bicycle lane on both Harbor Boulevard and West Fifth Street, along the outside edges of the project site.

Coastal Act Consistency Discussion

Coastal Act Section 30210 mandates that maximum public access and recreational opportunities be provided, consistent with public safety needs, the need to protect public rights, private property owners' rights and natural resource areas. Section 30213 mandates that lower cost visitor and recreational facilities, such as the proposed public pedestrian and biking trail, shall be protected, encouraged and provided, where feasible. This section also states that developments providing public recreational opportunities are preferred. Coastal Act Section 30214(a) addresses the appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

As described in Section 3.0 above, the Coastal Plan Land Use Map for the North Shore at Mandalay Bay assigns three land use designations: *Planned Unit Development Residential, Recreation Area* and *Resource Protection Area*. In concert, as described in Section 3.1, the Zoning Map reflects the Coastal Plan Land Use Map with three corresponding zones: *Single Family Beach, Coastal Recreation* and *Coastal Resource Protection*. As proposed, the amendment includes a 70 foot wide swath of land (approx. 6 acres) along the Reliant Energy Canal designated as *Recreation Area*. This area would serve as a linear park that includes a 15 foot wide bicycle/pedestrian path that connects to a 6 foot bike path along Harbor Blvd and Fifth Street. This area would also serve as a landscaped buffer area between the residential development and the sensitive wetland resources along the canal and as a mitigation site for the willow scrub.

As also discussed above, staff is recommending suggested modifications to the Land Use Map, Zoning Map and land use policies including designating a 23.8 acre swath of land adjacent to and along the canal and around the milk-vetch preserve area as a resource protection area for onsite dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush mitigation and to serve as a natural buffer between the residential development and the sensitive wetland areas in and along the canal as well as the milk-vetch preserve. In addition, a 50 foot wide landscaped buffer designated as a coastal recreation area (5.5 acres) is a suggested modification to the land use and zoning map to serve as a buffer between the residential development and the resource protection area. Within this buffer area a 15 foot wide bicycle/pedestrian path is proposed on the outer margin adjacent to the residential area located approximately 35 feet from the resource protection zone along the Reliant Energy canal. The resource protection zone containing restored dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush habitat, in combination with the linear parkway form a substantial natural vegetation buffer for wildlife and wetland habitat in the canal area and for agricultural lands beyond the canal.

Designation of the area adjacent to the canal as resource protection area as opposed to coastal recreation area provides a higher level of protection for the dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush habitat that is to be restored this area. In addition, relocating the pedestrian bicycle path outside of the resource protection area within in a landscaped buffer designated as coastal recreation will minimize direct human and domestic animal disturbance of the dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush restoration area. In addition, pursuant to suggested modifications to the resource protection policies cited above, the *Planned Unit Development Residential and Recreation Area* will be separated from the *Resource Protection Area* by fencing to prevent and minimize human and domestic animal disturbance of the sensitive resource areas.

Section 30252 states that new development shall maintain and enhance public access to the coast, the means of which may include but are not limited to, providing non-automobile circulation within the development and providing onsite recreational facilities to serve the new development so as not to overburden nearby public recreational facilities with the needs of new residents.

The proposed amendment includes provisions for 6 ft. wide bicycle lanes on both Harbor Blvd and West Fifth Street along the outer edges of the North Shore site and an onsite 50 ft. wide public linear park including a 15 ft. wide bicycle/pedestrian trail. The proposed public recreational trails connect previously uncoupled segments of the Ventura County and City of Oxnard recreational trail systems. The onsite trail is part of a planned trail network along the Reliant Energy canal, eventually connecting residential areas along the inland waterway to McGrath State Beach, which includes a temporary bicycle camp.

The proposed recreational trail along the Reliant Energy Canal will enhance public access to coastal resources by providing a safer, more scenic route for bicyclists and pedestrians. The path will also serve as onsite recreation and non-automobile circulation within the development for the new residents as well as the general public. The path will offer views of adjacent agricultural areas and the Reliant Energy Canal, which sustains wetland habitat that hosts a variety of plant and animal species.

The Commission notes that the aspects of the proposed amendment regarding coastal access and recreation, as proposed, were consistent with coastal access and recreation policies of the

Coastal Act, however, some minor suggested modifications were necessary to reflect changes related to sensitive resource and land use issues as presented in the two sections previous to this one. Therefore, due to the reasons discussed above, the Commission finds that the proposed amendment with suggested modifications is consistent with Coastal Act Sections 30210, 30213, 30214 and 30252.

5.0 FINDINGS AND DECLARATIONS FOR THE IMPLEMENTATION PROGRAM/COASTAL ZONING ORDINANCE (IP/CZO)

The Commission hereby finds and declares:

5.1 STANDARD OF REVIEW FOR THE IP/CZO

The Coastal Act provides:

The local government shall submit to the Commission the zoning ordinances, zoning district maps, and, where necessary, other implementing actions that are required pursuant to this chapter...

The Commission may only reject ordinances, zoning district maps, or other implementing action on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. If the Commission rejects the zoning ordinances, zoning district maps, or other implementing actions, it shall give written notice of the rejection, specifying the provisions of the land use plan with which the rejected zoning ordinances do not conform, or which it finds will not be adequately carried out, together with its reasons for the action taken.

The Commission may suggest modifications in the rejected zoning ordinances, zoning district maps, or other implementing actions, which, if adopted by the local government and transmitted to the Commission shall be deemed approved upon confirmation by the executive director. The local government may elect to meet the Commission's rejection in a manner other than as suggested by the Commission and may then resubmit its revised zoning ordinances, zoning district maps, and other implementing actions to the Commission.

The standard of review used by the Commission in reviewing the adequacy of zoning and other implementing measures is whether or not the implementing procedures are consistent with and adequate to carry out the land use plan.

5.2 LUP/CP POLICIES AND THE STRUCTURE OF THE CERTIFIED IP/CZO

Oxnard's Coastal Zoning Ordinance implements the City's Coastal Land Use Plan and policies. It serves to integrate the City of Oxnard Coastal Land Use Plan with the adopted Oxnard General Plan and Zoning Ordinance as applied to the Coastal Zone. The Coastal Zoning Regulations and Maps set forth regulations, standards, and procedural requirements for development within the Coastal Zone and establish required consistency with the policies of the LCP Land Use Plan.

5.3 PROPOSED CHANGES TO THE CERTIFIED IP/CZO

LCP Amendment OXN-MAJ-1-00 proposes modifications to the IP/CZO in order to amend the zoning map to reflect the annexation of the site into the City and apply specific zoning ordinances to the North Shore site.

The proposed changes to the IP/CZO are as follows:

1. Amend the existing Coastal Zoning Map (Appendix B-3) to reflect proposed zoning for the North Shore at Mandalay Bay site.
2. Revise Ordinance for Single-family Beach Sub-zone to include a provision for North Shore at Mandalay Bay site.

3. Revise Ordinance for Coastal Recreation Sub-zone to include a provision for North Shore at Mandalay Bay site and an additional permitted use.
4. Revise Ordinance for Coastal Resource Protection Sub-zone to include a provision for North Shore at Mandalay Bay site.
5. Incorporate the proposed site-specific policies into the Coastal Zoning Ordinance Appendix (4): Local Coastal Policies.

5.4 DISCUSSION AND FINDINGS

IP/CZO Change #1

Article 2 of the Coastal Zoning Ordinance establishes the purpose, permitted uses, development standards, and procedural/permit requirements for various zones, including the three zones that will apply to the North Shore at Mandalay Bay property:

- ♦ R-B-1 - Single-Family Beach Zone:
Development within the R-B-1 zone shall be consistent with the policies of the Oxnard Coastal Land Use Plan.
- ♦ RC - Coastal Recreation Zone:
This zone is designed to implement the recreational policies of the Oxnard Coastal Land Use Plan.
- ♦ RP - Coastal Resource Protection Zone:
Development within the RP zone shall be consistent with Policies 6, 11, 12, 13, 16, and 20 of the certified LCP Land Use Plan and Sections 30230, 30231, 30236, and 30240 of the Coastal Act.

Below is the description of the proposed changes to the zoning maps with the Commission's suggested modifications:

The portions of the property which have been zoned Resource Protection contains the Ventura Marsh Milk-vetch and a 100-foot-wide fenced soil remediation/excavation limit preservation area and dune scrub, coyote brush/willow cluster, buckwheat and coastal sagebrush restoration area. Additional area has been zoned Coastal Recreation to provide a substantial buffer between the Milk-vetch resource protection area and the planned residential development on the property and to preserve as much of the existing vegetation and topography around the Milk-vetch plants as possible. These areas Milk-vetch preservation area and surrounding restoration area together comprise a 10.4 23.8 acres resource protection area (5.2 acres under the MOU and an additional 4.9 acres under the Settlement Agreement).

Additional areas zoned Coastal Recreation include: an open space area adjacent to West Fifth Street to preserve additional dune scrub (.88 acre as provided in the Settlement Agreement), an open space area on the northerly portion of the site (1.24 acres) and a linear park along the Reliant Canal (5.84 acres).

The balance of the project site has been zoned Single-Family Beach.

The proposed zoning map is attached as Exhibit 10. The suggested modifications to the zoning maps as described above are reflected Exhibits 7 & 8. The proposed zoning designations correspond to the proposed land use designations for the site, hence, the proposed zoning map

changes reflect the proposed land use map changes and are therefore, consistent with the Land Use Plan as proposed to be amended.

IP/CZO Change #2, 3 & 4

Ordinance Section 37-2.1.0: R-B-1 (Single-family Beach Sub-zone)

Revise existing Section 37-2.1.1 (Purpose) to read as follows:

"The purpose of the R-B-1 zone is to provide areas in which the low-profile, small scale character of existing single-family beach-oriented neighborhoods may be preserved to provide reasonable protection to existing low to moderate income housing *and in which to designate areas of future development for low density residential use*. Development within the R-B-1 zone shall be consistent with the policies of the Oxnard Coastal Land Use Plan."

"In particular, development within the North Shore at Mandalay Bay shall be consistent with LCP Land Use Plan Policy No. 49.1."

Ordinance Section 37-2.13.0: RC (Coastal Recreation Sub-zone)

Add a new sentence at the end of existing Section 37-2.13.1 (Purpose) to read as follows:

"In particular, public coastal access and recreation within North Shore at Mandalay Bay shall be consistent with LCP Land Use Plan Policy No. 82.1."

Add a new Subsection 8 under Section 37-2.13.3 (Conditionally Permitted Uses) as follows:

8. Improved (paved) riding, hiking, biking and walking trails for North Shore at Mandalay Bay.

Ordinance Section 37-2.14.0: RP (Coastal Resource Protection Sub-zone)

Add a new sentence at the end of existing Section 37-2.14.1 (Purpose) to read as follows:

"Additionally, resource protection and development within North Shore at Mandalay Bay shall be consistent with LCP Land Use Plan Policy No. 10.1."

The proposed addition to the permitted uses under the Coastal Recreation Sub-zone Section 37-2.13.3 allows development of the public trail provided for in the proposed LUP coastal recreation policies. The proposed zoning ordinances incorporate by reference the proposed site-specific policies in the LUP, thus the proposed changes are consistent with the LUP as proposed to be amended.

IP/CZO Change #5

Coastal Zoning Ordinance Appendix (4): City of Oxnard Municipal Code (Local Coastal Policies; pp. LCP-1 through LCP-22)

Add to this comprehensive policy set all of the new LCP Land Use Plan Policies adopted for the LCP Amendment for the North Shore at Mandalay Bay project, specifically Resource Policy No. 10.1 (a) through (fh); Development Policy No. 49.1 (a) through (bc); and Coastal Access and Recreation Policy 82.1(a).

The City of Oxnard's Coastal Zoning Ordinance incorporates as implementing regulations the Land Use Plan Policies that are applicable to each of the land use zone districts shown on the City's Zoning Map, and also incorporates the entire set of LCP Land Use Plan policies as a component of the City's Municipal Code.

Because this LCP organization directly links LUP Policies and Zoning Regulations, the amendments and additions to the Coastal Zoning Ordinance consist largely of references to the new North Shore at Mandalay Bay policies in the Land Use Plan and incorporation of all of these new policies into the LCP policy set reiterated and adopted as part of the City's Municipal Code.

Therefore, the Commission finds that all of the above proposed changes to the IP/CZO as amended by the Commission's suggested modifications are consistent with and adequate to carry out the LUP/CP.

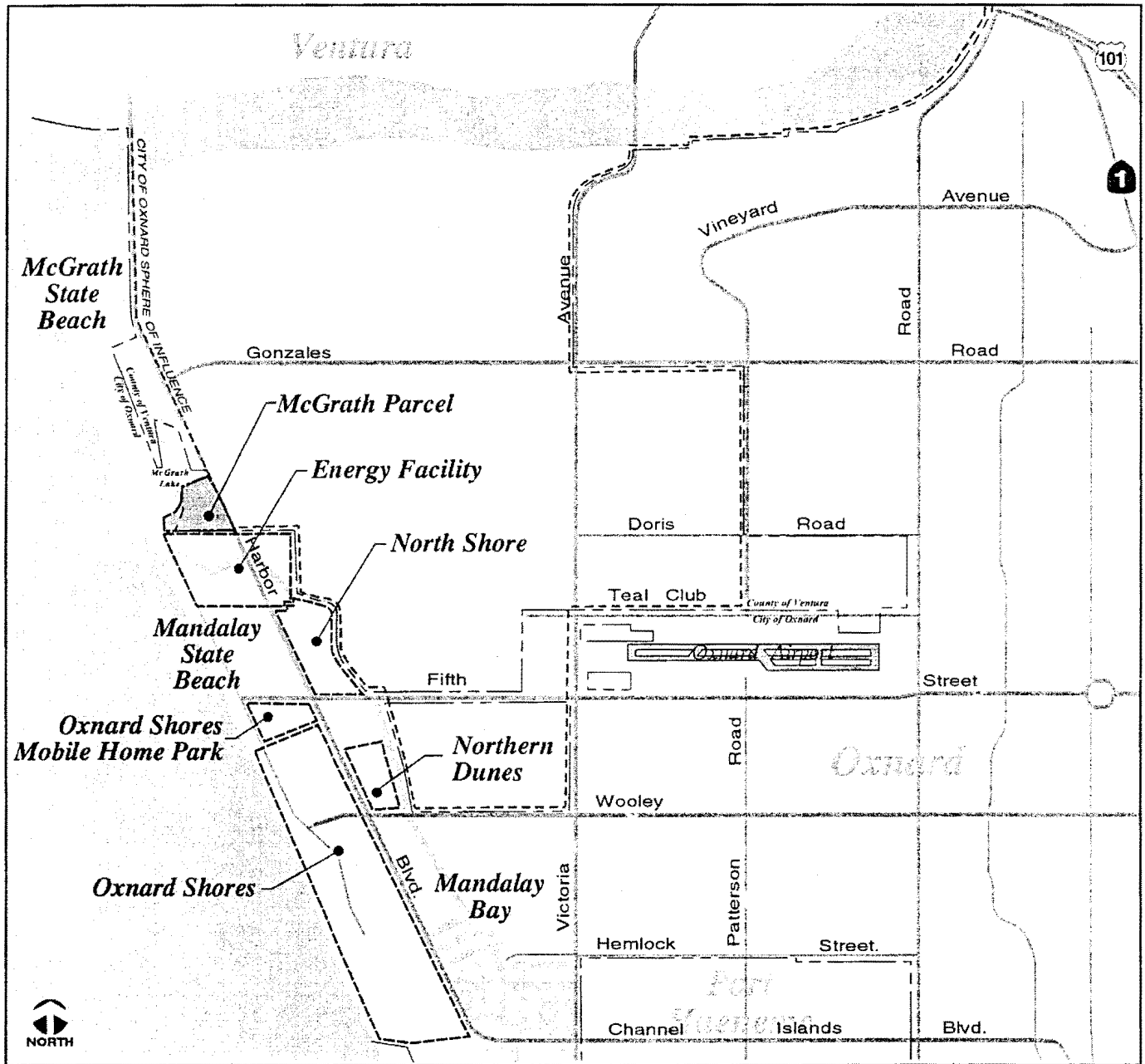


EXHIBIT NO. 1
 LCPA NO. OXN-MAJ-1-00
 VICINITY MAP

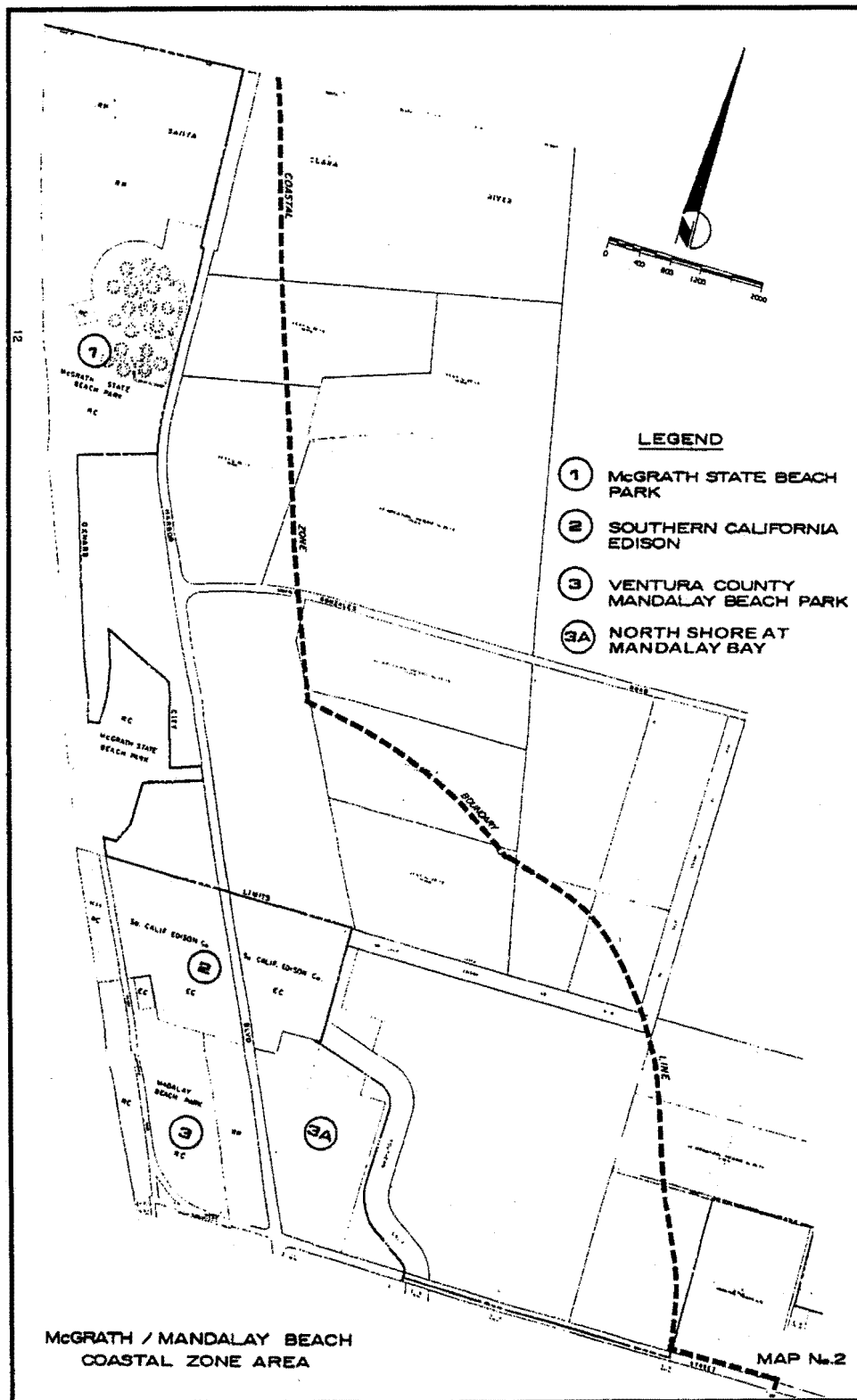
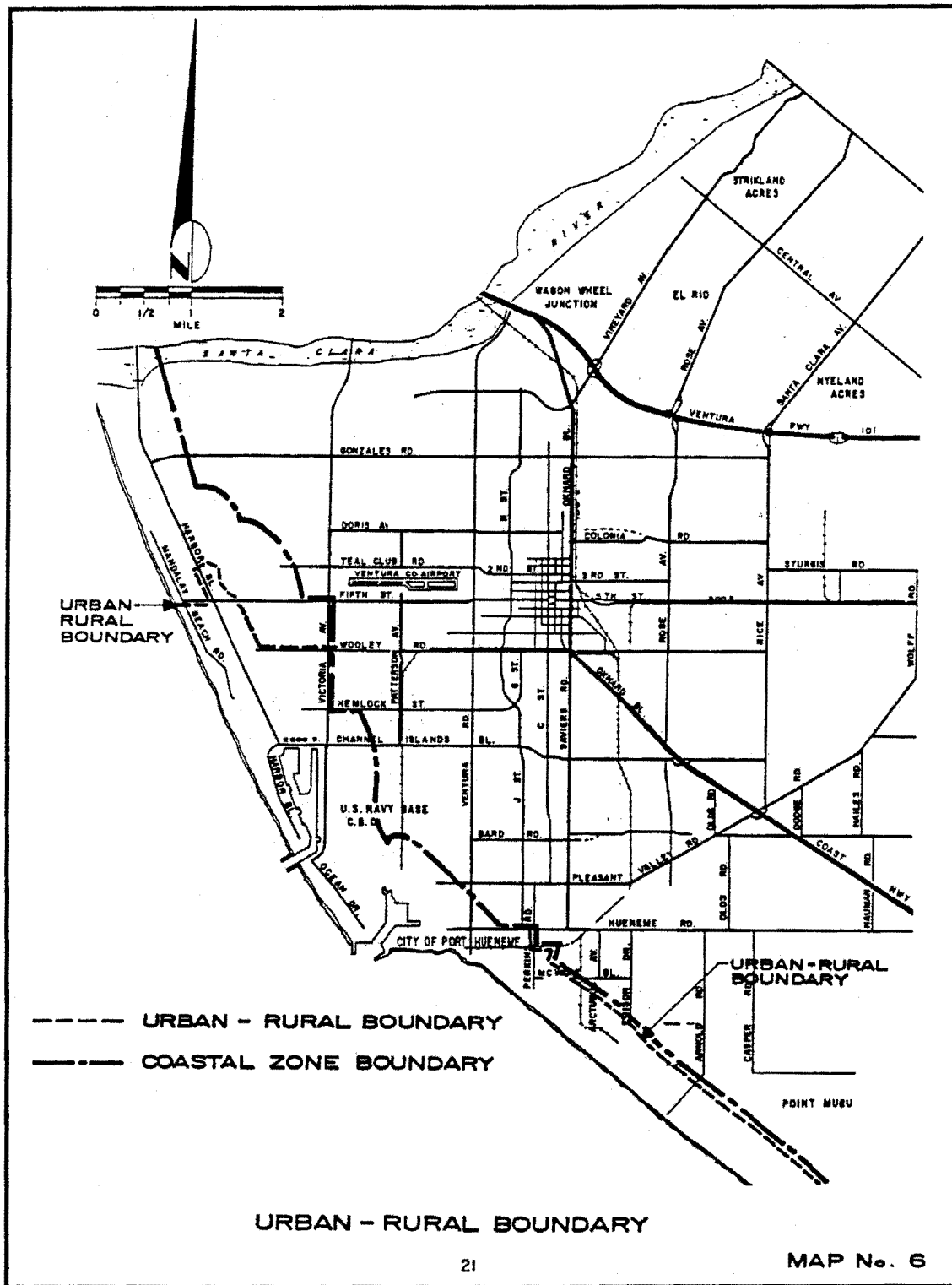


EXHIBIT 2.1

SE PLAN AMENDMENT

EXHIBIT NO. 2
LCPA NO. OXN-MAJ-1-00
COASTAL ZONE MAP,
MCGRATH-MANDALAY BEACH AREA



21

MAP No. 6

EXHIBIT 2.2
URBAN/RURAL BOUNDARY AMENDMENT

EXHIBIT NO. 3
LCPA NO. OXN-MAJ-1-00
URBAN-RURAL BOUNDARY MAP

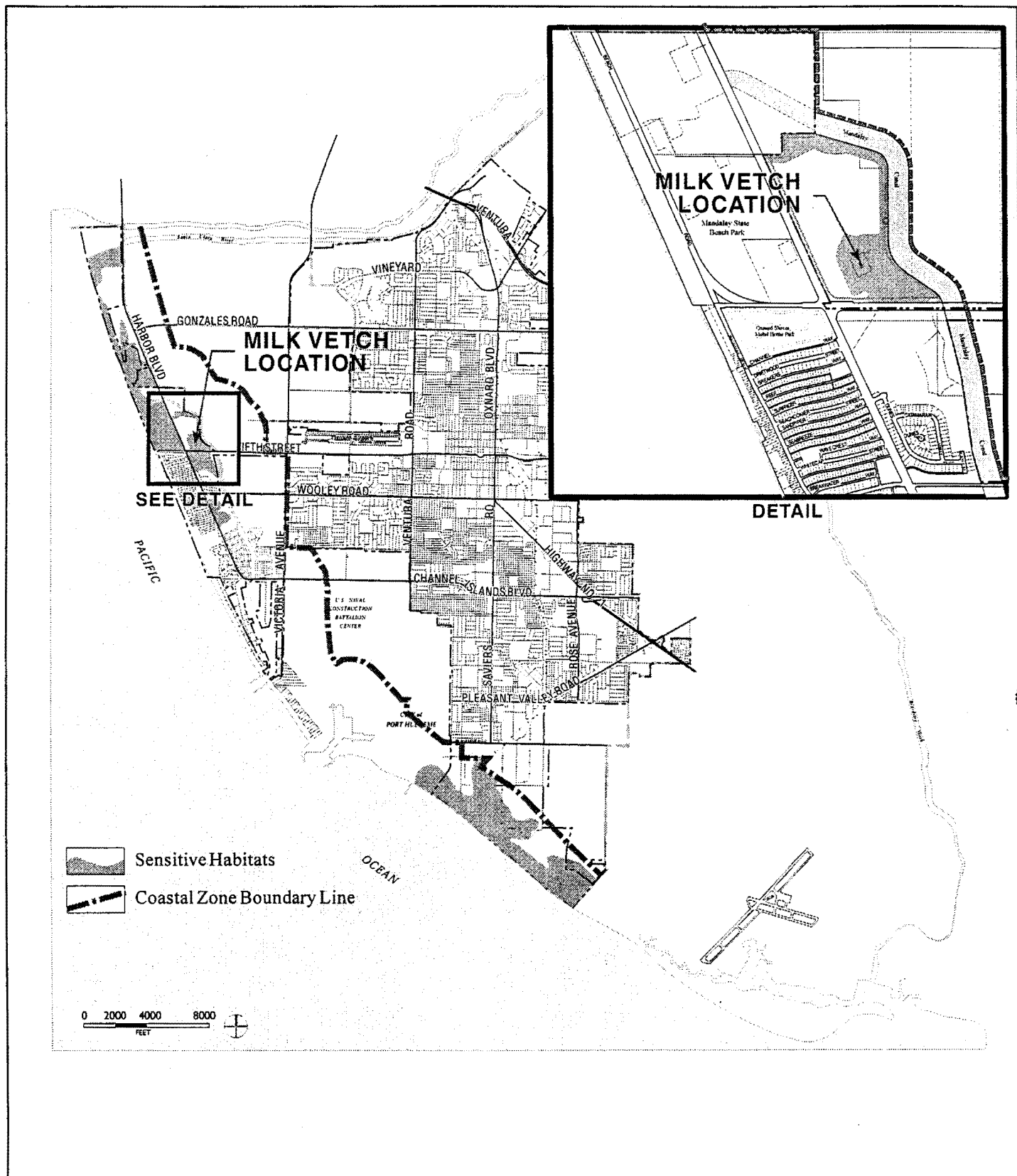


EXHIBIT 2.3
Sensitive Habitats Map Amendment
 LCP AMENDMENT • NORTH SHORE AT MANDALAY BAY

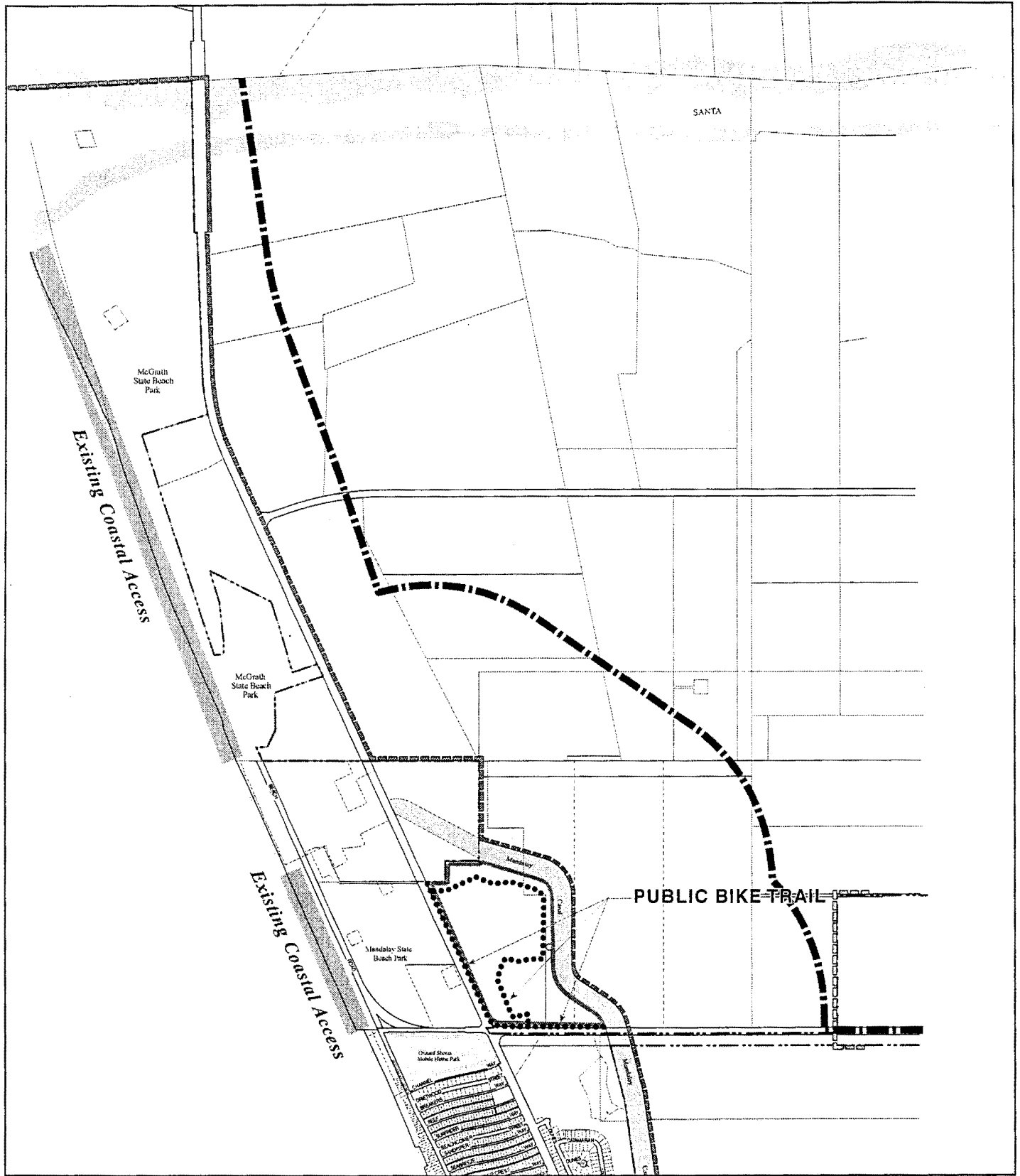


EXHIBIT 2.4
Coastal Access Map Amendment
LCP AMENDMENT • NORTH SHORE AT MANDALY BAY

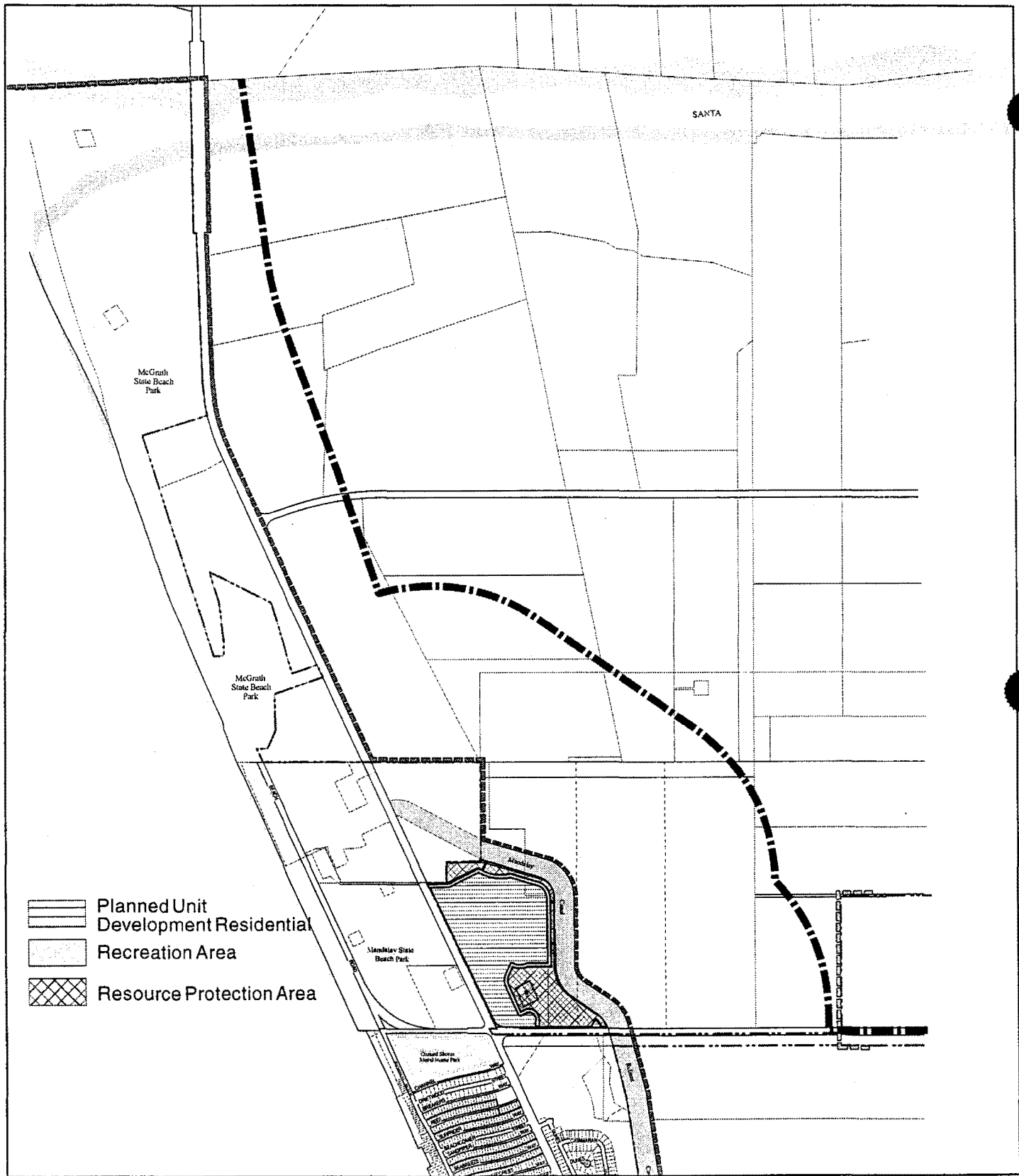


EXHIBIT 2.5
Coastal Land Use Map Amendment
LCP AMENDMENT • NORTH SHORE AT MANDALAY BAY

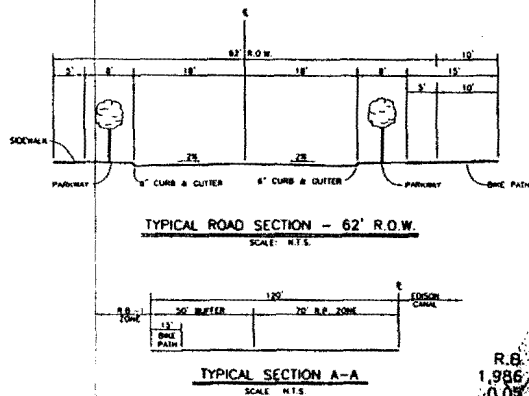
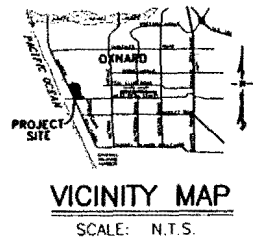
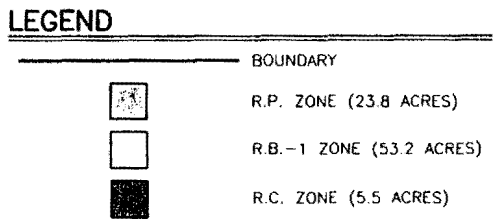
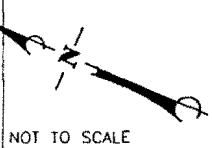
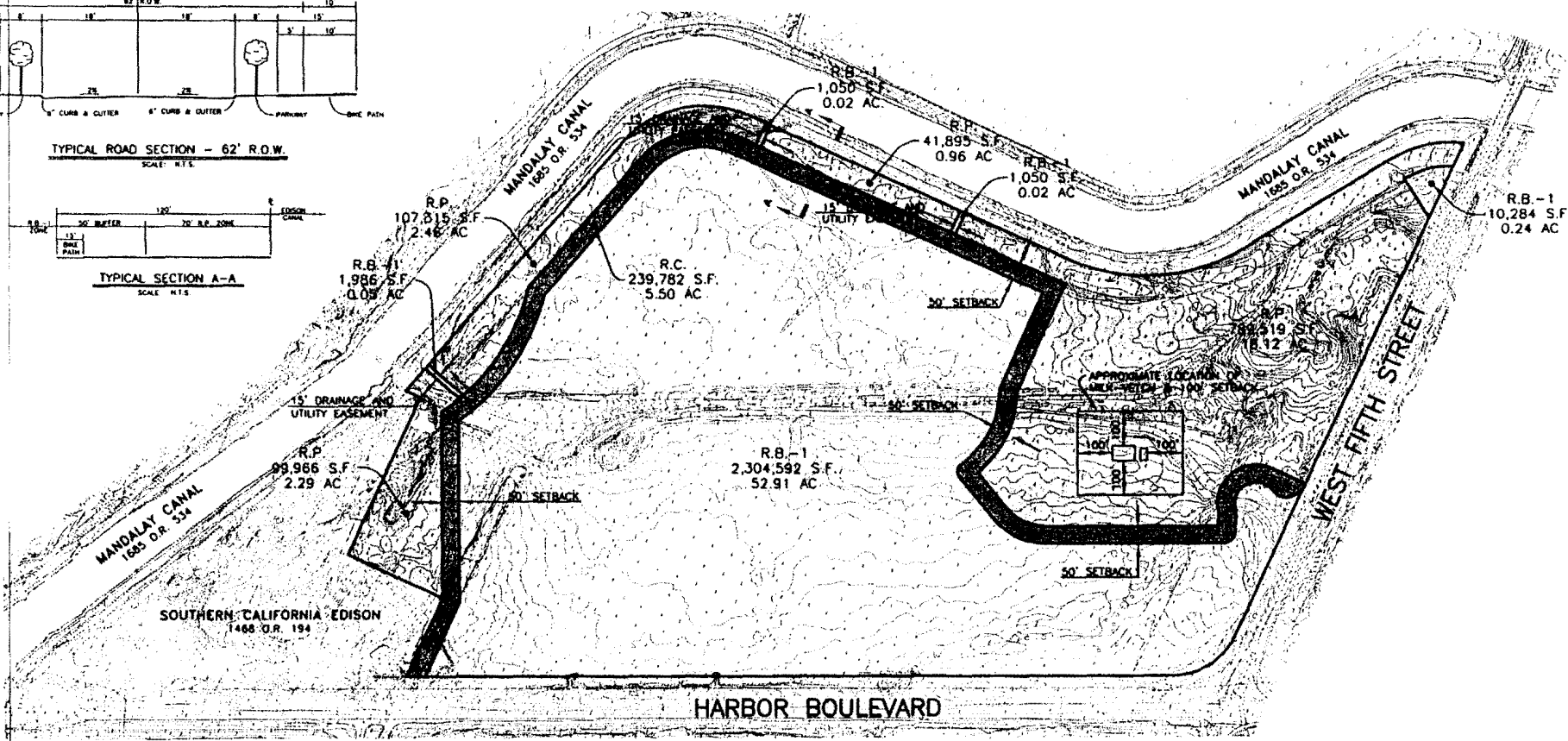


EXHIBIT NO. 9
LCPA NO. OXN-MAJ-1-00
COASTAL ZONING MAP, NORTH
SHORE SITE
(50 FOOT BUFFER)



PROPOSED ZONING EXHIBIT
NORTH SHORE @ MANDALAY BAY
 APN 183-010-30, -32, -33, -38
 MARCH 2002

EXHIBIT 1

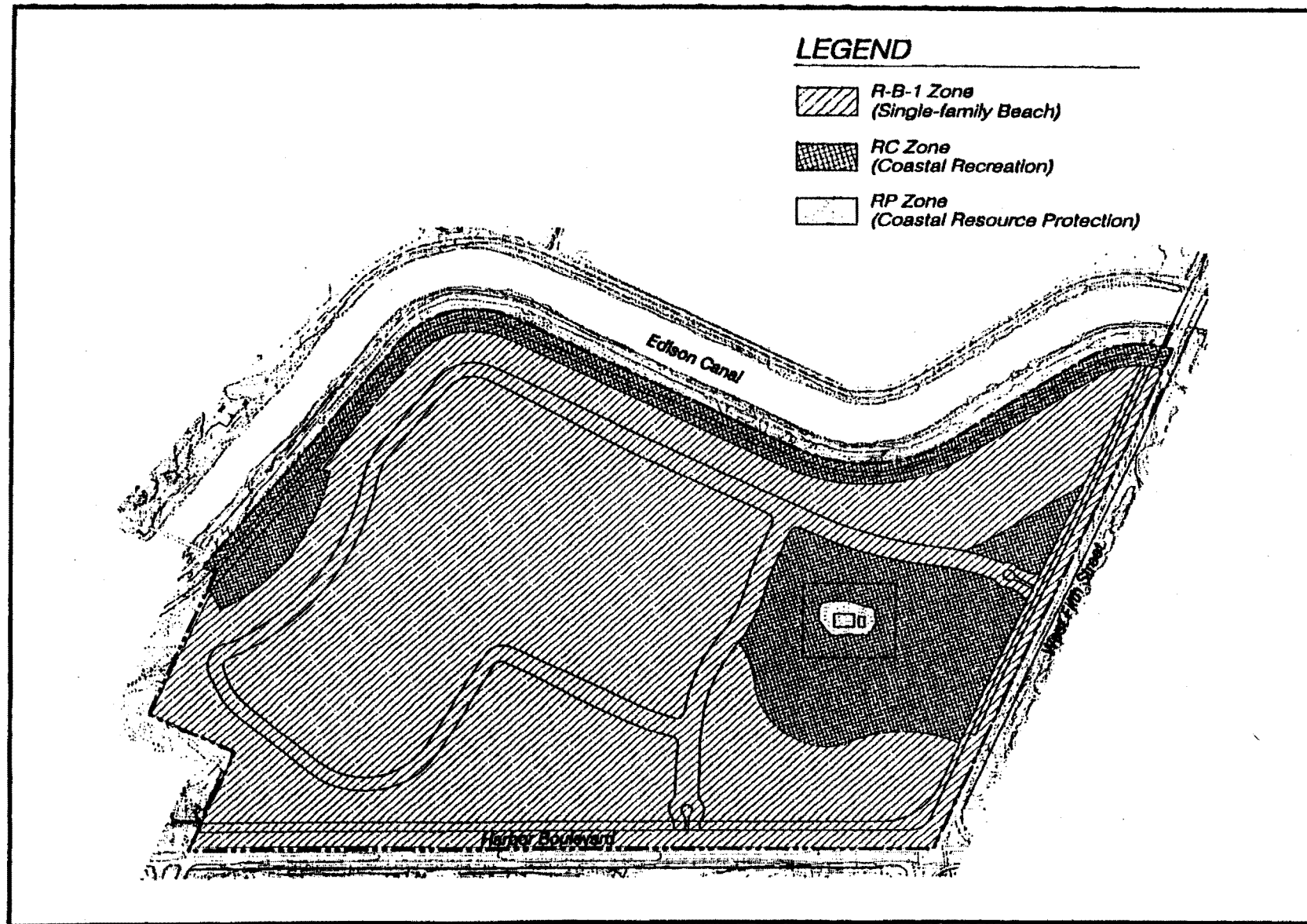


EXHIBIT 2.6
PROPOSED COASTAL ZONE MAP

ORIGINAL

MEMORANDUM OF UNDERSTANDING

BETWEEN NORTH SHORE AT MANDALAY BAY, L.L.C. AND STATE OF CALIFORNIA DEPARTMENT OF FISH AND GAME REGARDING ADDITIONAL MITIGATION MEASURES FOR THE NORTH SHORE PROJECT SITE

This Memorandum of Understanding ("MOU") is entered as of July 27, 1999 by and between North Shore at Mandalay Bay, L.L.C. ("North Shore") and the State of California Department of Fish and Game ("CDFG") in consideration of the following facts:

1.0 RECITALS

- 1.1 North Shore is proposing to develop a residential project (the "Project") in the City of Oxnard ("City"). The Project site is the former location of an oil field waste disposal facility. As part of the Project, North Shore proposes to expend funds and other resources to remediate the contaminated soils at the Project site in accordance with waste discharge requirements of the Regional Water Quality Control Board, Project approval conditions adopted by the City of Oxnard, and this MOU.
- 1.2 The Project site contains the Ventura marsh milk-vetch, degraded dune scrub, willow scrub, and saltgrass vegetation, and other biological resources. Approximately 13.3 acres of willow scrub, 2.08 acres of saltgrass vegetation, 8.15 acres of dune scrub, some of which have been degraded from past disturbance including 25 years of oil field disposal activities on the Project site, will be removed or disturbed as a result of the development of the Project. North Shore, CDFG, and the City have consulted with each other concerning measures to be implemented as part of the Project to minimize and mitigate the effects of the Project on the Ventura marsh milk-vetch, disturbed dune scrub, willow scrub, and saltgrass grassland.
- 1.3 CDFG has participated extensively, as a responsible and trustee agency, in the California Environmental Quality Act review of the Project. The Planning Commission of the City certified the Environmental Impact Report ("EIR") for the Project on April 15, 1999. Two appeals on the certification were denied by the City Council on June 15, 1999. Project approval has yet to be finalized with the City of Oxnard City Council ("City Council").
- 1.4 This MOU sets forth the understanding between North Shore and CDFG regarding additional mitigation and minimization measures to be implemented by North Shore as part of the Project for potential and expected impacts to Ventura Marsh milk-vetch, willow scrub, saltgrass grassland, and disturbed dune scrub habitat. It is understood that the measures contained in this MOU, except as otherwise noted, will supplement and not replace mitigation measures for biological resources and issues previously identified in the Draft and Final EIR for the Project. It is also understood that the measures contained in this MOU will be made conditions of approval of the Project before final project approval is granted by the City Council.

2.0 DEFINITIONS

- 2.1 Project. The term "Project" means the North Shore project in the City of Oxnard.
- 2.2 Milk-vetch. The term "milk-vetch" means the plant species Ventura Marsh milk-vetch (*Astragalus pycnostachyus* var. *lanosissimus*). The milk-vetch was believed to be extinct until it was observed on the Project site in 1997. The milk-vetch was listed as a "candidate" for endangered status, pursuant to the California Endangered Species Act, by the California Fish and Game Commission on

EXHIBIT NO. 11

LCPA NO. OXN-MAJ-1-00

CALIFORNIA DEPT. FISH & GAME

MEMORANDUM OF UNDERSTANDING

February 4, 1999. It was proposed for federal listing as endangered, pursuant to the federal Endangered Species Act, by the U.S. Fish and Wildlife Service on May 25, 1999.

- 2.3 Milk-vetch Preserve. The term "milk-vetch preserve" refers to the approximately 5.2-acre conservation area containing the Ventura Marsh milk-vetch population on the Project site that will be preserved as part of the Project design.
- 2.4 MOU. The term "MOU" means this Memorandum of Understanding as it may from time to time be amended.
- 2.5 Colony A, Colony B and Colony C. The terms "Colony A," "Colony B" and Colony "C" refer to the population of milk-vetch plants on the Project site. Colony A is contained within approximately 496 square feet of land. Colony B is contained within approximately 2,700 square feet of land. Colony A and Colony B are approximately 20 feet apart. As of April 14, 1999, a total of 214 milk-vetch plants were within Colonies A and B. Colony C is an area of potential seed bank approximately 300 square feet in size and approximately 97 feet to the southwest of Colony A and Colony B.
- 2.6 EIR. The term "EIR" means the Project environmental impact report certified by the City of Oxnard as it is defined in the California Environmental Quality Act.
- 2.7 Ground-disturbing activities. The term "ground-disturbing activities" means Project grading and all other Project activities that disturb the soils and/or vegetation on the Project site, except that the term does not include soil testing or sampling conducted prior to soil remediation that may be required by the Regional Water Quality Control Board for compliance with a waste discharge or other cleanup order.

NOW THEREFORE, the parties to this Memorandum of Understanding agree as follows:

1. WILLOW SCRUB AND SALTGRASS GRASSLAND REVEGETATION

North Shore agrees to carry out the following measures in conjunction with the Project:

- 3.1 North Shore shall mitigate the loss of 13.3 acres of willow scrub and 2.08 acres of saltgrass vegetation by replacing and preserving these habitats at a 1:1 ratio, for a total of 15.38 acres, if the replacement habitat is of similar value to the habitat that is affected by the development. However, fewer than 15.38 acres may be preserved if lower quality habitat is restored to yield a significantly higher biological value than the habitat that is affected by Project development, as determined by CDFG. Approximately 7.2 acres of habitat is available on the Project site for restoration of these communities. Restoration of these 7.2 acres will adequately mitigate the loss of 15.38 acres of the lower quality willow scrub and saltgrass vegetation on the site if CDFG determines that five years of monitoring shows that overall biological values of these communities have been adequately increased over pre-restoration levels. Increased values will be accomplished through restoring willow scrub and saltgrass grassland plant communities and associated wildlife habitat values using complements of species comparable in composition and densities to native willow scrub and saltgrass communities.
- 3.2 North Shore intends to restore the following on-site areas (See Exhibit A) in satisfying or partially satisfying the mitigation requirement in Section 3.1:

The approximately 70-foot wide easement (less 15 feet for the proposed bike path) that is part of the Project site between the lot lines and the Edison Canal (approximately 4.2 acres).

The open space lot adjacent to this easement in the northern portion of the Project site (approximately 1.5 acres).

The northeastern portion of the Milk-vetch preserve that is located east of the topographical ridge on the site (approximately 1.5 acres).

- 3.3 North Shore shall develop one or more detailed restoration, maintenance and monitoring plans for the willow scrub and saltgrass grassland restoration ("WS/SG Restoration Plans") that include procedures for planting, identification of plant species and density, maintenance measures and schedules, restoration success criteria, measures to be implemented if success criteria are not met, and long term management of the restored areas. North Shore shall submit a WS/SG Restoration Plan for on-site restoration to CDFG within 120 days after the City Council's approval of the Project if that approval is not appealed or challenged in court, or, if an appeal or challenge is filed, within 90 days after the appeal or challenge is resolved. CDFG shall provide its initial comments within 45 days after the plan has been submitted, and CDFG approval of the plan shall be obtained within 6 months of plan submittal. CDFG approval of the on-site WS/SG Restoration Plan for the 7.2 acres referenced in Section 3.1, which shall not be unreasonably withheld, shall be obtained prior to ground-disturbing activities. If North Shore provides off-site mitigation for willow scrub and saltgrass grasslands pursuant to Section 3.1, North Shore shall also prepare and submit for CDFG approval, which shall not be unreasonably withheld, one or more WS/SG Restoration Plans for the off-site lands within 90 days of identifying off-site lands that will be restored. CDFG's comments and approval of any off-site plan will be due within the time frames described above for the on-site restoration plan. Off-site restoration sites, if any, shall be identified within six months of any CDFG determination that on-site restoration did not adequately mitigate impacts to willow scrub and saltgrass grassland as described in Section 3.1. North Shore will fund the development and implementation of the plans and will provide for the permanent preservation of the restored areas by recording conservation easements (or other instruments) approved by CDFG. Easements or their equivalent shall be recorded over the on-site areas prior to ground-disturbing activities.

DUNE SCRUB PRESERVATION AND RESTORATION

North Shore agrees to carry out the following measures in conjunction with the Project:

- 4.1 The loss of approximately 8.15 acres of disturbed dune scrub habitat on the project site shall be mitigated at a 1:1 ratio through enhancement/restoration of preserved on-site habitat and enhancement/restoration of preserved off-site habitats. Dune scrub is a rare natural community in California.
- 4.2 North Shore shall permanently protect the conservation values of approximately 1.5 acres south/southeast of the Milk-vetch preserve shown on Exhibit B. This area is situated next to Fifth Street and will provide connectivity between the milk-vetch population and the preserved dune scrub to the open space and dune scrub communities across Fifth Street. If the 1.5-acre site is included in the soil remediation work, North Shore shall restore the site as dune scrub. If soils on the site are not remediated, North Shore shall enhance the dune scrub habitat on the 1.5 acres.
- 4.3 Dune scrub habitat within the milk-vetch preserve but outside of the fenced Ventura Marsh milk-vetch set-back will be restored, enhanced and permanently protected. The preserve area is currently characterized as coyote brush scrub, iceplant scrub, and small areas of disturbed dune scrub.
- 4.4 Because of the small amount of suitable habitat on-site for dune scrub enhancement and restoration, off-site dune scrub habitat will also need to be permanently preserved and enhanced/restored to mitigate the loss of dune scrub habitat on the site. Enhancement/restoration shall include the removal of non-native invasive plant species and planting of native dune scrub species, as appropriate. North Shore will make every effort to identify suitable off-site locations for the enhancement/restoration efforts prior to ground-disturbing activities. However, due to the uncertainty of identifying suitable off-site locations, ground-disturbing activities may be initiated before suitable off-site locations are approved provided that adequate security, as identified in Section 6.0, has been provided by North Shore for the off-site effort. Even if adequate security is provided, suitable locations for the off-site enhancement/restoration effort shall be identified by North Shore and submitted to CDFG for approval no later than 12 months after ground-disturbing activities are initiated. CDFG will assist North Shore in identifying suitable locations for the off-site effort. North Shore is investigating the following sites.

which may contain dune scrub habitat with characteristics similar to that which occurs on the Project site, as potential candidates for off-site dune scrub enhancement/restoration:

Dune scrub habitat within approximately 2 acres of in-holdings currently owned by the McGrath family within Mandalay State Park; and

Dune scrub habitat being considered for purchase by the Coastal Conservancy in the Project site vicinity.

- 4.5 North Shore shall develop detailed dune scrub restoration, maintenance and monitoring plans ("Dune Scrub Restoration Plans") that include procedures for restoration, identification of plant species and density, maintenance measures and schedules, restoration success criteria, measures to be implemented if success criteria are not met, and long term management of the restored areas. North Shore shall submit a Dune Scrub Restoration Plan for on-site restoration to CDFG within 120 days after the City Council's approval of the Project if that approval is not appealed or challenged in court, or, if an appeal or challenge is filed, within 90 days after the appeal or challenge is resolved. CDFG shall provide its initial comments within 45 days after the plan has been submitted, and CDFG approval of the plan shall be obtained within 6 months of plan submittal. CDFG approval of the plan, which shall not be unreasonably withheld, shall occur prior to ground-disturbing activities. North Shore shall also prepare and submit for CDFG approval a Dune Scrub Restoration Plan for each off-site restoration site within 90 days of identifying off-site lands that will be restored. CDFG's comments and approval of any off-site plan will be due within the time frames described above for the on-site restoration plan. North Shore shall fund the development and implementation of the plans and shall provide for the permanent preservation of the restored areas by recording conservation easements (or other instruments) approved by CDFG. Easements or their substitute shall be recorded over the on-site areas prior to ground-disturbing activities.

VENTURA MARSH MILK-VETCH PRESERVATION AND MITIGATION

North Shore agrees to carry out the following measures in conjunction with the Project:

Soil Remediation

- 5.1 North Shore shall design and implement soil remediation, site grading, and construction so that any existing milk-vetch plants in colonies A, B or C will be fully preserved in place while new, viable populations are attempted to be established in suitable off-site locations.
- 5.2 North Shore shall establish a soil remediation/excavation limit line around the milk-vetch population at a distance of 100 feet around Colonies A and B, and 30 feet around Colony C. Because Colony C is approximately 97 feet south/southwest of Colonies A and B, the 30-foot setback will create a "bubble" that will extend the larger 100-foot setback on the south/southwest side of the plants to include any seedbank at Colony C. North Shore and CDFG will use their best efforts to obtain approval of Regional Water Quality Control Board (RWQCB) for these setbacks.

Monitoring Wells

- 5.3 North Shore shall install five 2-inch diameter groundwater monitoring wells around the entire milk-vetch population (Colony A, Colony B and Colony C) to monitor the status of below surface contaminants (see Exhibit B). Specifically, North Shore shall install three wells approximately 100 feet north, northeast, and southeast of the population. Each of these wells will be upslope of the milk-vetch population. North Shore shall install two monitoring wells downslope of Colony A, approximately 100 feet west and 100 feet southwest of the colony. The drilling rig for well installation will be positioned such that the truck portion of the rig will not be within the 100-foot and 30-foot setbacks around colonies A, B and C.

Monitoring and Education Program

- 5.4 North Shore shall select and retain a qualified biologist to serve as a monitor on the site during all activities related to the installation of the groundwater monitoring wells, as well as during soil remediation adjacent to the plant populations, to ensure that the incidental impacts to the milk-vetch plants are avoided. Additionally, the biologist/monitor will conduct a machine operator and worker education program to alert on-site workers to the sensitivity of the milk-vetch population, to identify work zones and restricted areas, and to discuss construction and plant avoidance procedures and protocols. The City of Oxnard and CDFG will approve the selection of the biologist/monitor.

Milk-vetch Preserve

- 5.5 North Shore shall permanently preserve an approximate 5.2-acre area around the existing milk-vetch population to serve as a buffer between the plants and planned residential development on the Project site. The Milk-vetch preserve shall be designed such that the milk-vetch population will be approximately centered in the preserve area to maximize the distance between the plants and developed areas. North Shore shall leave the 5.2 acres around the milk-vetch population as a protected conservation area pursuant to Section 5.8 below.
- 5.6 North Shore shall construct a setback fence along the soil remediation line described in Section 5.2 to protect the milk vetch plants and surrounding area from human and/or domestic animal activities.
- 5.7 North Shore shall monitor and maintain the on-site milk-vetch plants; shall prepare an initial restoration, maintenance and monitoring plan that provides for, among other things, the long-term management and monitoring of the milk-vetch preserve ("On-site Milk-Vetch Plan"); and shall adapt this plan as may be appropriate in response to information obtained from the results of research and monitoring of the population. North Shore shall implement and fund the On-site Milk-Vetch Plan. The initial On-site Milk-Vetch Plan shall be submitted for CDFG's approval within 120 days after the City Council's approval of the Project if that approval is not appealed or challenged in court, or, if an appeal or challenge is filed, within 90 days after the appeal or challenge is resolved. CDFG shall provide its initial comments within 45 days after the plan has been submitted, and CDFG approval of the plan shall be obtained within 6 months of plan submittal. CDFG's approval of the plan, which shall not be unreasonably withheld, for the initial On-site Milk-Vetch Plan shall occur prior to ground-disturbing activities. The On-site Milk-Vetch Plan may provide for a reduced level of management and monitoring after five years to include minimal maintenance measures such as periodic clearing of debris, fence repairs, and removal of dead vegetation if, in the judgment of North Shore and CDFG, the plan has been successful and if a reduced level of management and monitoring will not place the population at greater risk.
- 5.8 The milk-vetch preserve will be protected in perpetuity through recordation of a conservation easement prior to ground-disturbing activities. CDFG and North Shore agree that this conservation easement may contain terms that allow cancellation of the easement and alternative use of the milk-vetch preserve area if it is determined by qualified experts, with CDFG's concurrence, that the milk-vetch population on the site is no longer viable and self-sustaining; if CDFG determines that the success of off-site populations will ensure that cancellation of the easement will not jeopardize the continued

existence of the species; and if other conservation values within the preserve (e.g., dune scrub habitat) are replaced by North Shore. The parties to this agreement will meet in good faith after five years from execution of this agreement, and periodically thereafter if necessary, to review the viability status of both the on-site milk-vetch population and the established off-site populations (see below) to determine the success of the mitigation approach described in this agreement and the appropriateness of additional measures, if any, based on this review.

Establishment of Off-Site Milk-Vetch Populations

5.9 North Shore shall develop one or more plans for the establishment of two self-perpetuating, viable off-site populations of Ventura Marsh milk-vetch ("Off-site Milk-Vetch Plan"). North Shore will make every effort to identify suitable off-site locations for two new milk-vetch populations prior to ground-disturbing activities. However, due to the uncertainty of identifying suitable off-site locations, ground-disturbing activities may be initiated before suitable off-site locations are approved provided that adequate security, as identified in Section 6.0, has been provided by North Shore for the milk-vetch effort. Even if adequate security is provided, suitable locations shall be identified by North Shore and submitted to CDFG for approval no later than 12 months after ground-disturbing activities are initiated. CDFG will assist North Shore in identifying the two suitable locations for establishment of milk-vetch populations and in developing the plan. Candidate sites include the Carpinteria Natural Reserve and a site in or near the City of Oxnard. North Shore shall prepare and submit for CDFG approval an Off-site Milk-Vetch Plan within 90 days of obtaining approval of a suitable site. CDFG shall provide its initial comments within 45 days after the plan has been submitted, and CDFG approval of the plan shall be obtained within 6 months of plan submittal. CDFG shall not unreasonably withhold approval of the Off-site Milk-Vetch Plans. North Shore shall fund and implement the plan(s) and shall ensure that the populations are permanently protected and managed. Each off-site population will contain a minimum of 75 to 100 reproductive adult plants occupying an area of about 2,000 square feet with demonstrated recruitment, seedling establishment, and stable to increasing population trends over at least five years without major manipulations of the habitat or population (e.g., no recontouring, watering, inoculations of plant material, revegetation efforts, etc.). To ensure that the off-site populations are permanently managed, North Shore will provide the Department with \$50,000 for establishment of an endowment to fund long-term management and maintenance efforts of the populations. The Department will make interest from these funds available for maintenance and management of the off-site populations in the years after North Shore successfully completes implementation of the Off-site Milk-Vetch Plan(s). Because North Shore is providing an endowment, North Shore shall not be responsible for management or maintenance of the off-site populations after it successfully implements the Off-site Milk Vetch Plan(s), including attainment of the success criteria outlined in this section. If one or more off-site population fails to meet success criteria after 10 years of implementation of the Off-site Milk Vetch Plan(s), North Shore will be released from further obligations to establish self-perpetuating off-site populations provided that North Shore has fully implemented the Off-site Milk-Vetch Plan(s) approved by CDFG and that failure of the off-site effort is due to factors beyond North Shore's reasonable control. In the event North Shore is released after 10 years from further obligations to establish off-site populations, CDFG shall receive 50 percent of the security originally provided for the off-site milk-vetch work for CDFG use in establishing off-site milk-vetch populations.

SECURITY

Prior to commencing ground-disturbing activities, North Shore shall provide CDFG with security in an amount adequate to cover the estimated costs of complying with this MOU, including all plans required pursuant to this MOU. To determine the amount of security, North Shore will develop an estimate of the cost of completing all obligations and submit the estimate for CDFG's review and concurrence. The security shall be in the form approved by CDFG, but generally may be a trust or escrow account in favor of CDFG or an irrevocable letter of credit. Security shall be reduced or released upon, and in proportion to, the successful completion of specific goals, tasks, and/or phases of habitat and plant restoration and protection, as set forth in this MOU and in subsequently approved restoration and milk-vetch plans. At least 50 percent of the security provided for establishment of off-site milk-vetch populations shall be

retained until CDFG and North Shore determine that North Shore has attained the success criteria for those populations.

) CITY CONDITIONS OF APPROVAL

North Shore shall instruct the City to include Sections 3, 4, 5 and 6 of this MOU as conditions of approval at the time the City Council approves the Project.

) CDFG AGREEMENT

CDFG believes that successful implementation of the measures described herein and measures that will be included in CDFG-approved restoration plans and milk-vetch plans will reduce any potential impacts of development with regard to biological resources on the Project site to a level of insignificance with respect to the California Environmental Quality Act. CDFG also agrees that if the measures described in this MOU and in all CDFG-approved restoration and milk-vetch plans are successfully implemented, CDFG will not seek additional mitigation measures for the on-site biological resources described herein during subsequent CDFG review of the project or during the regulatory approvals of other public entities.

ASSIGNMENT AND RELEASE

9.1 Any assignment of this MOU or any of the rights or obligations under the MOU is void absent the written consent of the Parties; provided, however, that no consent shall be required for assignment or pledge made by North Shore, with written notice to the Department, (a) to any company that shall succeed by purchase, merger or consolidation to the properties of North Shore; or (b) as security for a debt under the provision of any mortgage, deed of trust, indenture, bank credit agreement, or similar instrument.

9.2 CDFG recognizes that the restoration plans and milk-vetch plans approved and implemented pursuant to this MOU will contain long-term obligations for maintenance and monitoring. CDFG also recognizes that some of these long-term obligations may appropriately be assigned to special district, a homeowners association or another entity that receives fee title to the on-site restored areas and is responsible for maintenance of these areas. North Shore shall be released from its obligations under this MOU to carry out and fund long-term obligations, or any other relevant obligations, at the time and to the extent those obligations are expressly assigned to another entity with CDFG's approval pursuant to Section 9.1.

) MISCELLANEOUS

10.1 Integration

This MOU embodies the entire and integrated understanding between the parties to this MOU regarding the matters contemplated herein and supersedes all prior negotiations, representations, proposals or understandings, either oral or written. This MOU may only be amended by a written instrument executed by all of the parties. From time to time, the parties shall by mutual agreement execute such instruments and other documents, and take such other actions, as may be reasonably necessary to carry out the terms of this MOU in a manner consistent with state and federal law. If any condition of approval imposed on the Project conflicts with this MOU in a way that prevents North Shore from implementing any portion of this MOU, including the setbacks described in Section 5.2, this MOU shall be considered null and void unless the parties agree to an MOU amendment that resolves the conflict.

10.2 Multiple Originals

Multiple copies of this MOU may be executed, and any such executed copy shall be deemed an original for all purposes.

10.3 Effective Date

This MOU shall become effective upon its execution by North Shore and the CDFG.

10.4 Force Majeure

In the event that North Shore's performance under this MOU is interrupted or delayed by acts of god, acts of war, labor disputes, or delays as a result of the acts of third parties, (collectively "occurrences"), then North Shore shall be excused from any further performance for whatever period of time after the occurrences is reasonably necessary to remedy the effects of the occurrences.

10.5 Existing Law

Nothing in this MOU is intended to amend, supersede or modify any provision of state or federal law. North Shore and CDFG are responsible for complying with all applicable laws, including the California Fish and Game Code and Public Resources Code, in carrying out the Project, implementing the mitigation measures described in this MOU, and approving plans required by the MOU.

10.6 CDFG Access

North Shore agrees to permit CDFG personnel to enter the Project site at reasonable times in order to inspect biological resources described in this MOU and to monitor compliance with and to otherwise enforce the terms of any conservation easements, provided that CDFG shall not unreasonably interfere with North Shore's use and quiet enjoyment of the property.

10.7 Default

In the event North Shore or the Department defaults on any of its material obligations under this MOU, the other party shall have all remedies available at law or in equity, including but not limited to specific performance and injunction. In the event North Shore defaults, the Department shall also have all rights with respect to any security provided pursuant to this MOU, including all rights of a secured party pursuant to the California Uniform Commercial Code.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") dated August 17, 2000, is entered into between Petitioner and Plaintiff California Native Plant Society, a California non-profit corporation ("CNPS"), Respondents and Defendants City of Oxnard and City Council of the City of Oxnard (collectively, the "City"), and Real Party in Interest North Shore at Mandalay Bay, LLC ("North Shore"). Each party to this Agreement may be referred to herein as a "Party" and all parties to this Agreement may be collectively referred to herein as "Parties."

RECITALS

A. North Shore is the applicant for a project consisting of 347 residential dwelling units on an approximately ninety-one (91) acre site at the intersection of Harbor Boulevard and Fifth Street directly adjacent to the current municipal boundary of the City (the "Project").

B. On April 15, 1999, the Planning Commission of the City certified that the Final Environmental Impact Statement ("FEIR") for the Project was completed in compliance with the California Environmental Quality Act ("CEQA").

C. The City Council approved the Project on July 27, 1999, adopted findings regarding the significant environment effects of the Project, adopted a Statement of Overriding Considerations, and adopted a Mitigation and Monitoring Program. In connection with its approval of the Project, the City Council also approved a coastal development permit, a tentative subdivision tract map, a pre-zone, an amendment to the City's Local Coastal Program and an amendment to the City's General Plan. A Notice of Determination was properly posted beginning July 30, 1999.

D. Additional approval by the California Coastal Commission is necessary before construction can commence on the Project.

E. CNPS filed a Petition for Writ of Mandate and Complaint For Injunctive Relief on August 30, 1999 ("Petition") alleging violations of CEQA in that City failed to evaluate and avoid or minimize certain environmental effects, failed to prepare a subsequent or supplemental

Environmental Impact Report, and made findings not supported by substantial evidence. In particular, the Petition raised issues related to environmental documentation and mitigation of impact to the Ventura Marsh Milk-vetch ("Milk-vetch") and coastal dune scrub habitat present on the Project site.

F. The Petition sought, inter alia, to command City to set aside certification of the FEIR and Project entitlements, and to prepare a legally adequate Environmental Impact Report.

G. The Parties have engaged in settlement discussions since that time, desire to avoid further litigation, and agree that the following terms represent a fair and equitable resolution of their differences.

AGREEMENT

NOW, THEREFORE, in consideration of the above and the terms and conditions set forth below, the Parties hereby agree as follows:

1. CNPS will dismiss the above-entitled Petition. If the California Coastal Commission ("Commission") subsequently fails to approve the Project or approves it with conditions which (i) accomplish in a substantially different manner the goals of this Agreement, (ii) are inconsistent with this Agreement, or (iii) require substantially greater costs and obligations on the part of North Shore than provided for in this Agreement, then North Shore, at its sole discretion, may terminate this Agreement or seek to amend it in a manner both satisfactory to all Parties and consistent with Commission action. Should North Shore seek to amend this Agreement pursuant to the terms of this paragraph, CNPS and the City shall engage in good faith to reach a mutually satisfactory amended Agreement.

2. North Shore will, after Commission approval consistent with this Agreement, or such amended Agreement as the Parties reach, submit and, if approved, record a revised Tentative Tract Map for the Project in substantial conformance with that tract map attached hereto as Exhibit "A" and which designates on the Project site the area for preservation of the Milk-vetch ("the Milk-vetch preservation area").

3. A biological review committee ("Review Committee") has been established by North Shore to determine the nature, characteristics and timing of mitigation for both on-site Milk-vetch populations and populations at other properties off the site to be acquired by North Shore pursuant to paragraph 10. The Review Committee shall consist of no more than one representative, with appropriate rare plant and habitat mitigation experience, of the following: California Department of Fish and Game ("CDFG"), the United States Fish and Wildlife Service, the University of California, the Santa Barbara Botanic Garden, CNPS, and North Shore. Decisions of the Review Committee will be made by consensus to the extent possible, but decisions may be made by a majority of the committee. In no circumstances will a single member of the Review Committee have veto power over committee decisions or have sole authority for any such decision.

4. CNPS shall also have the right to participate in the review of all on-site biological resource plans for the Project, including landscaping, median planting plans and construction monitoring.

5. North Shore agrees to prepare a detailed habitat delineation and functional assessment prior to site disturbance that evaluates in greater detail than the FEIR the biological value and ecological function of the current habitat areas. The assessment will be used to assist in the development of mitigation measures for impacts on coastal dune scrub habitats, calculating replacement ratios, and to create a baseline against which to measure future plantings and restoration efforts. The assessment will be reviewed and approved by CDFG with input from CNPS.

6. For Project mitigation involving the establishment of new coastal dune scrub habitat, mitigation ratios will be calculated on the basis of functional equivalency as approved by CDFG, with input from CNPS.

7. CNPS shall be guaranteed all access to the Milk-vetch preserve area on the Project site and to the off-site Milk-vetch relocation mitigation areas for conservation, monitoring, and research purposes. CNPS' right of access shall be binding on and noticed to any successors-in-interest to North Shore, including homeowners associations.

8. North Shore shall implement all of the conditions of a Memorandum of Understanding between North Shore and the California Department of Fish and Game, dated July 27, 1999 ("MOU") and attached hereto as Exhibit "B." To the extent any provision of this Agreement and/or California Coastal Commission approval of the Project are inconsistent with the MOU, North Shore will make a good-faith effort to modify the MOU to be consistent with this Agreement and/or California Coastal Commission approval.

9. A permanent conservation easement shall be established for the on-site Milk-vetch preserve area as identified in Exhibit "A." The easement shall be managed by a credible land trust or other entity familiar with managing biological habitats, which shall be selected by mutual agreement by the Parties.

10. North Shore will acquire conservation easements or other property interests off the Project site for Milk-vetch relocation and mitigation, to the extent feasible given ownership and specific biological attributes of the off-site areas. The purpose of any off-site conservation easements is to insure continued habitat availability and protection and such easements may be terminable by North Shore if the Review Committee determines that the Milk-vetch cannot as a practical matter survive in that area. The easements or other interest shall expressly provide for use of the site as a Milk-vetch preserve, including rights of access and maintenance as deemed necessary by the Review Committee.

11. The Parties acknowledge that certain areas within the on-site Milk-vetch preserve area and the on-site coastal dune scrub habitat adjacent to Fifth Street have lower levels of groundwater and soils contamination than the remainder of the Project site. North Shore shall use its best good-faith effort to obtain Los Angeles Regional Water Quality Control Board ("LARWQCB") permission to use groundwater monitoring devices for those areas of lower contamination as remediation, instead of land-farming or other remediation which could destroy existing Milk-vetch plants or coastal dune scrub habitat.

12. The Parties enter into this Agreement for the sole purpose of settling and resolving this action and the issues raised therein, including the Project's impacts to and appropriate mitigation for the Milk-vetch, coastal dune scrub, and willow scrub habitats. To the extent that any aspect of the Project is subject to additional environmental review under CEQA, this Agreement shall not limit the right of any Party to comment on such environmental review for the purpose of exhausting their administrative remedies, to the extent such comments relate to issues not resolved in this action.

13. Nothing in this Agreement shall prohibit CNPS from submitting comments to the LARWQCB concerning remediation of groundwater pollution for the Project site as it may affect the Milk-vetch and coastal dune scrub habitat.

14. Nothing in the Agreement shall prohibit CNPS from submitting comments to public agencies other than the LARWQCB concerning the impacts of proposed agency requirements on environmentally sensitive areas within the Project site or off-site mitigation areas, to the extent such requirements are additional or differ substantially from the provisions of

this Agreement. Such comments may include, for example, those which may be made to the City's Fire Department regarding brush clearance requirements.

15. No site disturbance shall occur prior to approval of all biological mitigation plans, including agreement on estimated costs. If North Shore makes physical modifications to the site which adversely impact sensitive biological resources, and subsequently determines to exercise its right to withdraw from the Agreement under paragraphs 1 or 17, North Shore shall either restore the site to its pre-existing condition (based on the habitat delineation and functional assessment prepared pursuant to Paragraph 5) or, if that is no longer practical, restore the site to an equivalent level of ecological function (based on the habitat delineation and functional assessment prepared pursuant to Paragraph 5.) North Shore shall ensure that adequate funding exists in the security provided to CDFG pursuant to the MOU to accomplish restoration, and this security shall be available for site restoration if North Shore exercises its right to withdraw from this Agreement.

16. North Shore will establish a fund in an amount estimated to be sufficient to pay all prospective expenses connected with establishment of Milk-vetch populations off the Project site as provided in this Agreement. The expenses to be covered are those necessary to intensively monitor and manage the site or sites for five (5) years from the date of transfer/planting and to monitor and manage the site or sites at minimal levels for eleven (11) years thereafter. The protocols on which the monitoring and management will be based shall be determined by the Review Committee.

17. The Parties acknowledge that the amount of the fund referred in paragraph 16 above cannot be definitely established at this time. If based on the monitoring and management protocols determined by the Review Committee for which the fund is to be established, the estimated net present value of the fund is greater than what North Shore, in its sole discretion, determines is a reasonable and economically viable amount, then North Shore may elect to withdraw from this Agreement.

18. If, pursuant to paragraphs 1 or 17, North Shore elects to withdraw from this Agreement, or if for any other reason this Agreement cannot be implemented according to its terms, CNPS shall have the right to refile a petition for writ of mandate and complaint for

injunction relief based on alleged violations of CEQA. North Shore and City agree that they will not raise any defense to such subsequent litigation based on statute of limitations or other time-related defenses, except to the extent such defenses existed as of August 30, 1999. North Shore will establish a fund of \$2,000.00 to cover CNPS' expenses in connection with the Milk-vetch mitigation plan review and monitoring.

19. **Miscellaneous Provisions**

A. Incorporation of Recitals and Exhibits. Recitals A through G and *Exhibits "A" and "B"* attached hereto and referred to herein are incorporated in this Agreement as though fully set forth in the body hereof.

B. No Third Party Beneficiary. This Agreement is not intended, nor shall it be construed, to create any third-party beneficiary rights in any person who is not a party, unless expressly otherwise provided.

C. Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the Parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

D. Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance, and the same shall remain in full force and effect, unless enforcement of this Agreement, as so invalidated, would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement and the rights and obligations of the Parties hereto.

E. Construction of Agreement. The provisions of this Agreement and the Exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party herein and are consistent with the provisions hereof, in order to

achieve the objectives and purposes. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa.

F. Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

G. Applicable Law and Interpretation. This Agreement shall be construed and enforced in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objective and purposes of the parties hereto and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

H. Notices. Any notice shall be in writing and given by delivering the same in person or by sending the same by registered, or certified mail, return receipt requested, with postage prepaid, by overnight delivery, or by facsimile to the respective mailing addresses, as follows:

CNPS: California Native Plant Society
P.O. Box 5628
Ventura, California 93005
Attention: David Magney
Facsimile: 805/646-6975

Copy to: Environmental Defense Center
2021 Sperry, Suite 18
Ventura, California 93003
Attention: John T. Buse, Esq.
Facsimile: 805/677-2577

CITY: City Of Oxnard
305 W. Third Street
Oxnard, California 93030
Attention: James F. Rupp, Jr., Esq.
Facsimile: 805/385-8891; and
Attention: Gary Gillig, City Attorney
Facsimile: 805/385-7423

Copy to: Rupp & Holmberg
721 South A Street, 2nd Floor
Post Office Box 1426
Oxnard, California 93032-1426
Attention: James F. Rupp, Jr., Esq.
Facsimile: (805/385-8891)

NORTH SHORE: North Shore At Mandalay Bay
3030 Old Ranch Parkway, #450
Seal Beach, California 90740
Attention: Louise Rice-Lawson
Facsimile: (562) 430-4337

Copy to: Nossaman, Guthner, Knox & Elliott
18101 Von Karman Avenue, Suite 1800
Irvine, California 92612
Attention: Robert I. McMurry, Esq.
Facsimile: (949) 833-7878

Either CNPS, City or North Shore may change its mailing address at any time by giving written notice of such change to the other in the manner provided herein at least ten (10) days prior to the date such change is effected. All notices under this Agreement shall be deemed given, received, made or communicated on the earlier of the date personal delivery is effected or on the delivery date or attempted delivery date shown on the return receipt, air bill or facsimile.

I. Time is of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

J. City Contingency. This Agreement is contingent, at the sole discretion of CNPS, on a decision by the City to provide permanent protection through conservation easements, deed restrictions, or other means for certain City-owned parcels located immediately

south of the Project site on the southeast corner of the intersection of Fifth Street and Harbor Boulevard.

K. Successors. This Agreement shall be binding on successors and assigns and shall run with the land.

Date: 17 AUGUST, 2000

CALIFORNIA NATIVE PLANT SOCIETY



By: DAVID L. MAGNET
Its: California Native Plant Society

Date: _____, 2000

CITY OF OXNARD

By: _____
Its: _____

Date: _____, 2000

NORTH SHORE AT MANDALAY BAY

By: _____
Its: _____

LEGEND

- I Iceplant Series
- AW Arroyo Willow Series
- B Bullrush Series
- SG Saltgrass Series
- MCB Myoporum/Coyote Brush Series
- NNV Non Native Vegetation
- BD Beach Dune
- DEV Developed

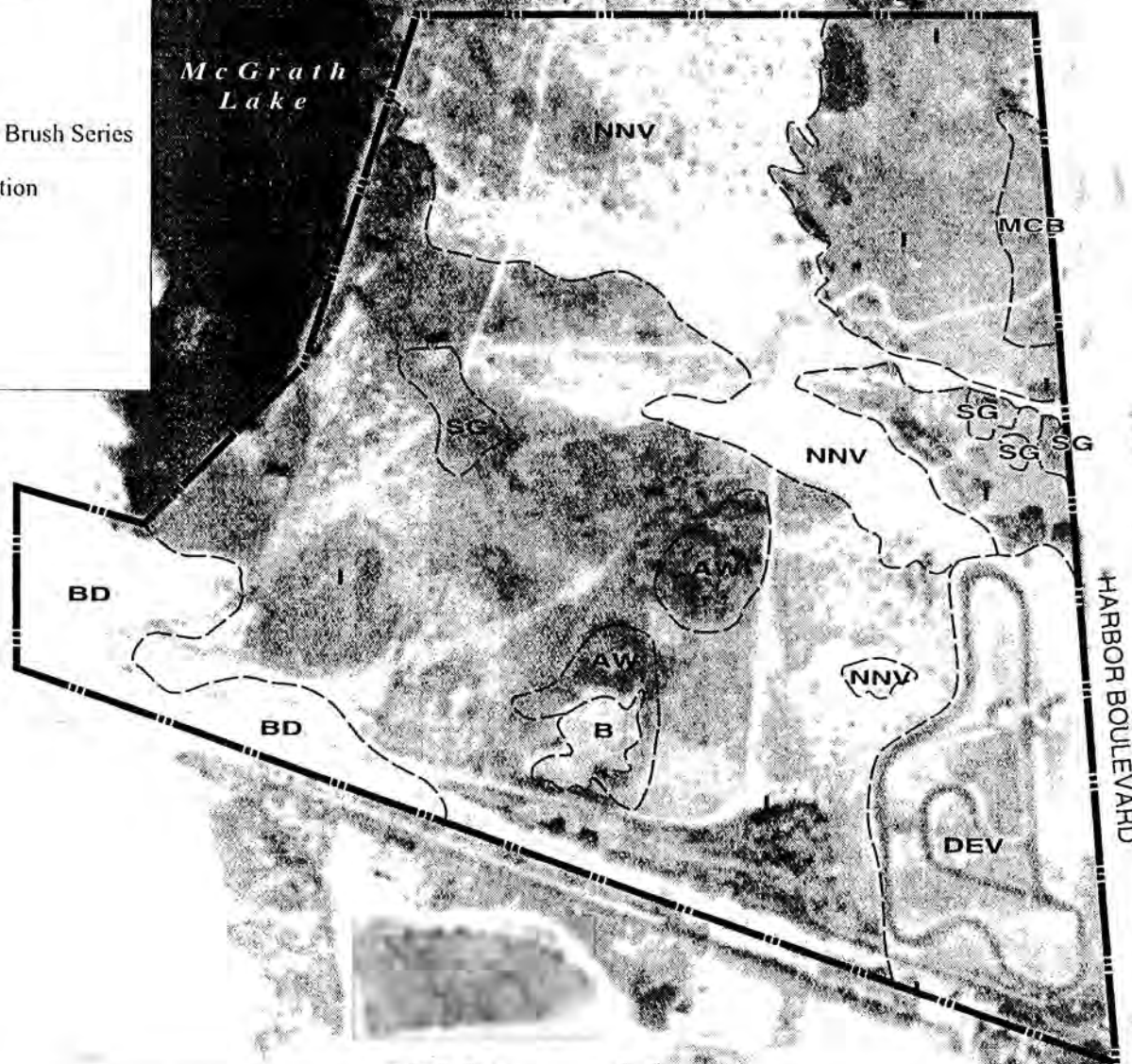


EXHIBIT NO. 13
LCPA NO. OXN-MAU-1-00
McGRATH PARCEL
(EXISTING VEGETATION)



FIGURE 2

Plant Communities on McGrath Parcel

LEGEND

- TW Transitional Wetland
- SW Shallow Water Wetland
- D Dune
- Existing Area to Remain
- EW Existing Wetland
- ED Existing Beach Dune
- Proposed Oil Well Easement/
Use Area

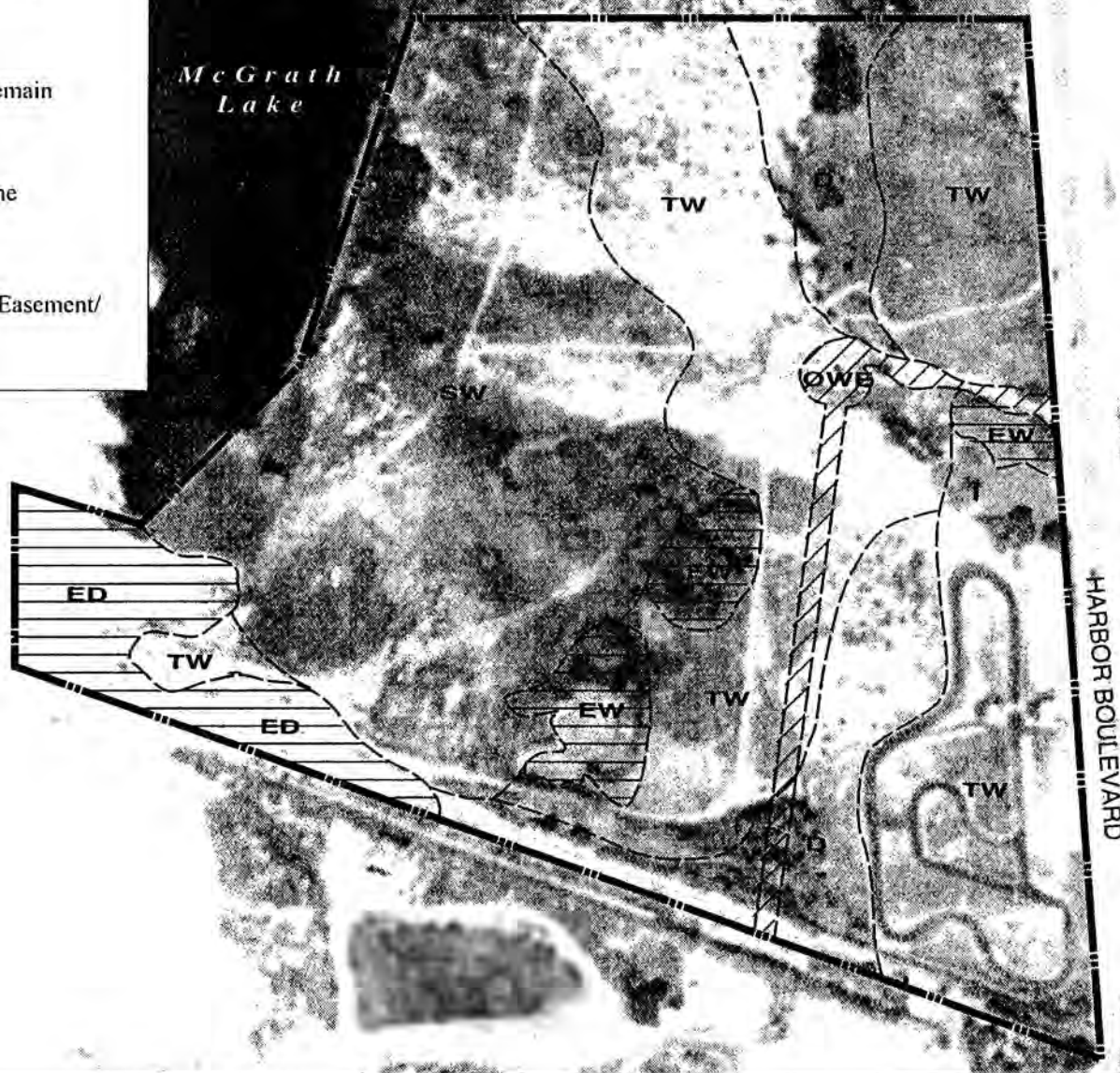


FIGURE 3

Potential Wetland Restoration Areas on McGrath Parcel

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA

99 SOUTH CALIFORNIA ST., SUITE 200

VENTURA, CA 93001

(805) 585 - 1800



To: Kara Kemmler and Jack Ainsworth

From: Jon Allen, Staff Ecologist/Biologist

Subject: North Shore at Mandalay Bay Site, Ecological Findings (Revised)

Date: 3/18/02

Documents Reviewed:

- 1) North Shore at Mandalay Bay Oxnard, CA. LCP Amendment and Coastal Consistency Analysis. City of Oxnard, Development Services Department, 305 W. 3rd Street, Oxnard, CA 93030. September 2000.
- 2) North Shore at Mandalay Bay, EIR, Vols. 1 & 2, State Clearinghouse No. 97061004. Impact Sciences. August 1998.
- 3) North Shore at Mandalay Bay, Final EIR, State Clearinghouse No. 97061004. Impact Sciences. March 1999.
- 4) Delineation and Classification of Willow Habitats, North Shore at Mandalay Bay Oxnard, CA. Impact Sciences, February 2001.
- 5) Characterization and Restoration of Willow Habitats, Impact Sciences, January 2001.
- 6) Summary of Soil Conditions, C. Richard Kelly, Environmental Engineering & Consulting, Oxnard, CA. January 2001.
- 7) Letter from CNPS on Vegetation at North Shore site. David Magney December 20, 2001.
- 8) Revised map of Proposed Restoration and Preservation on the North Shore site. Exhibit 1. December 2001.
- 9) Revised Wetland Delineation Report for North Shore Site, March 18, 2002.
- 10) McGrath Parcel Biological Analysis, Impact Sciences, (revised) March 2002.
- 11) California Department of Parks and Recreation, Summary of Adverse Impacts and Supporting Materials Package. March 19, 2002.

Site Description and History

From 1955 until its closure in 1982 the 90.3-acre North Shore site was utilized as an oil field waste disposal facility, and as a result, soil and ground water on the site are heavily contaminated. Ground samples have indicated that approximately 400,000 yd³ of soil is contaminated primarily with petroleum hydrocarbons, but some other volatile organics, small amounts of metals and other chemicals are also found. Records indicate that over the 28 years of operation as a disposal area, approximately 50 drilling companies deposited over 8.1 million barrels of waste at the site. Because of the extensive pollution and soil contamination on the site, the property owner has prepared a Remedial Action Plan that was approved by the Los Angeles RWQCB. Soil remediation will consist of above ground bioremediation using naturally occurring soil bacteria that degrade hydrocarbons. All of the site except for a small preserve area for the Ventura marsh milk

vetch will be excavated and treated in stages to a depth of approximately 20 feet, and the treated soil will be reused on the site for fill and resource mitigation areas.

Biological Resources on the Site

Vegetation Types Present

The 90.3-acre North Shore Project site is without question a very strange and unusual biological situation. The soil there consists of a hydrocarbon-polluted deep layer covered with fill material brought in as an artificial landfill cap when the oil waste disposal site was closed. The source of this fill material and the seed bank within it is unknown. Since the closing of the site in 1982, various plants have become established on the landfill in an almost random fashion that does not fit scientific classification schemes very well. The impacted vegetation that occurs on site has been mapped in the Impact Sciences Report (Revised Vegetation map – March 2002) as:

- 1) **Ventura Marsh Milk Vetch Preserve (ESHA) (0.4 acres) (Protected in a Preserve – 100 ft buffer. No soil remediation will be done in this area.)**
- 2) **Willow scrub (1.2 acres) (Met Army Corps of Engineers (ACOE) conditions for wetland vegetation criterion)**
- 3) **Saltgrass (3.2 acres in 11 scattered patches) (3.0 acres (10 patches) of which meets ACOE conditions for wetland vegetation criterion)**
- 4) Coyote brush/ Willow scrub (14.6 acres) (Disturbed Native Community)
- 5) Disturbed dune scrub (5.7 acres) (Disturbed Native Community)
- 6) Coastal sagebrush (0.1 acres) (Disturbed Native Community)
- 7) Dune buckwheat (0.7 acres) (Disturbed Native Community)
- 8) Willow/Myoporum (0.3 acres) (Disturbed Invasive Community)
- 9) Disturbed dune/Iceplant scrub (2.0 acres) (Disturbed Invasive Community)

The revised revegetation map (March 2002) shows 23.4 acres of these disturbed habitats that will be impacted by the bioremediation of contaminated soil. The habitats that are underlined (4-7) above are often considered to be ESHA due to their limited extent and high biological value within an ecosystem. In this case, however the designations are applied because they are the closest standard descriptors to the vegetation developing on the contaminated fill. The existing vegetation is degraded and dispersed and characterized by a high abundance of invasive plant species on the site in conjunction with a highly contaminated soil and groundwater environment. These somewhat artificial communities have low habitat value and are not rare or especially valuable. The biological and ecological value of these communities is greatly diminished. Therefore they do not fully qualify as ESHA in this situation. However, because these plant communities do provide some ecological function and value, their loss during soil remediation and subsequent residential development requires mitigation. Since the impacted habitat does not possess full ecological value, a 1:1 mitigation ratio (on site) for impacts is a reasonable amount that would be appropriate under these circumstances. Restoration on site will consist of willow dune habitat along the canal and willows and

dune scrub over the rest of the restoration areas for a total of 23.4 acres (equal to the impacted area). An appropriate buffer along the canal would be 100 feet including the trail or effectively 85 feet with the trail along the development side. This buffer plus the plantings of willows will help to protect the mudflats bordering the canal where coots, herons, egrets, ducks and many shore birds feed at low tide.

Special Status Wildlife (Source: North Shore EIR, p 225-230)

Birds

Eight species of birds with special status have been observed foraging in the Edison Canal adjacent to the North Shore property. Five of these have CDFG "Special Animal" status (a moderately sensitive status), while two, the double crested cormorant (*Phalacrocorax auritus*) and the osprey (*Pandion haliaetus*) are California species of concern (proposed for listing) and one, the California least tern is listed as state and federally endangered. The North Shore site has not been observed to serve as rookery or nesting habitat for any of these species, and their occurrence in the adjacent canal is because it serves as a foraging area providing topsmelt for least terns and various other small food animals particularly when the mudflats along the sides are exposed at low tide. Impacts to this habitat would be primarily from the adjacency of the development. In this regard, I would highly recommend that a *tall* barrier of willows and other native vegetation be planted along the canal to serve as a visual buffer between human activity and the canal, and that night lighting be kept low and directed away from the canal area. The tall vegetation buffer for the canal is proposed in the North Shore EIR (p. 13 of Appendix A), and the lighting is mentioned on p. 16, but I want to reiterate and emphasize the need for this protection of the canal area from both human and domestic animal impacts.

An additional consideration is the impact to snowy plover nesting and foraging habitat at Mandalay State Beach at the end of Fifth Street where most of the residents from North Shore would access the beach. While beach walkers are discouraged from reaching the plover habitat in McGrath State Park by the Edison Canal outflow, the dunes along the beach in the down coast direction need fencing and signage like that provided at McGrath State Park. The approach behind the Mandalay State Beach dunes is fenced, but open on the seaward side. The seaward side should also be closed with signage. This needs to be done regardless of the North Shore project to discourage and warn beach walkers of the sensitivity there.

Other Sensitive Animals on the Site

Two other sensitive animals have been observed on the North Shore site, the globose dune beetle (*Coelus globosus*) and the San Diego black-tailed jackrabbit (*Lepus californicus bennetii*). The beetle is a federal species of concern (proposed for listing) and the jackrabbit is a species of concern for both the state and federal governments. Several other sensitive animal species *potentially* occur on the site (e.g., slivery legless lizard (*Anniella pulchra*) has been found across Fifth Street) but have not been directly observed at North Shore. So there will be some temporal impacts to sensitive animals if the project is allowed. ~~The existing habitat for these animals is so fragmented and degraded however that I do not consider it to be ESHA. The restoration will correct this,~~

and provide a much improved habitat to which these animals can be introduced from surrounding areas. It is expected that during soil remediation the black-tailed jackrabbit will disperse to adjacent off site habitats because of its good dispersal ability. It would seem however, that some individuals of the globose dune beetle (and perhaps slivery legless lizard if it occurs there) may be unavoidably impacted as a result of the soil remediation activity. If this project is allowed, I strongly recommend that the legless lizard and dune beetle be reintroduced to the site into appropriate habitats in the restoration areas. The jackrabbit is so mobile that moving it around artificially is problematic, and CDFG and USFWS should be consulted if individuals are observed on the site.

Wetlands at North Shore

Definitions of Wetlands and Delineation Methodology

The Coastal Act defines a wetland as:

Section 30121.

"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

The California Code of Regulations definition is:

Section 13577(b) of the California Code of Regulations:

Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats. For purposes of this section, the upland limit of a wetland shall be defined as:

- (A) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;***
- (B) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or***
- (C) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not.***

Therefore, in order to qualify as a wetland in the Coastal Zone, land must be at least periodically inundated or saturated for sufficient duration to result in a predominance of hydrophytes or a predominance of hydric soils. There is no specific periodicity or duration of inundation or saturation required. The primacy of hydrology is implicit in the definition, but is presumed adequate if either hydrophytic cover or hydrophytic soils are predominant. However, neither the definitions of hydrophytes or hydric soils nor field methods for their identification are provided in California law. In practice, delineators

primarily rely on the definitions and technical guidelines developed by the Army Corps of Engineers.¹ Several other technical publications also provide useful guidance.²

Sampling at the North Shore Site:

In the earlier project submission there was uncertainty concerning the occurrence of wetland habitat on the North Shore site. Delineation forms were filled out that did not meet the usual ACOE condition for wetland vegetation, but it was nevertheless claimed that the vegetation criterion was met. In addition the samples were not taken in reference to vegetation polygons, and so there was no way to measure the areas in question. Since the samples did not meet the usual ACOE standard for wetland vegetation, I concluded that the vegetation on site did not meet the standard conditions for wetland vegetation. To correct this ambiguity, more extensive sampling has now been done, focusing on the vegetation polygons.

On the North Shore site, the objective was to sample vegetation communities that had previously been mapped to determine whether the vegetation in that community polygon met the hydrophyte criterion. The target communities to be sampled on the North Shore site included all vegetation communities that contained arroyo willow (*Salix lasiolepis*) and/or saltgrass (*Distichlis spicata*) as these two species are often associated with wetland habitats. To assess these vegetation communities, sampling was done along transects through the vegetation polygons randomly locating the sample points along each transect with the stipulation that they cannot overlap each other following the methods in the ACOE 1987 Manual for "Comprehensive" delineations. In this regard shrubs, saplings and woody vines were sampled within a 20-foot radius while smaller plants, grasses and forbs were sampled within a 5-foot radius. Thus the size of the sampled area was adjusted for plant size to obtain an appropriate area for assessing the dominant vegetation. Transects were established across these polygons that intersected all of the major plant associations within each polygon as per ACOE methodology. Thus in the coyote brush/willow areas all of the vegetation in the polygon was fairly represented. In the saltgrass areas only one sample was taken since these areas are very uniform consisting almost exclusively of saltgrass.

The results of the sampling program have indicated that some of the vegetation on the site does rise to the level of wetland vegetation under the ACOE standard (>50% of dominant vegetation species are facultative (or wetter) wetland indicator species). The areas involved are 3.0 acres of mostly saltgrass (Fig. 1, Right) and 1.2 acres of 'willow scrub' (almost all willows) along the current entrance road in what will become the restoration area following the soil remediation. These habitats are indicated by bold type in the above list. So in summary, 4.2 total acres of vegetation has now been identified that meets the ACOE standard for wetland vegetation cover.

¹ Environmental Laboratory. 1987. Corps of Engineers wetlands delineation manual. Technical Report Y-87-1, U.S. Army Engineer Waterways Experiment Stations, Vicksburg, Mississippi.

² Federal Interagency Committee for Wetland Delineation. 1989. Federal manual for identifying and delineating jurisdictional wetlands. Cooperative technical publication. U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, and USDA Soil Conservation Service, Washington, D.C.; National Research Council. 1995. Wetlands: Characteristics and boundaries. National Academy Press, Washington, D.C.; Tiner, R.W. 1999. Wetland indicators. A guide to wetland identification, delineation, classification, and mapping. Lewis Publishers, N.Y.

Why do we have wetland vegetation here?

When the oil waste disposal facility was closed down in the early 1980's, the site was "capped", and the oil companies used drilling mud with a high clay content for this purpose since it is a good sealant for hydrocarbons. The material used, "bentonite", is now found almost exclusively under the salt grass vegetation areas at the site. This explains their patchy nature and seeming lack of supporting hydrology. The soil underlying them has very high water holding capacity and essentially seals the surface. It is usually used around oil drill casings to seal them from leakage. It has very high adsorption of hydrocarbon compounds, and the bentonite on the North Shore site is highly contaminated with about 2000 mg/kg of petroleum compounds. The depth of the bentonite under the saltgrass ranges from 6 to 8 inches, and below that is very contaminated waste material. From WYO-BEN, a Wyoming bentonite company we have the statement:

For decades Wyoming Bentonite has been used for establishing low permeability liners in landfills, sewage lagoons, water retention ponds, golf course ponds and hazardous waste sites.

So this is a common practice and probably explains much of the existence of wetland vegetation on the site as well as why much of it is dying back and appearing generally unhealthy (Fig. 1, Left). Because of this I do not believe that over time this site would regenerate to a healthy dune habitat representative of the area. The existence of very contaminated materials just beneath the surface prevents deep-rooted plants from growing to maturity over most of the site, and this will not allow this site to regenerate naturally without soil remediation.



Figure 1. Left: Willow showing stress symptoms at the North Shore site. Right: Saltgrass polygon showing uniform vegetation. Bentonite fill (about 6-8 inches deep) was used in this area and is highly contaminated (~2000mg/kg hydrocarbon compounds).

Suggested Mitigation Area for Wetland Impacts

The developer has agreed, as part of the mitigation to purchase a 28-acre parcel across Harbor Boulevard between the McGrath State Park property and the Mandalay generating station. He currently has an option on this property. On this site staff has suggested creation of wetland habitat at a 4:1 mitigation ratio, and to restore coastal dune habitat within the 100-foot buffer surrounding the created wetland habitat. In my opinion this site is a good choice for such a project for several reasons: 1) In the central low area of the site (Fig. 2, Left) there is currently extensive cover by invasive iceplant (18.6 acres) and small amounts of saltgrass, bullrush and willow scrub suggesting that the area has the potential for wetland *creation*, 2) the site is protected up coast by State Parks property and down coast by the Mandalay Generating Station so that access is limited, 3) the current situation allows trespass across the site with impacts to snowy plover habitat, but this could be controlled by fencing, signage, etc. if the site is restored, 4) restoration of the site would remove the existing go-cart track and the noise and disturbance from that facility, 5) this area is directly adjacent to McGrath Lake on State Parks property and would form a logical extension of that wetland complex, 6) the site is adjacent to the snowy plover protected (fenced) area on State Parks property, and so the snowy plover protected area could be expanded. So in summary, I am fully in support of this as a mitigation site for wetland creation and dune restoration. I believe it is a good choice for such a project, and would compliment and enhance the protection of the area.



Figure 2. The suggested mitigation site. **Left:** View up coast of McGrath Lake on the adjacent State Parks property. The dunes on the left are a fenced snowy plover protected area. **Right:** View looking inland at the area where the wetland would be created. Note cover by invasive iceplant.

Issues Raised by California Department of Parks and Recreation

- Extension of the Urban-Rural Boundary

State Parks has argued that North Shore was once part of the dune complex system in the area and that the connectivity of the area will be significantly changed by this development. While the North Shore site was once part of the dune complex in the area, its use as an oil waste disposal facility for thirty years has made it significantly

different than the surrounding habitats. In addition, on the west it is isolated from the Mandalay State Beach property by two chain link fences and Harbor Blvd. On the east (the other side) it is blocked by two more chain link fences and the Mandalay Canal. So while birds might fly over these obstacles, ground-moving animals are essentially blocked now on both east and west sides of the property. In fact, it would not be difficult for such animals (e.g., coyotes, foxes, raccoons, etc.) to move around this property across the existing agricultural areas, and probably do so now to avoid the obstacles associated with the North Shore site.

- Impacts to Habitat for Threatened Species

I agree that the snowy plover foraging/nesting area on the beach should be protected, but the question is how best to do this. It is currently fenced on McGrath State Beach by a 5-foot chain link fence with good signage explaining the reasons to the public. The North Shore site is over one mile from the plover area along a very pedestrian-unfriendly busy highway (Harbor Blvd.) with no parking. Another access route is along the beach, and this route is blocked up coast by the outflow from the Santa Clara River and down coast by the outflow from the Mandalay Canal making it difficult for beach walkers to reach the area. This is probably why the plover uses this stretch of beach now. The only other primary access is through the State Park itself, and the Parks Department has complete control of this and the subsequent access within the Park. This will not be changed by this development. In fact the best and safest way to the beach is, and will remain, to walk down Fifth Avenue to Mandalay Beach. At the end of Fifth Street, turning up coast is blocked by the Canal outflow after about ½ mile, and the only open route is to go down coast, away from the plover area. The dune area across Harbor Blvd. from the North Shore site is completely blocked on Harbor and Fifth Street by a chain link fence and signage by Ventura County. This fencing continues down Fifth Street from the intersection with Harbor Blvd. all the way to Mandalay Beach (~1/4 mile), and is definitely the only really accessible route to the beach. So this would be the path that most people from North Shore would use to access the beach. While beach walkers are discouraged from reaching the plover habitat in McGrath State Park by the Edison Canal outflow, the fore dunes at Mandalay State Beach need protection along the beach. The approach *behind* the Mandalay State Beach dunes is fenced, but the area is open on the seaward side. The seaward side should also be fenced with signage. This needs to be done regardless of the North Shore project to discourage and warn beach walkers of the sensitivity there. In summary, the whole area is already partially protected by fencing and signage, and the mitigation measures from this project could compliment and complete the existing protection.

The Ventura Marsh Milk Vetch

By far the most unusual and valuable biological resource on the North Shore site is a plant previously thought to be extinct, the Ventura marsh milk vetch (*Astragalus pycnostachyus* var. *lanosissimus*). The last known population of this rare dune scrub plant was at McGrath State Beach, approximately 2 miles north of the North Shore site on Harbor Boulevard. The population at McGrath State Beach was reported destroyed in 1967, and since that time the species was presumed to be extinct. However in 1997 a population of this species was discovered in the North Shore site by USFWS biologist,

Kate Symonds (USFWS, Federal Register, May 2001, 66(98):27901-27908). (Ms Symonds is now with SAIC, Santa Barbara). This initial population was believed to have germinated from the final fill material brought in during the closure of the oil waste facility. The actual origin of this soil is unknown but is probably local due to the cost of transporting fill. Apparently the fill material contained a seed bank including the milk vetch seeds that may have lain dormant for many (30 or more) years. Apparently, when the right conditions occurred on the site, (an El Nino year?), many of the dormant seeds germinated, and 384 plants were discovered in 1997, of which 260 were small, thought to have germinated in that year.



Figure 3. Ventura Marsh Milk vetch seedling emerging at the North Shore Site, October 23, 2001.

Since that time the area (about 0.4 acre) of the North Shore site has been placed in a preserve area fenced off from the rest of the site. Studies on the biology of the milk vetch, funded by the developer, are being conducted by Christina Sandoval at Coal Oil Point, UC Santa Barbara. These studies have shown that it is normal for this plant to produce predominately dormant seeds. Normally, only about 5% of the seeds germinate spontaneously, 95% being dormant. Most of the seeds have a heavy seed coat that must be broken open before germination can occur. At North Shore this may have occurred when earth-moving equipment moved the soil containing the milk vetch seeds that then germinated during the wet winter of 1997.

Species that live in very harsh and uncertain conditions such a coastal dunes often evolve a "spreading of risk" or "hedging of bets" strategy that spreads reproduction over a very long time. That is, these species are reproductive opportunists that develop strategies that spread the emergence of their offspring over long time periods and many years. Thus, it may be normal for the milk vetch to have many seeds that lie dormant in the coastal dune soil seed bank waiting for a good year to germinate. We do not know for sure how long these seeds can lie dormant. In the case at North Shore it was probably on the order of thirty years, but much longer time periods are certainly possible.

Surely the preserve and the 100-foot buffer surrounding the milk vetch area must be declared ESHA in spite of the degraded nature of the site in other respects. This area must be preserved and soil remediation must not be conducted in this area. It is my opinion that the area should be preserved permanently because of the long-term seed bank strategy that this species employs. This strategy has saved it from apparent extinction, and that serves as an example of why the whole area surrounding the milk

vetch plants should be considered sensitive. There are probably many seeds still remaining in this soil that will germinate in the coming years, not to mention more that have been deposited from the current crop of adult plants. I strongly support the efforts to establish this plant elsewhere, and establishing the milk vetch at other sites should be part of the mitigation effort. Self-sustaining populations (with recruitment) should be documented in coastal dune habitat in the area. I have seen the population of plants at Coal Oil Point, but apparently the *Carpenteria* population was not successful (Christina Sandoval, pers. comm). We will learn much from this research, and it should be supported and continued. I strongly support continued efforts to reestablish this plant in as many new locations as possible with self-sustaining populations.



Channel Coast District
1933 Cliff Drive, Suite 27
Santa Barbara, California, 93109
Tel. (805) 899-1400, Fax (805) 899-1415

RECEIVED
RECEIVED

MAR 19 2002

CALIFORNIA
COASTAL COMMISSION
SOUTH CENTRAL COAST DISTRICT

March 19, 2002

California Coastal Commission
89 California Street, Suite 200
Ventura, CA 93001

Attention: Jack Ainsworth, Supervisor, Planning and Regulation

Re: LCP Amendment No. OXN-MAJ-1-00, City of Oxnard Local Coastal Program
Amendment; North Shore at Mandalay Bay Annexation

Dear Jack,

Thank you for meeting with us last week. As you requested, we would like to provide the Commission staff with more detail substantiating State Parks' serious concerns about the above-referenced proposed amendment to the Oxnard Local Coastal Plan (LCP). The attached package provides, in part, the scientific basis for our concern that the proposed development allowed under this LCP amendment will have significant adverse impacts that cannot be mitigated on sensitive natural resources at Mandalay and McGrath State Beaches.

Most of the area of the subject amendment, designated in the City of Oxnard's LCP as the **McGrath/ Mandalay Coastal Zone Area**, is a unique coastal resource. **This comparatively intact, interconnected and interdependent complex** consisting of fore dunes, back dune scrub and wetlands, and back dune lake **occurs nowhere else in Southern California**. Mandalay and McGrath State Beaches together constitute a significant proportion of the McGrath/Mandalay Coastal Zone Area. Both provide critical habitat for the Federally listed Western snowy plover and McGrath provides essential habitat for the State and Federally listed California least tern. Notwithstanding this, significant adverse impacts to these State Park units, off-site habitat, and critical habitat for rare, threatened and endangered species have not been addressed to date, nor have alternatives avoiding impacts been seriously considered in any document or proposal prepared by the City of Oxnard or the North Shore at Mandalay project proponent. We therefore respectfully request that the Commission staff recommend denial of the proposed LCP amendment.

Channel Coast District (CCD) of the California Department of Parks and Recreation (CDPR) has been on record since 1999 (see attached letters dated March 30, 1999 and May 25, 1999) voicing concerns that the Environmental Impact Report (EIR) for the project was deficient in addressing adverse impacts on sensitive resources at Mandalay State Beach and McGrath Lake within McGrath State Beach. These

concerns were effectively dismissed, rather than analyzed, by the local government. Despite our written request to be notified regarding future actions on the project, we were not approached or involved by the City during the LCP amendment preparation process, in any discussions regarding the impacts we had identified. The Commission staff has therefore not had the benefit of our input until very recently. Consequently, we are in the unfortunate position of opposing this amendment at this late stage of the process. We raise these concerns with the Commission recognizing that the Commission carries out the Coastal Act with a larger than local perspective. The Coastal Act balances the need for development with the need for coastal resource protection, in common with the State Parks mission, in the interest of preserving and protecting the State's extraordinary biodiversity.

The impact areas of greatest concern for State Parks that were not addressed or were deficient in the EIR are summarized in the attached "SUMMARY OF ADVERSE IMPACTS", with supporting data included for your reference. The impacts fall into either natural or recreational resources areas, and include:

- extension of the urban-rural boundary,
- increased impacts to critical habitat for threatened and endangered species through disturbance, increased demand on sensitive natural resources for habitat "services", removal of open space buffer area, reduction of species diversity and composition,
- compromise of public natural resource investment through a City-requested modification to the airport flight/take-off paths, increased visitor use impacts, increased demand for visitor services, and circulation.
- An additional deficiency of the EIR is the lack of serious alternatives analysis, particularly for remediation of site contamination.

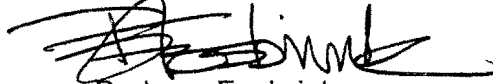
Coastal Act Section 30240 states, in part,

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

Given the scientific background we have provided and the lack of analysis in the project EIR and LCP amendment documentation of natural resource impacts to the McGrath/Mandalay Coastal Zone Area, it is State Parks' position that there is insufficient data to site and design development at the proposed location to meet this and other Coastal Act standards. We would be remiss to suggest possible modifications in the absence of scientific evidence that modifications would be effective in preventing significant degradation and potential loss of critical habitat areas. For these reasons, we strongly urge that staff recommend denial of the proposed amendment.

Thank you for your consideration of these issues. Should you have any questions whatsoever, please do not hesitate to contact me at 805/899-1400 regarding this important matter.

Sincerely,



Barbara Fosbrink
Technical Services Chief

Attachments:

1. Summary of Adverse Impacts
2. Letter to City of Oxnard dated March 30, 1999
3. Letter to City of Oxnard dated May 25, 1999
4. Letter to California Coastal Commission dated February 5, 2002
5. Supporting Scientific Data package:
 - a. Edge Effects, Connectivity and Habitat Fragmentation
 - b. Western Snowy Plover Ventura County Beach Use and Disturbance

Cc: Chuck Damm, Senior Deputy Director, Coastal Commission
Kara Kemmler, Coastal Analyst, Coastal Commission
Marilyn Miller, Community Development Director, City of Oxnard
Steve Treanor, Southern Division Chief, State Parks
Rick Rayburn, Natural Resources Division Chief, State Parks
Rich Rojas, District Superintendent, State Parks

SUMMARY OF ADVERSE IMPACTS

▪ Extension of Urban-Rural Boundary

The preponderance of scientific evidence shows that habitat fragmentation and decreases in habitat area result in measurable loss of biodiversity in those habitats. Attachment 5, (Edge Effects, Connectivity, and Habitat Fragmentation) provides a summary of scientific papers studying the effects of habitat area reduction, isolation of habitats due to development, the need for buffer areas, and providing "linkage" or connectivity such as wildlife corridors to prevent loss of plant and wildlife species from habitats adjacent to developed areas. For example, Soule, et al. (1998) studied chaparral-requiring birds in canyons isolated by development, concluding that the most effective tool for preventing extinction of chaparral-requiring species in an urban landscape is proper planning of urban and suburban development.

Fifth Street currently provides a reasonable, clearly defined urban-rural boundary. As proposed, the City's LCP amendment would extend the urban rural boundary, allowing residential development in a location that effectively isolates Mandalay State Beach, creating an island and eliminating connectivity with the existing agricultural and open space along Harbor Blvd. Currently, no residential development exists from the Harbor Blvd.-5th Street intersection in Oxnard to the Olivas Park Drive/101 Freeway area in Ventura, with the exception of isolated residences associated with the agricultural operations.

The site of the proposed North Shore at Mandalay project was once part of the dune complex that remains at Mandalay and McGrath State Beaches. This broad open space area provides for wildlife movement both to the Santa Clara River corridor and to the two State Park units. Construction of a residential subdivision will eliminate the connectivity of Mandalay State Beach to this area. Furthermore, eliminating the habitat provided by the proposed North Shore at Mandalay site will increase wildlife demand for habitat on Mandalay and McGrath State Beaches for displaced wildlife while simultaneously increasing conflicts between wildlife use and human activities.

Eliminating wildlife corridors and creating islands of habitat destabilizes predator-prey relationships, in some cases eliminating larger predators such as coyotes, which effects the distribution and abundance of smaller predators (fox, opossum) and making their prey such as scrub-breeding birds significantly more vulnerable. Attachment 5a includes several excellent studies on this issue. One very useful paper by Beier and Loe (1992) is "A Checklist for Evaluating Impacts to Wildlife Movement Corridors." Beier and Loe studied 8 major project impact analyses in southern California which found that wildlife movement studies, although recognized as important, are generally not well understood by decision-making agencies. Only two of the projects included wildlife movement maps, and the approving agencies did not require any monitoring of wildlife movement in their approvals.

Attachment 1

▪ **Impacts to Critical Habitat for Threatened Species**

Attachment 5b (Western Snowy Plover and Shorebird Disturbance Data) includes extremely valuable data on Western snowy plover in Ventura County as well as specific monitoring data on WSP at Mandalay State Beach (Mandalay SB). Western Snowy Plover nesting from 1997 to the present is documented at Mandalay SB as provided in Attachment 5b. In addition, California State Parks' current Management Measures for Western Snowy Plovers is included, summarizing management efforts at McGrath and Mandalay SB.

Mandalay SB is immediately adjacent to the proposed development site. It supports fragile wetland habitat and is part of the designated critical habitat for the Federally listed threatened Western Snowy Plover (Site # Ca-74). Mandalay is managed through an agreement with the County of Ventura, and is essentially undeveloped. McGrath Lake, situated within one mile of the development, is the last back dune coastal lake in Southern California, is surrounded by seasonal wetlands, and is also part of the designated critical habitat for the Western Snowy Plover.

As described in Attachment 5b, a number of impacts of the type associated with this project jeopardize the viability of the nesting population of Western snowy plover at Mandalay SB. Impacts occurring from increased human presence at the beach include disturbance of the birds, destruction of nests and eggs, predation and disturbance by domestic animals, especially disturbance from dogs, whether on or off leash. Development and human activity on the beaches of Orange and Los Angeles counties has resulted in the elimination of WSP breeding in those counties, contributing to the continued overall decrease in the population. Lafferty (2001) studied details effects of human and animal disturbance on a population of WSP in Santa Barbara County. This study provides some critical data revealing that typical management measures such as fencing and signs may not be sufficiently effective in preventing disturbances to nesting plovers and allowing successful breeding. McCrary and Pierson, in a Minerals Management Service study of Ventura County sandy beaches conducted from 1994 – 1997 concluded in part, "The results suggest that inaccessibility to humans may be an important aspect of shorebird habitat quality. **Relatively undisturbed sandy beaches are quite rare in southern California and the inaccessibility of the few remaining undisturbed beaches should be maintained.**"

▪ **Compromise of Public Natural Resource Investment**

The uniqueness of the area resources largely formed the basis for State acquisition of McGrath and Mandalay State Beaches, which represent resources considered to be of statewide significance. In recent years, significant public funds have been committed to protection and enhancement of the natural resources of the

Attachment 1

Mandalay-McGrath area. State Parks has contracted consultants to prepare a study of the McGrath SB Santa Clara River Estuary Natural Preserve (1990), and a more detailed 3-year study characterizing the biota of the estuary in part to determine issues relating to California least tern, which forages both in the estuary and at McGrath Lake. State Parks has also initiated a pilot Western Snowy Plover interim management plan, over the past two years in an effort to monitor and protect nesting and raise public awareness. The County of Ventura is in the second year of restoring the dune habitats at Mandalay SB with Coastal Resources Program grant and in-kind funding of \$211,000. By August, 2002, a consultant for the Channel Coast District of State Parks will have completed a \$130,000 Natural Resource Management Plan for McGrath State Beach. Channel Coast District has also contracted with Ventura College to produce a Geographic Information System (GIS) to digitally store and manage a wealth of resource-related data to improve management of the resources. State Parks is one of three members of the McGrath Lake Trustee Council planning for restoration of McGrath Lake following the 1993 oil spill in the lake. The State Coastal Conservancy has been actively involved in pursuing land acquisitions in this area due in large part to the significance of the resources and habitat values.

This is just a partial listing of the programs and initiatives public agencies have undertaken as a commitment to the values of the natural resources of the McGrath/Mandalay Coastal Zone Area. These efforts could be severely compromised with an influx of new users and given the likely additional plant and wildlife impacts described above.

An additional concern occurs relative to the potential modification of the airport flight path to avoid the proposed new residential area. The Draft and Final EIR proposed modifying the airport flightpath to mitigate noise impacts. Mitigation measures upon which the City based its findings approving the project would re-direct the airport take-off and descent path directly over McGrath Lake, a nationally recognized waterfowl and migratory bird refuge site on the Pacific flyway. Changing the flightpath would increase the potential for impacts to birds using McGrath Lake and possibly in the Santa Clara River Estuary Natural Preserve. This proposed change could result in increased conflicts between birds and planes. The change in flightpath could also hamper future plans on restoring habitats at McGrath Lake because of the potential for increased accidents. Wetland restoration efforts at Goleta Slough in Santa Barbara County have recently been limited by the FAA, because of potential increased conflicts between birds and airplanes serving the adjacent Santa Barbara Airport.

▪ **Recreational Impacts**

Coastal access for the project proposed in the LCP amendment would be provided by bike trails and paths that take people out to Harbor Blvd and Fifth Street, where they will naturally choose to access Mandalay State Beach. Neither Mandalay SB nor the McGrath Lake area is currently designed to handle an influx of new users.

City of Oxnard Major LCP Amendment
March 19, 2002

Attachment 1

There will clearly be indirect impacts from the North Shore at Mandalay development on these park units. There is no formal trail system, enforcement program or sanitary facility at either site. The sensitive resources at these units are protected in part because of the low numbers of people currently using these facilities. Management problems already exist due to lack of staff to patrol these areas.



City of

March 26, 2002

Jack Ainsworth, Supervisor, Planning and Regulation
Kara Kemmler, Coastal Planner
California Coastal Commission
89 California St., Suite 200
Ventura CA 93001

VIA FACSIMILE WITHOUT
ATTACHMENTS
HARD COPY TO FOLLOW
805/641-1732

Re: *LPC Amendment No. OXN-MAJ-1-00, City of Oxnard Local Coastal Program
Amendment; North Shore at Mandalay Bay Annexation*

It is necessary for me to respond to the letter from the State Department of Parks and Recreation of March 19, 2002. I request that you include this correspondence in any addendum to the staff report distributed to Coastal Commission.

First, the Department of Parks and Recreation has been on the distribution list for receiving documents regarding the North Shore project since the Draft Environmental Impact Report was distributed in 1999. The developer contacted them during the ensuing months to discuss the possibility of using State Parks property for offsite mitigation. They were present at the Coastal Commission hearing in May of 2001 when the North Shore project was continued for one year, and, during recent discussions between Oxnard planning staff and State Parks staff regarding a Parks project, we informally discussed the fact that North Shore was still awaiting a hearing on the LCP amendment. For them to claim that they have not been notified of this project is a surprise to all of us who have been working on it for the past three years.

No one argues that there are resources at Mandalay and McGrath State Beaches and that these resources deserve protection and preservation. But Ms. Fosbrink's characterization of the North Shore site as part of a pristine, undisturbed wildlife corridor is, to be polite, a clear misstatement of fact.

Adjacent Land Use Issues

Mandalay Beach Park is located at the northwest corner of Harbor Blvd. and Fifth St. within Oxnard's city limits. The property is divided into eight parcels totaling approximately 96.4 acres. State Parks owns a majority of the property (87.7 acres). Of the remaining acreage, 7.4 acres is owned by the City of Oxnard and 1.3 is owned by R H McGrath Farms. (See the attached maps.) The Oxnard Shores development, first approved in 1959 (Tract 1056) stretches from Fifth St. and Mandalay Beach Rd. south to Oxnard Beach Park. Oxnard Shores contains approximately 1,400 lots (not including apartment units), which have been constructed and reconstructed since the early 1960s until now. Directly south of Fifth St., at the corner of Fifth and Mandalay Beach Rd. is the 181-unit Oxnard Shores Mobile Home Park approved in May of 1971 (PD 42). It is apparent from aerial photos, however, that some type of mobile home park existed at this site prior to the PD approval. Additionally, there is a residential development southeast of the Mandalay Beach Park, across Harbor Blvd., known as The Dunes. This development was

approved beginning in 1964 and consists of 138 lots. Most of these lots contain duplexes or triplexes, resulting in a minimum of 275 to 300 units.

Sandwiched between the Mandalay State Beach Park and the McGrath Beach to the north is the Reliant Engery plant, property owned and operated by Southern California Edison, property owned and operated by Ocean Vista Power out of Houston and a commercial site operated as a go-cart training and racing track. While there is property to the southeast designated resource protection in the City's coastal zone and land use map, a considerable amount of development exists around both sites.

Mandalay State Beach gets a great amount of use at this time. A visit on any day or evening will find numerous individuals and groups using the beach, walking the dunes, traversing the wetlands and exercising their dogs. There are few signs on the site limiting access or use. The dunes and willow areas are marginally enclosed with a low chain link fence and several signs, which indicate the County of Ventura is attempting restoration work. There are no designated walkways, no educational signs and no fences prohibiting access to the more sensitive areas. At the waterline Snowy plovers are clearly present, yet there is no protective fencing or educational signage. Representatives from the State Parks Department and the County Parks Department indicated to us that there are no funds available for developing or implementing a management plan.

McGrath State Beach and McGrath Lake are separated from Mandalay Beach by the Reliant Power plant, the site of the Edison storage tanks, which have recently been removed, and other Edison property used for transmission lines. To get to the lake from Harbor Blvd. one must open a locked gate and actually trespass across private property. The Santa Clara Riverbed to the north and the Mandalay Canal outfall pipe to the south further isolate public access. Because of this limited accessibility, most of the traffic to the beach and dunes area at McGrath Lake comes from McGrath State Beach. This small wetland resource, still recovering from an oil spill that occurred several years ago, is not visible from the beach area because of surrounding dunes, nor is it visible from Harbor Blvd. because of the distance from the roadway. Again at this location, there are few measures currently being taken to educate the public and limit the access of people and dogs.

Wildlife Corridor

It is difficult to believe that the North Shore property served as part of a continuous wildlife corridor anytime within the last 50 years. It was an oil waste disposal site from 1957 to 1982. Prior to that time it was used for oil and gas production and to store equipment for adjacent agricultural uses. From 1982 it has been contaminated with over 8 million barrels of hydrocarbons, chemicals and other oil waste, an environment that is not conducive to plant or animal life. Since its abandonment as a waste dump it has also been fenced. It remains fenced with six-foot chain link around virtually its entire perimeter.

There are certainly small animals to be found on this property, as well as birds, insects, and other wildlife. However, considering the Mandalay Canal and long-term agricultural uses to the east, Fifth Street to the south, Harbor Blvd. to the west and a six-foot chain link fence, it is unlikely that this property has been used to any great extent as part of a wildlife corridor for larger, predator-type mammals such as coyotes. Further, after clean up of the contamination, establishment of the milk vetch protection and resource buffer area, and restoration of willow, salt

grass and other native plant materials within the 19 or so acres along Fifth Street and the buffer area along the canal, the site will enhance the habitat which exists at Mandalay State Beach by providing additional superior habitat that doesn't now exist.

Birds v. Airplanes

To address the issue of the birds at McGrath Lake and the Oxnard Airport flight path, I want to make it clear that the project does not contemplate a change to any flight path from or to the airport, nor does it include such a change as a mitigation measure. Ms. Fosbrink is simply wrong on this account. The activities of the Ventura County Airport are subject to the County of Ventura Department of Airports and other aviation agencies. While the EIR discusses the possibility of reducing noise impacts to residents of the project if airplanes were diverted north earlier in their takeoff patterns, it acknowledges that this is a decision out of the hands of City officials.

Conclusion

No one argues that there are resources on both Mandalay and McGrath State Beach and that there are impacts to these resources caused by existing and future development, whether that occurs at North Shore or elsewhere in the City. However, in spite of the hyperbole contained in the letter from State Parks, there is no reason to believe the impacts cannot be mitigated with fairly straightforward protective measures. The City has indicated a willingness to join in efforts with the State and the County of Ventura to formulate a plan to implement some type of program. That the State of California is not willing to work with other agencies to solve their problems should not be a reason to deny this project.

The statements made above were taken from information contained in City files, the EIR documents, and other studies and documents prepared for this project. I have attached maps and photographs to demonstrate the relation of the sites to other, adjacent developments. As always, if you have any questions please feel free to contact me at 805/385-7858.



Marilyn Miller, AICP
Planning and Environmental Services Manager

Encl.

C: Barbara Fosbrink, Technical Services Chief,
California Department of Parks & Recreation
Ron Smith, North Shore at Mandalay Bay
Steven H. Kaufmann, Richards, Watson & Gershon
Nancy Lucast, Lucast Consulting
John K. Flynn, Ventura County Board of Supervisors
Matthew G. Winegar, AICP, Development Services Director
Michael Henderson, Parks and Facilities Manager

| APN | Acreage | Owner | Owner Address | Owner Address 2 | Owner City | Owner State | Owner Zip |
|----------|---------|------------------------------|----------------------------|-------------------------|------------|-------------|-----------|
| 13808002 | 1.4 | CONWAY CHARLES J TR ET AL | 5701 W GONZALES RD | | OXNARD | CA | 93030 |
| 13808003 | 1.6 | | | | | | |
| 13808006 | 313.8 | CALIFORNIA STATE OF | DEPT OF PARKS & RECREATION | 1416 NINTH ST | SACRAMENTO | CA | 95814 |
| 18301036 | 0.7 | R H MC GRATH FARMS | P O BOX 8040 | | OXNARD | CA | 93031 |
| 18301042 | 1.4 | CALIF STATE OF-DEPT GEN SER | REAL ESTATE SERV DIVISION | 915 CAPITOL MALL RM 110 | SACRAMENTO | CA | 95814 |
| 18301043 | 14.1 | CALIF STATE OF-DEPT GEN SER | REAL ESTATE SERV DIVISION | 915 CAPITOL MALL RM 110 | SACRAMENTO | CA | 95814 |
| 18301050 | 0.1 | R H MC GRATH FARMS | P O BOX 8040 | | OXNARD | CA | 93031 |
| 18301051 | 0.6 | R H MC GRATH FARMS | P O BOX 8040 | | OXNARD | CA | 93031 |
| 18301054 | 0.2 | CALIF STATE OF-DEPT GEN SER | REAL ESTATE SERV DIVISION | 915 CAPITOL MALL RM 110 | SACRAMENTO | CA | 95814 |
| 18301055 | 2.7 | OXNARD CITY OF | 300 W THIRD ST | | OXNARD | CA | 93030 |
| 18301055 | 7.4 | OXNARD CITY OF | 300 W THIRD ST | | OXNARD | CA | 93030 |
| 18301056 | 1.3 | VENTURA COUNTY OF | ATTN R-W AGENT | 800 S VICTORIA AV | VENTURA | CA | 93009 |
| 18301057 | 18.3 | CALIF STATE OF-DEPT GEN SER | REAL ESTATE SERV DIVISION | 915 CAPITOL MALL RM 110 | SACRAMENTO | CA | 95814 |
| 18301057 | 53.5 | CALIF STATE OF-DEPT GEN SER | REAL ESTATE SERV DIVISION | 915 CAPITOL MALL RM 110 | SACRAMENTO | CA | 95814 |
| 18301057 | 0.4 | CALIF STATE OF-DEPT GEN SER | REAL ESTATE SERV DIVISION | 915 CAPITOL MALL RM 110 | SACRAMENTO | CA | 95814 |
| 18301058 | 2.2 | VENTURA COUNTY OF | ATTN R-W AGENT | 800 S VICTORIA AV | VENTURA | CA | 93009 |
| 18301059 | 0.3 | CALIF STATE OF-DEPT GEN SER | REAL ESTATE SERV DIVISION | 915 CAPITOL MALL RM 110 | SACRAMENTO | CA | 95814 |
| 18302201 | 4.7 | SOUTHERN CALIF EDISON CO | P O BOX 800 | | ROSEMEAD | CA | 91770 |
| 18302202 | 36.4 | OCEAN VISTA POWER GENERATION | 1111 LOUISIANA 16THFL | | HOUSTON | TX | 77002 |
| 18302203 | 16.1 | SOUTHERN CALIF EDISON CO | P O BOX 800 | | ROSEMEAD | CA | 91770 |
| 18302301 | 9.9 | OCEAN VISTA POWER GENERATION | 1111 LOUISIANA 16THFL | | HOUSTON | TX | 77002 |
| | 487.1 | | | | | | |



1929 Aerial Photograph

SOURCE: University of California Santa Barbara Photographic Repository

This photograph shows that the areas immediately east of the site with suitable soils for agricultural use were already under cultivation by the 1920s.

EXHIBIT NO. 18
LCPA NO. OXN-MAJ-1-00
1929 AERIAL PHOTO



SOURCE: University of California Santa Barbara Photographic Repository

This 1970 aerial photograph shows the pattern of development in the area in relation to established agricultural areas. The Mandalay Bay Power Station is shown at the top of the photograph. As shown in the photo, the canal providing cooling water to the plant was developed along the existing edge of the agricultural fields. Harbor Blvd and West Fifth Street were also fully built by this date and residential development in the Oxnard Shores and Oxnard Dunes areas had been established. By this date, the oil field waste disposal activities, which began in the mid-1950s, had expanded to the majority of the North Shore site, as evidenced by the dark ponds of oil waste visible in the photograph. The pattern of agricultural use in the area remains unchanged from that shown in the 1929 aerial photo.

EXHIBIT NO. 19
 LCRA NO. OXN-MAJ-1-00
 1970 AERIAL PHOTO

