

CONSENT CEASE AND DESIST ORDER CCC-10-CD-01 AND
CONSENT RESTORATION ORDER CCC-10-RO-01

1.0 CONSENT CEASE AND DESIST ORDER CCC-10-CD-01

Pursuant to its authority under Public Resources Code (“PRC”) section 30810, the California Coastal Commission (“Commission”) hereby orders and authorizes Driftwood Properties, LLC; its employees, agents, and contractors; and any persons acting in concert with any of the foregoing (hereinafter collectively referred to as “Respondents”) to:

- 1.1 Cease and desist from engaging in any further development, as that term is defined in PRC section 30106, on property identified in Section 8.0, below (“subject properties”), unless authorized or exempt pursuant to the Coastal Act (PRC §§ 30000 *et. seq.*), including by these orders.
- 1.2 Cease and desist from maintaining any Unpermitted Development (defined in Section 9.0, below) on the subject properties.
- 1.3 Remove, pursuant to the removal plan discussed in Section 4.1, below, and attached as Exhibit A to these Consent Orders, and pursuant to the terms and conditions set forth herein, the following from the subject properties: (1) all physical items placed or allowed to come to rest on the subject properties that constitute Unpermitted Development including, but not limited to, sandbags and sand/gravel/fill released from the sandbags, sand/gravel berms, filter fabric placed over the berms, and plastic discharge pipes; and (2) non-native vegetation.
- 1.4 Allow access onto and through the subject properties by any person or entity that holds a conservation easement over any portion of the subject properties; and refrain from blocking or impeding the ability of any person or entity to perform and carry out work required by this cease and desist order and related restoration order CCC-10-RO-01, CCC-10-RO-02 or restoration order CCC-06-RO-03 or any future plan for restoration of the subject properties, consistent with the terms of such an easement.
- 1.5 Execute and record an irrevocable offer to dedicate an Open Space Conservation and Public Access Easement and Declaration of Restrictions (“OTD”) over the subject properties as required by Section 4.6, below, to preserve the open space, habitat, and public access values of the subject properties.
- 1.6 Grant to the California State Coastal Conservancy a Preemptive Purchase Right (“PPR”) as required by Section 4.7, below.
- 1.7 Convey fee title to the OTD Area, as that term is defined in Section 4.2, to the City of Laguna Beach, or, if the City is unwilling to accept title to the OTD Area subject to the terms, conditions and obligations of the OTD, to the California State Coastal Conservancy, in the manner prescribed by Section 4.8 below.

2.0 CONSENT RESTORATION ORDER CCC-10-RO-01

Pursuant to its authority under PRC section 30811, the Commission hereby orders and authorizes Respondents to undertake and comply with all requirements and agreements addressed in this document.

3.0 NATURE OF ORDERS AND OF CONSENT

Through the execution of Consent Restoration Order CCC-10-RO-01 and Consent Cease and Desist Order CCC-10-CD-01 (hereinafter collectively referred to as “these Consent Orders”), Respondents agree to comply with the terms and conditions of these Consent Orders. These Consent Orders authorize and require the removal activities, among other things, outlined in these Consent Orders. Any development subject to Coastal Act permitting requirements that is not specifically authorized under these Consent Orders requires a Coastal Development Permit. Nothing in these Consent Orders guarantees or conveys any right to development on the subject properties other than the work expressly authorized by these Consent Orders. Through the execution of these Consent Orders, Respondents agree to comply with these Consent Orders including the following terms and conditions.

PROVISIONS COMMON TO BOTH ORDERS

4.0 TERMS AND CONDITIONS SPECIFIC TO THIS MATTER

4.1 Within seventy-five (75) days of the Commission’s issuance of these Consent Orders, Respondents shall fully complete the removal plan dated November 29, 2010, attached as Exhibit A (“Removal Plan”), which outlines the methods to: (1) remove all physical items placed or allowed to come to rest on the subject properties that constitute Unpermitted Development, including fencing located on the western portion of the subject properties, (2) remove non-native plant species from the subject properties, and (3) implement temporary erosion control measures.

4.2 DEFINITIONS

As used in these Consent Orders, the underlined phrases shall have the following meanings (a diagram of the following areas is included in Exhibit A):

Non-Native Plant Removal Area: The approximately 6 acre area that was previously graded and subsequently maintained by the periodic removal of vegetation, without a coastal development permit.

Impacted Area: All areas of the subject properties described as the Non-Native Plant Removal Area and all areas that are covered with or impacted by sand bags, any materials that have been released from sand bags, filter fabric, plastic discharge pipes, gravel, sand, rocks, and/or earth that was placed or discharged, or otherwise allowed to come to rest,

on the subject properties without any Coastal Act permit. In addition, the area where the chain link fence is located in the western portion of the subject properties is also included in the definition of "Impacted Area".

OTD Area: The approximately 75 acres of land synonymous with the "subject properties" as defined in Section 8.0 of these Consent Orders.

PPR Area: The area comprised of Lot 1 of Section 31 of T7S, R8W; Lot 8 of Section 31 of T7S, R8W; and Lot 1 of Section 32 of T7S, R8W. (The PPR document attached as Exhibit C includes, as Exhibit A thereto, a metes and bounds legal description of the PPR Area.)

4.3 Goals

- A. Removal from the subject properties of all physical items placed or allowed to come to rest on the subject properties that constitute Unpermitted Development.
- B. Removal of the chain-link fence located on the far western portion of the subject properties.
- C. Removal of all non-native plant species from the Non-Native Plant Removal Area to lessen the fuel load on the subject properties for fire safety purposes and to allow for the growth of plant species native to this area.
- D. Control of erosion across the Impacted Area and prevention of sediments from entering the storm drain system and coastal waters by removing Unpermitted Development, preserving existing native vegetation and enhancing native vegetation, limiting disturbance of native vegetation coverage and soils on the subject properties, and stabilizing the Impacted Area with appropriate temporary erosion control methods as described in the Removal Plan.
- E. Recordation of an irrevocable offer to dedicate an Open Space Conservation and Public Access Easement over the subject properties to preserve, in perpetuity, the open space, habitat, and public access values present on that property.
- F. Recordation of a Preemptive Purchase Right Agreement in favor of the California State Coastal Conservancy encumbering the PPR Area, which is approximately 80 acres of land adjacent to the subject properties, to provide the State Coastal Conservancy the right to purchase the PPR Area in the event that Respondents decide to dispose of it.
- G. Conveyance of fee title to the OTD Area to the City of Laguna Beach, or, if the City is unwilling to accept title to the OTD Area subject to the terms, conditions and obligations of the OTD, to the California State Coastal Conservancy so as to preserve, in perpetuity, the open space, habitat, and public access values present on the property.

- 4.4 All plans, reports, photographs and any other materials required by these Consent Orders shall be sent to:

California Coastal Commission
Headquarters Enforcement Program
Attn: Aaron McLendon
200 Oceangate, 10th Floor
Long Beach, CA 90802
Phone: (562) 590-5071
Facsimile: (562) 590-5084

With a copy sent to:
California Coastal Commission
Attn: Andrew Willis
200 Oceangate, 10th Floor
Long Beach, CA 90802

4.5 REMOVAL AND STABILIZATION

4.5.1 Within thirty (30) days of issuance of these Consent Orders, or within such additional time as the Executive Director may grant for good cause in accordance with the requirements of Section 15.0 herein, Respondents shall commence the following actions:

- A. Remove all Unpermitted Development in the Impacted Area, according to the Removal Plan attached as Exhibit A.
- B. Remove all non-native plant species from the Non-Native Plant Removal Area, according to the Removal Plan attached as Exhibit A.
- C. Remove the chain-link fence on the western portion of the subject properties, according to the Removal Plan attached as Exhibit A.
- D. Install any necessary temporary erosion control measures, according to the Removal Plan attached as Exhibit A.

4.5.2 Removal of Unpermitted Development, the chain-link fence, and non-native plant species shall be completed no later than 45 days after commencement of removal begins.

4.5.3 Within twenty (20) days of the completion of the removal activities described in Section 4.5.1, Respondents shall submit to the Executive Director of the Commission a report documenting the 1) removal of Unpermitted Development, non-native plant species, and chain link fence, and 2) implementation of erosion control measures (if any were found to be necessary), undertaken on the subject properties pursuant to these Consent Orders. This report shall include a summary of dates on which work was performed and photographs that show the current state of the areas of the site required to be addressed by these Consent Orders, clearly showing all areas where removal activities occurred and locations of all temporary erosion control measures that were installed.

4.5.4 In the event the Executive Director is unable to determine from the report submitted pursuant to section 4.5.3 whether the removal activities have been completed

in accordance with the Removal Plan, Respondents shall, upon notification from the Director, be required to reimburse the Coastal Commission for the reasonable travel expenses for not more than two members of the Coastal Commission staff to travel to the Impacted Area so as to ascertain compliance with the Removal Plan.

4.6 OFFER TO DEDICATE OPEN SPACE CONSERVATION AND PUBLIC ACCESS EASEMENT

4.6.1 Within forty-five (45) days of issuance of these Consent Orders Respondents shall execute and record an irrevocable offer to dedicate an Open Space Conservation and Public Access Easement and Declaration of Restrictions over the OTD Area for the purpose of protecting the open space, habitat, and public access values present on that property (attached to these Consent Orders as Exhibit B). The recorded OTD shall include a formal legal description of the subject properties and a metes and bounds legal description and graphic depiction, prepared by a licensed surveyor, of the OTD Area. The recorded document shall reflect that no development shall occur within the OTD Area except as otherwise set forth in the conditions of the OTD. The OTD shall be recorded free of prior liens and encumbrances (other than existing easements for roads, trails, and utilities) that the Executive Director determines may affect the interest being offered and shall run with the land, binding all successors and assigns.

4.6.2 Within 5 days of recording the OTD, Respondents shall submit to the Executive Director a certified copy of the recorded OTD.

4.6.3 If, at any time in the future, Respondents' ownership of a fee title interest in any of the OTD Area is confirmed by administrative or judicial action, including action by the Commission retroactively authorizing the lot line adjustment described in City of Laguna Beach LLA 95-01 or a similar lot line adjustment(s), Respondents shall execute a quitclaim deed of easement to the party currently holding the easement offered in the OTD reaffirming the easement. Respondents shall do so by submitting a proposed quitclaim deed for the Executive Director's review and approval within 30 days of such confirmation. Respondents shall record the approved quitclaim deed within 15 days of the Executive Director's approval.

4.6.4 If, at any time in the future, Respondents come to own or are confirmed as owning areas within the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 31 of T7S, R8W or the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 31 of T7S, R8W that are not subject to the OTD made pursuant to this Section 4.6, Respondents shall record another offer to dedicate Open Space Conservation and Public Access Easement subject to the same substantive terms over all such additional lands that were undeveloped as of the date of these Consent Orders ("New OTD"). Respondents shall submit the New OTD for the Executive Director's review and approval within 30 days of acquiring such property(ies) or having their ownership of the same confirmed. Respondents shall record the approved New OTD within 15 days of the Executive Director's approval.

4.6.5 From the date of issuance of these Consent Orders, Respondents shall treat the OTD Area as if the OTD had been accepted, and Respondents shall comply with all conditions of the OTD documents from the day these Consent Orders are issued by the Commission.

4.7 PREEMPTIVE PURCHASE RIGHT

4.7.1 Within forty-five (45) days of issuance of these Consent Orders, Respondents shall execute and record a Preemptive Purchase Right agreement, in the form attached to these Consent Orders as Exhibit D, which shall provide that:

- (1) Respondents agree to offer to sell the PPR Area (defined in Section 4.2, above) to the California State Coastal Conservancy prior to offering to sell it or otherwise conveying it to any other person or entity in the event that (a) Respondents wish to or are required to sell, donate, quit claim, or otherwise transfer the PPR Area, in part or in whole; or (b) Respondents propose to develop, or apply to a local or state agency for a permit(s) to secure the right to develop, any portion of the PPR area other than for open space and habitat conservation uses.
- (2) The offer to sell shall be at fair market value assuming the only permissible uses of the PPR Area are those for which the PPR Area is used at the time the PPR Agreement is executed as established by an appraisal paid for by the seller and prepared by an appraiser mutually acceptable to the buyer and Respondents, or, if the parties are unable to agree, by an appraiser designated by third party, or if the buyer and applicant agree through an arbitration on value.

4.7.2 The recorded PPR shall remain in effect for fifty (50) years unless sooner terminated in accordance with its terms and shall run with the land, be binding all successors and assigns, and shall be recorded free of prior liens and encumbrances that the Executive Director determines may affect the enforceability of the restriction. This recorded PPR shall not be removed or changed without a Coastal Commission-approved amendment to these Consent Orders.

4.7.3 If, at any time in the future, Respondents' ownership of a fee title interest in any of the PPR area is confirmed by administrative or judicial action, including action by the Commission retroactively authorizing the lot line adjustment described in City of Laguna Beach LLA 95-04 or a similar lot line adjustment(s), Respondents shall execute a quitclaim deed reaffirming their grant of a PPR pursuant to Section 4.7.1, above. Respondents shall do so by submitting a proposed quitclaim deed for the Executive Director's review and approval within 30 days of such confirmation. Respondents shall record the approved quitclaim deed within 15 days of the Executive Director's approval.

4.7.4 If, at any time in the future, Respondents come to own or are confirmed as owning areas within Lot 1 of Section 31 of T7S, R8W; Lot 8 of Section 31 of T7S, R8W; or Lot 1 of Section 32 of T7S, R8W not subject to the PPR, Respondents shall re-record a new PPR document that includes the additional lands, subject to the same substantive terms as

the document attached as Exhibit C and encumbering all such additional lands. Respondents shall submit the proposed supplemental PPR document for the Executive Director's review and approval within 30 days of acquiring such property(ies). Respondents shall record the approved supplemental PPR document within 15 days of the Executive Director's approval.

4.8 LAND CONVEYANCE

4.8.1 No sooner than 60 days and no later than 180 days after issuance of these Consent Orders, Respondents shall convey fee title to the OTD Area to the City of Laguna Beach, California provided the City of Laguna Beach affirmatively accepts such title subject to the terms, conditions and obligations of the OTD prescribed in Section 4.6 above. If the City of Laguna Beach is unwilling to accept title to the OTD Area subject to the terms, conditions and obligations of the OTD, then, within 60 days following the decision of the City of Laguna Beach to reject the transfer of title to the OTD Area, Respondents shall convey fee title to the OTD Area to the California State Coastal Conservancy for the benefit of the people of the State of California, and subject to the terms, conditions and obligations of the OTD. It is understood and agreed that following its acceptance of title to the OTD Area, the City of Laguna Beach may lease the OTD Area to the County of Orange of the State of California (the "County") for a nominal amount and upon terms and conditions upon which the City of Laguna Beach currently leases open space lands to the County and for such a period or periods of time as the County may agree, but subject to the OTD prescribed herein.

4.8.2 The conveyance document shall include a formal legal description of the subject properties and a metes and bounds legal description and graphic depiction, prepared by a licensed surveyor, of the area to be conveyed. The grant of fee title shall be recorded free of prior liens and encumbrances, other than existing easements for roads, trails, and utilities and the easement recorded pursuant to Section 4.6 herein.

4.8.3 Within 10 days of executing the conveyance, Respondents shall submit to the Executive Director a copy of the conveyance document.

4.8.4 If, at any time in the future, Respondents' ownership of a fee title interest in any of the area to be conveyed is confirmed by administrative or judicial action, including action by the Commission retroactively authorizing the lot line adjustment described in City of Laguna Beach LLA 95-01 or a similar lot line adjustment(s), Respondents shall execute a quitclaim deed reaffirming their grant of title to the area to be conveyed pursuant to Section 4.8.1, above. Respondents shall do so by submitting a proposed quitclaim deed for the Executive Director's review and approval within 30 days of such confirmation. Respondents shall record the approved quitclaim deed within 15 days of the Executive Director's approval.

4.8.5 If, at any time in the future, Respondents come to own or are confirmed as owning areas within the SW $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Section 31 of T7S, R8W or the NW $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 31 of T7S, R8W that are not subject to the fee title conveyance described in

Sections 4.8.1 and 4.8.2, Respondents shall execute another grant deed subject to the same substantive terms and conveying all such additional lands that were undeveloped as of the date of this order to the City of Laguna Beach, or in the event the City is unwilling to accept the OTD Area, to the California State Coastal Conservancy, for the benefit of the people of the State of California. Respondents shall submit the deed for the Executive Director's review and approval within 30 days of acquiring such property(ies) or having their ownership of the same confirmed. Respondents shall record the approved deed within 15 days of the Executive Director's approval.

4.8.6 In the event Respondents receive any funds in connection with the transfer of fee title of the OTD Area pursuant to Section 4.8.1 above, Respondents shall transmit all such proceeds of any sale of the OTD Area up to \$80,000 to the Commission, to be used for the purpose of actively restoring the easement area to a more natural state. Respondents shall transmit such proceeds within 60 days of the transfer of the OTD Area.

5.0 DISMISSAL OF CLAIMS AND REQUESTS

5.1 Immediately upon issuance of these Consent Orders, Respondents hereby waive any and all rights created or reserved to them in the "Stipulated Dismissal Without Prejudice and Tolling Agreement; Order Thereon" filed on June 3, 2010, in the case of *Driftwood Properties LLC v. California Coastal Commission*, Orange County Superior Court Case Number 30-2008 00180069, including the right to re-file the petition for writ of mandate and complaint referenced in that document, so that the dismissal of that case is now with prejudice and irrevocable. Further, in light of the desire to settle this matter and avoid litigation, pursuant to the agreement of the parties as set forth in these Consent Orders, Respondents hereby waive whatever right they may have to seek a stay or to challenge the issuance and/or enforceability of these Consent Orders in a court of law or equity.

5.2 Immediately upon issuance of these Consent Orders, Respondents hereby withdraw any outstanding requests that they may have made under the Public Records Act, Cal. Govt. Code sections 6250 *et seq.*, for records from the California Coastal Commission, and Respondents shall not re-file substantially the same request.

6.0 REVISIONS OF DELIVERABLES

The Executive Director may require revisions to the OTD and easement title transfer documents deliverable in the future and required under these Consent Orders, (but not including the documents attached as Exhibits to these Consent Orders) and Respondents shall revise any such deliverables consistent with the Executive Director's specifications, and resubmit them for further review and approval by the Executive Director, within ten days of the modification request from the Executive Director. The Executive Director may extend the time for submittals upon a written request and a showing of good cause, pursuant to Section 15.0 of these Consent Orders.

7.0 PERSONS SUBJECT TO THESE CONSENT ORDERS AND NON-INTERFERENCE

7.1 Driftwood Properties, LLC owns and operates the subject properties and has taken responsibility for the violations alleged in Section 9.0, below. By executing these Consent Orders, Driftwood Properties, LLC, attests that it has the authority to conduct the work on the subject properties required by these Consent Orders and agrees to obtain all necessary permissions (access, etc.) to conduct and complete the work required to resolve the violations addressed herein. Driftwood Properties, LLC; its current and future employees and agents; and any persons acting in concert with any of the foregoing are jointly and severally subject to all the requirements of these Consent Orders. Respondents agree to undertake the work required herein, and agree to cause their current and future employees and agents, and any contractors performing any of the work contemplated or required herein and any persons acting in concert with any of these entities to comply with the terms and conditions of these Consent Orders.

7.2 Respondents shall ensure that Driftwood Properties, LLC's agent, Athens Development AC, LLC, shall not take any action inconsistent with the purpose of these orders or do anything that would block, impede, or otherwise invalidate or circumvent goals or the terms and conditions of these Consent Orders or undermine or diminish their effect by any means.

8.0 IDENTIFICATION OF THE SUBJECT PROPERTIES

The properties that are the subject of these Consent Orders are described as follows:

The property currently (as of the date of issuance of these Consent Orders) designated by the Orange County Assessor's Office as Assessor Parcel Numbers 056-240-65, 056-240-57, and 656-191-40, at the northern terminus of Driftwood Drive in the City of Laguna Beach, Orange County.

9.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

For purposes of these Consent Orders, the phrase "Unpermitted Development" is defined as (a) any development, as that term is defined in PRC section 30106, that was performed on or after the effective date of the Coastal Act (January 1, 1977), was not exempt from the permitting requirement of the Coastal Act, and has not been authorized pursuant to that act, including (b) any materials, structures, topographic features, and denuded or otherwise vegetatively altered areas existing on, and purportedly altered legal status of, the subject properties as a result of such development. It specifically includes, but is not necessarily limited to: 1) the removal of major vegetation and the results thereof and 2) the placement and maintenance of approximately 5,500 sandbags, sand/gravel berms, filter fabric over the berms, and plastic discharge pipes, as well as the bags, berms, fabric, and pipes themselves resulting from that placement.

10.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of the alleged Coastal Act violations described in Section 9.0 pursuant to PRC section 30810 and section 30811. In light of the desire to settle these matters, Respondents agree to not contest the Commission's jurisdiction to issue or enforce these Consent Orders.

11.0 SETTLEMENT OF MATTER PRIOR TO HEARING

In light of the intent of the parties to resolve these matters in settlement, Respondents agree not to contest the legal and factual bases for, and the terms and issuance of, these Consent Orders, including the allegations of Coastal Act violations contained in the Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist and Restoration Order and Restoration Order Proceedings ("NOI") dated March 27, 2008. Specifically, Respondents have agreed not to contest the issuance or enforcement of these Consent Orders at a public hearing or any other proceeding.

12.0 EFFECTIVE DATE AND TERMS OF THESE CONSENT ORDERS

The effective date of these Consent Orders is the date these Consent Orders are issued by the Commission. These Consent Orders shall remain in effect permanently unless and until rescinded by the Commission.

13.0 FINDINGS

These Consent Orders are issued on the basis of the findings adopted by the Commission at its December 16, 2010 meeting, as set forth in the document entitled "Findings for Consent Cease and Desist Order CCC-10-CD-01 and Consent Restoration Order No. CCC-10-RO-01." The activities authorized and required in these Consent Orders are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

14.0 SETTLEMENT/COMPLIANCE OBLIGATION

14.1 In light of the intent of the parties to resolve these matters in settlement, Respondents have agreed to offer to dedicate an Open Space Conservation and Public Access Easement over approximately 75 acres of its property, to transfer fee title to this approximately 75 acres to the City of Laguna Beach, California, and to record a Preemptive Purchase Right agreement in favor of the California State Coastal Conservancy over approximately 80 acres of its property adjacent to the land to be so transferred .

14.2 Strict compliance with these Consent Orders by all parties subject thereto is required. Failure to comply with any term or condition of these Consent Orders, including any deadline contained in these Consent Orders, unless the Executive Director grants an extension under Section 15.0, will constitute a violation of these Consent Orders and shall result in Respondents being liable for stipulated penalties in the amount of \$1,000 per day per violation. Respondents shall pay stipulated penalties within fifteen days of

receipt of written demand by the Commission for such penalties regardless of whether Respondents have subsequently complied and shall be made payable to the account designated under the Coastal Act. Stipulated penalty payments shall be sent to the Commission to the attention of Aaron McLendon at the address listed in Section 4.4, above. If Respondents violate these Consent Orders, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30821.6, 30822 and 30820 as a result of the lack of compliance with these Consent Orders and for the underlying Coastal Act violations as described herein.

15.0 DEADLINES

Prior to the expiration of any given deadline established by these Consent Orders, Respondents may request from the Executive Director an extension of the unexpired deadline. Such a request shall be made in writing ten days in advance of the deadline and directed to the Executive Director in the San Francisco office of the Commission. The Executive Director may grant an extension of any deadline upon a showing of good cause, if the Executive Director determines that Respondents have diligently worked to comply with their obligations under these Consent Orders but cannot meet deadlines due to unforeseen circumstances beyond its control. A violation of deadlines established pursuant to these Consent Orders will result in stipulated penalties, as provided for in Section 14.2, above.

16.0 SITE ACCESS

By this agreement, Respondents specifically agree to provide access to the subject properties at all reasonable times to Commission staff and any entity having jurisdiction over the work being performed under these Consent Orders. Nothing in these Consent Orders is intended to limit in any way the right of entry or inspection that any entity may otherwise have by operation of any law. The Commission staff may enter and move freely about the subject properties for purposes including but not limited to inspecting records, operating logs, and contracts relating to the removal of unpermitted development and non-native plant species, and overseeing, inspecting and reviewing Respondents' progress in carrying out all terms of these Consent Orders.

17.0 GOVERNMENT LIABILITIES

Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities pursuant to these Consent Orders, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by Respondent or their agents in carrying out activities pursuant to these Consent Orders.

18.0 SETTLEMENT VIA CONSENT ORDERS

In light of the desire to settle this matter via these Consent Orders and avoid litigation, pursuant to the agreement of the parties as set forth in these Consent Orders, Respondents hereby agree not to seek a stay pursuant to PRC section 30803(b) or to challenge the issuance and enforceability of these Consent Orders in a court of law or equity.

19.0 PRIOR ADMINISTRATIVE SETTLEMENTS

The parties agree that nothing herein affects the obligations addressed in Consent Restoration Order CCC-06-RO-03, issued by the Commission in July 2006, which remains fully in effect.

20.0 SETTLEMENT OF CLAIMS

The Commission and Respondents agree that these Consent Orders settle the Commission's monetary claims for relief for those violations of the Coastal Act alleged in the NOI dated March 27, 2008, including the unpermitted Lot Line Adjustments LLA 95-01 and LLA 95-04, occurring prior to the date of these Consent Orders and addressed in these Consent Orders, with the exception that, if Respondents fail to comply with any term or condition of these Consent Orders, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of these Consent Orders. In addition, these Consent Orders do not prevent the Commission from taking enforcement action due to Coastal Act violations at the subject properties other than those that are the subject of these Consent Orders.

21.0 GOOD FAITH COVENANT

21.1 In the interest of ensuring implementation of these Consent Orders and the achievement of the goals of these Consent Orders, Respondents agree not to do anything that would block, impede, or otherwise invalidate or circumvent the terms and conditions of these Consent Orders or undermine or diminish their effect by any means including, but not limited to, requesting any local, regional, and/or state agencies or other parties to invalidate any term or condition of these Consent Orders or to order or take actions inconsistent with the goals of these Consent Orders with respect to the OTD Area or the PPR Area. Respondents agree to carry out the approved Removal Plan required in Section 4.0, consistent with these Consent Orders.

21.2 Respondents shall cooperate in the resolution of the unpermitted lot line adjustments (LLA 95-01 and LLA 95-04) with respect to the outstanding notices of violations directed to adjacent property owners. Respondents agree to work with Commission staff and the adjacent property owners if needed to fully resolve these outstanding violations.

22.0 SUCCESSORS AND ASSIGNS

These Consent Orders shall run with the land binding Respondents and all successors in interest, heirs, assigns, and future owners of the subject properties. Respondents shall provide notice to all successors, assigns, and potential purchasers of the subject properties of any remaining restrictions or obligations under these Consent Orders.

23.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 15.0, and for minor, immaterial matters upon mutual written agreement of the Executive Director and Respondents, these Consent Orders may be amended or modified only in accordance with the standards and procedures set forth in section 13188(b) and section 13197 of the Commission's administrative regulations.

24.0 GOVERNMENTAL JURISDICTION

These Consent Orders shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California.

25.0 LIMITATION OF AUTHORITY

25.1 Except as expressly provided herein, nothing in these Consent Orders shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with these Consent Orders.

25.2 Correspondingly, Respondents have entered into these Consent Orders and waived their right to contest the factual and legal basis for issuance of these Consent Orders, and the enforcement thereof according to their terms. Respondents have agreed not to contest the Commission's jurisdiction to issue and enforce these Consent Orders.

26.0 INTEGRATION

These Consent Orders constitute the entire agreement between the parties with respect to the subject matter hereof and may not be amended, supplemented, or modified except as provided in these Consent Orders.

27.0 STIPULATION

Respondents attest that they have reviewed the terms of these Consent Orders and understand that their consent is final and stipulate to the issuance by the Commission of these Consent Orders.

IT IS SO STIPULATED AND AGREED:

On behalf of Respondents:

DRIFTWOOD PROPERTIES LLC,
a Delaware limited liability company

By: Laguna Beach Holdings LLC,
a Delaware limited liability company,
its Sole Member

By: Ohana Laguna LLC, a Delaware limited
liability company, its Manager

By: Alex Hill, its Vice President

Date

Executed in San Francisco, CA on behalf of the California Coastal Commission:

Peter Douglas, Executive Director

Date

EXHIBITS:

Exhibit A: Removal Plan dated November 29, 2010 (See Section 4.1)

Exhibit B: Offer to Dedicate Open Space Conservation and Public Access Easement
(See Section 4.6.1)

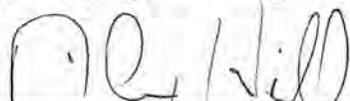
Exhibit C: Preemptive Purchase Right Agreement (See Section 4.7.1)

On behalf of Respondents:

DRIFTWOOD PROPERTIES LLC,
a Delaware limited liability company

By: Laguna Beach Holdings LLC,
a Delaware limited liability company,
its Sole Member

By: Ohana Laguna LLC, a Delaware limited
liability company, its Manager



By: Alex Hill, its Vice President



Date

Executed in San Francisco, CA on behalf of the California Coastal Commission:

Peter Douglas, Executive Director

Date

EXHIBITS:

- Exhibit A: Removal Plan dated November 29, 2010 (See Section 4.1)
- Exhibit B: Offer to Dedicate Open Space Conservation and Public Access Easement
(See Section 4.6.1)
- Exhibit C: Preemptive Purchase Right Agreement (See Section 4.7.1)

EXHIBIT A

DRIFTWOOD REMOVAL PLAN

REMOVAL PLAN

PREPARED FOR

DRIFTWOOD PROPERTIES, LLC

IN CONNECTION WITH

COASTAL COMMISSION

CONSENT AND RESTORATION ORDERS

CCC-10-CD-01

&

CCC-10-RO-01

NOVEMBER 29, 2010

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November 2010

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1.0 INTRODUCTION

1.1 BACKGROUND AND PURPOSE

This Removal Plan (“Plan”) has been prepared in accordance with Consent Cease and Desist Order CCC-10-CD-01 and Consent Restoration Order CCC-10-RO-01 that was issued by the California Coastal Commission (“CCC”) pursuant to Public Resources Code, Sections 30810 and 30811, respectively, for Driftwood Properties, LLC for the removal of physical items and non-native plant species on the Driftwood Estates Property (“site”). As such, the Plan provides details for the removal of non-native plant species, fencing, and sandbags, and the implementation of erosion control measures on approximately eight acres of land that was graded in the 1950s. The Plan also provides details on protection measures necessary to ensure the avoidance of sensitive biological resources that were previously mapped on the site, including the State and federally-threatened (“FT”, “ST”) big-leaved crownbeard (*Verbesina dissita*), California Native Plant Society (“CNPS”) List 4.2 Catalina mariposa lily (*Calochortus catalinae*), CNPS List 1B.2 foothill mariposa lily (*Calochortus weedii* var. *intermedius*) and the FT and California Species of Special Concern (“SSC”) coastal California gnatcatcher (*Polioptila californica californica*).

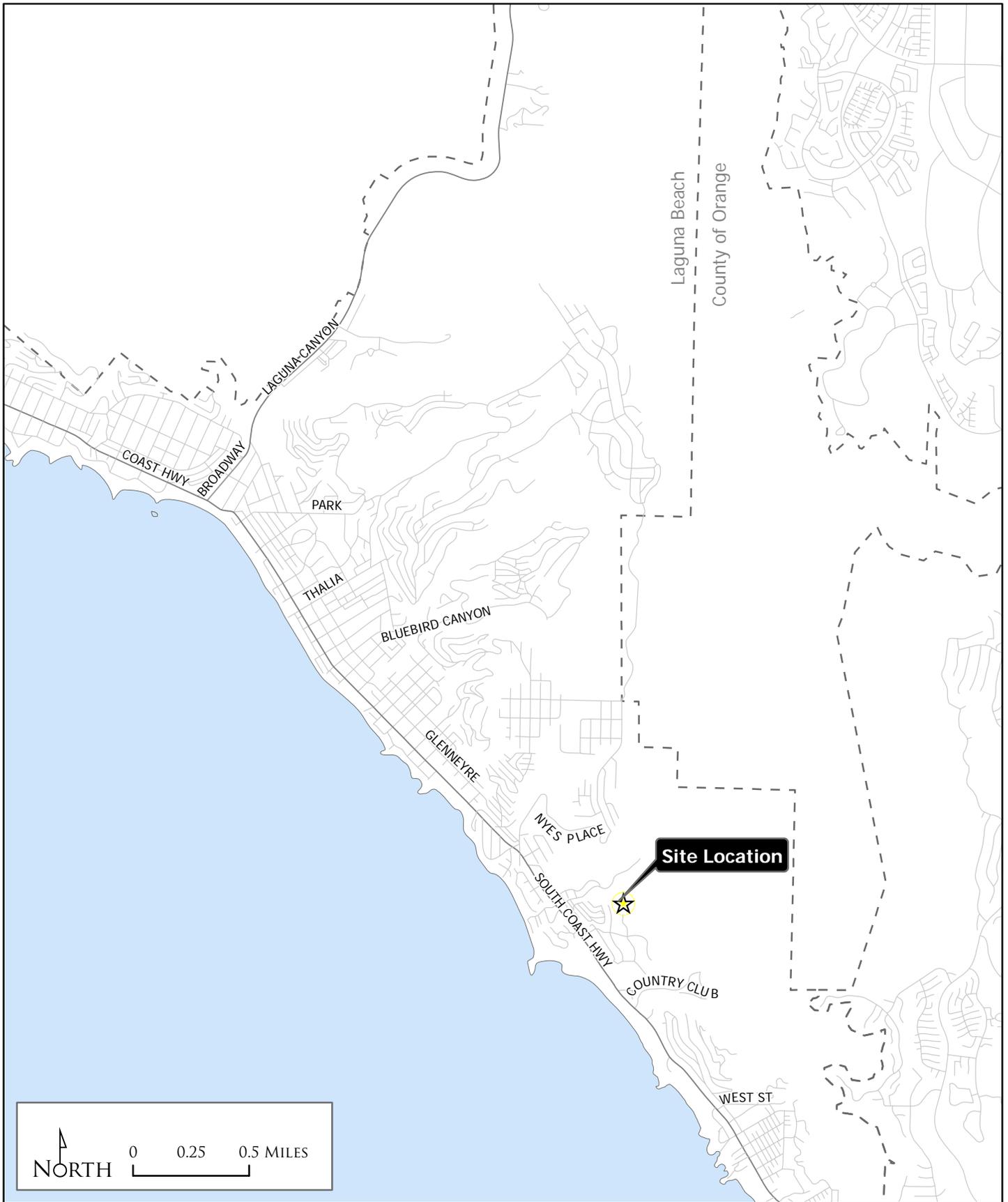
Following the completion of Plan implementation, it is contemplated that a conservation easement will be placed on the property and the site will be deeded to the City of Laguna Beach .

1.2 SITE LOCATION

The site encompasses approximately 8.1 acres within the City of Laguna Beach (“City”). Orange County, California, north and east of Driftwood Drive, as shown in Figure 1, *Regional Map*. The site is found on the U.S. Geological Service (“USGS”) 7.5-minute Laguna Beach quadrangle, within Section 31 of Township 7 S., Range 8 W., as shown in Figure 2, *Vicinity Map*.

The site is generally located east of Pacific Coast Highway within the southern portion of the City. Regional access to the site is provided via Interstate 405 (“I-405”) and Interstate 5 (“I-5”) located approximately nine miles to the east and Highway 133 (“H-133”) located approximately three miles to the north of the site. Local access to the site is via Marilyn Drive and Driftwood Drive to the south and east. The site is specifically bounded by single-family residential land to the west and south, and undeveloped park land to the east and north.

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REMOVAL PLAN

FIGURE 2
VICINITY MAP

2.0 EXISTING SITE CONDITIONS

Absent protective measures, weed and sandbag removal activities might potentially impact the sensitive resources on-site which are described below. Section 3.4, Protection Measures for Biological Resources of Concern, provides protection measures to ensure these resources will not be materially and adversely impacted.

2.1 EXISTING PLANT COMMUNITIES

The following plant communities are present within the site: annual grassland (0.9 acre), disturbed /ornamental (0.1 acre), disturbed/ sagebrush-buckwheat scrub (4.2 acres), southern maritime chaparral (1.4 acres), ornamental (1.0 acre), southern maritime chaparral/disturbed (0.2 acre), and toyon-sumac chaparral (0.3 acre). In addition, less than 0.1 acre of urban areas are present within the site. Major Areas with non-native plant species shall be removed from within communities that are predominantly vegetated with non-native plant species. These communities include annual grassland, disturbed /ornamental, disturbed/ sagebrush-buckwheat scrub and ornamental. The locations of each of the plant communities within the site as well as areas targeted for weed removal are shown in Figures 4, *Locations of Sensitive Plant Species* and Figure 7, *Locations of Non-Native Plant Species*. In addition to these weed removal areas (impact areas), Figure 8 shows the site in relation to the easement area, deed restriction area, and transfer area associated with the transfer of this property for conservation purposes.

2.2 HABITATS OF CONCERN

Biological resources of concern include habitats or species that have special recognition by federal, State, or local conservation organizations as endangered, threatened, or rare due to species' declining, limited, or threatened populations. The California Department of Fish and Game ("CDFG"), USFWS ("U.S. Fish & Wildlife Service"), and special interest groups such as the CNPS have watch lists of declining species. The site includes several habitat types of concern to the resource agencies due to their restricted distributions and that are considered of high inventory priority in the California Natural Diversity Data Base ("CNDDDB"). Habitat types of concern within the site include: southern maritime chaparral and southern maritime chaparral/disturbed..

2.3 SENSITIVE PLANT SPECIES

The site was comprehensively searched for special status plant species during the spring and summer of 2004, 2005, and 2008. Survey dates encompassed the flowering periods of all special status plants potentially occurring in the vicinity. The following special status plant species were observed within the site: big-leaved crownbeard, Catalina mariposa lily, and foothill mariposa lily (CNPS List 1B.2). Locations of each sensitive plant species mapped within the site are shown in Figure 4, *Locations of Sensitive Plant Species*.

2.4 SENSITIVE WILDLIFE SPECIES

Coastal California Gnatcatcher

Focused surveys for the FT and SSC coastal California gnatcatcher were conducted during the breeding season in accordance with USFWS guidelines in 2004, 2005, 2006, 2007, and 2008 within all areas of suitable habitat on the site (PCR 2004, 2005, 2006, 2007, and 2008b). No coastal California gnatcatchers were

observed within the site during the 2004 and 2007 focused surveys. However, during the 2005 surveys, a male juvenile and female adult was mapped in the western portion of the site. During the 2006 surveys, one adult male and one adult female were observed in the central western portion of the site as shown in Figure 5, *Locations of Coastal California Gnatcatcher Observations*.

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FIGURE 3-1A

REMOVAL PLAN

SITE PHOTOGRAPHY



REMOVAL PLAN



FIGURE 3-1B
SITE PHOTOGRAPHY



FIGURE 3-1C

REMOVAL PLAN

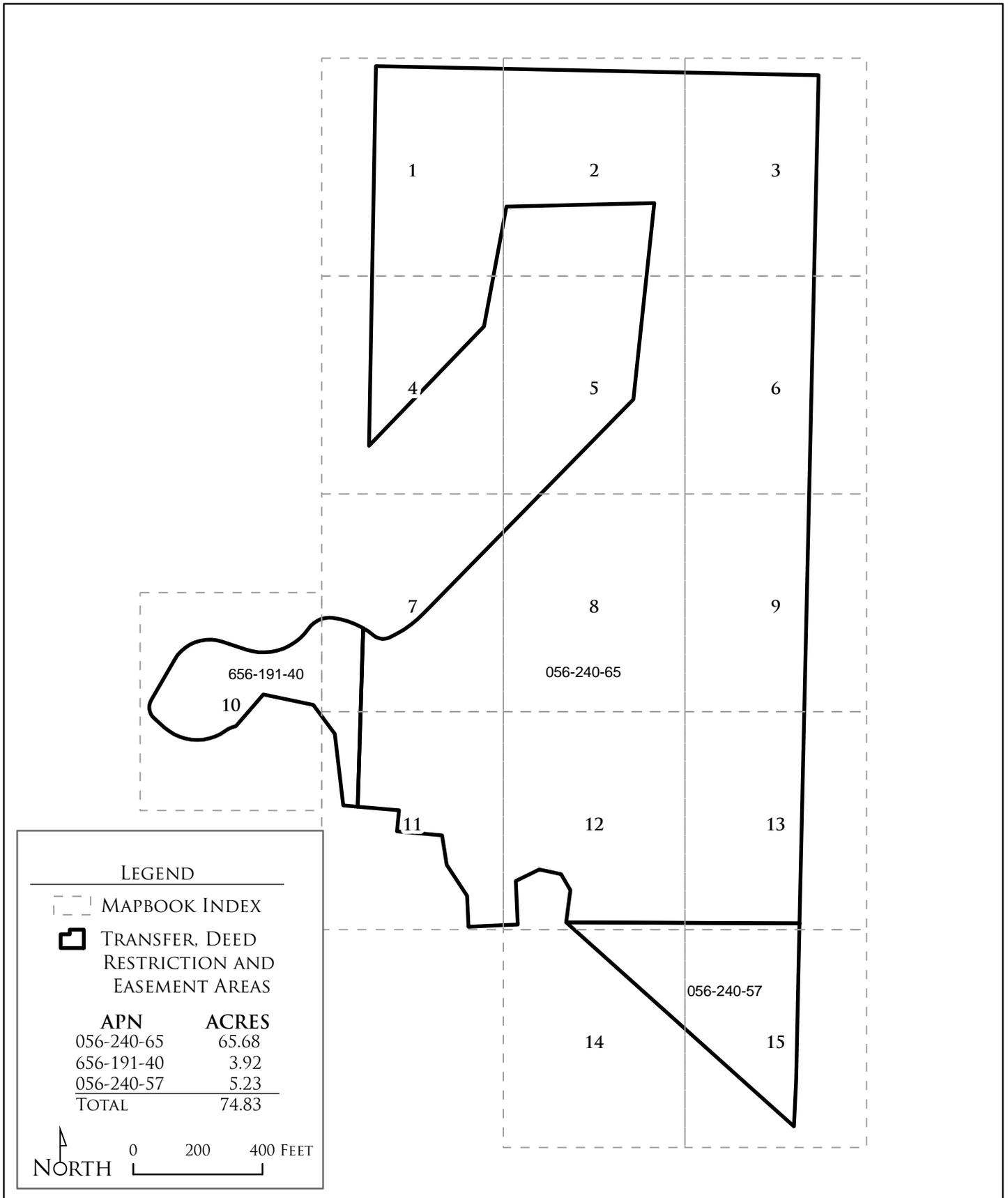
SITE PHOTOGRAPHY



FIGURE 3-1D

REMOVAL PLAN

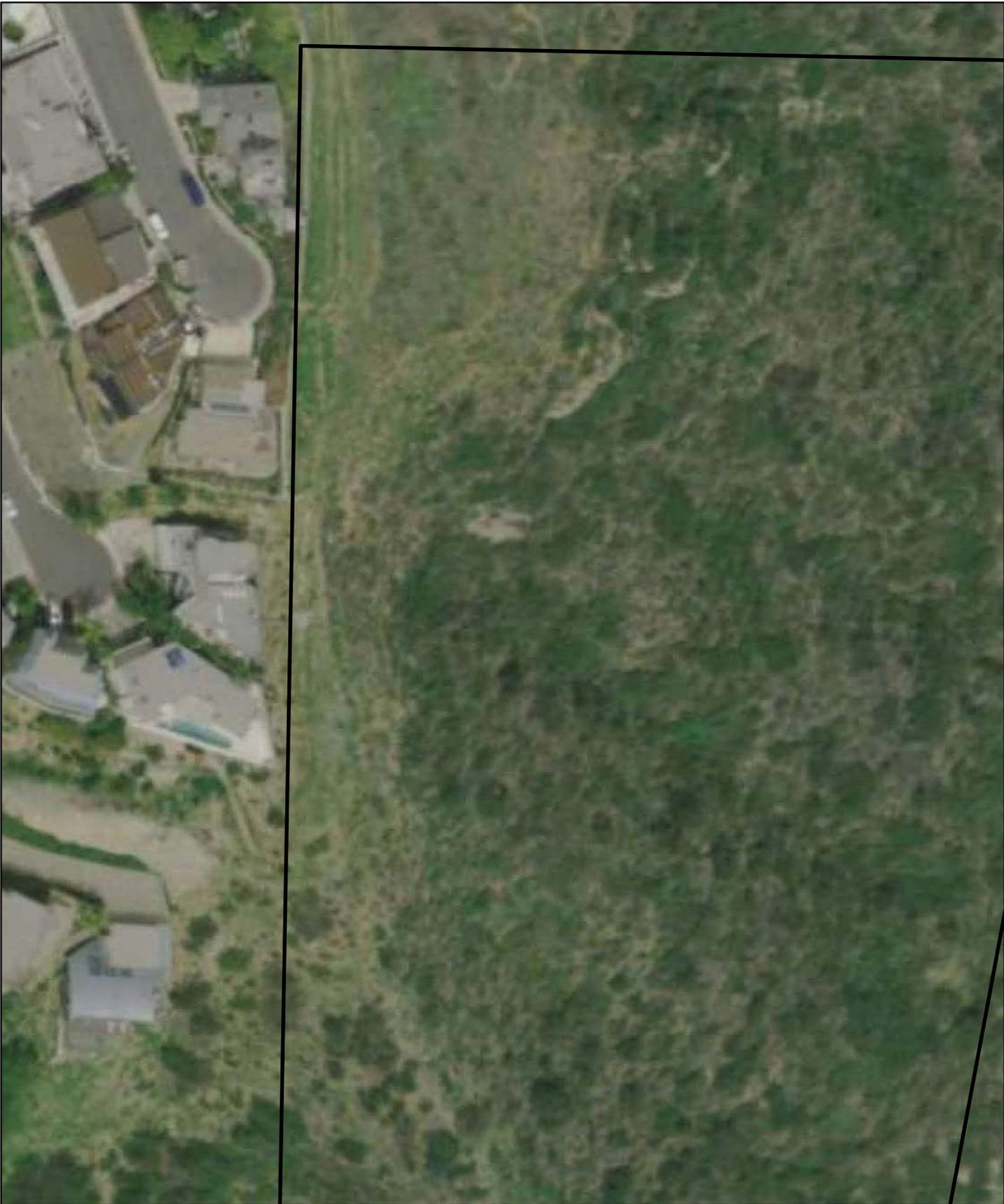
SITE PHOTOGRAPHY



REMOVAL PLAN

FIGURE 3-2 - INDEX

AERIAL PHOTO



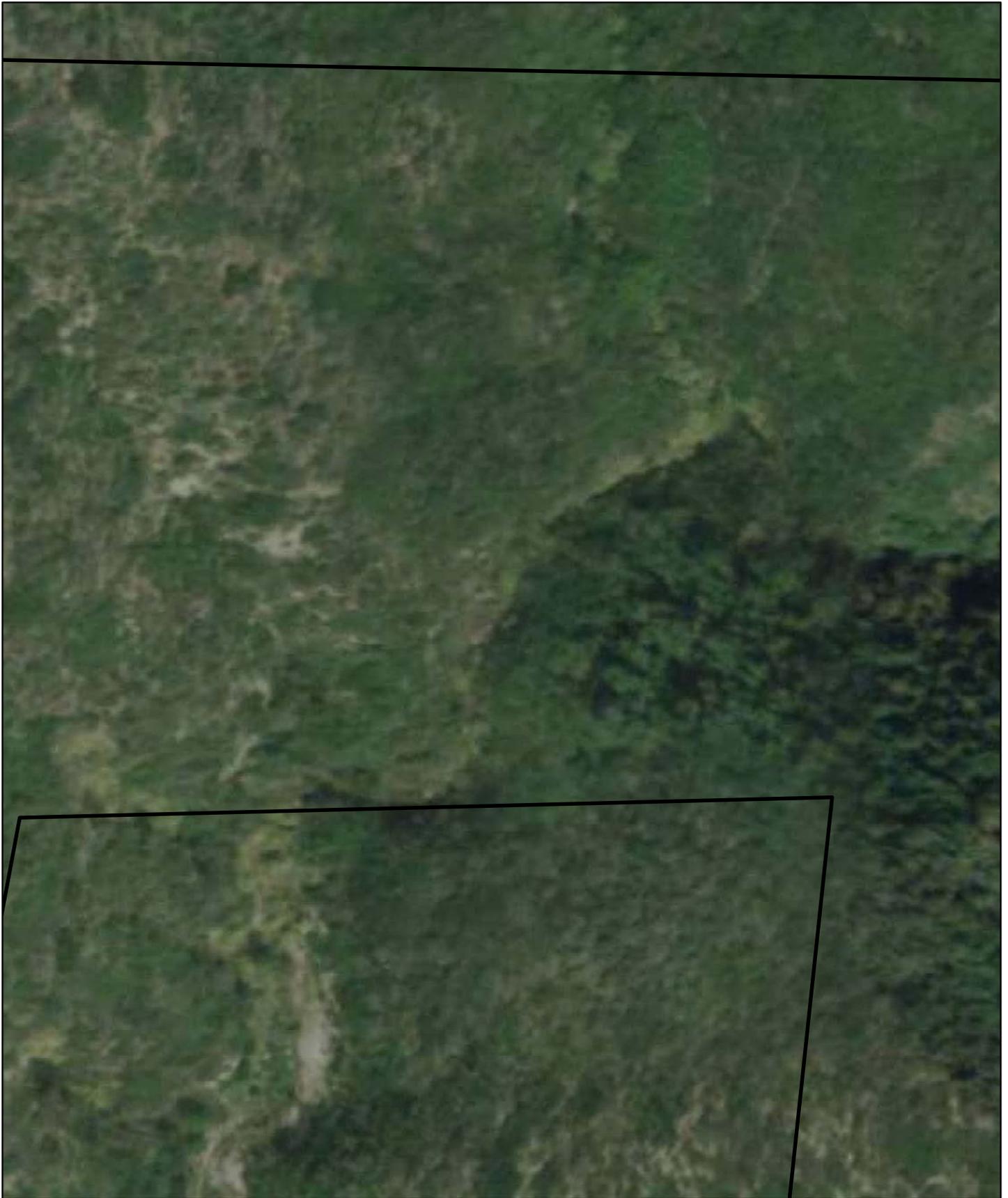
REMOVAL PLAN

FIGURE 3-2 SHEET 1 OF 15



11/11/10

AERIAL PHOTO



REMOVAL PLAN

FIGURE 3-2 SHEET 2 OF 15



11/11/10

AERIAL PHOTO



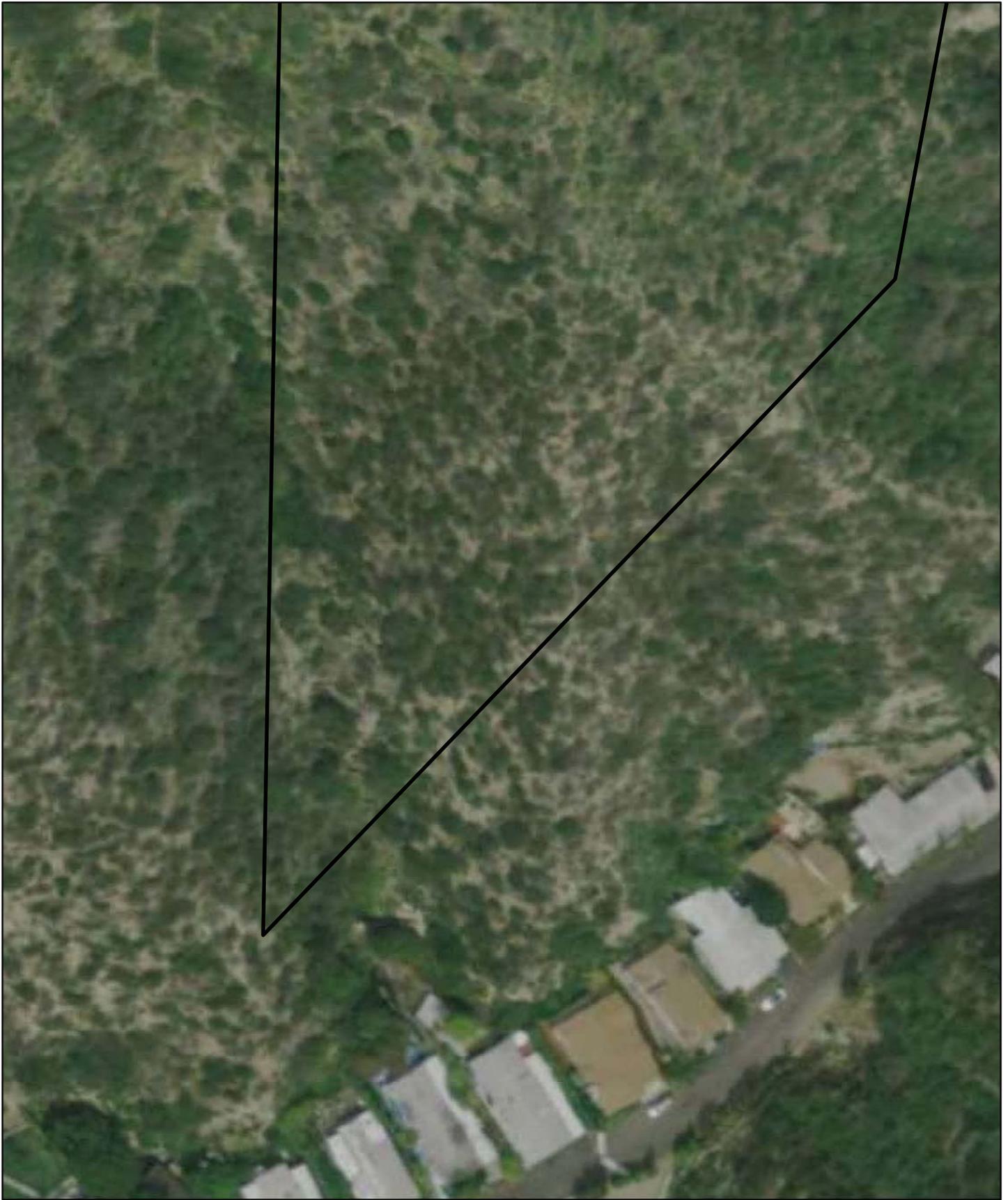
REMOVAL PLAN

FIGURE 3-2 SHEET 3 OF 15



11/11/10

AERIAL PHOTO



REMOVAL PLAN

FIGURE 3-2 SHEET 4 OF 15

11/11/10



AERIAL PHOTO



REMOVAL PLAN

FIGURE 3-2 SHEET 5 OF 15



11/11/10

AERIAL PHOTO



REMOVAL PLAN

FIGURE 3-2 SHEET 6 OF 15

NORTH

0 75 150 FEET

11/11/10

AERIAL PHOTO





REMOVAL PLAN

FIGURE 3-2 SHEET 8 OF 15



11/11/10

AERIAL PHOTO



REMOVAL PLAN

FIGURE 3-2 SHEET 9 OF 15



11/11/10

AERIAL PHOTO



REMOVAL PLAN

FIGURE 3-2 SHEET 10 OF 15



11/11/10

AERIAL PHOTO



REMOVAL PLAN

FIGURE 3-2 SHEET 11 OF 15

N
NORTH

0 75 150 FEET

11/11/10

AERIAL PHOTO



REMOVAL PLAN

FIGURE 3-2 SHEET 12 OF 15

11/11/10



AERIAL PHOTO



REMOVAL PLAN

FIGURE 3-2 SHEET 13 OF 15



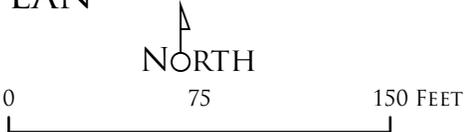
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AERIAL PHOTO



REMOVAL PLAN

FIGURE 3-2 SHEET 14 OF 15



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AERIAL PHOTO



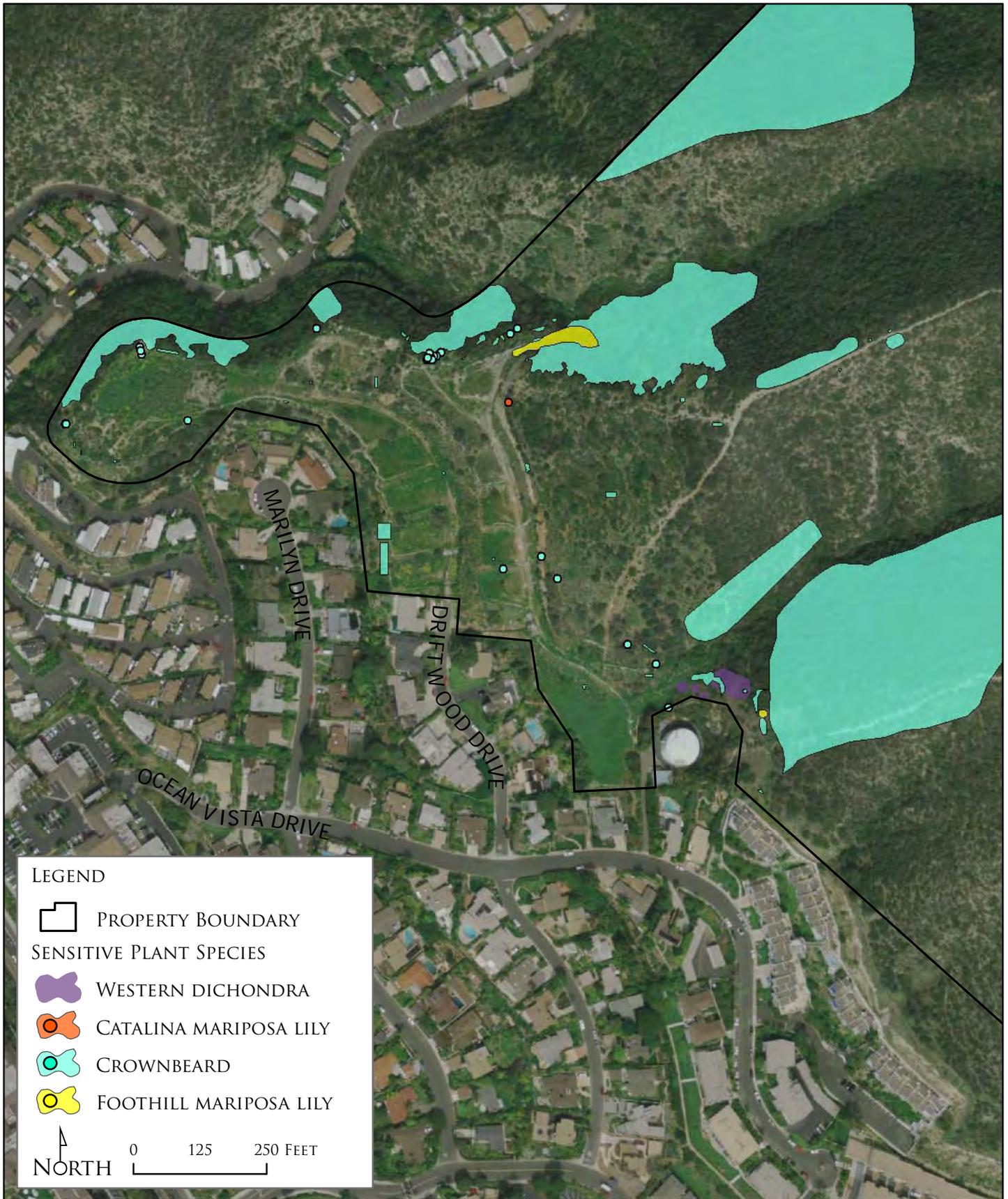
REMOVAL PLAN

FIGURE 3-2 SHEET 15 OF 15



11/11/10

AERIAL PHOTO



REMOVAL PLAN

FIGURE 4
LOCATIONS OF SENSITIVE PLANT SPECIES



REMOVAL PLAN

FIGURE 5
LOCATIONS OF COASTAL CALIFORNIA
GNATCATCHER OBSERVATIONS

3.0 NON-NATIVE PLANT SPECIES REMOVAL PLAN

3.1 NON-NATIVE PLANT SPECIES REMOVAL

3.1.1 General Non-Native Plant Species Removal Guidelines

Non-native plants will be removed from those areas on the site depicted in Figure 7, and any isolated non-native plants observed during the removal work will also be removed. A list of non-native plant species that were observed within the site and/or vicinity is included in Appendix A, *Non-Native Species Potentially Occurring Within the Site*. Non-native plant species removal activities will be conducted by LCG, a qualified restoration specialist firm that has experience successfully completing restoration and revegetation of coastal sage scrub and chaparral habitats in the Laguna Beach area. A complete Statement of Qualifications for LCG, including a description of the staff training, education and experience is included in Appendix B, *LCG Statement of Qualifications*.

Large stands of non-native species that are present within the site that will be the target for removal include garland chrysanthemum (*Chrysanthemum coronarium*) and purple fountain grass (*Pennisetum setaceum*); however, other non-native plant species will also be removed to the maximum extent practicable. A restoration specialist will monitor all non-native plant species removal efforts to ensure that native plants and sensitive biological resources are avoided (see Section 3.3, *Biological Resource Protection Measures*, for further details).

A variety of non-native plant species control strategies will be employed. Hand pulling will be implemented in areas where small infestations occur or in places where non-native plants are intermixed with stands of native vegetation. However, larger stands of non-native vegetation shall be removed through a combination of mechanical and/or chemical means including, small tractor (bobcat) mowing, weed-whipping and herbicide application. Figure 8, *Removal Plan*, depicts the locations of the various areas that will be hand-pulled vs. mechanically and/or chemically removed. It is estimated that non-native species removal may take up to six weeks with a five man crew working full days (8 a.m. to 5 p.m.).

Equipment and/or hand tools used shall be limited to the following:

- Stringtrimmers (weedwhipper)
- Hoes, picks, and shovels
- Bobcat type tractor with mower attachment; the Bobcat will be operated through the main gates at Driftwood Drive on established pathways to various sandbag locations; fueling will be conducted only in the containment area, spill kits will be available on-site, and a drip tray/containment system will be utilized.

3.1.2 Herbicide Application

During implementation of the Plan, herbicide application is recommend, as needed, on a limited basis, to ensure success, to the maximum extent feasible, that re-emergence of non-native plant species is minimized. As such, the following guidelines shall be implemented when addressing herbicide application during the implementation of the Plan. A preliminary step in weed control is to mow or weed-whip major stands of annual weeds within the restoration areas prior

Herbicide use shall be restricted to the use of Glyphosate Aquamaster™ (previously Rodeo™) herbicide for the elimination of non-native and invasive vegetation located within the project site for purposes of habitat restoration only. No use of any herbicide shall occur during the rainy season (November 1 – March 31) unless otherwise allowed by the Executive Director for good cause. In no instance shall herbicide application occur if wind speeds on site are greater than 5 mph or 48 hours prior to predicted rain. In the event that rain does occur, herbicide application shall not resume again until 72 hours after rain.

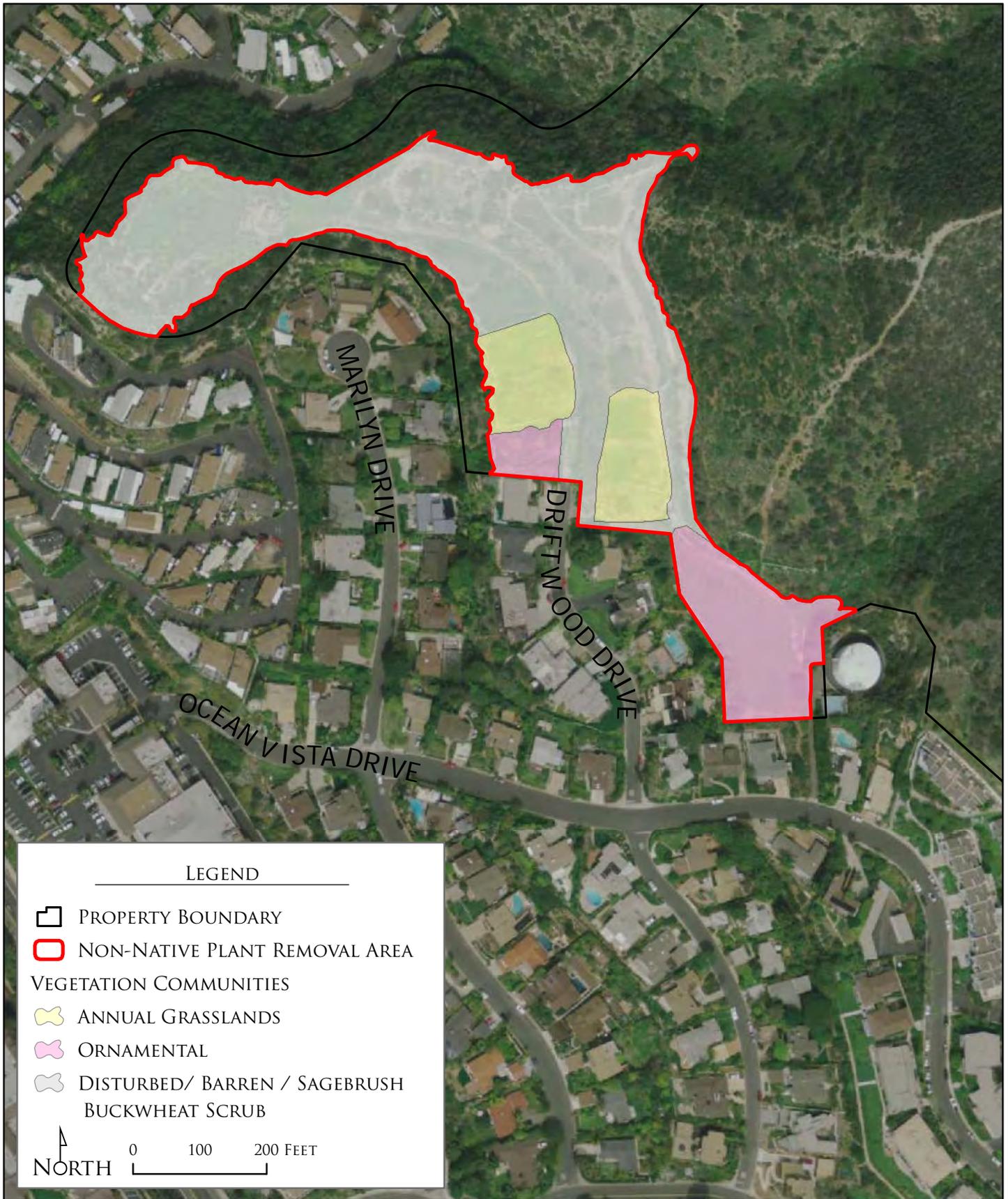
The site maintenance contractor must have a pest control business license which requires that at least one individual employed by the business be in possession of a qualified applicator's license. All licenses must be issued by the State of California, be registered in Orange County, and be of current status. If a qualified applicator is not present during the herbicide treatment, all applicators must have undergone documented herbicide application training. Personnel must wear all protective clothing required by law and follow all label directions and precautions. All re-entry times specified on an herbicide label will be observed and posted. Herbicide preparation will be allowed only in approved staging areas more than 100 feet from a stream course or body of water. All applications shall be in accordance with the manufacturer's labeling.

A brightly colored dye will be used in all herbicide applications to aid the applicator in achieving good coverage of the target species. The material will be a non-toxic material such as Blazon, Turfmark, or equivalent. The dye will be mixed with the herbicide at no more than half the rate specified on the label. Herbicide treatment will be conducted when weather conditions are conducive to the effective uptake of the herbicide by the target species. Treated plants or stumps will not be disturbed until the applied herbicide has had time to take effect per the manufacturer's instructions.



REMOVAL PLAN

FIGURE 6
IMPACTED AREAS



REMOVAL PLAN

FIGURE 7
LOCATIONS OF NON-NATIVE
PLANT SPECIES

3.1.3 Non-Native Tree Removal

Non-native trees that may occur within the site will be removed during pre-planting weed control activities **unless the exotic tree is providing shade for big-leaved crownbeard plants**. Exotic trees that may be present within the site include, but are not limited to, acacia (*Acacia* sp.), Aleppo pine (*Pinus halepensis*), and/or Italian stone pine (*Pinus pinea*).

The exotic trees will be removed by cutting and treating the stump with a concentrated solution of roundup (glyphosate). If trees need to be removed during the nesting bird season (February 15 to September 15), then a biological monitor will verify that raptor nests and other bird nests are not present in these exotic trees prior to removal. All trees will be cut to within six (6) inches of the ground and herbicide will be applied within a few minutes of making the cut. The herbicide will be applied to the vascular tissue located near the outer edge of the stump. Cut material will be removed from the site within three days of being cut and disposed of at an offsite location. Treated plants will be inspected prior to initiating planting activities. If any treated stumps show evidence of new growth, or if any new plants are found, additional cutting and/or herbicide treatment will be performed.

3.1.4 Best Management Practices

In addition, the following Best Management Practices (BMPs) and schedules shall be implemented during all non-native plant species removal efforts:

- The hours of operation of equipment and contractors shall be limited to 8:00 am to 5:00 pm.
- All ingress and egress routes for the equipment and contractors shall be limited to previously disturbed areas, as shown in Figure 8, *Removal Plan*.
- Prior to the start of non-native plant species removal, any native habitats or sensitive biological resources within five (5) feet of removal efforts shall be flagged with brightly colored construction flagging. Care shall be taken during flagging as to not harm or break any of the plant parts. In addition, a biological monitor shall be present during removal efforts to ensure native plants and sensitive biological resources are avoided (see Section 3.3, *Biological Resource Protection Measures*, for further details). Following the completion of the removal activities, inspection by Coastal Commission Staff, and photo recordation of site conditions following removal activities, all flagging shall be removed and disposed of properly.
- During removal efforts, no heavy equipment shall be parked or serviced within 20 feet of native habitats or sensitive biological resources to avoid the accidental spilling or leaking of hazardous materials (e.g., oil, fuel, hydraulic fluid, etc.) into these areas.
- All equipment shall be removed from the site at the end of each day and/or stored in a designated place within the site that is a minimum 20 feet away from native vegetation or sensitive biological resources, as shown in Figure 8, *Removal Plan*. It is estimated that eight 40-yard greenwaste bins will be required for storage of removed non-native vegetation. Bins and equipment will be temporarily stored on the site inside the gated fences at the top of Driftwood Avenue or near the water tank off

Ocean Vista Drive. All equipment left on-site overnight will have the standard best management practices in place (i.e. drip trays, spill kits, etc.).

- All non-native plant materials or debris, shall removed from the site at the end of each week. All materials shall be disposed of in areas officially designated by the City or County that properly equipped for the processing of such organic materials (i.e., Prima Desecha Landfill in San Juan Capistrano).

3.2 SANDBAG AND CHAIN-LINK FENCE REMOVAL

Sandbag and chain-link fence removal activities will be conducted by LCG. Sandbags and residual material (fabric, fill, and gravel) shall be removed by hand or mechanized equipment from within the site. In addition to sandbags and gravel, additional materials that require removal include sand/gravel berms, filter fabric placed over the berms, and plastic discharge pipes. A shovel, wheelbarrow and other like tools will likely be needed to remove loose gravel material from deteriorated sandbags. Once removed, the sandbags and other materials shall be placed on a Bobcat that shall only be operated on well-established dirt pathways throughout the site. Two well-established dirt pathways exist on-site, one headed north and one headed east onto the site from Driftwood Drive or Wesley Drive (see Figure 8, *Removal Plan*). From the well-established dirt trails, the Bobcat shall be driven onto Driftwood Drive or Wesley Drive and all sandbag material shall be unloaded onto a truck for transportation to the local landfill; Prima Desecha Landfill in San Juan Capistrano. A biological monitor shall be present during all sandbag removal activities to ensure native plant communities and sensitive biological resources are avoided (see Section 3.3, *Sensitive Resource Protection Measures*, for further details).

Approximately 25,000 sandbags are located within the site as shown in Figure 6, *Impacted Areas*. This figure also shows the location of berms and plastic discharge pipes. The Bobcat shall be parked near the site boundary only on established dirt trails or on Driftwood Drive. It is anticipated that the Bobcat will be operated from 8:00am until 5:00pm during removal activities which will last approximately five to six weeks with a five to six person crew, two bobcats, and two low boy bins per day being rotated off the site.

A chain-link fence is present within the western portion of the site as shown in Figure 6, *Impacted Areas*. This fence shall be removed by hand and pieces of the fence shall be hand carried to the Bobcat that is operated only within well-established dirt trails. It is estimated that removal of the chain-link fencing will require two to three full days and will require the use of one Bobcat. As mentioned above, the Bobcat shall be parked near the site boundary only on established dirt trails or on Driftwood Drive, and it is anticipated that the Bobcat will be operated from 8:00am until 5:00pm during removal activities. A biological monitor shall be present during all chain-link fence removal activities to ensure sensitive resources are avoided (see Section 3.3, *Sensitive Resource Protection Measures*, for further details).

All waste materials from the sandbag and chain-link fence removal activities shall be disposed of at the local landfill; Prima Desecha Landfill in San Juan Capistrano). Efforts shall be made to re-use or recycle as much material as possible.

3.3 PROTECTION MEASURES FOR BIOLOGICAL RESOURCES OF CONCERN

3.3.1 Protection of Existing Habitat and Sensitive Species

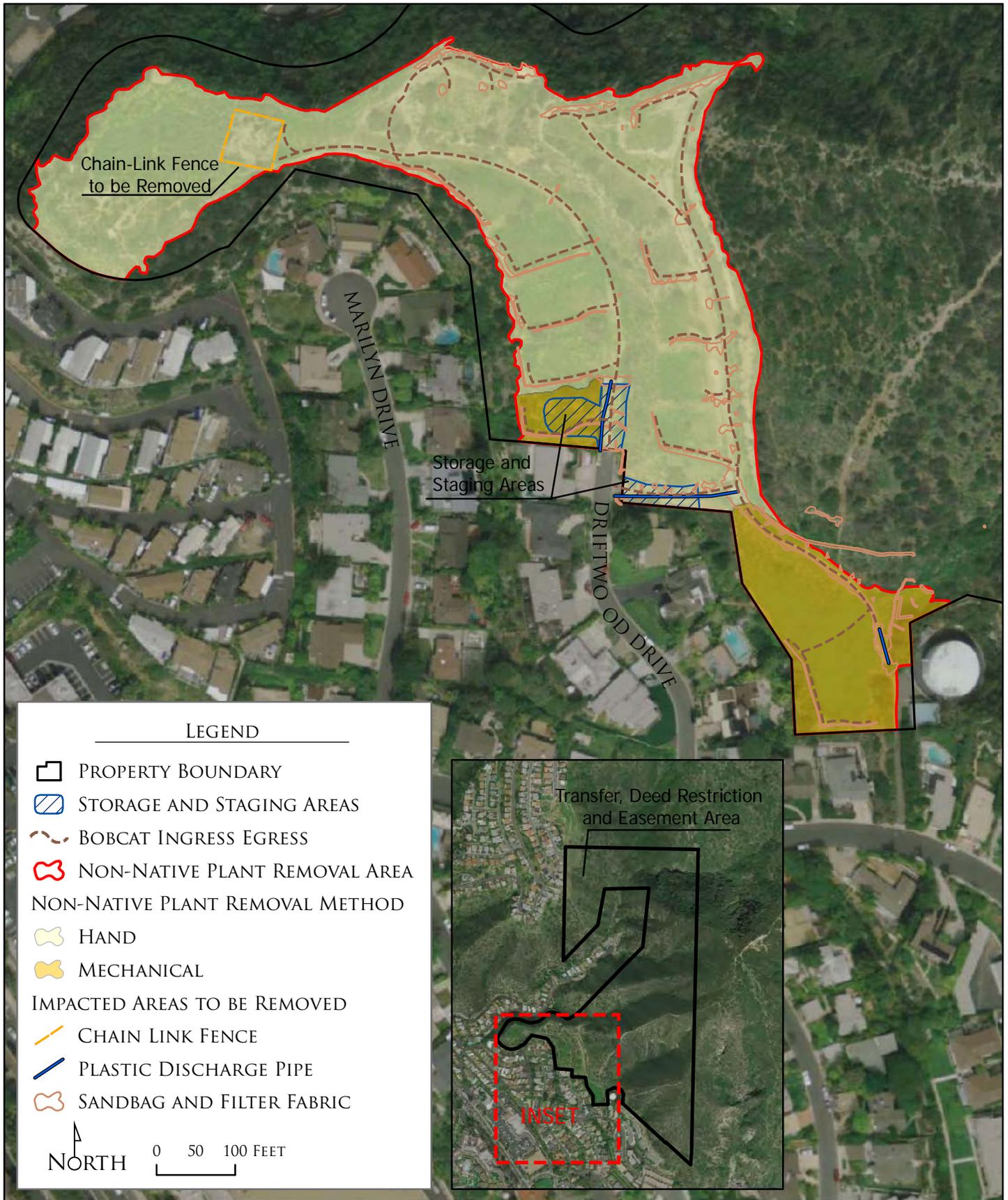
The following measures will be implemented during removal activities to protect the biological values of the natural habitats and sensitive species present within the site. General construction related protection measures include debris removal, erosion control, and monitoring. The monitoring will ensure that protected natural resources are not damaged during removal activities and operation of equipment is conducted outside of native habitats and habitats of concern, and cleanup procedures for any spillage within construction areas is implemented as soon as possible. The monitor will prepare a memorandum after completion of the exotic plant species and sandbag removal activities, documenting adherence or violations of required habitat protection measures, and listing any remedial measures. This letter will be submitted to those agencies responsible for compliance.

Coastal Sage Scrub and Maritime Chaparral

During removal activities the bobcat will be operated on existing paths and areas overgrown with non-native plant species. In order to avoid the accidental or inadvertent removal of native species avoidance measures shall be implemented for native coastal sage scrub and maritime chaparral species in areas where these species exist as a natural community and in areas where these species co-occur with non-native species. Such avoidance measures shall include plastic fencing, stakes, flags, or other markers clearly visible to maintenance personnel. If existing paths contain native species that could be disturbed by the bobcat, hand tools and wheel barrows shall be used to remove non-native species.

Coastal California Gnatcatcher

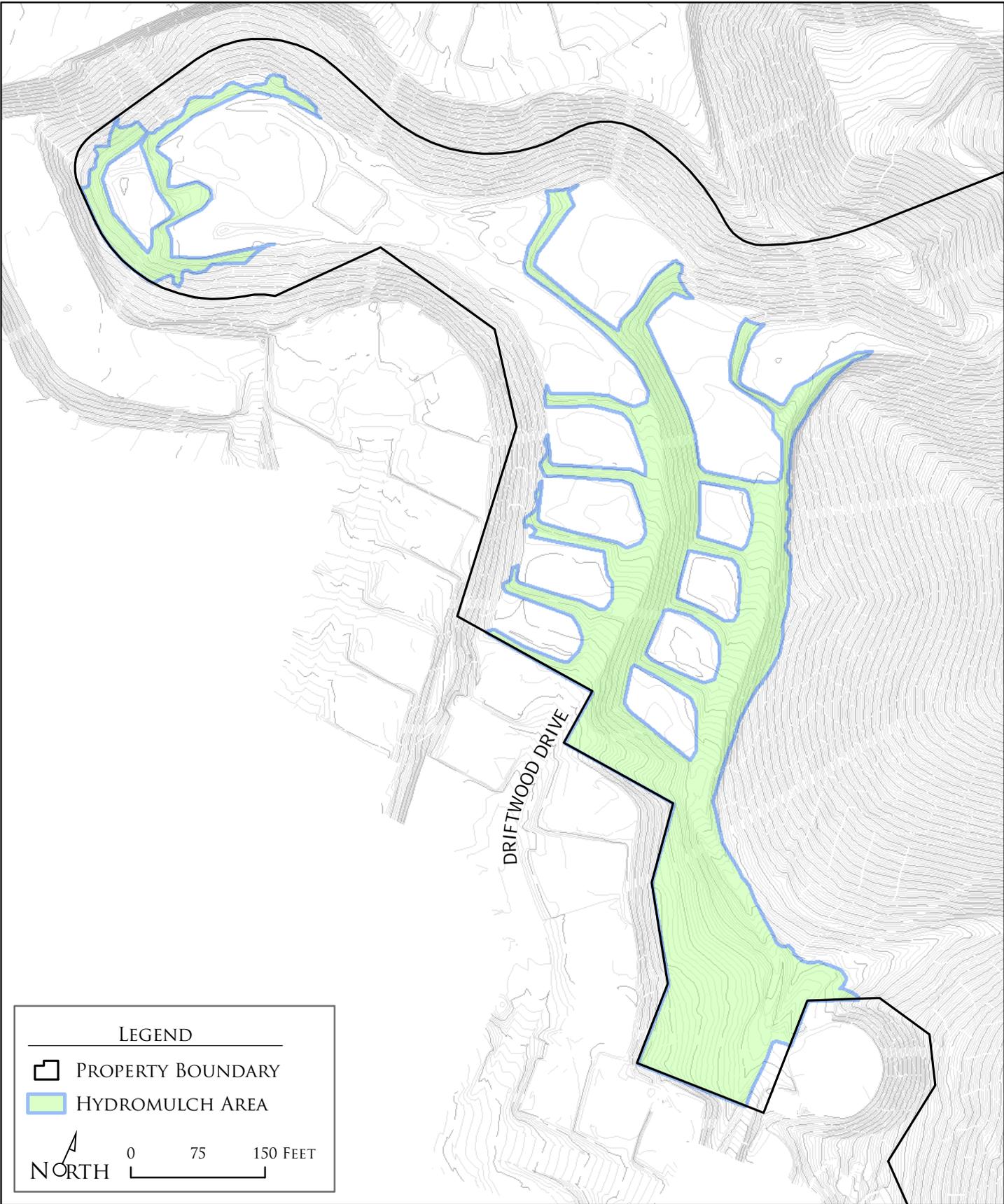
Should removal activities occur during the breeding season (February 15 through July 15), preconstruction surveys for the coastal California gnatcatcher shall be conducted. One week prior to removal activities, three surveys shall be conducted by a biological monitor within all suitable habitat on the site. The monitor must possess a valid recovery permit from the USFWS for the coastal California gnatcatcher. The final survey will be conducted one day before the start of removal activities. Should coastal California gnatcatchers be observed nesting within the site, a 500-foot buffer shall be established around the nest site, and this area will be avoided until the young have fledged or until the birds have abandoned the nest, as determined by a qualified biologist.



REMOVAL PLAN

FIGURE 8

REMOVAL PLAN



REMOVAL PLAN

EXHIBIT 9
TEMPORARY EROSION CONTROL PLAN

Big-leaved Crownbeard, Foothill Mariposa Lily, and Catalina Mariposa Lily

Big-leaved crownbeard occurs throughout the site including areas needing weed removal and sandbag removal. Surveys for big-leaved crownbeard shall be conducted prior to any removal activities within the site. Any big-leaved crownbeard identified within these areas shall be flagged and avoided during removal activities.

Foothill mariposa lily and Catalina mariposa lily occurs in the north eastern portion of the site on slopes above the previously graded portions of the site. It is not anticipated that these sensitive plants will be impacted during removal activities; however, any foothill mariposa lily or Catalina mariposa lily observed within work areas will be flagged and avoided. These species are perennial bulbiferous herbs which are more easily avoided when they are dormant outside of the blooming period.

In addition to flagging, a biological monitor will supervise all removal activities near sensitive plant species and shall prepare a monitoring report for submittal to the resource agencies.

Nesting Birds

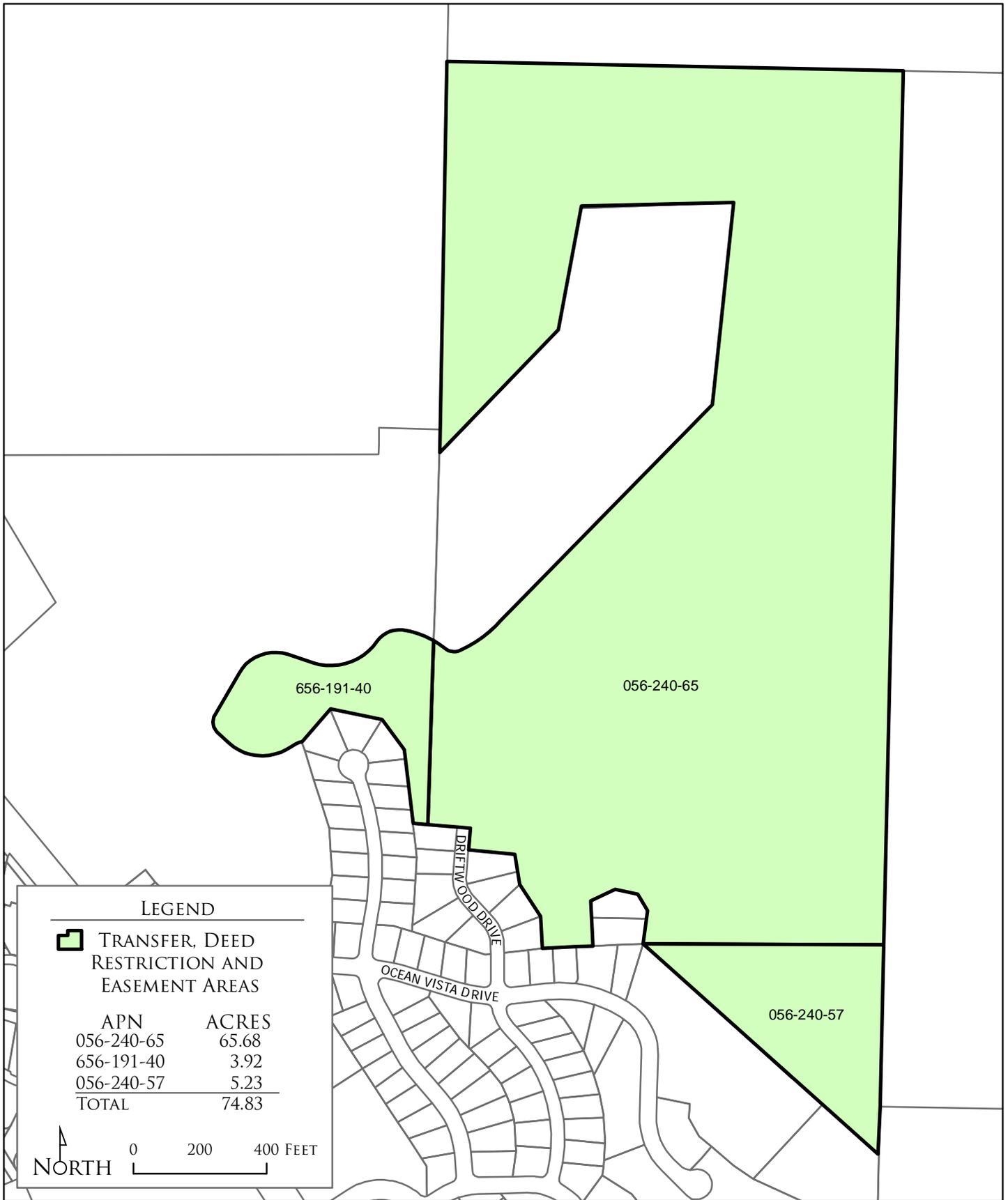
If initial vegetation removal occurs during the nesting season (February 15 to September 15), all suitable habitat will be thoroughly surveyed for the presence of nesting birds by a qualified biologist before commencement of clearing (within the areas to be cleared as well as a 500-foot buffer surrounding the area). If any active nests are detected, a buffer of at least 300 feet (500 feet for raptors) will be delineated, flagged, and avoided until the nesting cycle is complete as determined by the biological monitor, to minimize impacts.

3.4 SOIL EROSION CONTROL

Soil disturbance will be kept to a minimum during weed removal and sandbag removal activities. As determined by a licensed civil engineer (Wilson Mikami), temporary erosion control immediately following removal activities may include hand tamping and light watering. At the completion of removals, the removal area shall be hydromulched (EarthGuard Fiber Matrix or equivalent). It is strongly encouraged that restoration activities follow weed removal activities in a timely fashion to provide a means to add stability to the soil as quickly as possible. In no event shall erosion control structures be retained on a permanent basis.

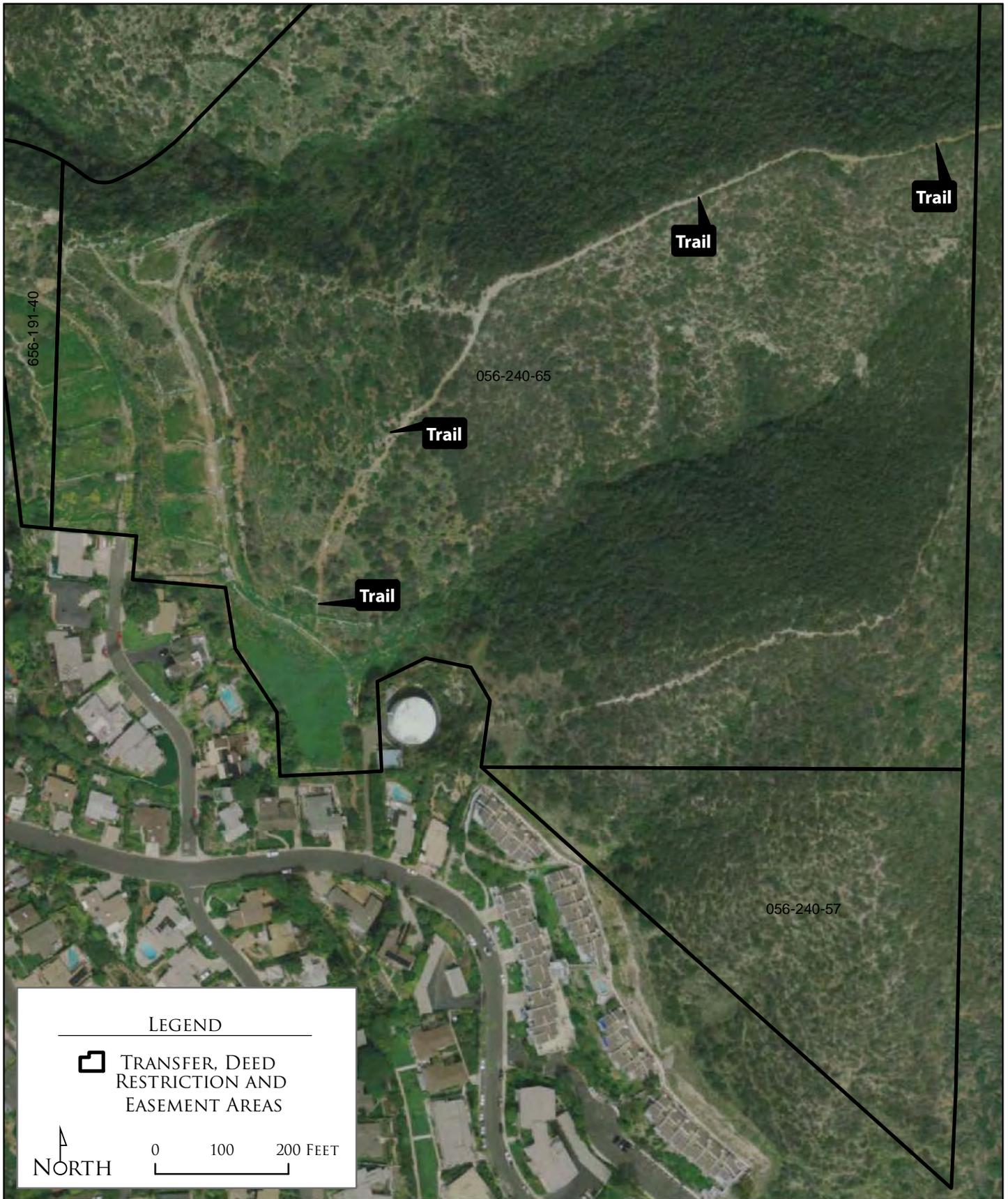
Should there be rain in the forecast, construction shall be conducted with provisions for the control of sand, silt and debris originating at the site. If necessary, select downstream perimeter areas shall be lined with straw wattles or similar structures to prevent runoff during the construction operation. Erosion and sediment control devices shall be checked and maintained prior to, during, and after all rainfall events..

Erosion control measures shall only be used if it is absolutely necessary to reduce sedimentation of coastal waters; for example, if erosion of the site will transport sediment into the storm drain system which eventually discharges to the ocean. Additionally, temporary erosion control measures shall be the minimum necessary to control erosion and shall not bury or otherwise destroy native plant species or their habitats.



REMOVAL PLAN

FIGURE 10
TRANSFER, DEED RESTRICTION
AND EASEMENT AREAS



REMOVAL PLAN

FIGURE 11

DRIFTWOOD TRAIL LOCATION

4.0 LITERATURE CITED

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APPENDIX A: NON-NATIVE SPECIES POTENTIALLY OCCURRING WITHIN THE STUDY AREA

SCIENTIFIC NAME	COMMON NAME
Aizoaceae <i>Carpobrotus edulis</i>	Fig-Marigold Family hottentot-fig
Apiaceae <i>Foeniculum vulgare</i>	Carrot Family fennel
Asteraceae <i>Anthemis cotula</i> <i>Centaurea melitensis</i> <i>Chrysanthemum coronarium</i> <i>Cirsium</i> sp.	Sunflower Family mayweed tocalote garland chysanthemum thistle
Brassicaceae <i>Brassica nigra</i> <i>Hirschfeldia incana</i> <i>Lobularia maritima</i> <i>Raphanus sativus</i>	Mustard Family black mustard shortpod mustard sweet-alyssum wild radish
Chenopodiaceae <i>Atriplex semibaccata</i> <i>Chenopodium</i> sp. <i>Salsola tragus</i>	Goosefoot Family Australian saltbush chenopodium Russian thistle
Euphorbiaceae <i>Ricinus communis</i>	Spurge Family castor bean
Fabaceae <i>Acacia</i> sp. <i>Medicago polymorpha</i> <i>Melilotus officinalis</i>	Legume Family acacia California bur clover yellow sweet clover
Geraniaceae <i>Erodium cicutarium</i>	Geranium Family red-stemmed filaree
Lamiaceae <i>Marrubium vulgare</i>	Mint Family horehound
Malvaceae <i>Malva parviflora</i> <i>Plantago lanceolata</i>	Mallow Family cheeseweed English plantain
Myoporaceae <i>Myoporum laetum</i>	Myoporum Family myoporum

SCIENTIFIC NAME	COMMON NAME
Pinaceae	Pine Family
<i>Pinus halepensis</i>	Aleppo pine
<i>Pinus pinea</i>	Italian stone pine
Poaceae	Grass Family
<i>Avena</i> sp.	oat
<i>Bromus diandrus</i>	ripgut grass
<i>Bromus hordeaceus</i>	soft chess
<i>Bromus madritensis</i> ssp. <i>rubens</i>	foxtail chess
<i>Cortaderia selloana</i>	pampas grass
<i>Hordeum vulgare</i>	barley
<i>Lolium</i> sp.	ryegrass
<i>Pennisetum setaceum</i>	purple fountain grass
<i>Vulpia myuros</i>	fescue
Solanaceae	Nightshade Family
<i>Nicotiana glauca</i>	tree tobacco

APPENDIX B: LCG STATEMENT OF QUALIFICATIONS



Chris Weaver , President

Mr. Weaver has over nineteen years of management experience in the green industry with a wide range of industry knowledge. He began his career working as a golf course superintendent where he directed wetlands mitigation and various other environmental issues, developed an Integrated Pest Management Program, assured that courses were impeccably maintained, developed budgets, managed field employees, equipment fleet and overall operations. He then moved into habitat restoration where he was responsible for estimating over fifteen million dollars in bids on both public and private works, managing various public and private works projects, developing budgets, contract negotiation, client relations and irrigation design/AutoCAD oversight. Mr. Weaver has estimated and managed several projects which have involved native and invasive species. In 2007 Mr. Weaver formed LCG with a team of experienced individuals he worked with in the habitat restoration industry. In addition to overseeing the company, Mr. Weaver acts as Senior Project Manager allowing him “hands on” use of his knowledge and experience.

Mr. Weaver holds a degree in Turfgrass Management and is a California Qualified Pesticide Applicator. He is also a member of the Pesticide Applicators Professional Association, Sports Turf Managers Association and a seminar participant in PAPA continuing education courses.

Grady Banister , Sr. Project Manager

Mr. Banister is the Vice President of Operations for LCG’s Habitat Restoration Division and will be acting Project Manager on this project. He has over thirty years experience in the Green Industry, with over 10 years experience in habitat restoration. He began his career as a nurseryman, moved into commercial landscape and then habitat restoration. Previous positions have included Chief Estimator, Project Manager, Director of Operations and Director of Sales. Mr. Banister has extensive experience in estimating and managing federal, public and private work projects of various sizes ranging from under \$50,000 to over \$5,000,000, managing the daily operations of construction and maintenance projects, preparing and adhering to budgets and schedules, procurement and negotiating terms with vendors, locating new opportunities, forming and maintaining client relations. Mr. Banister is our senior QAL and is responsible for pesticide management throughout the company including pesticide training and pesticide use reporting.

Mr. Banister holds a qualified applicators license and is a certified Water Pollution Control Manager and California Nurseryman.

Mr. Banister has extensive experience in working with both native plant and Invasive species. Prior to joining LCG November 2007 at the company’s founding Mr. Banister was responsible for estimating and managing several large and small scale habitat restoration, maintenance and invasive species removal projects. Some prior projects include:

Big Tujunga Wash Mitigation, County of Los Angeles

Estimator and Assistant Project Manager

Project Scope: Remove all Arundo and Tamarisk from the Wentworth Street ponds area of the Big Tujunga Wash located in Los Angeles County. Protect and maintain all existing native species. Cut and mulch 20+ acres of Arundo donax , Tamarisk, Nicotiana glauca, Ricinis communis and herbicide treatment of re-sprouts until fully eradicated. Habitat restoration was also performed including

installation of irrigation system, planting of 12 acres of riparian and 3 acres of Coastal Sage Scrub habitats with three years maintenance.

Camp Pendleton Habitat Restoration

Estimator and Project Manager

Project Scope: Habitat restoration of 16 acres of native grasslands, 6 acres of riparian habitat, 3 acres of oak woodland and 2 acres of coastal sage scrub including planting, seeding, Brodiaea filifolia transplanting, invasive species removal and 2 years maintenance.

Goat Canyon, Tijuana Estuary

Estimator and Project Manager

Project Scope: Restoration of 10 acres of coastal sage scrub and mixed maritime scrub including planting, seeding, Ferrocactus transplanting, erosion control and five years maintenance.

Sunny Creek Habitat restoration

Estimator and Project Manager

Project Scope: Restoration of 4 acres of riparian habitat and oak woodland including planting, installation and removal of temporary irrigation installation, seeding and five years maintenance,

Serrano Creek Habitat Restoration

Estimator and Project Manager

Project Scope: Restoration of 4 acres of riparian and 4 acres of upland habitats including removal of Arundo donax, Tamarisk and Ricinis Communis; planting; irrigation system installation; seeding and maintenance.

Callegas Creek, Camrosa Water District

Estimator and Project Manager

Project Scope: Remove over 2 acres of Arundo donax, Tamarisk, Nicotiana glauca and Ricinis communis from a two mile section of area of Callegas Creek in Ventura County. Protect all existing native species. Perform herbicide treatment of re-sprouts for one year. Perform habitat restoration including installation of irrigation system, planting of riparian, transition zone and upland habitats with maintenance.

Dana Point Headlands, Headlands Reserve

Estimator and Project Manager

Project Scope: Non naïve plant removal, installation of 11 acres of coastal sage scrub and 2 acres of maritime scrub habitats including planting, irrigation system and maintenance.

Forster Ranch

Estimator and Assistant Project Manager

Project Scope: Restoration of 90 acres of coastal sage scrub and 3 acres of wetland habitat including planting, seeding, irrigation system installation and maintenance. Transplanting of 0.5 acres of Brodiaea filifolia was also performed.

Jose Iniquez, Field Supervisor

Mr. Iniquez has seven years experience managing habitat restoration projects for environmental consulting firms. He is familiar with both invasive species and native plants. Mr. Iniquez has had ‘hands on’ experience in several successful habitat restoration projects performing and overseeing the various tasks involved including irrigation, planting, seeding, maintenance, etc. Additionally he is familiar with all aspects of monitoring including setting up transects. He has conducted biological field surveys, including focused burrowing owl surveys, and general avian and plant surveys.

Mr. Iniquez also holds a qualified applicators license with the B and C categories. Mr. Iniquez is fluent in both English and Spanish.

Field Crews

LCG field crews are experienced in working with both native plant and invasive species. The field crews consist of a foreman and four to fifteen workers. The foreman will report directly to the Field Supervisor.

CREDENTIALS

Licensed California Contractor, C27 Classification
Certified Small Business
Licensed Qualified Applicators on Staff, Categories B, C and F
Certified Storm Water Pollution Control Managers

PROJECTS

Alexander & Boulder Wetland **Mead Valley , CA**

Sheli Lamb Riverside Corona RCD
Phone: 951-683-7691 4500 Glenwood Drive
Fax: 951-683-3814 Riverside, CA 92501
Owner: RCRCO Period of Performance 4/08 – 7/08
Eradication of lepidium, tamarisk, tree tobacco and thistles over 70 acres of Riparian and Wetland habitats
Contact Amount: \$14,784.00 Contract No.: None

Amberhill **Corona, CA**

Alisa Flint Glenn Lukos Associates
Phone: (949) 837-0404 29 Orchard
Fax: (949) 837-5834 Lake Forest, CA 92630
Owner: Amberhill Four, Inc. Period of Performance 7/08 – Present
Maintenance of 6.9 acres of riparian habitat.
Contract Amount: \$23,460.00 Contract No. 0486-0002clev

Coyote Canyon **Fontana, CA**

Sally Davis Glenn Lukos Associates
Phone: (949) 837-0404 29 Orchard
Fax: (949) 837-5834 Lake Forest, CA 92630
Owner: Centex Homes Period of Performance 5/08 – Present
12.26 acres of riversidian sage scrub and wetlands habitats revegetation including irrigation installation, planting, seeding, weeding and maintenance.
Contract Amount: \$427,146.00 Contract No.: 0303-0020coyo

Chino Majestic **Chino, CA**

Ann Guithues Bender Majestic Management Co.
Phone: (562) 692-9581 13191 Crossroads Pkwy North

Fax: (562) 695-0441
Owner: Majestic Management Co.
Initial weed removal, planting, seeding and maintenance of 1.6 acres of wetland and CSS habitat.
Contract Amount: \$46,540.00

City of Industry, CA 91746
Period of Performance 1/08 – Present
Contract No. 3721A

Doheny North Creek **Dana Point, CA**

Julie Fontaine
Phone: (949) 246-3117
Fax: (760) 231-9500
Owner: CDM Development
Maintenance of 0.25 acres of sand dune and riparian habitats.
Contract Amount: \$11,165.00

EARSI
223 62nd Street
Newport Beach, CA 92663
Period of Performance 12/07 – Present
Contract No.: None

Exotic Plant Control **Santa Barbara & Ventura Counties, CA**

Joshua More
Phone: (805) 585-1853
Fax: (805) 585-1857
Owner: California State Parks
Exotics species removal from 3 start parks including Gaviota State park, La Purisima Mission SHP and Emma Wood State Beach.
Contract Amount: \$29,330.29

Channel Coast District
911 San Pedro Street
Ventura, CA 93001
Period of Performance 10/08 – Present
Contract No.: C0742017

Four Seasons **Beaumont, CA**

Sally Davis
Phone: (949) 837-0404
Fax: (949) 837-5834
Owner: K. Hovnanian Homes
Maintenance of 22 acres of riparian, chaparral and riversidian sage scrub habitats
Contract Amount: \$341,824.00

Glenn Lukos Associates
29 Orchard
Lake Forest, CA 92630
Period of Performance 7/08 – Present
Contract No. : 0558-0003-seas

Harris Fire Weed Control-70 Acre **Jamul, CA**

John Martin
619-468-9245 X227
Fax: (619) 468-9249
Owner: U.S. Fish & Wildlife Service
Removal of 70 acres of weeds.
Contract Amount: \$94,619.00

San Diego National Wildlife Refuge Phone:
14715 Hwy 94
Jamul, CA 91935-4016
Period of Performance 9/08 – 10/08
Contract No.: 801818M459

Harris Fire Weed Control- 24 Acre **Jamul, CA**

John Martin
619-468-9245 X227
Fax: (619) 468-9249
Owner: U.S. Fish & Wildlife Service
Removal of 24 acres of weeds.
Contract Amount: \$47,412.00

San Diego National Wildlife Refuge Phone:
14715 Hwy 94
Jamul, CA 91935-4016
Period of Performance 10/08 – 10/08
Contract No.: 801818M336

Lake Forest Drive **Lake Forest, CA**

Alisa Flint
Phone: (949) 837-0404
Fax: (949) 837-5834
Owner: Irvine Company
Maintenance of 0.2 acres of riparian habitat.
Contract Amount: \$4,200.00

Glenn Lukos Associates
29 Orchard
Lake Forest, CA 92630
Period of Performance 7/08 – Present
Contract No.: 0351-0035geot

Lake Los Serranos**Chino Hills, CA**

Jay Greening
Phone: (909) 597-1791
Fax: (909) 597-1791

Lake Los Serranos Company
158111 Pipeline Avenue
Chino Hills, CA 91709
Period of Performance 11/07 – 9/08

Owner: Lake Los Serranos Company
2.5 acre riparian and upland restoration including planting, irrigation installation, erosion control, weeding and maintenance.

Contract Amount: \$134,456.50

Contract No.: None

Lauro Dam**Santa Barbara, CA**

Julie Tapia
Phone: (559) 487-5138
Fax: (559) 487-5397

U.S. Bureau of Reclamation
1243 "N" Street
Fresno, CA 93721

Owner: U.S. Bureau of Reclamation
2 acres of riparian restoration including exotics removal, irrigation installation, planting, seeding, erosion control and maintenance.

Contract Amount: \$171,201.28

Contract No.: 08CS200122

Orchard Stone Creek, Phase 1**Murrieta, CA**

Alan Davis
Phone: (714) 282-1798
Fax: (714) 282-1632

Stone Creek Construction Inc.
22875 Savi Ranch Pkwy
Yorba Linda, CA 92887
Period of Performance 10/08 – Present

Owner: Carlmart, LP
Maintenance of 1.2 acres of riversidian sage scrub.

Contract Amount: \$12,259.00

Contract No.: LCG-10/08-60

Orchard Stone Creek, Phase 2**Murrieta, CA**

Alan Davis
Phone: (714) 282-1798
Fax: (714) 282-1632

Stone Creek Construction Inc.
22875 Savi Ranch Pkwy
Yorba Linda, CA 92887
Period of Performance 9/08 – Present

Owner: Carlmart, LP
Revegetation of 0.39 acres of riversidian sage scrub including planting, installation of irrigation system and maintenance.

Contract Amount: \$19,092.00

Contract No.: LCG-10/08-60

Presidio Riverside**Riverside, CA**

Stuart Hatch
Phone: (949) 261-5789
Fax: (949) 261-6153

Empire Homes
20 Corporate Park, Suite 240
Irvine, CA 92606
Period of Performance 6/08 – Present

Owner: Empire Homes
Maintenance of 2 acres of riparian habitat.

Contract Amount: \$28,800.00

Contract No.: 00001008

San Miguel Ranch**Chula Vista, CA**

Sally Davis
Phone: (949) 837-0404
Fax: (949) 837-5834

Glenn Lukos Associates
29 Orchard
Lake Forest, CA 92630
Period of Performance 5/08 – Present

Owner: Trimark Pacific
Maintenance of 2.34 acres of wetlands and coastal sage scrub habitat. Plus 10,000 sf of perennial pepperweed control.

Contract Amount: \$22,246.00
0030migu

Contract No. 0702-0001lotl/0163-

Seneca Springs

Beaumont, CA

Stuart Hatch
Phone: (949) 261-5789
Fax: (949) 261-6153
Owner: Empire Homes
Maintenance of 12 acres of riparian and wetlands habitats.
Period of Performance 6/08 – Present

Empire Homes
20 Corporate Park, Suite 240
Irvine, CA 92606
Contract Amount: \$110,400.00

Contract No.: 00001009

Tesoro High School

Mission Viejo, CA

Sally Davis
Phone: (949) 837-0404
Fax: (949) 837-5834
Owner: San Juan Capistrano Valley School District
Maintenance of 2.5 acres of coastal sage scrub habitat.
Contract Amount: \$12,504.00

Glenn Lukos Associates
29 Orchard
Lake Forest, CA 92630
Period of Performance 2/08 – Present

Contract No. 0306-0002cree

Tesoro High School Exotics

Mission Viejo, CA

Sally Davis
Phone: (949) 837-0404
Fax: (949) 837-5834
Owner: San Juan Capistrano Valley School District
Removal of 1.35 acres of Spanish Sunflower
Contract Amount: \$7,380.00

Glenn Lukos Associates
29 Orchard
Lake Forest, CA 92630
Period of Performance 2/08 – Present

Contract No.: 0306-0002mfs

Talega

San Clemente, CA

Julie Fontaine
Phone: (949) 246-3117
Fax: (760) 231-9500
Owner: CDM Development
Maintenance of 0.9 acres of riparian and wetland habitats.
Contract Amount: \$12,500.00

EARSI
223 62nd Street
Newport Beach, CA 92663
Period of Performance 12/07 – Present

Contract No.: None

Whittier Narrows

El Monte, CA

Sally Davis
Phone: (949) 837-0404
Fax: (949) 837-5834
Owner: City of La Habra
5 acres of arundo removal and maintenance of riparian habitat
Contract Amount: \$15,600.00

Glenn Lukos Associates
29 Orchard
Lake Forest, CA 92630
Period of Performance 5/08 – Present

Contract No.: 0337-1004whit

CONTACTS

Grady Banister
Vice President Operations
gradybanister@lcfgofcalifornia.com

Chris Weaver
President
chrisweaver@lcfgofcalifornia.com

127 Business Center Drive
Suite C
Corona, CA 92880

Phone: (951) 549-0075
Fax: (951) 549-9605

Appendix C: HYDROMULCH EXAMPLE SPECS

EarthGuard Fiber Matrix Erosion Control. University tested. Worksite proven.

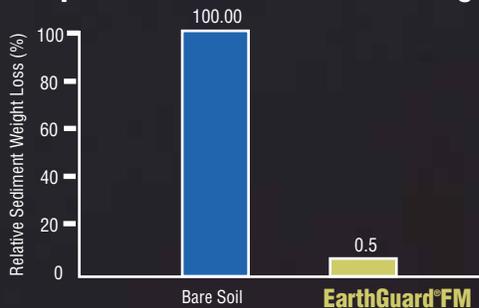
EarthGuard® Fiber Matrix

EarthGuard® Fiber Matrix from Terra Novo is the economical solution more and more erosion specialists are turning to. It's the perfect short to mid-term erosion application comparable to the most expensive BMPs.

Check it out for yourself — EarthGuard® Fiber Matrix is simple to apply, safe to use and as effective as any comprehensive BFM system on the market. Call or visit us on the web to learn more about EarthGuard®.

Results from Caltrans Study of EarthGuard FM

Comparison of Relative Sediment Weight



The data from this series of tests appear to support the use of **EarthGuard®** Fiber Matrix (EGFM) to reduce soil erosion and off-site delivery of sediment from steep slopes. A 99.5% reduction in sediment delivery/weight is a high level of performance comparable to the best performing best management practices such as some rolled erosion control products (RECPs) and bonded fiber matrices (BFMs). The **EarthGuard®** Fiber Matrix manufacturer, Terra Novo, Inc. claims an installed cost of \$0.025-\$0.06 per square foot compared to \$0.085-\$0.15 for BFMs and RECPs.



**EarthGuard®
Fiber Matrix**



Terra Novo
(888) 843 1029

LOCAL DISTRIBUTOR

www.earthguard.com

EarthGuard® Fiber Matrix Erosion Control

EarthGuard® is a soil stabilizing emulsion specifically formulated to reduce erosion and sediment runoff. It is non-toxic, 100% biodegradable, and conforms to the State of California Department of Transportation Standard Specifications Section 07-382 E A05-30-06 for “Polymer Stabilized Fiber Matrix (PSFM).” **EarthGuard® FM** is a one-step spray application, combining **EarthGuard®** and wood/cellulose fiber. It is applied as an aqueous slurry by itself or in combination with seed. **EarthGuard® FM** is chemically engineered to be effective at low rates while absorbing the impact of raindrops, and providing immediate dust control, erosion control, and soil stabilization until permanent vegetation is established or construction has resumed. **EarthGuard® FM’s** versatility allows it to be highly effective in many applications: erosion control, slope stabilization, dust abatement, landscape design, storm water runoff, fire burn rehabilitation, land development, and golf course construction.

APPLICATION RATES AND METHODS

EarthGuard® FM application rates depend upon field conditions and desired benefits. The following charts can be used as general rate guidelines for seasonal erosion control (loamy soils that are balanced in organic matter and nutrients). Slope should be “track-walked” with flow interruptors every 25 feet.

FULL SEASONAL CONTROL

Maximum rainfall of 19” or less over a 4–5 month period

1	Slope	6:1	5:1	4:1	3:1	2:1	1.5:1	1:1
	Gals/Acre	4	5	6	7	8	9	10
	(lbs) Mulch/Acre	1,500	1,500	1,500	1,800	2,000	2,500	3,000

Rainfall greater than 19” over a 4–5 month period

2	Slope	≤5:1	4:1	≥3:1
	Gals/Acre	6	8	10
	(lbs) Mulch/Acre	2,000	2,500	3,000

LONG TERM EROSION CONTROL OF PERMANENT SLOPES INCLUDING SEED

During the fall and winter months, follow the above charts for **EarthGuard®** and mulch rates. Add seed mixes as recommended to achieve long-term erosion control. This can be applied via a one-step hydroseeding process. However, some may prefer a two-step application (hydroseed and fertilizer first, and then **EarthGuard®** and mulch over the top). Consider increasing mulch rates to a minimum of 2,000 lbs. per acre when seeding.

If slopes are ready for permanent landscape (plants, trees, etc.), use the **EarthGuard®** rates from the above charts without adding mulch. Apply the mixture to all exposed soil after planting is completed. This will provide temporary erosion control while the plants establish their root mass.

FOR PARTIAL SEASON OR EXTENDED PROTECTION, CONTACT TERRA NOVO FOR RECOMMENDATIONS

WINTER PROTECTION FOR PADS

Use 3–4 gallons of **EarthGuard®** and 1,500 lbs. of mulch per acre. Pads should be “roughened” prior to application.

STORM-BY-STORM PROTECTION

For temporary protection of slopes and flat areas that are still in progress, apply **EarthGuard®** at 3–5 gallons per acre prior to a storm event. After the rain has stopped and the ground is dry enough, proceed with grading.

DUST CONTROL

On grading jobs, haul roads, etc. add 2 quarts of **EarthGuard®** to each 1,000 gallons of water. Apply with a water truck as normal. Number of passes can be reduced up to 75%.

If the desired result is more of a “Dust Cap” (longer lasting effect yet still temporary) usually 8–10 gallons per acre will be required.

APPLICATION & MIXING GUIDELINES

Spray all mixtures at a minimum rate of 3,000 gallons of water/acre (higher rates may be required) evenly over the area to be treated. Be careful not to spray too fast, creating puddles or run-off — they damage the soil structure before **EarthGuard®** products can work. Application should be sprayed from

multiple directions and angles to insure complete and proper coverage. Do not disturb treated areas after **EarthGuard®** products are applied. Mulch manufacturers recommend all hydraulic applications using fiber mulch to have a 24-hour window without rain.

Some situations with sandy – sandy loam soils, very little organic matter in the soil, poorly compacted slopes, heavy rainfall locations (over 20 inches per year), very intense rain storms (2–3 inches at a time), high wind exposure, etc. may require increasing the **EarthGuard®** and/or mulch by 1.25 – 1.50 times. When SWPPPs, BMPs or other plans are being written, contact Terra Novo, Inc., or your local dealer for more specific rate recommendations.

Many types of equipment can be used to apply **EarthGuard®** (hydroseeders, water trucks, spray rigs, aerial applicators, and irrigation systems). When mixing, fill the vessel 1/3 full of water prior to adding any **EarthGuard®**. As the tank continues to fill and agitators are running, slowly add the recommended amount of **EarthGuard®**. If the tank doesn’t have agitators, it is important to add the **EarthGuard®** directly to the fill water flow. Mix or circulate the tank for a minimum of 10 minutes prior to application. A hydroseeder is required for applications of **EarthGuard® FM**.

EarthGuard® can be stored for 6 months. Always thoroughly mix before using. Always close or seal containers after use. Store in a dry, insulated location to avoid moisture and freezing. Frozen product, once thawed, can and should be completely remixed.



For technical services or to locate your nearest **EarthGuard®** dealer, call 1-888-843-1029.
Terra Novo, Inc., P.O. Box 81916, Bakersfield, CA 93380 www.earthguard.com

Information and statements herein are believed to be reliable but are not to be construed as a warranty or guarantee. Terra Novo, Inc. offers no warranties, expressed or implied. Nothing herein is to be taken as permission to practice any patented invention without a license. EarthGuard is a registered trademark of Terra Novo, Inc. All rights reserved.

EXHIBIT B

OFFER TO DEDICATE OPEN SPACE AND PUBLIC ACCESS EASEMENT

1 **RECORDING REQUESTED BY:**

2
3 **WHEN RECORDED RETURN TO:**

4 California Coastal Commission
5 725 Front Street; Suite 300
6 Santa Cruz, CA 95060-4508

7 Attn: Legal Division

8
9 A.P.N. 056-240-65, 056-240-57 & 656-191-40

10
11 **IRREVOCABLE OFFER TO DEDICATE OPEN SPACE CONSERVATION**
12 **AND PUBLIC ACCESS EASEMENT**
13 **AND DECLARATION OF RESTRICTIONS**

14
15 THIS IRREVOCABLE OFFER TO DEDICATE AN OPEN SPACE CONSERVATION AND
16 PUBLIC ACCESS EASEMENT AND DECLARATION OF RESTRICTIONS (the "Offer") is made
17 this ____ day of _____, 20__, by Driftwood Properties, LLC (the "Grantor");

18
19 I. WHEREAS, County records indicate that Grantor is the legal owner of a fee interest
20 in certain real property located in the County of Orange, State of California, described and depicted in
21 EXHIBIT A, attached hereto and incorporated herein by reference (the "Property"); and

22
23 II. WHEREAS, all of the Property is located within the coastal zone as defined in
24 section 30103 of Division 20 of the California Public Resources Code ("PRC"), which Division is
25 known as the "California Coastal Act of 1976"; and

26
27 III. WHEREAS, the California Coastal Act of 1976 (the "Act") created the California
Coastal Commission (the "Commission") and requires that, with limited exceptions not applicable

1 here, development, as defined by the Act (PRC § 30106), within the coastal zone requires a coastal
2 development permit (“CDP”) and that, to be approved by the Commission, such development must be
3 consistent with the policies set forth in Chapter 3 of the Act; and
4

5 IV. WHEREAS, pursuant to Sections 30810 and 30811 of the Act, the Commission
6 has the authority to respond to violations of the Act by issuing cease and desist orders and, if it finds
7 that development has occurred without a coastal development permit, is inconsistent with Chapter 3 of
8 the Act, and is causing continuing resource damage, by issuing restoration orders; and
9

10 V. WHEREAS, the Commission has received evidence that development occurred on
11 the Property without authorization by a CDP, in violation of the Act (“unpermitted development” or
12 the “Violations”); and
13

14 VI. WHEREAS, at least some of the said unpermitted development was inconsistent
15 with the policies set forth in Chapter 3 of the Act; and
16

17 VII. WHEREAS, at least some of the said unpermitted development is causing, or may
18 be causing, continuing resource damage in violation of the Act; and
19

20 VIII. WHEREAS, in order to resolve the reported outstanding Violations on the
21 Property, the Commission issued Notices of Intent to Record a Notice of Violation of the Coastal Act
22 and to Commence Cease and Desist and Restoration Order Proceedings dated March 27, 2008, and
23 Grantor and the Executive Director of the Commission (“ED”) entered into an agreement that, *inter*
24 *alia*, required recordation of this Offer; and
25

26 IX. WHEREAS, on December 16, 2010, the Commission, acting on behalf of the
27 People of the State of California and pursuant to the Act, issued Consent Cease and Desist Order No.
CCC-10-CD-01 and Consent Restoration Order No. CCC-10-RO-01 (the “Consent Orders”) and
adopted the findings set forth in the Staff Recommendations and Findings pertaining thereto (copies of

1 which are on file and available for review at the California Coastal Commission located at 45 Fremont
2 Street, Suite 2000, San Francisco, California 94105-2219) requiring, *inter alia*, that Grantor execute
3 and record an offer to dedicate an Open Space Conservation and Public Access Easement and
4 Declaration of Restrictions in the form of this document; and
5

6 X. WHEREAS, the Property possesses natural resource, wildlife habitat, scenic, public
7 access, and open space values (collectively, the “Protected Values”) of importance to the People of the
8 State of California; and
9

10 XI. WHEREAS, the Protected Values, and the characteristics of the Property, its
11 current use and state of improvement, are documented and described in a document entitled
12 “Driftwood Removal Plan” dated November 29, 2010, included as Exhibit A to the Consent Orders
13 (referred to herein as the “Baseline Report”), which describes and depicts the conditions on the
14 Property as of the time the Consent Orders were issued and which prescribes the removal actions
15 required by the Consent Orders to be completed by Grantor following the issuance of the Consent
16 Orders; and
17

18 XII. WHEREAS, the Consent Orders require, *inter alia*, that Grantor execute and
19 record an offer to dedicate an Open Space Conservation and Public Access Easement and Declaration
20 of Restrictions and agree to restrict development on and use of the Property so as to preserve the
21 Protected Values on the Property; and
22

23 XIII. WHEREAS, Grantor has agreed to comply with the terms and conditions of the
24 Consent Orders by, among other things, executing and recording this Offer; and
25

26 XIV. WHEREAS, Grantor desires to preserve and maintain the Property in its natural,
27 scenic and open space condition; and

1 XV. WHEREAS, it is intended that this Offer is irrevocable and shall impose
2 enforceable restrictions on the Property within the meaning of Article XIII, section 8 of the California
3 Constitution and that this Offer shall thereby qualify as an enforceable restriction under the provision
4 of the California Revenue and Taxation Code, section 402.1.
5

6
7 NOW, THEREFORE, in order to comply with the Consent Orders and thereby resolve
8 the Violations, in part, and in consideration of the mutual benefit and conditions set forth herein, the
9 substantial public benefits for the protection of coastal resources to be derived, and the issuance of the
10 Consent Orders to the Grantor by the Commission, thereby releasing the Grantor from certain
11 liabilities for the Violations, Grantor hereby irrevocably offers to dedicate to the People of the State of
12 California an easement over the Property, in gross and in perpetuity, for the purposes of open space
13 and scenic preservation, habitat protection and resource conservation, and compatible public access
14 (the "Easement") as follows:
15

16 1. DESCRIPTION. The Easement offered hereby affects the real property
17 described in Exhibit A, a parcel of land further identified as:
18

19 Approximately 75 acres, currently (as of the date of issuance of the Consent Orders)
20 designated by the Orange County Assessor's Office as Assessor Parcel Numbers 056-240-65,
21 056-240-57, and 656-191-40, at the northern terminus of Driftwood Drive in the City of
22 Laguna Beach, Orange County.
23

24 2. PURPOSE. This Offer and the Easement created by its acceptance are for the
25 purpose of conserving and protecting the Protected Values forever, and assuring that inconsistent uses
26 of the Property will be prevented and corrected.
27

1 3. DURATION, ACCEPTANCE AND TRANSFERABILITY. This Offer shall
2 be binding upon Grantor and its heirs, assigns, or successors in interest as owners of the Property for a
3 period of ninety days from the date of recordation of this Offer. This Offer, and any subsequent
4 transfers of the Easement created by the original acceptance of this Offer, may be accepted by a
5 political subdivision of the State of California (“State”), a public entity, or a private association
6 qualified to hold conservation easements in accordance with Sections 815 through 816 of the
7 California Civil Code and approved by the ED (hereafter referred to as the “Grantee”). If a private
8 association other than the Laguna Canyon Foundation proposes to accept this Offer and Grantor is still
9 the fee title owner of the Property at the time, the private association must be acceptable not only to
10 the ED but also to Grantor. The original acceptance of this Offer shall be effectuated by recordation
11 by the Grantee of an acceptance of this Offer in the form attached hereto as Exhibit C, and subsequent
12 Grantees shall record substantively similar acceptances. Upon such recordation of acceptance, this
13 Offer and terms, conditions, and restrictions shall have the effect of a grant of open space conservation
14 easement in gross and perpetuity over the Property that shall run with the land in perpetuity and be
15 binding on the Grantor and its heirs, assigns, and successors in interest as owners of the Property.
16 After acceptance, this Easement may be transferred to and held by any political subdivision of the
17 State, a public entity, or a private association qualified to hold conservation easements under Sections
18 815 through 816 of the California Civil Code and acceptable to the ED. Acceptance of the Offer is
19 subject to a covenant that runs with the land, providing that no Grantee may abandon the Easement
20 until such time as that party effectively transfers the Easement to another entity that qualifies as a
21 Grantee of the Easement under the criteria hereinabove stated.
22
23
24
25

26 4. BASELINE DATA. The Baseline Report contains an inventory of the
27 Property’s relevant features and conditions, its improvements and its natural resources (the “Baseline

1 Data”). A copy of the Baseline Report is on file and available for review at the California Coastal
2 Commission located at 45 Fremont Street, Suite 2000, San Francisco, California 94105-2219. Grantor
3 represents that the Baseline Report accurately represents the condition of the Property at the date of
4 recordation of this Offer. Grantee shall use the Baseline Report to monitor the future uses of the
5 Property, the condition of it, and practices on it. The Commission, Grantor, and Grantee further agree
6 that, in the event a controversy arises with respect to the condition of the Property or the Protected
7 Values, these parties shall not be foreclosed from utilizing any other relevant document, survey, or
8 report to assist in the resolution of the controversy.
9

10
11 5. DECLARATION OF RESTRICTIONS. Grantor, for itself and for its heirs,
12 assigns, and successors in interest, covenants and agrees not to perform or, while holding title to the
13 property, allow others to perform, any acts inconsistent with the terms and conditions of this Offer, on
14 or affecting the Property. Any use or activity that would diminish or impair the Protected Values of
15 the Property is prohibited, except as provided for by the terms and conditions of this Offer. This Offer
16 authorizes Grantee to enforce the terms, conditions, and restrictions of this Offer in the manner
17 described herein. Nothing in this Offer relieves Grantor, or its heirs, assigns, and successors in
18 interest, of any obligation or restriction on the use of the Property imposed by law.
19

20 Restrictions and prohibitions on the use of the Property include, but are not limited to
21 the following:

22
23 a. The division, subdivision, de facto subdivision, or partition of the Property,
24 including transfer of development rights, whether by physical, legal, or any other process. Grantor
25 grants all development rights to the Grantee, except as specifically provided in this Offer, that were
26 previously, are now, or later will be, allocated to, implied, reserved, appurtenant to, or inherent in the
27 Property; and Grantor agrees that these rights are released, terminated, and extinguished, and may not

1 be used on or transferred to any portion of the Property as it now or later may be bounded or
2 described, or to any other property adjacent or otherwise, or used for the purpose of calculating
3 permissible lot yield of the Property or of any other property. The creation of the Easement through
4 acceptance of this Offer shall not create any development rights.
5

6 b. Grantor's use or authorization to use any portion of the Property for
7 mitigation (in other words, to compensate for adverse changes to the environment elsewhere).

8 c. Development, as that term is more generally defined in the Act (PRC section
9 30106, attached hereto as EXHIBIT B and incorporated herein by reference), including, but not
10 limited to, removal of native vegetation or any other vegetation constituting "major vegetation" as that
11 phrase is used in PRC section 30106, grading, paving, planting of non-native vegetation, tilling, or
12 installation of structures such as signs, fences, buildings, permanent irrigation devices, etc., grazing or
13 agricultural activities within the Easement Area with the exception, subject to applicable government
14 regulatory requirements, including those of the Act, of the following, and then only if approved or
15 specified in the Consent Orders, as approved and/or authorized by the ED under applicable law, or as
16 approved and/or authorized by the Commission under applicable law:
17

18 1) Development associated with habitat restoration including: a) removal
19 of non-native plant species as specified in the Consent Orders; b) removal of unpermitted development
20 and any other development to be removed as specified in the Consent Orders; c) planting of native
21 plant species; d) temporary above ground irrigation to provide for the establishment of native plant
22 species for a maximum of three years after planting begins or until the revegetation has become
23 established, whichever occurs first;
24

25 2) Necessary vegetation trimming, thinning or removal for fuel
26 modification purposes, only as authorized by the ED or the Commission;
27

1 following rights and interests, without limitation, except as indicated below, are granted to the
2 Grantee:

3 a. To identify, preserve and protect in perpetuity the Protected Values on the
4 Property;

5 b. To enter upon, inspect, observe, and study the Property for the purposes of
6 (1) identifying the current condition of, uses and practices on the Property, and the baseline condition
7 of the Property; and (2) monitoring the uses and practices to determine whether they are consistent
8 with the Easement. Entry shall be permitted consistent with Section 9, below, and shall be made in a
9 manner that will not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.
10

11 c. To prevent any activity on or use of the Property that is inconsistent with the
12 Purpose of the Easement, and to require the restoration of such areas or features of the Property that
13 may be damaged by any inconsistent condition, activity or use;

14 d. To improve, and allow the public use of, an existing, historically used
15 access trail (as depicted in Figure 11, at page 41 of the Baseline Report), consistent with the Protected
16 Values, provided that any Coastal Act authorization for the development required by law is first
17 obtained;

18 e. To erect and maintain signs or other appropriate markers indicating any
19 allowable public access, provided any Coastal Act authorization required by law is first obtained.
20

21 8. TRANSFERABILITY. Grantee may transfer to a political subdivision of the
22 State, public agency, or private association qualified to hold conservation easements under Sections
23 815 through 816 of the California Civil Code and approved by the ED the Easement created by
24 acceptance of this Offer. In addition, the Easement is subject to a covenant that runs with the land
25 providing that Grantee may not abandon the Easement but, if Grantee wishes to relinquish its control,
26
27

1 Grantee must instead transfer the Easement to another qualified political subdivision of the State,
2 public entity or private association qualified to hold conservation easements under Sections 815
3 through 816 of the California Civil Code and approved by the ED.
4

5 9. RIGHT OF ENTRY. The fee title owner of the Property at any given time
6 (“Owner”) shall provide access to the Property at all reasonable times to Grantee, the Commission,
7 any successors and assigns of each, and any agency having jurisdiction to ascertain whether the
8 prohibitions and use restrictions set forth above are being observed under the Easement created by
9 acceptance of this Offer. Nothing in the Easement is intended to limit in any way the right of entry or
10 inspection that any agency may otherwise have by operation of any law. The Commission may enter
11 and move freely about the Property for purposes including, but not limited to, ensuring compliance
12 with the terms of the Easement.
13

14 10. MONITORING. Grantee shall uphold the Purpose of the Easement created by
15 acceptance of this Offer. Grantee’s responsibilities include, but are not limited to, annual monitoring,
16 such additional monitoring as circumstances may require, record keeping, and enforcement, for the
17 purpose of preserving the Protected Values in perpetuity. Grantee has the right to enter upon, inspect,
18 observe and evaluate the Property, consistent with Section 9, above, to identify the current condition
19 of, and uses and practices on the Property, and to monitor the use and practices regarding the Property
20 to determine whether they are consistent with the Easement. Commission staff may accompany
21 Grantee during annual monitoring.
22

23
24 Grantee shall report in writing to the Commission by June 30 annually after the annual
25 monitoring visit, describing the method of monitoring, condition of the Property (with reference to the
26 Baseline Report), stating whether any violations were found during the period, describing any
27

1 corrective actions taken, the resolution of any violation, and any transfer of interest in the Property.
2 Failure to do so shall not impair the validity of the Easement or limit its enforceability in any way.

3 11. BENEFIT AND BURDEN. The Easement created by acceptance of this Offer
4 shall run with and burden the Property, and all obligations, terms, conditions, and restrictions hereby
5 imposed shall be deemed to be covenants and restrictions running with the land, and shall be effective
6 limitations on the use and enjoyment of the Property from the date of recordation of this Offer, and
7 shall, during their respective terms of ownership, bind the Owner in perpetuity.

8 12. REMEDIES. Any act, conveyance, contract, or authorization by the Grantor,
9 whether written or oral, that uses or would cause to be used, or would permit use of the Property
10 contrary to the terms of the Easement created by acceptance of this Offer will be deemed a violation
11 and a breach hereof. Grantor, Grantee, and any heirs, successors and assigns of each, may pursue any
12 and all available legal and/or equitable remedies to enforce the terms and conditions of the Easement
13 and their respective interests in the Property.

14 Grantee shall have the right to prevent and correct violations of the terms of the
15 Easement. If the Grantee finds what it believes is a violation, it may at its discretion take appropriate
16 legal action to ensure compliance with the terms, conditions, covenants and Purpose of the Easement,
17 and shall have the right to correct violations and prevent the threat of violations. Except when an
18 ongoing or imminent violation could diminish or impair the Protected Values, Grantee shall give the
19 Owner written notice of the violation and fifteen days to correct it before filing any legal action.

20 If a court with jurisdiction determines that a violation may exist or has occurred,
21 Grantee may obtain an injunction, specific performance, or any other appropriate equitable or legal
22 remedy. A court may also issue an injunction requiring the Owner to restore the Property to its
23 condition prior to the violation. In any case where a court finds that a violation has occurred, the
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1 Owner shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation,
2 including but not limited to reasonable attorney's fees. Grantee's remedies under this section shall be
3 cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
4

5 Without limiting the Owner's liability therefor, Grantee shall apply damages recovered
6 to the cost of undertaking any corrective action on the Property. Should the restoration of lost values
7 be impossible or impractical for whatever reason, Grantee shall apply any and all damages recovered
8 to furthering Grantee's mission, with primary emphasis on conservation easement acquisition and
9 enforcement in the vicinity of the Property.
10

11 If Grantee fails to enforce any term, condition, covenant or restriction of the Easement
12 as determined by the ED, the ED shall have the right to enforce this Easement after giving notice to
13 the Owner and Grantee and providing a reasonable opportunity under the circumstances for Grantee to
14 enforce the Easement. If the ED determines that the Grantee has failed to enforce any of the terms,
15 conditions, covenants or restrictions of the Easement, the ED shall be entitled to exercise the right to
16 enter the Property, including right of immediate entry where the ED determines that immediate entry
17 is required to prevent, terminate or mitigate a violation of the Easement.
18

19 Grantee's failure or refusal to exercise any rights under the Easement in response to the
20 Owner's breach of any term herein shall not constitute a waiver or forfeiture of Grantee's right to
21 enforce any term, condition, covenant or Purpose of the Easement or any other term.
22

23 13. CONDEMNATION. If condemnation of the Property or the Easement created by
24 acceptance of this Offer is threatened or initiated, the Owner and Grantee shall promptly inform each
25 other and the Commission in writing. If the Property or the Easement is taken, in whole or in part, by
26 exercise of the power of eminent domain by any public, corporate, or other authority, the parties shall
27 join in appropriate actions at the time of the taking to recover the full value of the taking and all

1 incidental or direct damages resulting from the taking. Any proceeds shall be divided in accordance
2 with the proportionate value of the Owner's and Grantee's respective interests at the time of the
3 taking, it being expressly agreed that the Easement constitutes a compensable property right. Grantee
4 shall be entitled to compensation in accordance with applicable law for the value of the Easement
5 taken, and the Owner shall be entitled to compensation in accordance with applicable law for the value
6 of the underlying fee taken. Grantee shall apply any and all proceeds recovered to furthering the
7 Grantee's mission, with primary emphasis on conservation easement acquisition and enforcement in
8 the vicinity of the Property.
9

10
11 14. TAXES AND ASSESSMENTS. The Owner shall pay or cause to be paid all
12 real property taxes and assessments levied or assessed against the Property during Owner's respective
13 terms of ownership. Furthermore, the easement and restrictions shall be deemed to constitute a
14 servitude upon and burden to the Property within the meaning of section 3712(d) of the California
15 Revenue and Taxation Code, or successor statute, which survives a sale of tax-deeded property.
16

17 15. MAINTENANCE.
18 Neither Grantee nor any of its successors, successors-in-interest, or assigns shall be obligated to
19 maintain, improve, or otherwise expend any funds in connection with the Property or any interest or
20 the Easement created by this Offer, but Grantee may elect to expend such funds as may be or become
21 available to it for the purposes of restoring and/or enhancing wildlife habitat and plant communities
22 native to this segment of coastline, and/or for the purposes of maintaining or improving existing public
23 pedestrian trails.
24

25 16. TRANSFER OF PROPERTY INTEREST.
26 Any time the Property itself, or any interest in it, is transferred by the Owner to any third party, the
27 Owner shall notify Grantee in writing (with copies to the Commission) at least thirty days prior to the

1 transfer of title to the Property or interest, and the document of conveyance shall expressly incorporate
2 by reference this Offer, or, once created, the Easement. Any document conveying a lease of the
3 Property shall expressly incorporate by reference this Offer, or, once created, the Easement. Failure of
4 the Owner to do so shall not impair the validity of the Offer or Easement, or limit their enforceability
5 in any way.
6

7 17. AMENDMENT OR TERMINATION OF EASEMENT.

8 This Offer and the Easement created by acceptance of the Offer may be amended or terminated only
9 with the written consent of Grantee and the ED. Any amendment shall be consistent with the purpose
10 of the Offer and the Easement, respectively. No amendment shall diminish or affect the perpetual
11 duration or the purpose of the Easement, or the status or rights of Grantee under the terms of the
12 Easement. The Offer, the Easement and any amendment to them shall be recorded in the Official
13 Records of Orange County. Recorded copies of any amendments to this Offer or the Easement shall
14 be provided to and retained by the Commission.
15

16 18. LIABILITY AND INDEMNIFICATION.

17 This Offer is made and shall be accepted upon the express condition that Grantee and the State, and
18 their respective successors, successors-in-interest, assigns, agencies, departments, officers, agents, and
19 employees are to be free from all liability and claim for damages by reason of any injury to any person
20 or persons, including Grantor, or property of any kind whatsoever and to whomsoever belonging,
21 including Grantor, from any cause or causes whatsoever, except matters arising out of the sole
22 negligence of Grantee and any successors and assigns, while in, upon, or in any way connected with
23 the Property; Grantor, during Grantor's period of ownership, and Grantor's successors in interest as to
24 their respective periods of ownership, hereby covenanting and agreeing to indemnify and hold
25 harmless Grantee, the State of California, and their respective successors, successors-in-interest,
26
27

1 assigns, agencies, departments, officers, agents and employees from all liability, loss, costs, and
2 obligations on account of or arising out of such injuries or losses however occurring, or alleged to
3 have occurred, during the respective period(s) of ownership. Grantee and any successors, successors-
4 in-interest, and assigns, shall have no right of control over, nor duties and responsibilities with respect
5 to the Property that would subject Grantee and any successors and assigns to any liability occurring on
6 the land by virtue of the fact that the right of Grantee and any successors, successors-in-interest, and
7 assigns to enter the land is strictly limited to preventing uses inconsistent with the interest granted and
8 does not include the right to enter the land for the purposes of correcting any dangerous condition as
9 defined by California Government Code § 830.
10

11
12 19. GRANTOR'S ENVIRONMENTAL WARRANTY. Without limiting the
13 preceding paragraph, Grantor warrants that it has no actual knowledge of the presence of or a release
14 or threatened release of hazardous substances or wastes on the Property and hereby promises to defend
15 and indemnify Grantee and the Commission against all litigation, claims, demands, penalties and
16 damages, including reasonable attorneys' fees, arising from or connected with the presence or any
17 release of hazardous waste on the Property or violation of federal, state or local environmental laws
18 pertaining to the Property, occurring, or alleged to have occurred, during the Grantor's period of
19 ownership, and with Grantor's successors in interest to so defend and indemnify with respect to such
20 releases occurring, or alleged to have occurred, within their respective periods of ownership.
21

22
23 Notwithstanding any other provision herein to the contrary, and without limitation, the
24 Grantor and Grantee do not intend this Offer or the Easement created by its acceptance to be construed
25 such that it creates in or gives Grantee or the Commission:

26 a. The obligations or liability of an "owner" or "operator" as those words are
27 defined and used in environmental laws, as defined below, including, without limitation, the

1 Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42
2 USC section 9601 et seq.; “CERCLA”).

3 b. The obligations or liability of a person described in CERCLA at 42 USC
4 section 9607 (a)(3) or (4).

5 c. The obligations of a responsible person under any applicable Environmental
6 Laws, as defined below.

7 d. The right to investigate and remediate any Hazardous Materials, as defined
8 below, associated with the Property.

9 e. Any control over the Owner’s ability to investigate, remove, remediate, or
10 otherwise clean up any Hazardous Materials associated with the Property.

11 The term “Hazardous Materials” includes, without limitation, (a) material that is
12 flammable, explosive, or radioactive; (b) petroleum products; and (c) hazardous materials, hazardous
13 wastes, hazardous or toxic substances, or related materials defined in the CERCLA (42 USC section
14 9601 et seq.), the Hazardous Materials Transportation Act (49 USC section 5101, et seq.), the
15 Hazardous Waste Control Law (California Health and Safety Code section 25100 et seq.), the
16 Hazardous Substance Account Act (California Health and Safety Code section 25300 et seq.), and in
17 the regulations adopted and publications promulgated pursuant to them, or any other applicable
18 federal, state, or local laws, ordinances, rules, or regulations now in effect or enacted after this date.

19 The term “Environmental Laws” includes, without limitation, any federal, state or local or
20 administrative agency statute, regulation, rule, ordinance, order or requirement relating to pollution,
21 protection of human health, the environment or Hazardous Materials.

22 20. GRANTOR’S TITLE WARRANTY. Grantor represents and warrants that
23 Grantor owns the entire fee simple interest in the Property, including the entire mineral estate, and
24
25
26
27

1 hereby promises to defend this Offer and the Easement created by its acceptance against all claims that
2 may be made against them, except for claims arising out of the prior easements of record, any
3 unrecorded mining claims and any reservation of mineral rights reserved in the original Federal Patent
4 by which the Property passed into private ownership. Other than accrued but unpaid current real
5 property taxes, there are no financial liens or financial encumbrances existing as of the date of the
6 execution of this Offer to the best of Grantor's knowledge, information and belief
7

8 21. SUBSEQUENT EASEMENTS. The grant of any easements, other interests in
9 land, or use restrictions that might diminish or impair the Protected Values or open space character of
10 the Property is prohibited. Grantee's written approval shall be obtained at least thirty days in advance
11 of executing any proposed easement or use restriction on the Property, and such subsequent easements
12 and use restrictions shall make reference to this Offer or the subsequent Easement, respectively, and
13 be subordinate to them. Grantee shall promptly notify the Commission if Grantee approves any
14 subsequent easement or use restriction. Grantee shall disapprove any proposed subsequent easement or
15 use restriction which appears to diminish or impair the Protected Values.
16

17 22. INTERPRETATION. This Offer and the Easement created by its acceptance
18 shall be interpreted under the laws of the State, resolving any ambiguities and questions of the validity
19 of specific provisions so as to give maximum effect to its conservation purposes and the Protected
20 Values.
21

22 23. NOTICES. Any notices to the Grantor or the Commission required by this
23 Offer and the Easement created by its acceptance shall be in writing and shall be personally delivered
24 or sent by first class mail, to the following addresses, unless an entity has notified the others of a
25 change of address:
26

27 To Grantor:

1 Driftwood Properties, LLC
2 Attn: Richard F. Ross
2398 East Camelback Road, Ste 1100
3 Phoenix, AZ 85016-9016

4 With a copy to:

5 Driftwood Properties, LLC
6 Attn: Alex Hill
3838 Camino Del Rio North, Suite 162
7 San Diego, CA 92108

8 To the Commission:

9 California Coastal Commission
10 Executive Director
45 Fremont Street, Suite 2000
11 San Francisco, CA 94105

12 24. SUCCESSORS AND ASSIGNS. The terms, covenants, conditions, obligations
13 and reservations contained in this Offer shall be binding upon and inure to the benefit of Grantor,
14 Grantee, and successors and assigns of each, whether voluntary or involuntary.
15

16 25. CONSTRUCTION OF VALIDITY. If any provision of this instrument is
17 held to be invalid or for any reason becomes unenforceable, no other provision shall be thereby
18 affected or impaired.

19 26. REPRESENTATION OF SIGNATORIES. The signatories below represent
20 that they have full authority to bind their respective entities.
21

22 Executed this _____ day of _____, 20_____, at
23 _____, California.
24

25
26 **DRIFTWOOD PROPERTIES, LLC** (Grantor)
27 a Delaware limited liability company

By: Laguna Beach Holdings LLC,

1 a Delaware limited liability company,
2 Its: Sole Member

3 By: Ohana Laguna LLC,
4 a Delaware limited liability company
5 Its: Manager

6 By: _____
7 Alex Hill
8 Its: Vice President

9 *** NOTARY ACKNOWLEDGMENT(S) ON NEXT PAGE(S) ***
10
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1 STATE OF CALIFORNIA
2 COUNTY OF _____
3 On _____, before me, _____, Notary Public,
4 personally appeared _____, who proved to me on the basis of
5 satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and
6 acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and
7 that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
8 person(s) acted, executed the instrument.

9 I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
10 paragraph is true and correct.

11
12 WITNESS my hand and official seal.

13
14 Signature _____ (Seal)

15
16 STATE OF CALIFORNIA
17 COUNTY OF _____
18 On _____, before me, _____, Notary Public,
19 personally appeared _____, who proved to me on the basis of
20 satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and
21 acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and
22 that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
23 person(s) acted, executed the instrument.

24 I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
25 paragraph is true and correct.

26
27 WITNESS my hand and official seal.

Signature _____ (Seal)

This is to certify that the Irrevocable Offer to Dedicate Open Space Conservation Easement set forth above is hereby acknowledged by the undersigned officer on behalf of the California Coastal Commission pursuant to authority conferred by the California Coastal Commission when it issued Cease and Desist Order No. CCC-10-CD-01 and Restoration Order No.CCC-10-RO-01 on December 16, 2010 and the California Coastal Commission consents to recordation thereof by its duly authorized officer.

Dated: _____

CALIFORNIA COASTAL COMMISSION

Print Name and Capacity of Above

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

On _____ before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

(Seal)

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

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EXHIBIT A

That certain parcel of land situated in the City of Laguna Beach, County of Orange, State of California, being that portion of Fractional Section 31, Township 7 South, Range 8 West of the San Bernardino Meridian, according to the official plat of said land filed in the District Land Office May 19, 1873, described as follows:

BEGINNING at the most westerly corner of Lot 8 of Tract No. 2067 as shown on a map thereof filed In Book 68, Pages 37 through 39 of Miscellaneous Maps in the Office of the County Recorder of said Orange County, said most westerly corner being the southwesterly terminus of that certain course shown on said map as having a bearing and distance of "North 40° 11' 48" East 130.00 feet"; thence along the northwesterly northerly and northeasterly lines of said tract through the following courses: along said course North 40° 11' 43" East 130.00 feet; thence South 79° 02' 45" East 157.88 feet; thence South 37° 30' 02" East 112.00 feet; thence South 07° 29' 46" East 222.89 feet; thence South 85° 50' 00" East 173.25 feet; thence South 04° 10' 00" West 65.92 feet; thence South 85° 50' 00" East 140.00 feet; thence South 09° 38' 45" East 92.20 feet; thence South 34° 02' 52" East 115.07 feet; thence South 03° 28' 00" East 95.92 feet; thence North 86° 32' 00" East 102.75 feet to the northeasterly corner of Lot 28 of said tract; thence leaving said northerly line, along the easterly prolongation of the northerly line of said Lot 28 North 86° 32' 00" East 50.00 feet to the northwesterly corner of Parcel 1 as shown on a map thereof filed In Book 80, Page 42 of Record of Surveys in said Office of the Orange County Recorder, said corner also being the southwesterly corner of the land described In Parcel A In a Grant Deed to South Coast County Water District of Orange County, California recorded October 11, 1971 in Book 9838, Page 779 of Official Records in said Office of the Orange County Recorder; thence along the westerly, northerly and easterly lines of said land through the following courses: North 03° 28' 00" West 135.00 feet; thence North 63° 02' 00" East 81.00 feet; thence South 78° 43' 00" East 69.00 feet; thence South 31° 12' 00" East 57.72 feet; thence South 06° 48' 00" West 100.25 feet to the northeasterly corner of Parcel 2 of said record of survey, said corner also being the most northerly corner of Tract No. 8296 as shown on a map thereof filed in Book 349, Pages 48 through 50 of Miscellaneous Maps in said Office of the Orange County Recorder; thence leaving said easterly line, along the northeasterly line of said tract South 49° 13' 17" East 948.10 feet to the west line of the east one-half of the east one-half of said Fractional Section 31; thence along said west line North 00° 27' 51" East 3254.75 feet to the southeast corner of Lot 8 of said Fractional Section 31; thence along the south line of said lot North 89° 37' 53" West 1370.88 feet to the southwest corner of said lot; thence along the west line of the east one-half of said Fractional Section 31 South 00° 16' 58" West 1178.05 feet to the easterly prolongation of the southerly line of Block M of Arch Beach Heights as shown on a map thereof filed in Book 8, Page 65 of Miscellaneous Maps in said Office of the Orange County Recorder; thence North 43° 05' 00" East 515.25 feet; thence North 09° 45' 00" East 377.51 feet; thence North 87° 45' 00" East 458.00 feet; thence South 05° 15' 00" West 612.00 feet; thence South 43° 35' 00" West 930.00 feet to the beginning of a tangent curve concave northwesterly and having a radius of 350.00 feet; thence along said curve southwesterly 129.85 feet through a central

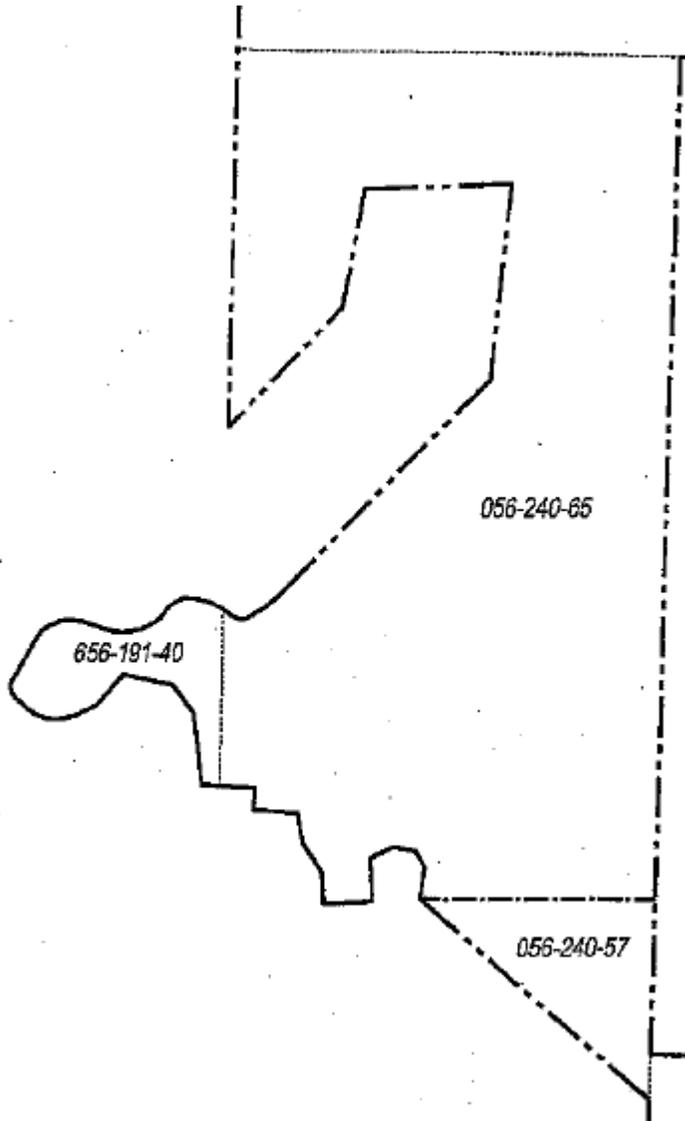
1 angle of 21° 15' 27" to a point of compound curvature with a curve concave northerly
2 and having a radius of 45.00 feet, a radial line of said curves from said point
3 bears North 25° 09' 33" West; thence along said curve westerly 50.15 feet through a
4 central angle of 63° 51' 00" to a point of reverse curvature with a curve concave
5 southerly and having a radius of 250.00 feet, a radial line of said curve from said
6 point bears South 38° 41' 27" West; thence along said curve northwesterly 139.89 feet
7 through a central angle of 32° 03' 39" to a point of compound curvature with a curve
8 concave southeasterly and having a radius of 80.00 feet; a radial line of said
9 curve from said point bears South 06° 37' 48" West; thence along said curve westerly
10 87.64 feet through a central angle of 62° 46' 00" to a point of reverse curvature
11 with a curve concave northerly and having a radius of 170.00 feet, a radial line
12 of said curve from said point bears North 56° 08' 12" West; thence along said curve
13 southwesterly 218.48 feet through a central angle of 73° 38' 12" ; thence tangent
14 from said curve North 72°30'00" West 78.00 feet to the beginning of a tangent curve
15 concave southerly and having a radius of 125.00 feet; thence along said curve westerly
16 170.90 feet through a central angle of 78° 20' 00"; thence tangent from said curve
17 South 29° 10' 00" West 144.00 feet to the beginning of a tangent curve concave
18 easterly and having a radius of 45.00 feet; thence along said curve southwesterly
19 and southerly 61.31 feet through a central angle of 78° 04' 00"; thence tangent from
20 said curve South 48° 54' 00" East 44.00 feet to the beginning of a tangent curve
21 concave northerly and having a radius of 150.00 feet; thence along said curve
22 southeasterly and easterly 203.25 feet through a central angle of 77° 38' 15" to a
23 point of reverse curvature with a curve concave southeasterly and having a radius
24 of 90.00 feet, a radial line of said curve from said point bears
25 South 36° 32' 15" East; thence along said curve northeasterly 35.81 feet through a
26 central angle of 22° 47' 41" to the POINT OF BEGINNING.

17 CONTAINING: 74.81 Acres, more or less.

18 The above described land also being Parcel 3 as depicted in Exhibit "B" attached to Lot Line
19 Adjustment LL 95-01 recorded November 22, 1995 as Instrument No. 95-520276 in the Official
20 Records of Orange County, California

21 Also known as Assessors Parcel Numbers 656-191-40; 056-240-65 and 056-240-57

The Following Diagram of the Property is for Illustrative Purposes only.



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EXHIBIT B

PUBLIC RESOURCES CODE § 30106

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1 **EXHIBIT B**

2
3 Public Resources Code § 30106

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

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

EXHIBIT C

FORM OF ACCEPTANCE

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1 RECORDING REQUESTED BY AND
2 WHEN RECORDED MAIL TO:

EXHIBIT C
PERMIT NO:

3 CALIFORNIA COASTAL COMMISSION
4 45 FREMONT STREET, 20TH FLOOR
5 SAN FRANCISCO, CA 94105

ACCEPTANCE CERTIFICATE
PAGE ONE (1) OF TWO (2)

6 CERTIFICATE OF ACCEPTANCE

7 This is to certify that the interest in real property conveyed by the Offer to Dedicate dated
8 _____, executed by _____,
9 and recorded on _____ as Instrument Number _____,
10 attached hereto as Exhibit A and incorporated herein by reference, is hereby accepted by
11 _____, a public agency/private association on
12 _____, pursuant to authority conferred by resolution of the
13 _____ adopted on _____, and the
14 grantee consents to recordation thereof by its duly authorized officer.

15 By: _____

16 For: _____

17 STATE OF CALIFORNIA

18 COUNTY OF _____

19 On _____, before me, _____, a Notary Public,
20 personally appeared _____, who proved to me on the basis of
21 satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and
22 acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and
23 that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the
24 person(s) acted, executed the instrument.

25 I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
26 paragraph is true and correct.

27 WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT BY THE CALIFORNIA COASTAL COMMISSION

OF ACCEPTANCE OF OFFER TO DEDICATE

This is to certify that _____ is a public agency/private association acceptable to the Executive Director of the California Coastal Commission to be Grantee under the Offer to Dedicate executed by _____ on _____, and recorded on _____, in the office of the County Recorder of _____ County as Instrument Number _____.

Dated: _____

California Coastal Commission

STATE OF CALIFORNIA

COUNTY OF _____

On _____, before me, _____, a Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT C

PREEMPTIVE PURCHASE RIGHT AGREEMENT

**Recording Requested By and
When Recorded Return to:**

State Coastal Conservancy
1330 Broadway, Suite 1300
Oakland, CA 94612

Attn: Legal Counsel: GA

EXEMPT FROM RECORDING FEES -- GOVERNMENT CODE SECTION 6103

PREEMPTIVE PURCHASE RIGHT

This Preemptive Purchase Right Agreement (the "Agreement") is made this ____ day of _____, 20__ by and between Driftwood Properties, LLC ("Grantor") and the California State Coastal Conservancy ("Grantee"). Grantor and Grantee may be referred to as the "Parties" hereinafter.

RECITALS

- A. Grantor is the fee owner of real property situated in Orange County, California, as described in Exhibit A attached hereto and made a part hereof (the "Property").
- B. Grantee is an agency of the State of California charged under Division 21 of the California Public Resources Code with protecting, preserving, and enhancing the coastal resources of California.
- C. Pursuant to a Cease and Desist Order and Restoration Order agreed to by Grantor and issued by the California Coastal Commission ("Commission") on December 16, 2010 pursuant to California Public Resources Code sections 30810 and 30811, respectively, ("Consent Orders"), Grantor has agreed to grant, and the Commission has ordered Grantor to grant, to Grantee preemptive purchase rights on the terms and conditions set forth in this Agreement, the form of which was prescribed in the Consent Orders.

NOW THEREFORE, the parties agree as follows:

- 1. Right of First Offer at Appraised Value.
 - A. Grantor shall offer the Property for sale to Grantee in writing upon all terms and conditions which Grantor is willing to offer to any third party or on the open market ("Notice"), consistent with the requirements of Paragraph B of this Section 1, before either:

1. Selling, donating, quitclaiming, or otherwise conveying, or offering to sell, donate, quitclaim or otherwise convey the Property, in part or in whole, to any third party, or
 2. Developing, or applying to a local or state agency to secure the right to develop or rezone, any portion of the Property. For the purposes of this Agreement, “develop” is used as that term is defined in the California Coastal Act, Section 30106 of the California Public Resources Code, other than for purposes of open space and habitat conservation uses.
- B. Notwithstanding Paragraph 1(A), Grantor’s offer to Grantee shall be on terms not less favorable to Grantee than the Fair Market Value of the Property assuming the only permissible uses of the Property are those for which the Property is used at the time of this Agreement. Fair Market Value shall be established by an appraisal paid for by Grantor and prepared by an appraiser mutually acceptable to Grantor and Grantee, or, if the parties are unable to agree, by an appraiser designated by a third party mutually acceptable to Grantor or Grantee, or, if Grantor and Grantee cannot agree on either of the above, through an arbitration on value. Grantor shall inform the appraiser of the permissible use assumption to be used in making the appraisal, as described in the first sentence of this paragraph.
- C. If Grantor provides notice to Grantee of Grantor’s intention to sell, donate, quitclaim, or otherwise convey the Property pursuant to Paragraph 1(A)(1) of this Agreement, Grantee shall notify Grantor of its acceptance of the offer to purchase set forth in the Notice within thirty days after Grantee’s receipt of the Notice (“Deadline Date”). If Grantee fails to so notify Grantor of its acceptance by the Deadline Date, Grantee's right of first offer shall be deemed to have automatically and without further notice expired, and Grantor shall thereafter have the right to offer the Property to any third party or on the open market on terms and conditions stated in the Notice. If Grantor does not consummate a sale or other conveyance of the Property on the terms and conditions set forth in the Notice within 120 days after the Deadline Date, this right of first offer shall revive. If, however, Grantor consummates the sale or other conveyance of the Property to a Third Party within said 120 days after the Deadline Date, this preemptive purchase right shall thereupon automatically without further notice terminate. In advance any of such consummation, Grantee shall, upon request of Grantor, provide to a duly licensed title insurance company serving as an escrow company in the transaction in which such a sale or other transfer to a third party is to be so consummated, a fully executed and acknowledged document in a form acceptable to said title insurance company (the “Confirmation Document”) confirming that, provided a sale to a third party on the terms and conditions set forth in the Notice is consummated by recordation within the 120 day period prescribed in this sub-section, such timely consummation shall result in the termination of the preemptive purchase right established in this Agreement, and that concurrently with, and only concurrently with, such timely consummation and recordation of such sale, the Confirmation Document shall be recorded

concurrently with the Grant Deed or other conveyance document by which such sale to a third party is completed, and, in the alternative, that upon expiration of the said 120 day period without such consummation and recordation, for any reason other than the failure of Grantee or Grantee's successor in interest to provide the Confirmation Document, then the Confirmation Document, and all copies thereof shall be returned to Grantee.

- D. If Grantor provides notice to Grantee of Grantor's intention to develop or apply to a local or state agency to secure the right to develop or rezone any portion of the Property pursuant to Paragraph 1(A)(2) of this Agreement, for uses other than for open space and habitat conservation, Grantor shall describe in the Notice the contemplated development or application to develop or rezone. Grantee shall notify Grantor of its acceptance of the offer to purchase set forth in the Notice within thirty (30) days after Grantee's receipt of the Notice ("Deadline Date"). If Grantee fails to so notify Grantor of its acceptance by the Deadline Date, Grantor shall remain in possession of the Property and be able to continue its efforts to develop or apply for approval to develop or rezone the Property as described in the Notice, but Grantee's right of first offer shall not expire and Grantor's obligations to offer the Property to Grantee as described in Paragraph 1(A) of this Agreement shall remain.

2. Notices. All notices required or permitted under this Agreement shall be in writing and delivered to the Parties by facsimile transmission, personally by hand, courier service, or express mail, or by first class mail, postage prepaid, at the addresses stated below. All notices will be considered given: (a) if sent by mail, when deposited in the mail, first class, postage fully prepaid, addressed to the Parties to be notified; (b) if delivered by hand, courier service or express mail, when delivered; or (c) if transmitted by facsimile, when transmitted. The Parties may, by notice as provided above, designate a different address to which notice will be given. The addresses of the Parties are as follows:

GRANTOR:

Driftwood Properties, LLC
Attn: Richard F. Ross
2398 East Camelback Road, Ste 1100
Phoenix, AZ 85016-9016

With a copy to:

Driftwood Properties, LLC
Attn: Alex Hill
3838 Camino Del Rio North, Suite 162
San Diego, Ca 92108

GRANTEE:

Executive Officer
State Coastal Conservancy

1330 Broadway, Suite 1300
Oakland, CA 94612

Copies of any documents sent to the Parties shall also be sent to:

California Coastal Commission
Attn: Aaron McLendon
200 Oceangate, Suite 1000
Long Beach, CA 90802

3. Time is of the Essence; Dates. Time is of the essence of this Agreement. If any date specified in this Agreement falls on a Saturday, Sunday or a public holiday, that date will be considered to be the succeeding day on which public agencies and major banks are open for business.
4. Binding on Successors. The Agreement shall be binding not only on the Parties but also on their respective successors and assigns.
5. Additional Documents. The parties agree to sign such additional documents, including escrow instructions, as may be reasonable and necessary to carry out the provisions of this Agreement.
6. Notice regarding foreclosure or bankruptcy. Grantor shall promptly notify Grantee and the Commission in case of threatened or actual foreclosure, or threatened or actual bankruptcy.
7. Enforcement. If Grantor sells or purports to sell the property in derogation of the State's rights under this agreement, the State shall be entitled to pursue any remedy available to it at law or in equity, including, without limitation, an action for rescission of the sale, specific performance of this agreement, and damages. The State, in that instance, may record a notice of lis pendens or other notice or filing in the county records.
8. Entire Agreement. This Agreement, in combination with the Consent Order, is the entire agreement between the Parties concerning Grantee's preemptive purchase right and supersedes all prior and contemporaneous agreements, representations and understandings.
9. Amendment. No amendment of this Agreement will be binding unless in writing and signed by the Parties, and no amendment shall be binding without a Commission-approved amendment to the Consent Order authorizing the amendment to this Agreement.
10. Waiver. No waiver of any term of this Agreement will be considered to constitute a waiver of any other term, whether or not similar, nor will any

waiver be considered a continuing waiver. No waiver will be binding unless in writing and signed by the party making the waiver.

11. Assignment of Grantee's Interest. Upon approval by the Executive Director of the California Coastal Commission, Grantee's interest may be freely assigned without the prior consent of Grantor.
12. Duration. This recorded Preemptive Purchase Right shall remain in effect for fifty (50) years from the date set forth in the preamble, unless sooner terminated as provided in Section 1. C. above.
13. Severability. Each term of this Agreement is severable from any and all other terms of this Agreement. Should any term of this Agreement be, for any reason, unenforceable, the balance will still be in full force and effect.
14. Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of California.
15. Grantor's representations and warranties. Grantor represents and warrants to Grantee that Grantor has full legal authority to enter into this agreement, and has or will have full legal authority to enter into a purchase and sale agreement pertaining to the Property and consummate the transactions contemplated by those documents at the time Grantee exercises a right of first offer. No consent of any holder of any other interest in the real property, partner, shareholder, creditor, investor, judicial or administrative body, authority or other party is required that has not been obtained.
16. Recordation. This Agreement shall be recorded in the official records of the County of Orange promptly after execution.

DRIFTWOOD PROPERTIES, LLC (GRANTOR)

a Delaware limited liability company,

By: Laguna Beach Holdings LLC,
a Delaware limited liability company,
its Sole Member,

By: Ohana Laguna LLC, a Delaware limited
liability company, its Manager,

By: _____
Alex Hill, its Vice-president

CALIFORNIA STATE COASTAL CONSERVANCY (GRANTEE)

Samuel Schuchat
Executive Officer

Date

[ACKNOWLEDGEMENTS FOLLOW LEGAL DESCRIPTION]

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY
FOR PREFERENTIAL PURCHASE RIGHT AGREEMENT

In the City of Laguna Beach, County of Orange, State of California, being that portion of Fractional Section 31 and Fractional Section 32, Township 7 South, Range 8 West, San Bernardino Meridian, more particularly described as follows:

Beginning at the quarter-section corner in the line between said Fractional Section 31 and Section 30, Township 7 South, Range 8 West, San Bernardino Meridian, as said quarter-section is shown on a Map of Tract No. 6029 recorded in Book 230, Pages 21 through 26 of Miscellaneous Maps in the Office of the County Recorder of said Orange County, California, said quarter-section corner being also the Northeasterly corner of said Tract No. 6029; thence, along the Northerly line of said Fractional Section 31, North $89^{\circ} 10' 38''$ East, 1420.33 feet to the Easterly line of Lot 8 of said Fractional Section 31; thence along said Easterly line South $0^{\circ} 05' 08''$ West, 704.85 feet to a corner in the boundary of Lot 39 of the Miguel Rancho, as shown on a Map recorded in Book 2, Pages 230 and 231 of Patents, Records of Los Angeles County, California; thence along said boundary of Lot 39, North $89^{\circ} 55' 38''$ East, 2594.67 feet to the Northeast corner of Lot 1 of said Fractional Section 32; thence, along the Easterly line of said Lot 1 of Section 32, a distance of approximately 615 feet to the Southeasterly corner of said Lot 1, thence along the Southerly line of said Lot 1 a distance of approximately 1281 feet to the Southeast corner of Lot 1 of said Fractional Section 31; thence, along the Southerly line of said Lot 1, North $89^{\circ} 37' 53''$ West, 1369.98 feet to the Southwest corner of said Lot 1; thence North $89^{\circ} 37' 53''$ West, 1370.88 feet to a point in the West line of the East Half of said Fractional Section 31, said point being in the East line of said Tract 6029; thence Northerly along said West line, North $0^{\circ} 16' 58''$ East, 1273.38 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM that portion described as follows:

Beginning at the Northeast corner of Lot 119 in said Tract No. 6029; thence South $89^{\circ} 43' 02''$ East, 80.00 feet; thence South $0^{\circ} 16' 58''$ West, 89.38 feet; thence North $89^{\circ} 43' 02''$ West, 80.00 feet to the Southeast corner of said Lot 119; thence Northerly along the East line of said Lot 119, North $0^{\circ} 16' 58''$ East, 89.38 feet to the POINT OF BEGINNING.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, before me, _____,
Notary Public, personally appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF CALIFORNIA

COUNTY OF _____

On _____, before me, _____,
Notary Public, personally appeared _____, who
proved to me on the basis of satisfactory evidence to be the person(s) whose name(s)
is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their
signature(s) on the instrument the person(s), or the entity upon behalf of which the
person(s) acted, executed the instrument.

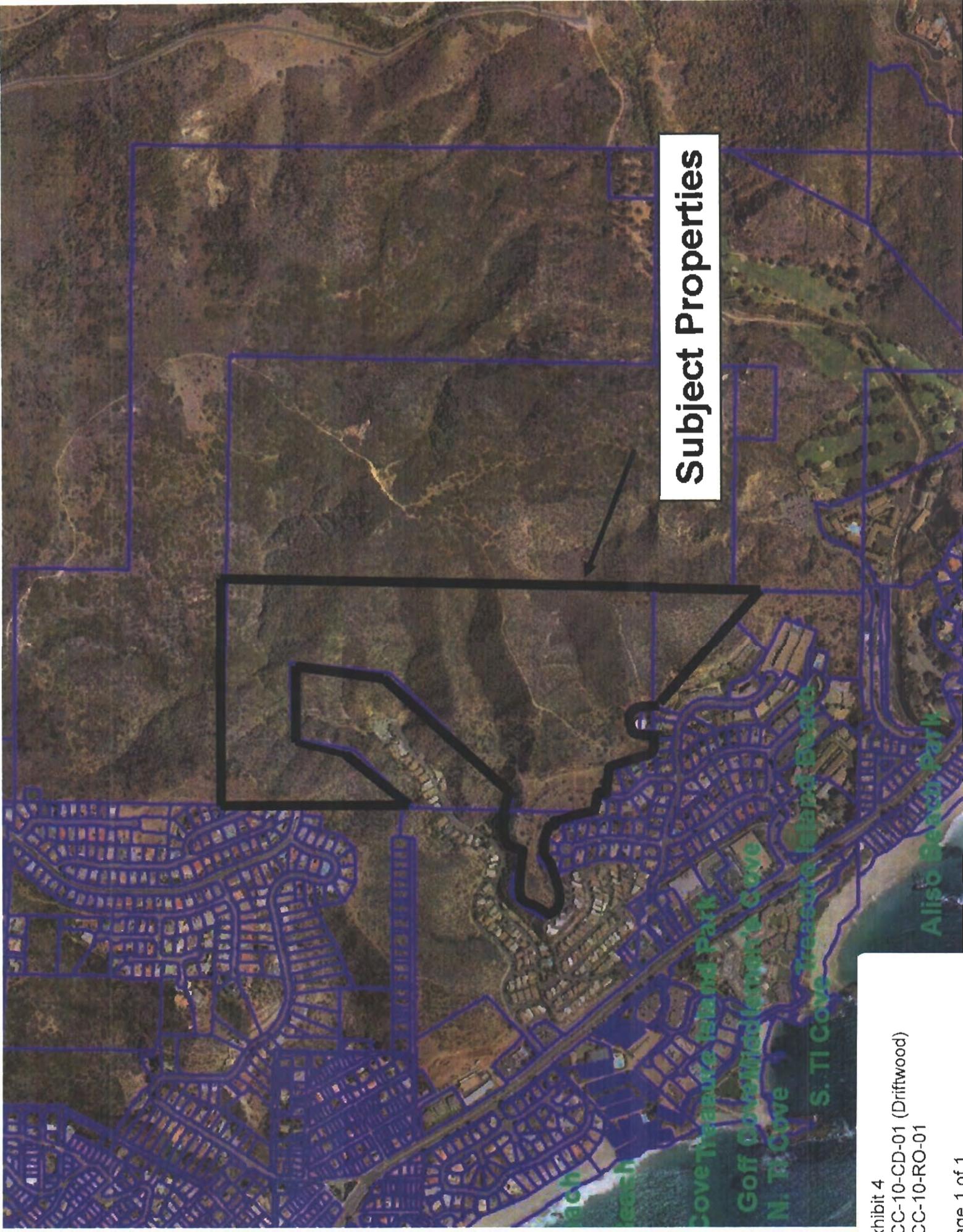
I certify under PENALTY OF PERJURY under the laws of the State of California that
the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

NO EXHIBITS

2 & 3



Subject Properties

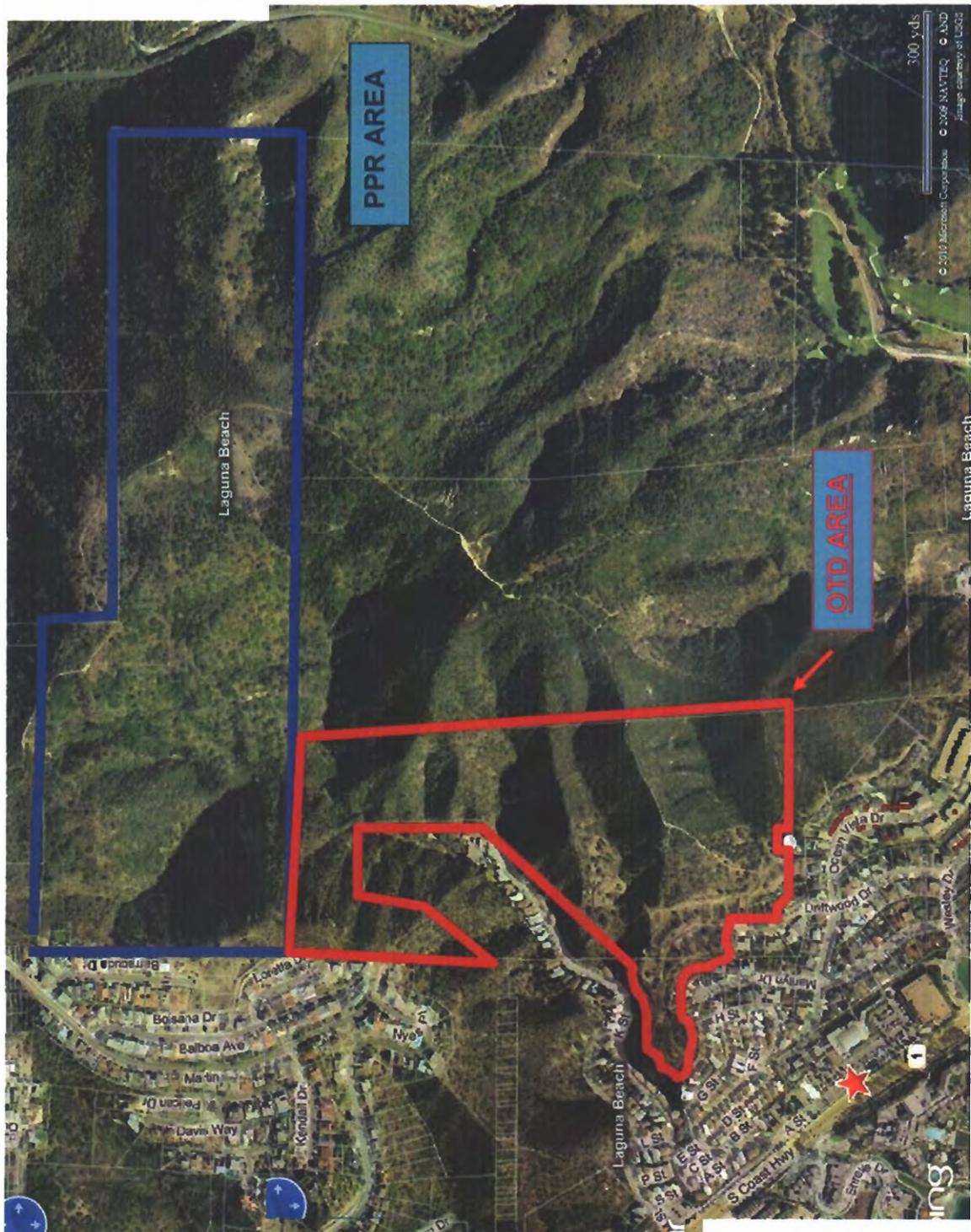


Exhibit 5
CCC-10-CD-01 (Driftwood)
CCC-10-RO-01



REMOVAL PLAN

FIGURE 6
IMPACTED AREAS

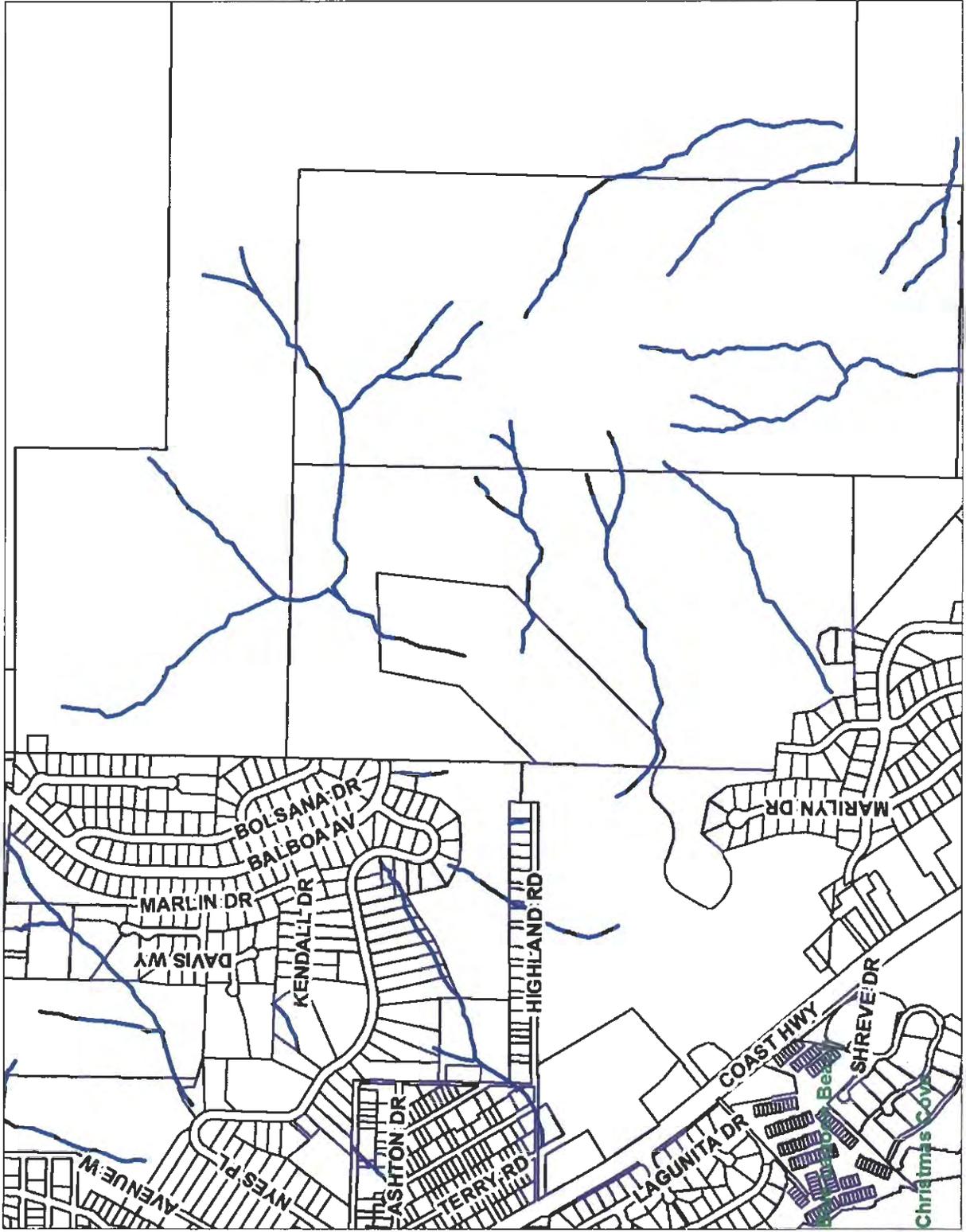


- Legend**
- Parcels
 - Significant Drainage Course C

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Notes
Enter Map Description

City of Laguna Beach



Data layers that appear on this map may or may not be accurate, current, or otherwise reliable.

1,368 Feet

684

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1,368

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885

**Via Regular and Certified Mail**

July 17, 2006

Mr. Michael Mohr
Driftwood Properties, LLC
720 E. University Ave., Suite 200
Los Gatos, CA 95032

Subject: Consent Restoration Order No. CCC-06-RO-03

Dear Mr. Mohr,

Enclosed is a copy of Consent Restoration Order CCC-06-RO-03 ("Order"), signed by all parties. On July 13, 2006, after a public hearing, the California Coastal Commission issued the Order to Driftwood Properties, LLC and Athens Development AC, LLC. The effective date of the Order is July 13, 2006. All deadlines for the work which is to be performed under this Order run from that date.

A copy of the Order has also been sent to Richard Ross, as he signed on behalf of Driftwood Properties, LLC pursuant to your June 16, 2006 letter of authorization. Staff greatly appreciates the willingness of both Driftwood Properties, LLC and Athens Development AC, LLC to work with us to resolve this matter quickly, effectively, and amicably. If you have any questions, please contact me at (415) 904-5294.

Sincerely,

A handwritten signature in cursive script that reads "Christine A. Chestnut".

Christine Chestnut
Headquarters Enforcement Analyst

Encl.: Restoration Order CCC-06-RO-03
cc without Encl.: Lisa Haage, Chief of Enforcement
Pat Veesart, Southern California Enforcement Team Leader

Exhibit 8
CCC-10-CD-01 (Driftwood)
CCC-10-RO-01

CONSENT RESTORATION ORDER CCC-06-RO-03:

1.0 Pursuant to its authority under Public Resources Code §30811, the California Coastal Commission hereby orders and authorizes Driftwood Properties, LLC, all of its partners; subsidiaries; members (including Laguna Beach Holdings LLC, the sole member of Driftwood Properties LLC; together with Ohana Laguna LLC, the sole member of Laguna Beach Holdings LLC); employees; agents including Athens Development AC (aka The Athens Group), LLC; contractors; and any persons acting in concert with any of the foregoing (hereinafter collectively referred to as "Respondents") to restore the property as described below. The restoration and mitigation required under this Consent Order is necessary to resolve a Coastal Act violation, consisting of the unpermitted removal of major vegetation, including 1341 square feet of Big-leaved Crownbeard (*Verbesina dissita*) (hereinafter referred to as "Crownbeard"), which is listed as a "threatened" species by the United States Department of Fish and Wildlife pursuant to the Federal Endangered Species Act (see 50 CFR 17.11, 61 FR 52370) and by the California Department of Fish and Game pursuant to the California Endangered Species Act (see 14 CCR § 670.2), from property owned and managed by Driftwood Properties, LLC, located at the northern terminus of Driftwood Drive in Laguna Beach, Orange County (APN 056-240-65) (hereinafter referred to as "the property"). This Consent Order authorizes the restoration and mitigation activities outlined in the Consent Order. Any development subject to Coastal Act permitting requirements that is not specifically authorized under this Consent Order requires a Coastal Development Permit. Through the execution of this Consent Order, the Respondents agree to comply with the following requirements, with respect to the property:

2.0 TERMS AND CONDITIONS

2.1 Within thirty days of issuance of this Consent Order, Respondents shall submit a Restoration Plan for the review and approval of the Executive Director of the Commission. The Executive Director may require revisions to this and any other deliverables required under the Consent Order, and the Respondents agree to revise and resubmit any such deliverables within ten days of receipt of a modification request from the Executive Director. The Restoration Plan shall outline all restoration and mitigation activities, sampling and analyzing procedures, monitoring and maintenance protocols, contingency plans, and any other activities related to the restoration and mitigation of the Restoration and Mitigation Areas, pursuant to this Consent Order. The Restoration Plan shall be prepared by a restoration ecologist(s) or resource specialist(s), qualified to perform restoration of Crownbeard and Big Pod Ceanothus (*Ceanothus megacarpus*) vegetation in the Laguna Beach area or under conditions similar to those that exist on the property, and shall include and address the following:

A. Definitions

1. Restoration Area: The area, shown as a polygon(s) and clearly labeled on the Restoration Plan Map, pursuant to Section 2.1.C.1.i below, containing the impacted Crownbeard.

2. Mitigation Area(s): The area(s), shown as a polygon(s) and clearly labeled on the Restoration Plan Map that contains the acacia to be removed pursuant to this Consent Order and that will contain the Big-Pod Ceanothus and additional Crownbeard to be planted pursuant to this Consent Order. If two distinct Mitigation Areas must be established- one that contains the acacia to be removed and that will contain the Big-Pod Ceanothus to be planted, and one that will contain the additional Crownbeard to be planted- the areas shall be shown as two polygons on the Restoration Plan Map and shall be clearly labeled as Crownbeard Mitigation Area and Acacia/Ceanothus Mitigation Area.

B. Goals

1. Restoration of 1341 square feet of impacted Crownbeard on the property to the condition that it was in prior to any disturbance, according to the performance standards set forth in Section 2.1.C of this Consent Order.
2. Mitigation, consisting of planting and maintaining an additional 670 square feet of Crownbeard on the property, to mitigate for the temporal loss and loss of fitness that has occurred as a result of the Coastal Act violation.
3. Removal of thirty-one non-native acacia trees from the Mitigation Area, the location of which shall be specified in the Restoration Plan, and prevention of regrowth or invasion of other non-native species in the Mitigation Area.
4. Mitigation, consisting of planting and maintaining thirty-one native Big Pod Ceanothus plants.
5. Monitoring and maintenance of the Restoration and Mitigation Areas for five years, to ensure successful restoration.

C. Methods

1. General Provisions: The Restoration Plan shall include:
 - i. A map showing the property and the location of all restoration and enhancement activities to be conducted pursuant to this Consent Order. The locations of the reference sites as defined in Provision 2.1.C.1.iii of this Consent Order, impacted Crownbeard, Crownbeard Mitigation Area, acacia to be removed, and Big Pod Ceanothus to be planted, shall each be individually

delineated and labeled on the map, so that each location can be clearly identified. The map will include global positioning system coordinates for these locations. Fuel modification zones, as required by the Laguna Beach Fire Department, shall also be delineated.

- ii. A schedule/timeline of restoration and mitigation activities, which identifies the parties who will be conducting the restoration and mitigation activities (agents, employees, contractors, resource specialists, etc.). Restoration procedures recommended by the ecologist/specialist charged with preparing the Restoration Plan shall be utilized. If these procedures require planting to occur at a certain time of year, the Executive Director may, as provided for under Provision 12.0 of this Consent Order and at the written request of Respondents, extend the deadline for planting that is set forth in Provision 2.3 of this Consent Order, to achieve optimal growth of the Crownbeard and Big Pod Ceanothus.
- iii. A detailed description of Crownbeard reference sites, setting forth the rationale for selection, identifying the location and species composition, and describing the history of disturbance from fuel modification activities, fire, etc. The reference sites shall be located as close as possible to the restoration areas.
- iv. A detailed description of all equipment to be used. Hand tools shall be utilized unless the Restoration Plan demonstrates to the satisfaction of the Executive Director that mechanized equipment is required and will not significantly impact resources protected under the Coastal Act, especially the threatened Crownbeard.
- v. A detailed description of any artificial inputs, such as watering or fertilization that may be used to support the establishment of the vegetation. The description shall include a list of the full range of amounts of inputs that may be utilized, and a statement that the minimum amount necessary for successful restoration shall be utilized. Respondents agree that no permanent irrigation system will be installed in the restoration area. If necessary, temporary above ground irrigation to provide for the establishment of the Crownbeard and Big Pod Ceanothus plants is allowed, however, for three years or until the vegetation has become sufficiently established to warrant cessation of the irrigation, whichever occurs first. If, after three years, the

vegetation has not become established, the Executive Director may allow, upon written request from the Respondents, for the continued use of the temporary irrigation system until such time as the vegetation is established.

- vi. An assessment of the possible impacts to sensitive resources on the property, including Crownbeard and dichondra (*Dichondra occidentalis*), from restoration and mitigation activities and procedures for both proactively and retroactively addressing these impacts. Respondents agree that restoration and mitigation activities shall be conducted in a way that minimizes impacts to the property. Other than those areas subject to restoration and mitigation activities, the property and surrounding areas shall not be disturbed by activities related to this Consent Order and to the approved Restoration Plan to the greatest extent practicable. Impacts shall be addressed in the appropriate annual report and shall be remedied by the Respondents. Prior to the initiation of any restoration and mitigation activities, the boundaries of the affected area shall be physically delineated in the field using temporary measures such as fencing, stakes, colored flags, or colored tape.
 - vii. Identification of a Commission-approved site for disposal of removed acacia, non-native plants, and any other waste materials that are generated during restoration and mitigation activities. Any hazardous waste shall be disposed of at an appropriate licensed hazardous waste disposal facility. If a disposal site within the Coastal Zone is selected, a coastal development permit may be required.
2. Impacted Crownbeard Revegetation: The Restoration Plan shall detail the methods used to successfully restore the impacted Crownbeard in the Restoration Area. The current location of the Crownbeard restoration area and the specific location of the Crownbeard "clumps" that are to be restored shall be clearly delineated and labeled on the Restoration Map prepared pursuant to Provision 2.1.C.1.i of this Consent Order. All non-natives, with the exception of any acacia, which shall be identified on the Restoration Map required under Section 2.1.C.1.i of this Consent Order, that are providing canopy shading for the impacted Crownbeard, shall be removed from the Restoration Area and maintenance of the area, as set forth in Section 2.1.F.2, shall prevent the re-establishment of non-natives to levels above those specified in Section 2.1.D.5 of this Consent Order. A contingency plan, outlining procedures to address unsuccessful revegetation

shall be included in the Monitoring section of the Restoration Plan, as set forth in Provision E.1 below. To ensure successful restoration of the Restoration Area, the contingency plan shall state that if no Crownbeard plants have become established within two years from the time of seeding, container plants shall be planted in the Restoration Area, the number of which shall be determined by the ecologist/specialist in order to ensure successful restoration under this Consent Order.

3. Mitigation - Additional Crownbeard: The Restoration Plan shall detail the methods used to ensure successful cultivation of an additional 670 square feet of Crownbeard. This section shall specify whether container plants or seed shall be used, the amount of plants or seed to be used, and the location of placement of the plants or seed within the Mitigation Area. All seed or plants shall come from onsite sources if possible. If this is not possible, seed or plants from a source as close to the property as is feasible shall be used, to ensure the genetic integrity of the Crownbeard. A contingency plan, outlining procedures to address unsuccessful growth of the additional Crownbeard shall be included in the Monitoring section of the Restoration Plan, as set forth in Provision E.1 below. To ensure successful vegetation of the Mitigation Area, the contingency plan shall state that if no Crownbeard plants have become established within two years from the time of seeding, container plants shall be planted at the Mitigation area, the number of which shall be determined by the ecologist/specialist in order to ensure successful restoration under this Consent Order. All non-natives shall be removed from the Mitigation Area and maintenance of the area, as set forth in Section 2.1.F.2, shall prevent the re-establishment of non-natives to levels above those specified in the Section 2.1.D.5 of this Consent Order.

4. Mitigation - Acacia Removal: The Restoration Plan shall detail the methods used to remove the thirty-one acacia trees specified in Section 2.1.C.1.i of this Consent Order and shall include information about the location of trees to be removed, the equipment to be used in the removal activities, and disposal procedures. Any acacia trees that are currently shading the impacted Crownbeard will not be removed, as their removal could compromise the Crownbeard revegetation. A contingency plan, which sets forth maintenance activities and alternative eradication methods to prevent regrowth shall be included in the Monitoring section of the Restoration Plan as set forth in Section 2.1.F.1 below. All other non-natives will be removed from the Mitigation Area and maintenance of the area, as set forth in Section 2.1.F.2,

shall prevent the re-establishment of non-natives to levels above those specified in the Section 2.1.C.5 of this Consent Order.

5. Mitigation - Big Pod Ceanothus: The Restoration Plan shall outline the methods used to plant the thirty-one Big Pod Ceanothus plants specified in Section 2.1.C.1.i of this Consent Order. This section shall specify whether container plants or seed shall be used and the location of placement of the plants or seed within the Mitigation Area. All plantings shall utilize seed or plants from onsite sources if possible. If this is not possible, seed or plants from a source as close to the property as is feasible shall be used, to ensure the genetic integrity of the vegetation. A contingency plan, outlining procedures to address unsuccessful growth of Big Pod Ceanothus shall be included in the Monitoring section of the Restoration Plan, as set forth in Section 2.1.F.1 below. All non-natives will be removed from the Mitigation Area and maintenance of the area, as set forth in Section 2.1.F.2, shall prevent the re-establishment of non-natives to levels above those specified in the Section 2.1.D.5 of this Consent Order.

D. Performance Standards

1. General: Each provision in this section shall specify the performance standard to be used, the method of measurement or assessment of the standard, the sampling size, and the frequency of sampling and monitoring. For absolute standards, this section will specify the success criteria and sampling/evaluation procedure. If absolute performance standards cannot reasonably be formed, clear relative standards shall be specified. For relative standards, this section will specify the comparison procedure to be used and the basis for judging differences to be significant. If the comparison between a restoration area and the appropriate reference sites requires a statistical test, the test will be described, including the desired magnitude of difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted. The design of the sampling program shall relate logically to the performance standards and chosen methods of comparison. The sampling programs and data analysis procedures shall be described in sufficient detail to enable an independent scientist to duplicate them.
2. Crownbeard [This standard applies to both the impacted Crownbeard and to the additional Crownbeard to be planted as a mitigation measure.]: A relative performance standard shall be utilized, requiring comparison of Crownbeard in the Restoration and Mitigation Areas to three reference sites located as close to the

areas as is feasible. The basal stem densities of the Crownbeard located in the Restoration and Mitigation Areas and the approved reference sites shall be measured. Successful Crownbeard restoration under this Consent Order requires the basal stem density of the Crownbeard in the Restoration and Mitigation areas to be equivalent to at least 80% of the average basal stem density of the Crownbeard located within the reference sites.

3. Acacia: An absolute performance standard shall be utilized. Successful removal under this Consent Order requires the complete removal of the thirty-one acacia trees specified in Section 2.1.C.1.i of this Consent Order and the absence of regrowth of any of the removed trees. The success of the eradication efforts shall be evaluated by photographic analysis and assessment of the area by a qualified restoration ecologist or resource specialist.

4. Big Pod Ceanothus: Absolute performance standards shall be utilized, and shall be detailed in the Restoration Plan. The health of each individual plant shall be evaluated. Successful growth of the Big Pod Ceanothus shall be attained when all thirty-one of the plants have met the approved success criteria specified in the Restoration Plan.

5. Non-Natives:

Efforts shall be made to remove all non-natives from the Restoration and Maintenance Areas ("areas") during the five-year maintenance period. If, during the maintenance period, non-natives are found in the areas, they will be removed according to the monitoring plan submitted pursuant to Section 2.1.F.2 of this Consent Order and/or according to the suggestions made by the qualified ecologist/specialist and detailed in the relevant annual monitoring report(s) pursuant to Section 2.1.F.3 of this Consent Order. At the end of the five-year monitoring period two absolute success criteria shall be utilized to evaluate the success of non-native eradication in the areas. Herbaceous non-native plants shall make up less than 10% of the total vegetation cover in the areas and woody non-natives shall make up less than 5% of the total vegetation cover in the areas.

E. Erosion Control

1. General: All activities conducted on the property pursuant to this Consent Order shall be conducted in a way that does not contribute to erosion on the property. Any increased erosion from the cited unpermitted development or restoration and mitigation activities

conducted pursuant to this Consent Order shall be mitigated, according to the Erosion Contingency Plan, as set forth below.

2. Contingency Plan: Throughout the restoration and monitoring period, Respondents shall conduct regular inspections of the property to determine whether erosion of the property has occurred as a result of the activities undertaken pursuant to this Consent Order and to assess the need to implement erosion control measures (Best Management Practices or BMPs) to ensure that no gullyng or rilling and debris flow across the property occurs. The Restoration Plan shall include an erosion control contingency plan that sets forth the inspection schedule, identifies the BMPs that may be utilized if erosion occurs or is likely to occur, and identifies the erosion indicators that will serve as early warning signals that erosion controls are needed and will trigger implementation of the BMPs.
3. Site Access: Commission staff shall be able to enter the property, according to Provision 13.0 of this Consent Order, as needed to conduct inspections to evaluate erosion concerns.

F. Monitoring and Maintenance

1. The Restoration Plan shall include maintenance and monitoring methodology, including sampling procedures, sampling frequency, and contingency plans to address potential problems with restoration/mitigation activities and/or unsuccessful restoration/mitigation of the Restoration and Mitigation Areas. Monitoring and maintenance activities shall be conducted in a way that does not impact the sensitive resources on the property or on adjacent properties. Any impacts shall be addressed in the appropriate annual report and shall be remedied by the Respondents to ensure successful restoration.
2. The ecologist/specialist that prepares the plan shall recommend the needed maintenance, based on the conditions of the property. Maintenance of the Restoration and Mitigation Areas shall include eradication of non-natives, weed control, implementation of erosion control measures as set forth in Section E of this Consent Order, trash and debris removal, and/or replacement plantings as necessary.
3. The Respondents agree to submit a written report, for the review and approval of the Executive Director, on an annual basis for a period of five years (during the same one-month period each year, as specified in the Restoration Plan). The report shall be prepared by a restoration ecologist or resource specialist, with qualifications as set forth in Section 2.1 of this Consent Order, and shall evaluate compliance with

the approved Restoration Plan. The report shall provide further recommendations for additional action, as necessary, to ensure that restoration and mitigation activities fully comply with the Restoration Plan and this Consent Order and shall include current photographs taken from locations specified in the Restoration Plan that show the progress of the activities. The locations shall be clearly marked and labeled on the restoration map prepared pursuant to Section 2.1.C.1.i of the this Consent Order and shall not change over the course of the monitoring period unless recommended changes are submitted, pursuant to Section 2.1 of this Consent Order, for the review and approval of the Executive Director. Changes shall only be made upon a determination of good cause by the Executive Director.

4. At the end of the five-year monitoring period, Respondents agree to submit a final report prepared by a restoration ecologist or resource specialist, with qualifications as set forth in Section 2.1 of this Consent Order, for the review and approval of the Executive Director. If this report indicates that restoration and mitigation activities have been unsuccessful, in part or in whole, based on the requirements contained in the approved Restoration Plan, Respondents agree to submit a revised or supplemental plan to bring the Restoration and Mitigation Areas into full compliance with this Consent Order. If the restoration and mitigation activities are unsuccessful at the end of the five-year period, Respondents agree to mitigate by a 2:1 replacement using container stock, and the Restoration Plan shall include a description of the methods of this mitigation. The Executive Director will determine if the revised or supplemental Restoration Plan must be processed as a coastal development permit, a new Restoration Order, or an amendment/modification of the this Consent Order.

G. Statement of Qualifications

The Restoration Plan shall include a description of the education, training and experience of the qualified restoration ecologist(s) and/or resource specialist(s) who shall prepare the Restoration Plan and/or conduct restoration, sampling, maintenance, and/or monitoring activities pursuant to this Consent Order. A qualified restoration ecologist/resource specialist for this project shall be an ecologist, arborist, biologist or botanist who has experience successfully completing restoration or revegetation of threatened species and Big Pod Ceanothus habitats in the Laguna Beach area or under conditions similar to those present on the property.

- 2.2 All plans, reports, photographs and any other materials required by these Consent Orders shall be sent to:

California Coastal Commission
Headquarters Enforcement Program

With a copy sent to:
California Coastal Commission

Attn: Christine Chestnut
45 Fremont Street, Suite 2000
San Francisco, California 94105
Phone: (415) 904-5220
Facsimile: (415) 904-5235

Attn: Andrew Willis
200 Oceangate, 10th Floor
Long Beach, CA 90802
Phone: (562) 590-5071
Facsimile: (562) 590-5084

2.3 Within sixty days of the approval by the Executive Director of the documents submitted under Section 2.1 of this Consent Order, or within such additional time as the Executive Director may grant for good cause in accord with the requirements of Section 12.0 herein, Respondents shall complete the following actions in accordance with the schedule/timeline as set forth in the Restoration Plan:

- A. Plant Crownbeard plants or seed, according to the Restoration Plan.
- B. Remove acacia, according to the Remediation Project portion of the Restoration Plan.
- C. Plant Big Pod Ceanothus species, according to the Restoration Plan.
- D. Install any necessary erosion control measures, as required under the Erosion Control Contingency portion of the Restoration Plan.

2.4 All restoration and mitigation activities undertaken pursuant to this Consent Order shall be conducted in accordance with the Laguna Beach Fire Department's Landscape/Fuel Modification Guidelines and Maintenance Program and with all other applicable Laguna Beach Fire Department regulations. A written explanation of any possible conflicts must be submitted to the Executive Director and any suggested modifications made pursuant to a conflict shall be submitted, pursuant to Section 2.1 of this Consent Order, for the review and approval of the Executive Director.

2.5 Within thirty days of the completion of the restoration and mitigation activities described in Provision 2.3 of this Consent Order, Respondents shall submit to the Executive Director of the Commission a report documenting the restoration and remediation activities (and erosion control measures if necessary) undertaken on the property pursuant to this Consent Order. This report shall include a summary of dates on which work was performed and photographs that show the revegetation progress of the impacted Crownbeard, removal of the acacia, planting of the Big Pod Ceanothus and Crownbeard, and implementation of any necessary erosion control measures, as well as photographs of the property after these activities have been completed.

3.0 RECORDATION OF A NOTICE OF VIOLATION

Respondents do not object to recordation by the Executive Director of a notice of violation, pursuant to Public Resources Code Section 30812(b). Accordingly, a notice of

Exhibit 8
CCC-10-CD-01 (Driftwood)
CCC-10-RO-01

violation will be recorded within ten days of the issuance of this Consent Order. No later than thirty days after the Executive Director determines that Respondents have fully complied with this Consent Order, the Executive Director shall record a notice of rescission of the notice of violation, pursuant to Section 30812(f). The notice of rescission shall have the same effect of a withdrawal or expungement under Section 405.61 of the Code of Civil Procedure.

4.0 PERSONS SUBJECT TO THE ORDER

Driftwood Properties, LLC owns and operates the property and has taken responsibility for the violation. By executing this Order, Athens Development AC, LLC, as an agent of Driftwood Properties, LLC, attests that it has the authority to conduct the work on the property required by this Consent Order and agrees to obtain all necessary permissions (access, etc.) to conduct and complete the work required to resolve the violation. Driftwood Properties, LLC, all of its partners, subsidiaries, members (including Laguna Beach Holdings LLC, the sole member of Driftwood Properties LLC; together with Ohana Laguna LLC, the sole member of Laguna Beach Holdings LLC), employees, agents including Athens Development AC, LLC, and contractors, and any persons acting in concert with any of the foregoing are jointly and severally subject to all the requirements of this Order, and agree to undertake the work required herein.

5.0 IDENTIFICATION OF THE PROPERTY

The property that is the subject of this Consent Order is described as follows:

Lot located at the northern terminus of Driftwood Drive in Laguna Beach, Orange County (APN 056-240-65), more specifically described in the attached Exhibit A.

6.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

Unpermitted removal of major vegetation, including 1341 square feet of Big-leaved Crownbeard (*Verbastna dlssita*) (hereinafter referred to as "Crownbeard"), which is listed as a "threatened" species by the United States Department of Fish and Wildlife pursuant to the Federal Endangered Species Act (*see also* 61 FR 52370) and by the California Department of Fish and Game pursuant to the California Endangered Species Act (*see also* 14 CCR 670.2), from property.

7.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of this alleged Coastal Act violation pursuant to Public Resources Code Section 30811. Respondents agree to not contest the Commission's jurisdiction to issue or enforce this Consent Order.

8.0 WAIVER OF DEFENSES

In light of the intent of the parties to resolve these matters in settlement, Respondents have waived their right to contest the legal and factual bases and the terms and issuance

of this Consent Order, including the allegations of Coastal Act violations contained in the Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Restoration Order Proceedings, dated April 20, 2006. Specifically, Respondents waive their right to present defenses or evidence to contest the issuance or enforcement of the Consent Order at a public hearing or any other proceeding.

9.0 EFFECTIVE DATE AND TERMS OF THE ORDER

The effective date of this order is the date on which it is approved by the Commission. This order shall remain in effect permanently unless and until rescinded by the Commission.

10.0 FINDINGS

This order is issued on the basis of the findings adopted by the Commission at its July 2006 meeting, as set forth in the attached document entitled "Findings for Consent Agreement and Restoration Order No. CCC-06-RO-03." The activities authorized and required in this Consent Order are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

11.0 SETTLEMENT/COMPLIANCE OBLIGATION

- 11.1 In light of the intent of the parties to resolve these matters in settlement, Respondent Driftwood Properties, LLC has agreed to pay a monetary settlement in the amount of \$30,000. The settlement monies shall be deposited in the Violation Remediation Account of the California Coastal Conservancy Fund (see Public Resources Code Section 30823). Respondent Driftwood Properties, LLC shall submit the settlement payment amount within thirty days of the issuance of this Consent Order, to the attention of Christine Chestnut of the Commission, payable to the California Coastal Commission/Coastal Conservancy Violation Remediation Account.
- 11.2 Within thirty days of the issuance of this Consent Order, Respondent Driftwood Properties, LLC shall post a bond, as a form of financial guaranty, in an amount equal to the estimated amount of the restoration and mitigation activities required under this Consent Order, which shall be determined by the restoration ecologist or resource specialist preparing the Restoration Plan and shall be subject to the review and approval of the Executive Director.
- 11.3 Strict compliance with this Consent Order by all parties subject thereto is required. Failure to comply with any term or condition of this Consent Order, including any deadline contained in this Consent Order, unless the Executive Director grants an extension under 12.0, will constitute a violation of this Consent Order and shall result in Respondents being liable for stipulated penalties in the amount of \$500 per day per violation. Respondents shall pay stipulated penalties within fifteen days of receipt of written demand by the Commission for such penalties regardless of whether Respondents have subsequently complied. If

Respondents violate this Consent Order, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30821.6, 30822 and 30820 as a result of the lack of compliance with the Consent Order and for the underlying Coastal Act violations as described herein.

12.0 DEADLINES

Prior to the expiration of any deadline established by this Consent Order, Respondents may request from the Executive Director an extension of that deadline. Such a request shall be made in writing ten days in advance of the deadline and directed to the Executive Director in the San Francisco office of the Commission. The Executive Director shall grant an extension of any deadline upon a showing of good cause, if the Executive Director determines that Respondents have diligently worked to comply with their obligations under this Consent Order but cannot meet deadlines due to unforeseen circumstances beyond its control.

13.0 SITE ACCESS

By this agreement, Respondents specifically agree to provide access to the property at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under this Consent Orders. Nothing in this Consent Order is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the property for purposes including but not limited to inspecting records, operating logs, and contracts relating to the Restoration and Mitigation Areas and overseeing, inspecting and reviewing Respondents' progress in carrying out the terms of this Consent Order.

14.0 GOVERNMENT LIABILITIES

The State of California, the Commission and its employees shall not be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities pursuant to this Consent Order, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to this Consent Order.

15.0 WAIVER OF RIGHT TO JUDICIAL REVIEW

Persons against whom the Commission issues a Restoration Order have the right to seek judicial review of the order. However, pursuant to the agreement of the parties as set forth in these Consent Orders, Respondents agree to waive whatever right they may have to seek judicial review of these Consent Orders in a court of law.

16.0 SETTLEMENT OF CLAIMS

The Commission and Respondents agree that this Consent Order settles their monetary claims for relief for those violations of the Coastal Act specified in Section 1.0 of this Consent Order (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including Sections 30805, 30820, and 30822), with the exception that, if Respondents fail to comply with any term or condition of this Consent Order, the Commission may seek monetary or other claims for both the underlying violations of the Coastal Act and for the violation of this Consent Order. In addition, this Consent Order does not limit the Commission from taking enforcement action due to Coastal Act violations at the property other than those that are the subject of the April 20, 2006 NOI.

17.0 SUCCESSORS AND ASSIGNS

This Consent Order shall run with the land binding Respondents and all successors in interest, heirs, assigns, and future owners of the property. Respondents shall provide notice to all successors, assigns, and potential purchasers of the property of any remaining obligations under this Consent Order.

18.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 12.0, this Consent Order may be amended or modified only in accordance with the standards and procedures set forth in Section 13188(b) of the Commission's administrative regulations.

19.0 GOVERNMENTAL JURISDICTION

This Consent Order shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California.

20.0 LIMITATION OF AUTHORITY

20.1 Except as expressly provided herein, nothing in this Consent Order shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with this Consent Order.

20.2 Correspondingly, Respondents have entered into this Consent Order and waived their right to contest the factual and legal basis for issuance of this Consent Order, and the enforcement thereof according to its terms. Respondents have agreed not to contest the Commission's jurisdiction to issue and enforce this Consent Order.

21.0 INTEGRATION

This Consent Order constitutes the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in this Consent Order.

22.0 STIPULATION

Respondents and their representatives attest that they have reviewed the terms of this Consent Order and understand that their consent is final and stipulate to its issuance by the Commission.

IT IS SO STIPULATED AND AGREED:

On behalf of Respondents:

DRIFTWOOD PROPERTIES LLC,
a Delaware limited liability company

By: Laguna Beach Holdings LLC
Its: Sole Member

By: Ohana Laguna LLC
Its: Manager



By: Richard F. Ross
Its: Authorized Representative

6/23/06
Date

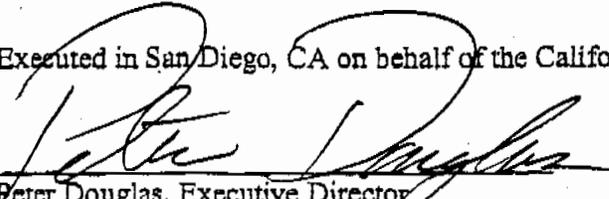
ATHENS DEVELOPMENT AC, LLC



Jeffrey J. Morgan, Manager,
Athens Development AC, LLC

6/23/06
Date

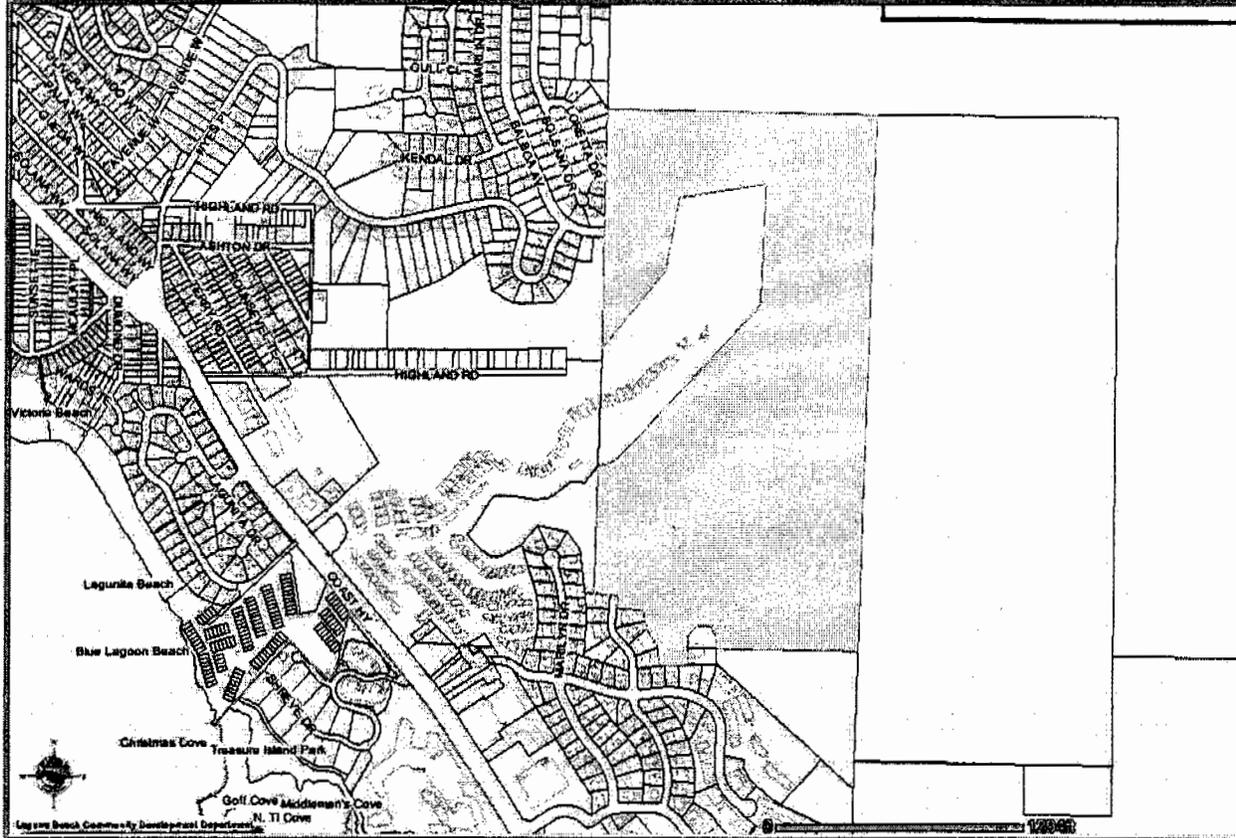
Executed in San Diego, CA on behalf of the California Coastal Commission:



Peter Douglas, Executive Director

7/13/06
Date

Exhibit 8
CCC-10-CD-01 (Driftwood)
CCC-10-RO-01



Rec (APN)	Site Address	GIS Lot Area (sq. ft.)	Zone	Specific Plan	OP Land Use Designation	Building Site Status	HR Category (C,K,E,X)	HR Designation Date	Environmentally Sensitive Areas	On Site Turnaround Required	Special Subdivision Map Building Setbacks	Special Street Plan Requirements
1055-240-05		3121919	DSC R1-RHP		OS-RHP-VLD	Yes			Drainage/NVHV/NVHF/M	No	None	None

Consent Restoration Order No. CCC-06-RO-03
Exhibit A

**CONSENT CEASE AND DESIST ORDER CCC-10-CD-02 AND
CONSENT RESTORATION ORDER CCC-10-RO-02**

1.0 CONSENT CEASE AND DESIST ORDER CCC-10-CD-02

Pursuant to its authority under California Public Resources Code (“PRC”) section 30810, the California Coastal Commission (“Commission”) hereby authorizes and orders Stevan Gromet and Rona Gromet; all their successors and assigns (hereinafter collectively referred to as “Respondents”) to: (1) cease and desist from trespassing upon or engaging in any further development on the property identified in Section 6.0, below (“subject property”), unless authorized pursuant to the Coastal Act, including through the terms and conditions of these Consent Orders; (2) cease and desist from undertaking any development on Respondents’ own property, located at 30662 Marilyn Drive, Laguna Beach, Orange County, unless authorized pursuant to a Coastal Development Permit; (3) take all steps necessary to ensure compliance with the Coastal Act; and (4) restore the Impacted Area of the subject property in accordance with these Consent Orders. Through the execution of Consent Cease and Desist Order No. CCC-10-CD-02, Respondents agree to comply with its terms and conditions.

2.0 CONSENT RESTORATION ORDER CCC-10-RO-02

Pursuant to its authority under PRC section 30811, the Commission hereby orders and authorizes Respondents to take the actions set forth below, including steps to restore and revegetate the Impacted Area of the subject property as described in Section 3.0, below. Through the execution of Consent Restoration Order CCC-10-RO-02, Respondents agree to comply with its terms and conditions. Respondents further agree to condition any contracts for work related to these Orders upon an agreement that any and all employees, agents, and contractors; and any persons acting in concert with any of the foregoing, adhere to and comply with the terms and conditions set forth herein.

PROVISIONS COMMON TO BOTH ORDERS

3.0 TERMS AND CONDITIONS

3.1 Within thirty days of the Commission’s issuance of these Consent Orders, Respondents shall submit a Restoration Plan for the review and approval of the Executive Director of the Commission. The Restoration Plan shall outline all removal, restoration, and erosion control activities; sampling and analyzing procedures; monitoring and maintenance protocols; contingency plans; and any other activities related to the remediation of the Coastal Act violation on the subject property pursuant to these Consent Orders. The Restoration Plan shall be prepared by a restoration ecologist or resource specialist (“restoration consultant”) qualified to perform restoration of southern maritime chaparral

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(“chaparral”) – including restoration of big-leaved crownbeard (*Verbesina dissita*) – in the Laguna Beach area or under conditions similar to those that exist on the subject property. The Restoration Plan shall address the necessity of controls to prevent excessive erosion and sediment transport across the subject property and describe the measures that will be taken to control erosion and sediment transportation. Qualifications of the restoration consultant must be submitted to the Executive Director for his review and approval prior to the preparation of the Restoration Plan. The Restoration Plan shall include and address the following:

A. Definitions

1. Impacted Area: All areas of the subject property from which Respondents or any/either of them removed or caused to be removed major vegetation, areas that were impacted by the removal thereof, and any areas that may become impacted during the course of restoration and maintenance, as generally depicted in Exhibit 1, including but not limited to an approximately 3,500 square-foot area that, prior to the violation described in Section 7.0, below, contained maritime chaparral species, including big-leaved crownbeard.
2. Crownbeard Restoration Areas: Those portions of the Impacted Area on which these Consent Orders require big-leaved crownbeard (hereinafter “Crownbeard”) restoration and revegetation, consisting of an approximately 1,050 square foot area, as generally depicted in Exhibit 2.
3. Chaparral Revegetation Area: All portions of the Impacted Area, not including the Crownbeard Restoration Areas, that, prior to the Coastal Act violation, contained southern maritime chaparral species and upon which restoration and revegetation shall occur (approximately 2,450 square feet), as generally depicted in Exhibit 3.

B. Goals

1. Restoration on the subject property of the Crownbeard Restoration Areas.
2. Restoration on the subject property of the Chaparral Revegetation Area.
3. Removal of non-native and invasive plant species and prevention of regrowth or establishment of other non-native and invasive species across the entire Impacted Area.
4. Control of erosion across the subject property and prevention of sediments from entering the storm drain system and coastal waters by preserving and enhancing existing native vegetation, limiting disturbance on the subject property, utilizing best management practices (BMPs), and stabilizing and revegetating the Impacted Area with native plant species as soon as possible.

5. Monitoring and maintenance of the Crownbeard Restoration and Chaparral Revegetation Areas until such a time as the Executive Director determines the remediation is successful, but in no case less than five years.

C. Methods

1. General Provisions: The Restoration Plan shall include:

- i. A map(s), drawn to scale, that shows the specific parameters, locations and extents of the following: (1) reference sites as defined in Section 3.1.C.1.iii of these Consent Orders; (2) the area of unpermitted vegetation clearing that is the subject of these proceedings, consistent with Section 3.1.A.1; (3) the Crownbeard Restoration Areas, consistent with Section 3.1.A.2; (4) the Chaparral Revegetation Areas, consistent with Section 3.1.A.3; (5) any existing non-native and invasive plants that shall be removed pursuant to Section 3.1.D.4; and (6) the specific locations and directions from which photographs will be taken annually and included in the annual monitoring reports to demonstrate restoration progress, as discussed in Section 3.1.E.3. Any proposed deviations in Respondents' delineations of the areas defined in Section 3.1.A, from those depicted in Exhibits 1, 2 and 3, shall be explained in writing and subject to the Executive Director's review and approval. The locations of all species planted shall each be individually delineated and labeled on the map(s), so that each can be clearly identified.
- ➔ ii. A schedule/timeline of restoration activities that also identifies the parties who will be conducting these activities (i.e., agents, employees, contractors, resource specialists, etc.). Restoration procedures recommended by the restoration consultant charged with preparing the Restoration Plan shall be included in the Restoration Plan and utilized. If these procedures require planting to occur at a certain time of year, the Executive Director may, as provided for under Section 13.0 of these Consent Orders and at the written request of Respondents, extend the deadline for planting that is set forth in Section 3.2 of these Consent Orders, to achieve optimal growth of the Crownbeard and associated chaparral species.
- ⓐ iii. A description of the physical and biological parameters of the natural habitat type that is the model and establishes the goals for restoration, including the characteristic species. This section shall explicitly lay out the restoration goals and objectives. It shall also include a detailed description of Crownbeard reference sites, setting forth the rationale for selection, identifying the location and species composition, and describing the history of disturbance from fuel modification activities, fire, etc. The reference sites shall be located as closely as possible to the Impacted Area, shall be similar in all relevant respects to the habitat model, and shall provide the standard for measuring success of the Crownbeard restoration under these Consent Orders.

- iv. A list of the species that are to be planted (“palette”), including the rationale for and description of the size and number of container plants and the rate and method of seed application. The Restoration Plan shall indicate that plant propagules shall come from local native stock (the Plan shall not employ any non-native or invasive plant species – no plant species listed as problematic and/or invasive by the California Native Plant Society, the California Invasive Plant Council or as may be identified from time to time by the State of California shall be utilized). If plants, cuttings, or seeds are obtained from a nursery, Respondents must provide a nursery certification that they are of local origin and are not cultivars, and the Restoration Plan shall provide specifications for preparation of nursery stock (e.g., container size & shape to develop proper root form, hardening techniques, watering regime, etc.). Technical details of planting methods (e.g., spacing, micorrhizal inoculation, etc.) shall also be included. The Restoration Plan shall include procedures for any plant salvage and methods of installing salvaged plants.
- v. A detailed description of all equipment to be used. Hand tools shall be utilized unless the Restoration Plan demonstrates to the satisfaction of the Executive Director that mechanized equipment is required and will not significantly impact resources protected under the Coastal Act, especially the threatened Crownbeard.
- vi. A detailed description of any artificial inputs, such as watering or fertilization that may be used to support the establishment of the vegetation. The description shall include a list of the full range of amounts of inputs that may be utilized, and a statement that the minimum amount necessary for successful restoration shall be utilized. Respondents shall not install a permanent irrigation system in the restoration area. If necessary, temporary above ground irrigation to provide for the establishment of the Crownbeard and associated chaparral species is allowed for a maximum of three years or until the vegetation has become sufficiently established to warrant cessation of the irrigation, whichever occurs first. If, after three years, the vegetation has not become established, the Executive Director may allow, upon written request from the Respondents, for the continued use of the temporary irrigation system. The written request shall include an explanation for why additional irrigation is needed, and the duration for which the extension is being sought.
- vii. An assessment of the possible impacts to sensitive resources on the subject property, including Crownbeard, from restoration and mitigation activities and procedures for both proactively and retroactively addressing these impacts. Respondents shall conduct restoration and removal activities in a way that minimizes impacts to the subject property. Any impacts to sensitive species that occur during and/or as a result of restoration, revegetation, or monitoring, shall be reported to the Executive Director in writing with accompanying photographs of the impacts, within five days of occurrence. Any impacts to sensitive species shall be remedied by the Respondents as soon as possible, after receiving approval from the Executive Director. Impacts to sensitive species shall be documented, remedial measures

taken, and their effectiveness shall be discussed in the annual report that corresponds to the reporting period during which the impact occurred.

Other than those areas subject to restoration activities, including areas for which Driftwood Properties, LLC has granted authorizing site access and restoration authorization, the subject property and surrounding areas shall not be disturbed by activities related to these Consent Orders and to the approved Restoration Plan, to the greatest extent practicable. Prior to the initiation of any restoration or removal activities, the boundaries of the Impacted Area shall be physically delineated in the field, using temporary measures such as fencing, stakes, colored flags, or colored tape. All temporary delineation materials shall be removed when no longer needed and verification of such removal shall be provided in the annual report that corresponds to the reporting period during which the removal occurred.

2. Crownbeard Restoration: The Restoration Plan shall detail the methods that will be used to successfully restore and maintain the Crownbeard Restoration Areas. The location of the Crownbeard Restoration Areas shall be clearly delineated and labeled on a Restoration Plan Map, prepared pursuant to Section 3.1.C.1.i of these Consent Orders. The planting of the Crownbeard within the Crownbeard Restoration Areas shall take place before the rainy season during the first year in which this agreement is in effect, but no later than December 1, 2010. The Restoration Plan shall detail the methods that will be used to ensure successful cultivation of the Crownbeard, in conformance with the provisions of 3.1.C. The Restoration Plan shall state that a total of nine crownbeard plants from one-gallon containers shall be planted within the Crownbeard Restoration Areas. The crownbeard propagules shall be planted in close proximity to those chaparral shrub plantings required in Section 3.1.C.3. The plantings shall be distributed such that for each chaparral shrub planted, three crownbeard propagules will be planted in sufficient proximity to allow for the crownbeard to benefit from the chaparral shrub canopy. All seed or propagating material shall come from onsite sources of plant stock, if possible. If this is not possible, seed or plants from a source as close to the property as is feasible shall be used to ensure the genetic integrity of the Crownbeard on the subject property.

A contingency plan outlining procedures to address unsuccessful restoration shall be included in the monitoring section of the Restoration Plan, as described in Section 3.1.E.1, below. The contingency plan shall state that if any Crownbeard plants within the Crownbeard Restoration Areas fail to become established within two years from the time of planting, they shall be replaced by container plants, the number of which shall be recommended by the restoration consultant, subject to the approval of the Executive Director or his or her designee, in order to ensure successful restoration under these Consent Orders. The contingency plan shall also state that if any established Crownbeard in the Crownbeard Restoration Areas fails to survive, it shall be mitigated at a replacement ratio of 3:1 (based on area of coverage), on the subject property, in accordance with the provisions set forth in Section 3.1.E.4, below.

The Restoration Plan shall state that all non-native and invasive plants, with the exception of any that are providing canopy shading for the impacted Crownbeard, shall be removed from the Crownbeard Restoration Areas and maintenance activities, as set forth in Section 3.1.E.1, shall prevent the re-establishment of non-native and invasive plants to levels above those specified in Section 3.1.D.4 of these Consent Orders.

3. Chaparral Revegetation Areas: The Restoration Plan shall outline the methods that will be used to reestablish the southern maritime chaparral plant species across the remaining portion of the subject property impacted by the unpermitted development (approximately 2,450 square feet), and shall conform to the provisions set forth in Section 3.C.1.iv. The plant palette for the Chaparral Revegetation Areas shall include medium and large, shade-producing native chaparral shrubs/trees of local stock (i.e., Bush-rue, Lemonade Berry or Ceanothis) and native grasses. The Restoration Plan shall state that at least three shade-producing chaparral shrubs/trees from containers shall be planted within the Chaparral Revegetation Areas, in locations where crownbeard has not been observed to be resprouting (generally in the central-eastern portion of the Impacted Area). The locations of the shrubs/trees to be planted within the Chaparral Revegetation Areas shall be delineated on a Restoration Plan Map, as set forth in Section 3.1.C.1. The planting of the chaparral shrubs within the Chaparral Revegetation Areas shall take place before the rainy season during the first year in which this agreement is in effect, but no later than December 1, 2010.

The restoration plan shall also state that the portions of the Chaparral Revegetation Areas not planted with chaparral shrubs/trees shall be seeded with big-pod ceanothis and native grasses. Seeding shall occur during the first year of restoration, in advance of the rainy season, but not earlier than November 2010. A contingency plan, outlining procedures to address unsuccessful growth of the chaparral species shall be included in the monitoring section of the Restoration Plan, as set forth in Section 3.1.E.1, below. All non-native and invasive plant species shall be removed from the Chaparral Revegetation Areas and maintenance of the areas shall prevent the establishment of non-native and invasive plants to levels above those specified in the Section 3.1.D.4 of these Consent Orders.

4. Non-Native Plant Species Removal: The Restoration Plan shall detail the methods that will be used to remove non-native and invasive plant species from the Impacted Area, including the Crownbeard Restoration and Chaparral Revegetation Areas, and shall include a weeding schedule, information about the location of plants to be removed, the equipment to be used in the removal activities, and disposal procedures. Weeding shall occur on a monthly basis during the rainy season (i.e., January through April). Any non-native plants that are currently shading the impacted Crownbeard shall not be removed as their removal could compromise the Crownbeard survival. A contingency plan, which sets forth maintenance activities and alternative eradication methods to prevent regrowth, shall be included in the monitoring section of the Restoration Plan as set forth in Section 3.1.E.1, below.

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5. Erosion Control: The Restoration Plan shall specify the methods to be used during and after remediation to stabilize the soil and make it capable of supporting native vegetation. Such methods shall not include the placement of retaining walls or other permanent structures, grout, geogrid or similar materials. Any soil stabilizers identified for erosion control shall be compatible with native plant recruitment and establishment. The Restoration Plan shall specify the type and location of erosion control measures that will be installed on the subject property and maintained until the Impacted Area has been revegetated to minimize erosion and transport of sediment. Such measures shall remain in place and maintained at all times of the year for at least three years or until the plantings have become established, whichever occurs first, and then shall be removed or eliminated by Respondents. All erosion control materials shall be removed when no longer needed and verification of such removal shall be provided in the monitoring report for the reporting period during which the removal occurred.

D. Performance Standards

1. General: The Restoration Plan shall include performance standards against which the success of the Crownbeard restoration, chaparral revegetation and non-native and invasive plant species eradication efforts can be evaluated. The performance standards shall be based on the restoration objectives and goals and the reference sites' characteristics, as set forth in Section 3.1.C.1. For each of the respective remediation areas (i.e., Crownbeard Restoration and Chaparral Revegetation Areas) on the subject property, the Restoration Plan shall specify performance standards to be used, the method of measurement or assessment of the standard, the sampling size, and the frequency of sampling and monitoring. For absolute standards, the Restoration Plan shall specify the success criteria and sampling/evaluation procedure. If absolute performance standards cannot reasonably be formed, clear relative standards shall be specified. For relative standards, the Restoration Plan shall specify the comparison procedure to be used and the basis for judging differences to be significant. If the comparison between a Restoration Area and the appropriate reference sites requires a statistical test, the test will be described, including the desired magnitude of difference to be detected, the desired statistical power of the test, and the alpha level at which the test will be conducted. The design of the sampling program shall relate logically to the performance standards and chosen methods of comparison. **The sampling programs and data analysis procedures shall be described in sufficient detail to enable an independent scientist to duplicate them.**
2. Crownbeard: A relative performance standard shall be utilized, requiring comparison of Crownbeard in the Restoration Areas to three reference sites located as close to the areas as is feasible, as set forth in Section 3.1.C.1.iii of these Consent Orders. The basal stem densities of the Crownbeard located in the Restoration Areas and the approved reference sites shall be measured. Successful Crownbeard restoration under

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these Consent Orders requires the basal stem density of the Crownbeard in the Restoration Areas to be equivalent to at least 80% of the average basal stem density of the Crownbeard located within the reference sites.

3. Chaparral Species: Performance standards for the southern maritime chaparral species shall be based on the restoration objectives and goals and the reference sites' characteristics. Absolute performance standards shall be utilized, and shall be detailed in the Restoration Plan. The health of each individual plant shall be evaluated. Successful growth of the chaparral species shall be attained when all species have met the approved success criteria specified in the Restoration Plan.
4. Non-Native Plant Species: Non-native and invasive plant species shall be removed from the Impacted Area during the maintenance and monitoring period. If, during the maintenance period, non-native or invasive species are found in the Impacted Area, they shall be removed according to the maintenance provisions included in the Restoration Plan, pursuant to Section 3.1.E.1 or according to the suggestions made by the qualified restoration consultant and detailed in the relevant annual monitoring report(s) pursuant to Section 3.1.E.3 of these Consent Orders.. At the end of the five-year monitoring period, two absolute success criteria shall be utilized to evaluate the success of non-native and invasive plant eradication. Herbaceous non-native plants shall make up less than 20% of the total vegetation cover across the Impacted Area and woody non-natives shall make up less than 10% of the total vegetation cover across the Impacted Area.
5. Total Vegetative Cover: In addition to the criteria specified herein, successful restoration under these Consent Orders requires the Impacted Area to achieve a total vegetative cover, including woody and herbaceous species, of at least 75%, or a percentage of vegetative cover not statistically different from that of the reference sites identified pursuant to Section 3.1.C.1.iii.

E. Monitoring and Maintenance

1. The Restoration Plan shall include maintenance and monitoring methodology, including sampling procedures, sampling frequency, and contingency plans to address potential problems with restoration activities and/or unsuccessful remediation of the Restoration and Revegetation Areas. Monitoring and maintenance activities shall be conducted in a way that does not impact the sensitive resources on the subject property or on adjacent properties. Any impacts shall be addressed in the appropriate annual report and shall be remedied by the Respondents to ensure successful remediation. At a minimum, long-term maintenance requirements shall include periodic site inspections by the restoration consultant, at intervals specified in the Restoration Plan, eradication of non-native and invasive plant species, weed control, implementation and maintenance of erosion control measures as set forth in Section 3.1.C.5 of these Consent Orders, trash and debris removal, and/or replacement plantings as necessary.

2. Within 30 days of the completion of the restoration and remediation work described in the Restoration Plan (Section 3.1.C), Respondents shall submit to the Executive Director a report documenting the restoration, revegetation and non-native and invasive species removal work on the subject property. This report shall include a summary of dates when work was performed and photographs that show implementation of the Restoration Plan, including photographs of the subject property before and after the plantings required by the Restoration Plan have been completed.
3. On an annual basis, for five years from the date of the approved restoration report required pursuant to Section 3.1.E.2 of these Consent Orders (during the same one-month period each year, as specified in the Restoration Plan, and no later than December 31 of the first year), Respondents shall submit a written report for the review and approval of the Executive Director. The report shall be prepared by a restoration consultant, with qualifications as set forth in Section 3.1 of these Consent Orders, and shall evaluate compliance with the approved Restoration Plan. The report shall provide recommendations for additional action, as necessary, to ensure that restoration and mitigation activities fully comply with the Restoration Plan and these Consent Orders. The annual reports shall include current photographs, taken from locations specified in the Restoration Plan, showing the progress of the remedial activities. The locations shall be clearly marked and labeled on a Restoration Plan Map prepared pursuant to Section 3.1.C.1.i of these Consent Orders and shall not change over the course of the monitoring period unless recommended changes are submitted, pursuant to Section 4.0 of these Consent Orders, for the review and approval of the Executive Director. Changes shall only be made upon a determination of good cause by the Executive Director. In addition, the monitoring reports shall include a map delineating the location and extent of the crownbeard clusters observed during the growing season that corresponds to the report's monitoring period. The basal stem densities corresponding to each cluster delineated shall also be included in the report.
4. If the periodic inspections or the monitoring report indicate that the project or a portion thereof is not in conformance with the Restoration Plan or has failed to meet the goals and/or performance standards specified in the Plan, the duration of the monitoring period as set forth in Section 3.1.E.3 shall be extended for a period of time equal to that during which the project remained out of compliance, in no case less than 2 years, and Respondents shall submit a revised or supplemental Restoration Plan for review and approval by the Executive Director. The revised Restoration Plan shall be prepared by a qualified restoration consultant, with qualifications as set forth in Section 3.1 of these Consent Orders, and shall specify measures to correct those portions of the remediation that have failed or are not in conformance with the original approved Plan. These measures, and any subsequent measures necessary to carry out the original approved plan, shall be carried out by Respondents in coordination with the Executive Director until the goals of the original approved Restoration Plan have been met.

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5. At the end of the five-year monitoring period, Respondents shall submit a final report prepared by a restoration consultant, with qualifications as set forth in Section 3.1 of these Consent Orders, for the review and approval of the Executive Director. If this report indicates that restoration and mitigation activities have been unsuccessful, in part or in whole, based on the requirements contained in the approved Restoration Plan, Respondents shall submit a revised or supplemental plan to bring the Restoration and Revegetation Areas into full compliance with these Consent Orders. If the restoration or revegetation activities are unsuccessful at the end of the five-year period set forth in Section 3.1.E.3, Respondents shall mitigate by a replacement ratio of 3:1 using container stock and the Restoration Plan shall include a description of the methods of this mitigation. The Executive Director will determine if the revised or supplemental Restoration Plan must be processed as a coastal development permit, a new Restoration Order, or an amendment/modification of the these Consent Orders.
- 3.2 Upon approval of the Restoration Plan by the Executive Director, Respondents shall fully implement the Restoration Plan pursuant to the approved schedule, with all restoration revegetation, and initial non-native and invasive species removal work to be completed as early as possible pursuant to recommendations by the consulting specialist and approvals by the Executive Director. Unless the Restoration Plan provides otherwise, the restoration, revegetation and non-native and invasive species removal work shall be completed no later than 60 days after the approval of the Restoration Plan. The Executive Director may extend this deadline or modify the approved schedule for good cause pursuant to Section 13.0 of these Consent Orders.
- 3.3 All restoration and revegetation activities undertaken pursuant to these Consent Orders are intended to be consistent with the Laguna Beach Fire Department's Landscape/Fuel Modification Guidelines and Maintenance Program and with all other applicable Laguna Beach Fire Department regulations. A written explanation of any possible conflicts must be submitted to the Executive Director and any suggested modifications made pursuant to a conflict shall be submitted, pursuant to Section 4.0 of these Consent Orders, for the review and approval of the Executive Director.
- 3.4 All plans, reports, photographs and any other materials required by these Consent Orders shall be submitted in both digital (i.e., PDF or similar file type) and hard copy format to:

California Coastal Commission
Attn: Elijah Davidian

45 Fremont Street, Suite 2000
San Francisco, CA 94131
(415) 904-5200
Facsimile (415) 904-5235

With a copy to:

California Coastal Commission
Attn: Andrew Willis

200 Oceangate, 10th Floor
Long Beach, CA 90802
(562) 590-5071
Facsimile (562) 590-5084

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- 3.5 All work to be performed under these Consent Orders shall be done in compliance with all applicable laws.

4.0 REVISIONS OF DELIVERABLES

The Executive Director may require revisions to deliverables required under these Consent Orders, and the Respondents shall revise any such deliverables consistent with the Executive Director's specifications, and resubmit them for further review and approval by the Executive Director, within ten days of receipt of a modification request from the Executive Director. The Executive Director may extend the time for submittals upon a written request and a showing of good cause, pursuant to Section 13.0 of the Consent Orders.

5.0 PERSONS SUBJECT TO THE CONSENT ORDERS

Stevan Gromet and Rona Gromet, all their successors, assigns, employees, agents, and contractors, and any persons acting in concert with any of the foregoing are jointly and severally subject to all the requirements of these Consent Orders, and shall undertake the work required herein.

6.0 IDENTIFICATION OF THE SUBJECT PROPERTY

The property that is the subject of these Consent Orders is described as follows:

Vacant land, owned by Driftwood Properties LLC, located at the northern terminus of Driftwood Drive, identified by the Orange County Assessor's Office as Assessor's Parcel Numbers 056-240-65 and 656-191-40, in Laguna Beach, Orange County.

7.0 DESCRIPTION OF ALLEGED COASTAL ACT VIOLATION

Unpermitted removal of major vegetation (including, but not limited to southern maritime chaparral plant species) across an approximately 3,500 square foot area, resulting in significant impacts to sensitive species, including to an approximately 700 square foot area of big-leaved crownbeard (*Verbesina dissita*), which is listed as a "threatened" species by the United States Fish and Wildlife Service pursuant to the Federal Endangered Species Act (50 CFR § 17.12(2)(h)) and by the California Department of Fish and Game pursuant to the California Endangered Species Act (14 CCR §670.2(b)(2)(D)), from the subject property.

8.0 COMMISSION JURISDICTION

The Commission has jurisdiction over resolution of this alleged Coastal Act violation under Public Resources Code Sections 30810 and 30811. Respondents have agreed not to and shall not contest the Commission's jurisdiction to issue or enforce these Consent Orders.

9.0 SETTLEMENT OF MATTER PRIOR TO HEARING

In light of the intent of the parties to resolve these matters in settlement, Respondents have agreed not to contest the legal and factual bases and the terms and issuance of these Consent Orders, including the allegations of Coastal Act violations contained in the Notice of Violation letter, dated April 27, 2007. Specifically, Respondents agree to this settlement and shall not contest the issuance or enforcement of these Consent Orders at a public hearing or any other proceeding by or before the Commission, any other governmental agency, any administrative tribunal, or a court of law.

10.0 EFFECTIVE DATE AND TERMS OF THE CONSENT ORDERS

The effective date of these Consent Orders is the date these Consent Orders are issued by the Commission. These Consent Orders shall remain in effect permanently unless and until rescinded by the Commission.

11.0 FINDINGS

These Consent Orders are issued on the basis of the findings adopted by the Commission, as set forth in the document entitled "Findings for Consent Cease and Desist Order No. CCC-10-CD-02 and Restoration Order No. CCC-10-RO-02." The activities authorized and required under these Consent Orders are consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act. The Commission has authorized the activities required in these Consent Orders as being consistent with the resource protection policies set forth in Chapter 3 of the Coastal Act.

12.0 SETTLEMENT/COMPLIANCE OBLIGATION

12.1 Respondents have agreed to pay a monetary settlement in the amount of \$20,000. The settlement monies shall be paid to a not-for-profit organization for purposes of facilitating conservation, restoration, and/or education regarding native plant species Southern California's Coastal Zone agreed upon between the parties, and to be paid under the terms set forth in this agreement. Respondents shall propose the project and recipient organization(s) for the Executive Director's approval, but they may include the Zoological Society of San Diego and/or the Laguna Greenbelt. Respondents shall submit the settlement payment directly to the

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approved organization in four separate payments of \$5,000 on or before the following dates: December 1, 2010, April 1, 2011, April 1, 2012, and April 1, 2013, with a copy of the check and accompanying transmittal letter to be sent to Elijah Davidian of the Commission staff at the address in section 3.4. A copy of each payment receipt shall be submitted by Respondents, within one week of the foregoing dates, to the attention of Elijah Davidian of the Commission at the address in section 3.4.

- 12.2 Strict compliance with these Consent Orders by all parties subject thereto is required. Failure to comply with any term or condition of these Consent Orders, including any deadline contained in these Consent Orders, unless the Executive Director grants an extension under Section 13.0, will constitute a violation of these Orders and shall result in Respondents being liable for stipulated penalties in the amount of \$1,000 per day per violation. Respondents shall pay stipulated penalties within 15 days of receipt of written demand by the Commission for such penalties regardless of whether Respondents have subsequently complied. If Respondents violate these Consent Orders, nothing in this agreement shall be construed as prohibiting, altering, or in any way limiting the ability of the Commission to seek any other remedies available, including the imposition of civil penalties and other remedies pursuant to Public Resources Code Sections 30821.6, 30822 and 30820 as a result of the lack of compliance with these Consent Orders and for the underlying Coastal Act violations as described herein.

13.0 DEADLINES

Prior to the expiration of the deadlines established by these Consent Orders, Respondents may request from the Executive Director an extension of the deadlines contained herein. Such a request shall be made in writing 10 days in advance of the deadline and directed to the Executive Director via the San Francisco office of the Commission. The Executive Director shall grant an extension of deadlines upon a showing of good cause, if the Executive Director determines that Respondents have diligently worked to comply with their obligations under these Consent Orders, but cannot meet deadlines due to unforeseen circumstances beyond their control.

14.0 SITE ACCESS

- 14.1 Respondents have obtained consent and will provide within 30 days of the execution of this agreement, written documentation from Driftwood Properties, LLC that Respondents, and other parties including Commission staff, have permission to access and perform restoration activities as set forth in these Consent Orders, on the subject property identified as APNs 056-240-65 and 656-191-40. If at any time Respondents are denied permission to access or perform

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restoration activities on the subject property, they shall refrain from accessing or performing work on the subject property and notify the Executive Director immediately. Respondents agree that at any point prior to their completion of the obligations set forth in these Consent Orders, if they are denied permission to access or perform restoration activities on the subject property and that denial results in their inability to carry out the terms and conditions of these Consent Orders, their obligation to resolve the violation described in Section 7.0 shall remain in effect and they shall utilize all reasonable efforts in a timely fashion to re-secure permission to access to and complete restoration work upon the subject property. Should Respondents fail to re-secure access after of six months, the portion of the restoration that has not been completed shall be carried out at an off-site location, subject to the approval of the Executive Director, at a ratio of 3:1, and under a plan submitted by Respondents conforming substantively with the contents of the plan required under this order, and subject to the approval of the Executive Director, within one and a half (1.5) years from the date Respondents were denied permission to access or perform restoration on the site.

- 14.2 Respondents agree to provide access to the subject property at all reasonable times to Commission staff and any agency having jurisdiction over the work being performed under these Consent Orders. Nothing in these Consent Orders is intended to limit in any way the right of entry or inspection that any agency may otherwise have by operation of any law. The Commission staff may enter and move freely about the portions of the subject property on which the violations are located, and on adjacent areas of the properties to view the areas where development is being performed pursuant to the requirements of these Consent Orders for purposes including but not limited to inspecting records, operating logs, and contracts relating to the site and overseeing, inspecting and reviewing the progress of Respondents in carrying out the terms of these Consent Orders.

15.0 GOVERNMENT LIABILITIES

Neither the State of California, the Commission, nor its employees shall be liable for injuries or damages to persons or property resulting from acts or omissions by Respondents in carrying out activities pursuant to these Consent Orders, nor shall the State of California, the Commission or its employees be held as a party to any contract entered into by Respondents or their agents in carrying out activities pursuant to these Consent Orders.

16.0 SETTLEMENT VIA CONSENT ORDER

In light of the desire to settle this matter via these Consent Orders and avoid litigation, pursuant to the agreement of the parties as set forth in these Consent Orders, Respondents hereby agree not to seek a stay pursuant to PRC section 30803(b) or to challenge the issuance and enforceability of these Consent Orders in a court of law or equity.

17.0 SETTLEMENT OF CLAIMS

The Commission and Respondents agree that these Consent Orders settle the Commission's monetary claims for relief for those violations of the Coastal Act alleged in Section 7.0 of these Consent Orders, (specifically including claims for civil penalties, fines, or damages under the Coastal Act, including under Public Resources Code Sections 30805, 30820, and 30822), with the exception that, if Respondents fail to comply with any term or condition of these Consent Orders, the Commission may seek monetary or other claims violation of these Consent Orders. In addition, these Consent Orders do not limit the Commission from taking enforcement action due to Coastal Act violations at the subject property or elsewhere, other than those specified herein.

18.0 CONTRACTUAL OBLIGATION

These Consent Orders constitute both administrative orders issued to Respondents personally and a contractual obligation between Respondents and the Commission, and therefore shall remain in effect until all terms are fulfilled, regardless of whether Respondents own property adjacent to the subject property upon which the violation exists.

19.0 MODIFICATIONS AND AMENDMENTS

Except as provided in Section 13.0, and for minor, immaterial matters upon mutual written agreement of the Executive Director and Respondents, these Consent Orders may be amended or modified only in accordance with the standards and procedures set forth in section 13188(b) and section 13197 of the Commission's administrative regulations.

20.0 GOVERNMENTAL JURISDICTION

These Consent Orders shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California.

21.0 NO LIMITATION OF AUTHORITY

21.1 Except as expressly provided herein, nothing in these Consent Orders shall limit or restrict the exercise of the Commission's enforcement authority pursuant to Chapter 9 of the Coastal Act, including the authority to require and enforce compliance with these Consent Orders.

21.2 Correspondingly, Respondents have entered into these Consent Orders and agreed not to contest the factual and legal bases for issuance of these Consent Orders, and the enforcement thereof according to its terms. Respondents have agreed not to contest the Commission's jurisdiction to issue and enforce these Consent Orders.

22.0 INTEGRATION

These Consent Orders constitute the entire agreement between the parties and may not be amended, supplemented, or modified except as provided in these Consent Orders.

23.0 STIPULATION

Respondents and their representatives attest that they have reviewed the terms of these Consent Orders and understand that their consent is final and stipulate to its issuance by the Commission.

24.0 EXECUTION IN COUNTERPARTS

The parties agree that this agreement may be executed in counterparts and each shall be treated as the original.

IT IS SO STIPULATED AND AGREED:
On behalf of Respondents:



Stevan Gromet

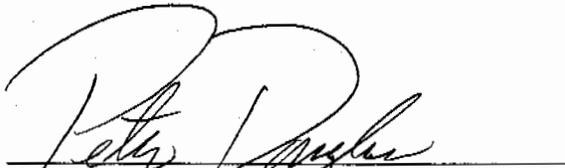
3-31-10
Date



Rona Gromet

3-31-10
Date

Executed in Ventura on behalf of the California Coastal Commission:



Peter M. Douglas, Executive Director
California Coastal Commission

4/14/2010
Date



Impacted Area



Exhibit 9
CCC-10-CD-01 (Driftwood)
CCC-10-RO-01

All Locations Approximate.
For Illustrative Purposes Only.



Impacted Area
 Crownbeard Restoration Areas



Exhibit 9
 CCC-10-CD-01 (Driftwood)
 CCC-10-RO-01

All Locations Approximate.
 For Illustrative Purposes Only.



All Locations Approximate.
For Illustrative Purposes Only



Impacted Area
 Chaparral Revegetation Area

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071



NOTICE OF VIOLATION OF THE CALIFORNIA COASTAL ACT
REGULAR AND CERTIFIED MAIL

May 4, 2007

Martyn Hoffmann
The Athens Group
31106 Pacific Coast Highway
Laguna Beach, CA 92651

Violation File Number: V-5-06-029

Property Location: Northern Terminus of Driftwood Drive, Laguna Beach, Orange County, APN 056-240-65 & APN 656-191-40

Unpermitted Development: Removal of major vegetation and placement of approximately 5,500 sandbags, sand/gravel berms, filter fabric over the berms and plastic discharge pipes in an environmentally sensitive habitat area

Dear Mr. Hoffmann:

Thank you for taking time to discuss the unpermitted placement of sandbags, drainage control devices and vegetation removal on the subject properties. We are encouraged by your willingness to work with staff to resolve this matter cooperatively. As we recently discussed, on April 20, 2007, The Athens Group withdrew its application for Coastal Development Permit ("CDP") No. 5-06-382, for after-the-fact approval for the placement of approximately 5,500 sandbags and other drainage control devices on the subject properties. More than 5,500 sandbags were placed on the subject properties by the previous owner of the properties without the required CDP between 1994 to 1998. According to The Athens Group's application for CDP No. 5-06-382, between 1999 and 2004, sand/gravel berms, filter fabric over the berms, and plastic discharge pipes were placed on the property by the previous owner, also without the required CDP. In 2004, The Athens Group replaced a majority of the unpermitted sandbags on the property, approximately 5,500, without a CDP

The initial placement of sandbags and drainage control devices on the properties, as well as the subsequent replacement of sandbags, constitute development under the Coastal Act and, therefore, require a CDP. Pursuant to Section 30600 (a) of the Coastal Act¹, any person wishing to perform or undertake development in the Coastal Zone must obtain a coastal development permit, in addition to any other permit required by law. "Development" is defined by Section 30106 of the Coastal Act as:

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid,

¹ The Coastal Act is in the Public Resources Code beginning at section 30000

Exhibit 10
CCC-10-CD-01 (Driftwood)
CCC-10-RO-01

solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of the use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....[underlining added for emphasis]

At the present time, the sandbags and drainage control devices persist on the subject properties without benefit of the required CDP. Furthermore, the sandbags and drainage devices prevent the establishment of major vegetation. Any development undertaken in the Coastal Zone without a valid coastal development permit constitutes a violation of the Coastal Act.

In addition, Commission staff has confirmed that vegetation was periodically removed from the subject properties prior to 1999. In this location, both the southern maritime chaparral and the coastal sage scrub on the site are rare habitat types: they perform the important ecosystem function of providing habitat for rare species, and they are also obviously easily degraded by human activities. Therefore, at the subject site, coastal sage scrub and maritime chaparral meet the definition of Environmentally Sensitive Habitat Area ("ESHA") under the Coastal Act. Furthermore, it is only because of ground disturbance, repeated cutting of vegetation, and sandbag placement that coastal sage scrub and maritime chaparral are not now established to a greater extent on the graded areas of the site. Thus, the Commission's ecologist has determined that the entire graded portion of the site is degraded ESHA.

Removal of ESHA, including degraded ESHA, constitutes removal of major vegetation and is therefore considered development as defined in the Coastal Act. Staff analysis of aerial and ground-level photographs, city records, and biological surveys confirm that: 1) 3 of the pad areas on the lower row of pads were scraped of vegetation between 1979 and 1986; 2) 4 lower and 4 upper pads, as well as portions of roads on the site, were completely or partially scraped between 1993 and 1998; and 3) vegetation covering 5 lower pads and 1 upper pad was completely or partially removed in 1999. Commission staff has researched our permit files and concluded that no coastal development permits have been issued for the removal of major vegetation described above.

We would like to work with you to resolve these issues cooperatively. One option that you may consider, and in which you have expressed an interest, is agreeing to a "consent order". A consent order is similar to a settlement agreement. A consent order would provide you with an opportunity to have input into the process and timing of restoration of the subject properties and mitigation of the damages caused by the unpermitted activity, and, if appropriate, would allow you to negotiate a penalty amount with Commission staff. If you are interested in discussing the possibility of a consent order and options to resolve this case, please contact or send correspondence Christine Chestnut, to her attention at:

California Coastal Commission
45 Fremont Street, Suite 2000

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San Francisco, CA 92108

Please contact Ms. Chestnut by no later than **May 21, 2007**, regarding how you intend to resolve this violation.

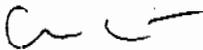
Although we would prefer to resolve this matter through the consent order process, please be aware that Coastal Act Section 30809 states that if the Executive Director of the Commission determines that any person has undertaken, or is threatening to undertake, any activity that requires a permit from the Coastal Commission without first securing a permit, the Executive Director may issue an order directing that person to cease and desist. A cease and desist order may be subject to any terms and conditions that are necessary to ensure compliance with the Coastal Act. Coastal Act Sections 30810 and 30811 also authorize the Coastal Commission to issue a cease and desist order and/or order restoration of a site if unpermitted development is inconsistent with the policies of the Coastal Act and is causing continuing resource damage. A violation of a cease and desist or restoration order can result in civil fines of up to \$6,000 for each day in which the violation persists.

In addition, we note that Sections 30803 and 30805 of the Coastal Act authorize the Commission to initiate litigation to seek injunctive relief and an award of civil fines in response to any violation of the Coastal Act. Section 30820(a)(1) of the Coastal Act provides that any person who performs development in violation of any provision of the Coastal Act may be subject to a penalty amount that shall not exceed \$30,000 and shall not be less than \$500. Coastal Act section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs or undertakes any development in violation of the Coastal Act can be subject to a civil penalty of not less than \$1,000 nor more than \$15,000 for each day in which the violation persists.

Finally, the Executive Director is authorized, after providing notice and the opportunity for a hearing before the Commission as provided for in Section 30812 of the Coastal Act, to record a Notice of Violation against the subject properties.

Thank you for your attention to this matter. If you have any questions regarding this letter or the pending enforcement case, please feel free to contact me.

Sincerely,



Andrew Willis
District Enforcement Analyst

cc: John Montgomery, City of Laguna Beach
Lisa Haage, Chief of Enforcement, CCC
Pat Veasart, Southern California Enforcement Supervisor, CCC
Christine Chestnut, Statewide Enforcement Analyst, CCC
Teresa Henry, South Coast District Manager, CCC
Karl Schwing, Orange County Permit Supervisor, CCC

Exhibit 10
CCC-10-CD-01 (Driftwood)
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CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400
TDD (415) 597-5885



VIA CERTIFIED AND REGULAR MAIL

March 27, 2008

Driftwood Properties, LLC
c/o Mr. Greg Vail
The Athens Group
31106 Pacific Coast Highway
Laguna Beach, CA 92651

Subject: Notice of Intent to Record a Notice of Violation of the Coastal Act and to Commence Cease and Desist Order and Restoration Order Proceedings

Violation File Number: V-5-06-029

Property Location: Northern Terminus of Driftwood Drive, Laguna Beach, Orange County, APN 056-240-65 & APN 656-191-40

Unpermitted Development: Removal of major vegetation; placement of approximately 5,500 sandbags, sand/gravel berms, filter fabric over the berms and plastic discharge pipes; and grading to create building pads and roads in an environmentally sensitive habitat area.

Dear Mr. Vail:

The purpose of this letter is to notify you of my intent, as the Executive Director of the California Coastal Commission ("Commission"), to record a Notice of Violation of the Coastal Act and to commence proceedings for issuance of Cease and Desist and Restoration Orders to address unpermitted development at the site, which may include, but may not be limited to removal of major vegetation; placement of approximately 5,500 sandbags, sand/gravel berms, filter fabric over the berms and plastic discharge pipes; and grading to create building pads and roads in an environmentally sensitive habitat area. The unpermitted development activities occurred on a portion of two parcels, recognized by the Orange County Assessor's Office as Assessor Parcel Numbers 056-240-65 and 656-191-40, at the northern terminus of Driftwood

Exhibit 11
CCC-10-CD-01 (Driftwood)
CCC-10-RO-01

Greg Vail
March 27, 2008
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Drive in the City of Laguna Beach in Orange County ("property"). The property is owned by Driftwood Properties LLC, which purchased the property in 2004, and managed by the Athens Group.¹

The purpose of these enforcement proceedings is to address development on the property that was not authorized with the necessary coastal development permit (CDP) through Cease and Desist and Restoration Orders, which will direct you to: 1) cease from performing any additional unpermitted development activity (development not authorized pursuant to, or exempt from, the Coastal Act), 2) remove all unpermitted development according to an approved removal plan, and 3) restore the impacted areas to their pre-violation condition, to the extent feasible pursuant to an approved restoration plan, except in areas where erosion control measures must be implemented to avoid additional impacts. In addition, the Commission also seeks to record a Notice of Violation in this matter to protect prospective purchasers until the Coastal Act violations on the property have been resolved.

Violation History

In December 2005, you notified Commission staff that you planned to replace 500 of the approximately 5,500 sandbags on the property, which 500 sandbags are located along the terminus of the watercourse on the property. In January 2006, you submitted a CDP application for these replacement activities, and you amended the permit application in October of 2006 to include a request for authorization to replace most of the other sandbags on the property as well. The amended permit application, No. 5-06-382, was scheduled to be considered by the Commission on May 10, 2006, but you withdrew the application in April of 2007. No subsequent application was filed, and, consequently, no CDP has been obtained for sandbags on the property.²

Upon review of the application for approval of the sandbags, Commission staff learned that building pads had been graded in the early 1960s. No vested right to the graded pads has been established. Furthermore, from a review of historical aerial and ground-level photographs, city records, and biological surveys, it appears that vegetation was removed from the areas in and adjacent to the pads on three occasions following the grading in the early 1960's: 1) at some time between 1979 and 1986, 2) at some time between 1993 and 1997 or 1998, 3) and again in 1999. None of these actions were authorized in a CDP. After the last of these instances, the disturbed areas were rapidly colonized by coastal sage scrub, southern maritime chaparral, including bigleaf crownbeard, and transitional or successional species. Had this site been left undisturbed

¹ This Notice is addressed to you in your capacity as representative for Athens Group, which is an agent for Driftwood Properties, LLC.

² Although you submitted a Vested Rights application with respect to the unpermitted graded pads, sandbags, and vegetation removal at issue in this matter in November 2007, it remains incomplete after almost five months and after repeated requests from staff to submit additional information. No vested right has been established for any of the cited unpermitted development.

In addition, although an Emergency Permit was sought and obtained for just the most recent set of sandbags placed on the property, this Emergency Permit specifically noted that it was a temporary authorization (the Emergency Permit required removal of the sandbags by March 28, 2008) and did not obviate the need for a CDP.

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following the grading in the early 1960's, it most likely now would be covered with a patchwork of mature coastal sage scrub and maritime chaparral.³

No CDPs were issued for the removal of major vegetation; placement of approximately 5,500 sandbags,⁴ sand/gravel berms, filter fabric over the berms and plastic discharge pipes; and grading to create building pads and roads. Pursuant to Section 30600(a) of the Coastal Act, any person wishing to perform or undertake development in the coastal zone must obtain a CDP, with limited exceptions, in addition to any other permit required by law. "Development" is defined, in relevant part, by Section 30106 of the Coastal Act to include:

...the placement or erection of any solid material or structure... grading, removing, dredging, mining, or extraction of any materials...construction, reconstruction, demolition, or alteration of the size of any structure... removal or harvest of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations....

The removal of major vegetation, which in this case includes removal of environmentally sensitive southern maritime chaparral and coastal sage scrub habitat; placement of approximately 5,500 sandbags, sand/gravel berms, filter fabric over the berms and plastic discharge pipes; and grading to create building pads and roads, constitute development under the Coastal Act, and, therefore, require a CDP, unless otherwise exempt.

Commission staff sent a Notice of Violation letter to you on May 4, 2007. Subsequently, staff discussed the possibility of addressing this violation through a consent order. We would still prefer to resolve the violations amicably if possible and welcome ideas from you as to how to achieve this goal. A consent order would provide you with an opportunity to resolve this matter consensually, to have greater input into the process and timing of removal of the unpermitted development and restoration of the subject property, and to negotiate an appropriate penalty amount with Commission staff. As you know, however, the terms and conditions of a consent order in this matter would need to be, by law, consistent with Coastal Act resource protection policies and in compliance with the Coastal Act and applicable regulations. If you are interested in discussing the possibility of resolving the violation through a consent order, please contact Christine Chestnut at 415-904-5294 or send correspondence to her attention at the address listed on the letterhead.

Notice of Violation

The Commission's authority to record a Notice of Violation is set forth in Section 30812 of the Coastal Act, subdivision (a) of which states the following:

Whenever the executive director of the Commission has determined, based on substantial evidence, that real property has been developed in violation of this division, the executive director may cause a notification of intention to record a notice of violation to be mailed by regular and certified mail to the owner of the real property at issue, describing the real property, identifying the nature of the violation, naming the owners thereof, and stating that if the owner objects to the filing of a notice of violation, an opportunity will

³ J. Dixon memo to R. Todaro re habitat characteristics on Athens Group property dated 04-16-07

⁴ Emergency Permit No. 5-07-440-G authorized the placement of up to 300 sandbags on an existing unpermitted sandbag berm at the mouth of a watercourse on the property.

be given to the owner to present evidence on the issue of whether a violation has occurred.

I am issuing this Notice of Intent to record a Notice of Violation because, as discussed above, a number of instances of unpermitted development have occurred at the property without the necessary permits, in violation of the Coastal Act. **If you object to the recordation of a Notice of Violation in this matter and wish to present evidence on the issue of whether a violation has occurred, you must respond in writing, to the attention of Christine Chestnut, using the address provided on the letterhead within twenty days of the postmarked mailing of this notice, or by April 16, 2008.** If you fail to object within that twenty-day period, we shall record the Notice of Violation in the Orange County Recorder's office pursuant to Section 30812(b) of the Coastal Act. It should also be noted that, pursuant to Section 30812, after final resolution of the violation, the Executive Director will also record a rescission of this notice, which shall have the legal effect of a withdrawal or expungement of the original notice.

Cease and Desist Order

The Commission's authority to issue Cease and Desist Orders is set forth in Section 30810 of the Coastal Act, which states, in part, the following:

- (a) If the commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that (1) requires a permit from the commission without securing the permit or (2) is inconsistent with any permit previously issued by the commission, the commission may issue an order directing that person...to cease and desist.*

As the Executive Director of the Commission, I am issuing this Notice of Intent to commence Cease and Desist Order proceedings because unpermitted development has occurred at the subject property. The unpermitted development at issue in this matter may include, but not be limited to, removal of major vegetation; placement of approximately 5,500 sandbags, sand/gravel berms, filter fabric over the berms and plastic discharge pipes; and grading to create building pads and roads in environmentally sensitive habitat area. The proposed Cease and Desist Order will direct you to desist from maintaining existing development on the property that was not authorized with any necessary CDPs and from performing further unpermitted development on the property.

Based on Section 30810(b) of the Coastal Act, the Cease and Desist Order may also be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with the Coastal Act, including a requirement for immediate removal of any development or material. Thus, the proposed Cease and Desist Order will require removal of development on the property that was not authorized with any necessary CDPs. The proposed Order will require removal to occur according to a plan and schedule that will have to be submitted and approved by the Executive Director. Your cooperation in Commission staff site investigations to ensure and document removal of all unpermitted materials and structures on the subject property will also be required.

Restoration Order

Section 30811 of the Coastal Act authorizes the Commission to order restoration of a site as follows:

In addition to any other authority to order restoration, the commission...may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission...the development is inconsistent with this division, and the development is causing continuing resource damage.

The specified activities meet the criteria of Section 30811 of the Coastal Act, based on the following:

- 1) Development has occurred on the property without a permit from the Commission, in violation of Section 30600(a) of the Coastal Act
- 2) Development is inconsistent with Coastal Act Section 30240 (protection of environmentally sensitive habitat).
- 3) The unpermitted development is causing "continuing resource damage," as defined by Section 13190 of the Commission's regulations. The unpermitted development has removed, damaged, and degraded environmentally sensitive habitat. Such impacts meet the definition of damage provided in Section 13190(b): "any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development." In addition, the resource damage from the development is continuing, in that the impacts from the unpermitted development continue to occur at the property.

For the reasons stated above, I have decided to commence a Restoration Order proceeding before the Commission. The procedures for the issuance of Restoration Orders are described in Sections 13190 through 13197 of the Commission's regulations, which are codified in Title 14 of the California Code of Regulations.

Please be advised that Coastal Act Sections 30803 and 30805 authorize the Coastal Commission to initiate litigation to seek injunctive relief and an award of civil penalties, respectively, in response to any violation of the Coastal Act. Coastal Act Section 30820(a) provides that any person who violates any provision of the Coastal Act may be subject to a penalty not to exceed \$30,000. Further, Section 30820(b) states that, in addition to any other penalties, any person who "knowingly and intentionally" performs any development in violation of the Coastal Act can be subject to a civil penalty of up to \$15,000 for each day in which the violation persists. Additional penalties of up to \$6,000 per day can be imposed if a cease and desist or restoration order is violated. Section 30822 further provides that exemplary damages may also be imposed for knowing and intentional violations of the Coastal Act or of any orders issued pursuant to the Coastal Act.

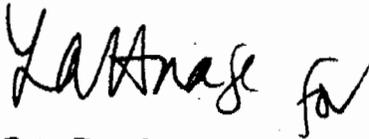
Greg Vail
March 27, 2008
Page 6 of 6

In accordance with Section 13181(a) and 13191(a) of the Commission's regulations, you have the opportunity to respond to the Commission staff's allegations as set forth in this notice of intent to commence Cease and Desist Order and Restoration Order proceedings by completing the enclosed Statement of Defense form. **The Statement of Defense form must be returned to the Commission's San Francisco office, directed to the attention of Christine Chestnut, no later than April 16, 2008.**

Commission staff has tentatively scheduled the hearing for the proposed Cease and Desist and Restoration Orders (and for the proposed Notice of Violation, should you additionally request **in writing** a hearing on this issue) for the May 7-9, 2008 Commission meeting. If you have any questions regarding this letter or the enforcement case, please call Christine Chestnut at (415) 904-5294 or send correspondence to her attention using the address provided on the letterhead.

We are very encouraged by the discussions we have had with you and hope to ultimately resolve this violation through consent agreements. We appreciate your cooperation in this matter and look forward to continuing to work with you to reach an amicable resolution of the violation.

Sincerely,



Peter Douglas
Executive Director

Encl.: Statement of Defense Form for Cease and Desist Order

cc (without Encl): Lisa Haage, Chief of Enforcement
Alex Helperin, Staff Counsel
Pat Veasart, Southern California Enforcement Team Leader
~~Christine Chestnut~~, Enforcement Analyst
Christine Chestnut, Headquarters Enforcement Office

Exhibit 11
CCC-10-CD-01 (Driftwood)
CCC-10-RO-01

CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000
SAN FRANCISCO, CA 94105-2219
VOICE AND TDD (415) 904-5200
FAX (415) 904-5400

**MEMORANDUM**

FROM: John Dixon, Ph.D.
Ecologist

TO: Ryan Todaro

SUBJECT: Habitat Characteristics on the Athens Group LLC property at Hobo Aliso Ridge (formerly known as Driftwood Estates)

DATE: April 16, 2007

Documents reviewed:

Marsh, K. January 20, 1992. South Laguna Biological Resources Inventory. A report prepared for the City of Laguna Beach.

J. Gustafson (Investigator, City of Laguna Beach). June 16, 1994. Response to complaint that Esslinger property was bulldozed on June 4 and June 5, 1994. Includes this summary of the site visit: "Site visit revealed recent grading or brush removal."

U.S. Fish and Wildlife Service. October 7, 1996. Determination of Endangered or Threatened Status for Four Southern Maritime Chaparral Plant Taxa from Coastal Southern California and Northwestern Baja California, Mexico. Final rule. Federal Register Volume 61, Number 195, pages 52370-52384. [Listing of Bigleaf Crownbeard, *Verbesina dissita*, as Threatened]

Shelley, D.A. (John M. Tettemer & Associates). June 30, 1999. Letter to M. Vaughn (CCC) concerning proposed development on Esslinger property, now known as Driftwood Estates.

LSA Associates. August 17, 2000. Biological Resources Assessment, Driftwood Estates – Laguna Beach Project. A report prepared for Highpointe Communities, Inc.

Michael Brandman Associates. November 2001. Draft Environmental Impact Report, Laguna Beach Driftwood Estates (Tentative Tract No. 16035). State Clearinghouse No. 2001011112. Prepared for City of Laguna Beach.

Exhibit 12
CCC-10-CD-01 (Driftwood)
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Tippets, W.E. (CDFG). December 20, 2001. Letter to A. Larson (City of Laguna Beach) re: "Draft Environmental Impact Report for the Driftwood Estates Project (Tentative Tract Number 16035), Laguna Beach, California (SCH 200101112 (sic)).

Evans, K.E. (USFWS). December 21, 2001. Letter to A. Larson (City of Laguna Beach) re: "Draft Environmental Impact Report for the Laguna Beach Driftwood Estates (Tentative Tract Number 16035), City of Laguna Beach, County of Orange, California

Almanza, E. and D. Bramlet. June 2003. Technical Review, Biological Resources Assessment, Driftwood Estates. A critical assessment of proposed alterations to the City of Laguna Beach's habitat ranking system written by E. Almanza based on a Dave Bramlet's site survey and technical information, with a note from Karlin Marsh dated February 21, 2003.

The subject property includes an irregular, more-or-less flat graded area bounded to the south and west by residential development (single-family homes and a trailer park), to the north by native habitat and a trailer park, and to the east by native habitat. This disturbed area was graded out of a natural, generally ocean-facing hillside on the south side of Hobo Canyon in an area known locally as the "Hobo Aliso Ridge." The relatively undisturbed adjacent native habitat is mainly comprised of southern maritime chaparral, coastal sage scrub, and habitats intermediate in character between maritime chaparral and coastal sage scrub. These habitats, especially maritime chaparral, support populations of bigleaf crownbeard¹, which is listed as "threatened" under both federal and state law and is endemic to this part of Orange County.

Prior to the grading of this site, its habitat was almost certainly southern maritime chaparral because the landscape position, topography, physical environment, and climatic regime were essentially the same as that of the adjacent maritime chaparral. If left undisturbed, it is reasonable to expect that the site would eventually again support a maritime chaparral community since such a successional sequence has been observed at other disturbed sites. This is also suggested by recent changes in the vegetation. The vegetation was periodically removed by bulldozing prior to 1999.² Ground-level photographs taken in 1999 show a barren site, nearly devoid of vegetation, bounded by a line of sandbags. Ground cover was extremely sparse, suggesting that the area had

¹ In the United States, natural populations of bigleaf crownbeard are only found on coastal hillsides and canyons in Laguna Beach. Although generally restricted to southern maritime chaparral, bigleaf crownbeard also occurs to a lesser extent in coastal sage scrub and mixed chaparral. There has been an 82 to 93 percent loss of maritime chaparral habitat in southern California due to urbanization and agriculture. The majority of remaining populations are on private land and threatened with residential development.

² The site was scraped at least in 1994 (Gustafson 1994) and in 1997 or 1998 (P. Elia, personal communication to J. Dixon, April 14, 2007). According to local residents, the vegetation was removed on other occasions prior to 1999 (P. Elia, personal communication to J. Dixon, April 14, 2007). A 1979 aerial photograph shows most of the site vegetated. An aerial from the City that is labeled "1997/1998 Aerial Photos" shows discrete, rectilinear unvegetated areas that suggest grading had recently taken place.

recently been scraped, closely mowed,³ or both. Apparently, the vegetation removal has ceased because by 2001 the graded portion of the site supported developing Venturan-Diegan transitional coastal sage scrub, sage scrub-grassland ecotone/sere⁴, coastal sage-chaparral ecotone/sere, and southern maritime chaparral, in addition to weedy vegetation (Michael Brandman Assoc. 2001). Bigleaf crownbeard was documented on the graded portion of the site in both 2000 and 2003 (LSA 2000, Almanza & Bramlet 2003).

When southern maritime chaparral is disturbed, the early colonizers are generally exotic grasses and other weeds followed by coastal sage scrub species. With time, the coastal sage scrub is expected to be replaced by maritime chaparral, which is considered the climax community. Based on observations of recovery on nearby sites, the process could take 30 years or longer (Fred Roberts, personal communication to J. Dixon, April 13, 2007). Therefore, had this site been left undisturbed beginning in 1972 it mostly likely now would be covered with a patchwork of mature coastal sage scrub and maritime chaparral. However, as pointed out by the Department of Fish and Game (Tippets 2001), "...past and ongoing clearance of vegetation on much of the previously-graded portion of the site has prevented the establishment of mature coastal sage scrub and southern maritime chaparral."

Both the Department and the U.S. Fish and Wildlife Service (Evans 2001) consider the various types of coastal sage scrub and the maritime chaparral that occur on the property to be "sensitive" or "special status" plant communities. Southern maritime chaparral is listed as a rare plant community by the Department of Fish and Game's Natural Diversity Data Base and it performs the important ecosystem function of providing habitat to rare and threatened species such as bigleaf crownbeard. Although there are thousands of acres of coastal sage scrub still in existence in California, over 85 percent of the original acreage has been lost. The loss in the coastal zone is probably much higher and is especially significant because coastal sage scrub provides critical habitat for the coastal California gnatcatcher, a "threatened" species under the Endangered Species Act. In its review of the Driftwood Estates proposal at the subject site, the Department of Fish and Game (Tippets 2001) found that, "The quality of the coastal sage scrub on the site varies, but it is generally not high quality. However, this vegetation community is widely regarded as threatened, and any loss is generally considered directly and cumulatively significant. In addition, rufous-crowned sparrow, a species of special concern strongly associated with coastal sage scrub, was observed on the site." The California gnatcatcher has also been observed at the site.⁵ In this setting, both the southern maritime chaparral and the coastal sage scrub are rare habitat types, they perform the important ecosystem function of providing habitat for rare species, and they are also obviously easily degraded by human activities.

³ Shelley (1999) reports "cut grasses."

⁴ An "ecotone" is a transitional zone between two communities that typically contains elements of each. A "sere" is a successional sequence of community types. The meaning here is apparently "seral stage."

⁵ California Department of Fish and Game Natural Diversity Database: Laguna Beach Quad (No. 3311757/071D), California gnatcatcher (*Poliophtila californica*) observation 836.

Therefore, at the subject site, coastal sage scrub and maritime chaparral meet the definition of Environmentally Sensitive Habitat Area (ESHA) under the Coastal Act.

It is clear that the habitat that was destroyed when the area was graded would have met the definition of ESHA and that the surrounding, ungraded area is currently ESHA. The current status of the graded area is a more difficult determination, because until recently it was repeatedly disturbed by scraping, vegetation clearance, and by the placement of sandbags, which take up space and prevent the establishment of any plant community. However, the fact that the area was rapidly colonized by coastal sage scrub and by maritime chaparral vegetation, including bigleaf crownbeard, in areas where disturbance ceased demonstrates that the necessary physical and environmental characteristics for these rare vegetation types are present. The evidence suggests that it is only because of ground disturbance, repeated cutting of vegetation, and sandbag placement that coastal sage scrub and maritime chaparral are not now well-established. Therefore, I recommend that the entire graded portion of the site be considered degraded ESHA.

CALIFORNIA COASTAL COMMISSION

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MEMORANDUM

FROM: John Dixon, Ph.D.
Ecologist

TO: Karl Schwing
Louise Warren

SUBJECT: Driftwood Property in Laguna Beach

DATE: July 14, 2008

Documents reviewed:

Almanza, E. and D. Bramlet. June 2003. Technical Review. Biological resource assessment, Driftwood Estates. With a note from Karlin Marsh dated 02/21/03.

Dixon, J.D. April 16, 2007. Memorandum to R. Todora (CCC) regarding "Habitat characteristics on the Athens Group LLC property at Hobo Aliso Ridge (formerly known as Driftwood Estates).

Evans, K.E. (USFWS). December 21, 2001. Letter to A. Larson (City of Laguna Beach) re: "Draft Environmental Impact Report for the Laguna Beach Driftwood Estates (Tentative Tract Number 16035), City of Laguna Beach, County of Orange, California.

LSA. August 17, 2000. Biological resources assessment. Driftwood Estates – Laguna Beach Project. A report prepared for Highpointe Communities.

Michael Brandman and Associates. May 2, 2002. Letter report to A. Larson (City of Laguna Beach) regarding "Biological resources assessment of Driftwood Estates (Tentative Tract 16035) based on interpretation of City habitat value criteria.

PCR Services Corporation. May 2008. Driftwood Properties biological resources/ESHA assessment, Laguna Beach, Orange County, California. A report prepared for Driftwood Properties, LLC.

John Tettermer and Associates. June 30, 1999. Letter report to M. Vaughn (CCC) providing a biological assessment of the Driftwood property.

Tippets, W.E. (CDFG). December 20, 2001. Letter to A. Larson (City of Laguna Beach) re: "Draft Environmental Impact Report for the Driftwood Estates Project (Tentative Tract Number 16035), Laguna Beach, California (SCH 200101112 (sic)).

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PCR's 2008 report ("Driftwood Properties biological resources/ESHA assessment") apparently has two purposes. One is to present the results of a number of useful biological studies that have been conducted on or near the property. The other is to erect straw men¹ and then knock them down. I will comment on the latter first.

Straw Man Number 1 (PCR 2008)

"In a memorandum to the CCC Ventura staff, dated March 25, 2003...Dr. Dixon expanded on [the definition of environmentally sensitive habitat area contained in Section 30107.5 of the California Coastal Act]." and "[T]he applicability of Dr. Dixon's expanded tests for ESHA determination is logical for the study area due to the plant and wildlife resources they share [with the Santa Monica Mountains] within the same floristic province and Mediterranean ecosystem."

In fact, there has been no "expansion" of the definition of ESHA that was provided by the legislature in the Coastal Act. The tests for ESHA are:

- (1) Are the species or habitats in an area rare?
- (2) Are the species or habitats in an area especially valuable because of their special nature or role in the ecosystem?
- (3) Could the area be easily disturbed or degraded by human activities and developments?

In my 2003 memorandum, I provided examples of rarity, special nature, and important roles in the ecosystem, especially as they apply to the situation in the Santa Monica Mountains. With regard to their applicability to the Driftwood study area, since these tests are applicable throughout the Coastal Zone, they are certainly applicable there.

What is different in the Santa Monica Mountains is that some community types that are relatively common in California (e.g., chamise chaparral) meet the definition of ESHA by virtue of their especially valuable role in the Santa Monica Mountains ecosystem - an unusually large, unusually complex, and unusually pristine ecosystem that is unique in the Coastal Zone. As PCR points out, in my 2003 memorandum I stressed the need for site-specific biological assessments in order to make an ESHA determination. As is the case for Driftwood, Commission staff generally do not conduct those biological studies, but rather rely on the site-specific data provided by others, typically consultants such as PCR (cf. Dixon (2007)).

Straw Man Number 2 (PCR 2008)

PCR suggests that I (Dixon 2007) applied a "deterministic," "linear recovery model," and made "broadly applicable generalizations." PCR then concludes that, "Under

¹ "a weak or imaginary opposition (as an argument or adversary) set up only to be easily confuted" (Merriam-Webster Collegiate Dictionary). "A straw man argument can be a successful rhetorical technique (that is, it may succeed in persuading people) but it carries little or no real evidential weight, because the opponent's actual argument has not been refuted" (Wikipedia).

Dr. Dixon's assumptions, [the athletic fields at Pepperdine University] should be considered ESHA today because he claims they will recover to coastal sage scrub."

In fact, I did not make reference to Pepperdine University or any developed area or any disturbed habitat other than Driftwood and similar parcels within the southern maritime chaparral of Laguna Beach. Nor did I make broad generalizations that could be applied to disparate geographic areas or habitat types. I (Dixon 2007) wrote the following: "If left undisturbed, it is reasonable to expect that the [Driftwood] site would eventually again support a maritime chaparral community since such a successional sequence has been observed at other disturbed sites." and "When southern maritime chaparral is disturbed, the early colonizers are generally exotic grasses and other weeds followed by coastal sage scrub species. With time, the coastal sage scrub is expected to be replaced by maritime chaparral, which is considered the climax community. Based on observations of recovery on nearby sites, the process could take 30 years or longer (Fred Roberts, personal communication to J. Dixon, April 13, 2007)." I did not apply a particular theory of community succession to this area. Rather, I attempted to describe a pattern of vegetative change following disturbance to southern maritime chaparral² that had been empirically observed elsewhere in the local area. In response to my query regarding the likely habitat that would develop in the absence of additional disturbance, based on his experience in the area Mr. Roberts³ thought that the graded area at Driftwood "...would almost certainly re-establish as a form of Diegan coastal sage scrub, perhaps⁴ followed by chaparral, or a mixture of both. However it would be a very long process. Based on recovery on nearby sites it could be a 30-year long process or more on a site like that."⁵

Postulating absurd consequences arising from a point-of-view of PCR's own invention does not advance the discussion of this complex subject. However, in case PCR's extreme hypothetical arose from a lack of clarity in my earlier memorandum, I will restate my understanding of these issues. I have never recommended that any particular area should be considered ESHA simply because it has the potential to develop sensitive habitat attributes in the future. I evaluate habitat as it currently exists, except in the limited circumstance where the habitat has been degraded by human activities without the benefit of a required permit. The Driftwood site potentially falls

² This pattern is implicit in the opinion of the Department of Fish and Game (Tippets 2001) that, "...past and ongoing clearance of vegetation on much of the previously-graded portion of the site has prevented the establishment of mature coastal sage scrub and southern maritime chaparral." Similarly, the U.S. Fish and Wildlife Service (Evans 2001) opined that "[T]he CSS onsite is likely an early successional stage resulting from prior disturbance, and would later give way to southern maritime chaparral...." LSA Associates (2000) stated that a primarily grassland habitat with low cover of coastal sage scrub species is generally considered an early successional stage of coastal sage scrub, occurs on the more disturbed parts of Driftwood and "indicates a gradual transition towards a climax community such as chaparral."

³ Mr. Roberts is a botanist that has been monitoring maritime chaparral in the Laguna Beach area since 1982. As a biologist for the U.S. Fish and Wildlife Service he was the principal author of the Final Rule designating big leaf crownbeard (*Verbesina dissita*) as a "threatened" species under the federal Endangered Species Act.

⁴ In retrospect, I should have included this caveat in my summary of the likely trajectory of community change at Driftwood and emphasized Mr. Robert's greater certainty of at least coastal sage scrub developing. Practically, there is little difference since coastal sage scrub also meets the definition of ESHA in this area that is occupied by the coastal California gnatcatcher.

⁵ As discussed below, after severe shrub clearance in about 1970, aerial photographic evidence suggests that it required 30 to 40 years for the hills above the Driftwood site to recover.

within this category. Based on the standards in the Coastal Act, the habitat was ESHA when the property was initially graded, and the evidence suggests it would now be ESHA had the vegetation not been cleared repeatedly over the years. If the vegetation removal was conducted without a permit, the area should be considered ESHA regardless of its current degraded condition. If the vegetation removal was done legally, then the issue is moot and the site should be evaluated based on its current condition. In any event, whether the Driftwood site with its particular history of disturbance would in the fullness of time support coastal sage scrub, southern maritime chaparral, or be dominated by the exotic fountain grass is a legitimate question that I will address below in the context of the biological studies that have been conducted.

Vegetative Changes On and Near the Driftwood Property

The location of the driftwood site relative to local topography is shown in Figure 1. A 1931 aerial photograph (Figure 2) shows the Driftwood property to be covered with vegetation that appears similar in pattern to the surrounding hillsides. The whole area was probably a mosaic of the vegetation types that are present in the area today, including southern maritime chaparral, ceanothus chaparral, toyon-sumac chaparral and coastal sage scrub (Fred Roberts, personal communication). The Driftwood property was graded in the early 1960s and the change in topography and reduction in vegetation is obvious in a 1964 aerial photograph (Figure 3). However, the adjacent natural hillside was more-or-less uniformly covered with shrubby vegetation. Sometime between 1964 and 1970 most of the shrubs and trees were removed from the lower slopes of the hills facing the ocean in the Hobo-Aliso portion of Laguna Beach, presumably for fire safety. In a 1970 aerial photograph (Figure 4) there is an abrupt roughly linear ecotone caused by shrub removal from Hobo Canyon to at least the ridge above the Aliso Creek Inn and Golf Course. Portions of the upper tier of the graded pads on the Driftwood property adjacent to the open space may also have been cleared at this time. In a 1977 aerial photograph (Figure 5), the lower portion of the hillside is still relatively bare in the cleared area. The vegetation on the Driftwood pads appears to have increased in abundance but the character of that vegetation cannot be ascertained from the aerial photographs. A 1986 aerial photograph (Figure 6) shows continuing recovery on the hillside, but the graded pads on the Driftwood property appear to have recently been cleared again. By 1993 large shrubs were much more abundant on the hillside (Figure 7) and by 2007 the native vegetation on the hillside had mostly recovered and again supports coastal sage scrub and southern maritime chaparral species (Figure 8). There was not a similar increase in large shrubs and small trees on the Driftwood property between 1977 and 2007. This may be partly a result of differences in substrate resulting from the early grading, but it is probably largely due to repeated disturbance in the form of vegetation removal. Since the signatures of herbaceous vegetation and coastal sage scrub are not distinct in these aerial images, one cannot determine how the character of the vegetation changed over time on the Driftwood Property. For this purpose, ground-level, oblique photographs and personal observations are more useful, but limited in extent.

Although local residents assert that there has been periodic vegetation removal for many years, the first clear evidence of which I am aware is a report of unpermitted grading in 1994. Following up a citizen's complaint of bulldozers clearing the land, City of Laguna Beach Inspector John Gustafson made a site visit on June 19, 1994 and found evidence of "grading or brush removal." Much of the property was again scraped in 1999 or shortly before⁶ as evidenced by photographs provided in Tettemer (1999). Inexplicably, PCR (2008, p. 34) asserts that "[d]uring the nine-year period from 1999 to the present, it is our understanding that the graded lots area has not undergone vegetation scraping or mowing of any kind. It is a certainty that no vegetation disturbance has taken place on the graded portion of the study area since the Applicant acquired the property in late 2004." Yet, on the very next page, PCR states that "...the site has been used as a fuel break for years" and during a site visit on July 2, 2008 biologists from Glenn Lukos Associates explained that much of the graded area was cleared of vegetation by goats or by the use of weed wackers, machetes, and chain saws in fall 2007 (see attached field notes). The small size of coastal sage scrub plants and the woody debris under limbed laurel sumac in areas that were not cleared in 2007 suggests that some clearing may also have taken place between 1999 and 2007.

PCR (2008) asserts that the historic (1962) grading changed the soil characteristics such that the area cannot support southern maritime chaparral species, including crownbeard, and only a "limited patch of coastal sage scrub." This hypothesis is not consistent with empirical observations. The extreme southwestern portion of the property (beyond the chain link fence surrounding a retention basin) supports a relatively high quality stand of coastal sage scrub dominated by California sagebrush (Figure 9 & Attachment A, Area 8). Presumably this is the "limited patch" of coastal sage scrub referred to by PCR. However, there are other areas that support coastal sage scrub species⁷, but that appear to have been more frequently disturbed (e.g, Areas Areas 6, 7, & 7A in Attachment A). For example, Figure 10 shows the area to the east of the chain link fence in 1999 after it had been scraped to bare ground and again in 2006. The photographs were taken from different locations, but the fence can be used as a spatial referent. Most of the shrubs that have recruited are coastal sage scrub species (Attachment A, Area 7A). Were this area and other similar areas to the northeast left undisturbed, they would probably support stands of coastal sage scrub similar to that on the southwestern edge of the property. That soil is not limiting is also suggested by the fact the coastal sage scrub species (and very few non-natives) are growing in the retention basin (Figure 11), which was more severely scraped than surrounding areas and has poor gravelly soil. Species that are commonly found in chaparral are also found scattered in the frequently disturbed areas. These include big pod ceanothus (*Ceanothus megacarpus*), red berry (*Rhamnus crocea*), black sage

⁶ Local residents observed bulldozers scraping vegetation on more than one occasion between 1996 and 1999 (Dan and Penny Elia, personal communication to J. Dixon on July 12, 2008). Photographs taken on June 11, 1999 (Tettemer 1999) show pads mostly bare (rocks are visible on the surface). Had this occurred prior to the previous winter rains, one would expect to see ruderal vegetation.

⁷ The significant variability in the vegetation on the site is not reflected in PCR's (2008) vegetation mapping. Areas with high quality coastal sage scrub, areas with developing coastal sage scrub, and areas dominated by non-native grasses are all lumped under the designation "Disturbed/Barren/Sagebrush Buckwheat Scrub," the floristics of which are not described in the text. This coarse categorization does not provide an accurate description of the vegetation that is present.

(*Salvia mellifera*), and crownbeard (*Verbisina dissita*). PCR (2008) argues that crownbeard germinate and begin to grow but do not persist on the site. They go on to say that those crown beard plants that germinated "...remained stunted, unable to persist due to lack of suitable soil and 'nurse' conditions provided by mature chaparral species." In fact, crownbeard has been observed on the site at least since the mid-1990s (F. Roberts, personal communication to J. Dixon on July 12, 2008) but apparently was first mapped in 2000 by LSA. In Spring 2008, it was mapped a second time (PCR 2008). The species has apparently been present on the property for at least ten years, so in that sense it is "persistent." However, it could be that on different occasions different ephemeral individuals or clones are observed and that particular plants have short life spans and are not "persistent." Such an *ad hoc* hypothesis is possible, although not a very parsimonious explanation. The fact remains that no one has marked individuals or clones and followed them over time, so there simply are no data to support PCR's speculation that crownbeard is "unable to persist." I do not know if the crownbeard that grow in the area that was graded in the early 1960s are as fit as those found in nearby undisturbed native habitats, but they are sufficiently robust to grow and flower with or without "nursery" overstory plants (Figure 12).

With regard to Environmentally Sensitive Habitat Areas as defined in the Coastal Act, there is apparently agreement that most of the slopes within the property boundaries are maritime chaparral, "very high value" under the City's General Plan, and meet the definition of ESHA (PCR 2008). Nearly all the vegetation surrounding the property boundaries was mapped as "Very High Value Habitat" or "Very High Value Habitat/High Value Habitat" by Michael Brandman and Associates (2002). The area was remapped by biologist Dave Bramlet (Almanza & Bramlet 2003) who found most of the surrounding area to be "Very High Habitat Value" and designated the coastal sage scrub at the southwest end of the property as "High Value Habitat."

After visiting the site, examining photographs from several years, and reading the various biological reports that are available, it is still my recommendation (cf. Dixon 2007) that, under current conditions, all areas of maritime chaparral and the coastal sage scrub at the southwest end of the property meet the definition of ESHA in the Coastal Act because they are rare habitats, have the important ecosystem function of supporting rare species (e.g., crownbeard, rufus-crowned sparrow, and California gnatcatcher), and are easily degraded by human activities. In my 2007 memorandum, I also recommended that the entire graded portion of the site be considered degraded ESHA. That recommendation was based on evidence that the original vegetation was maritime chaparral and coastal sage scrub, that if left undisturbed the site would transition to coastal sage scrub and maritime chaparral, and, implicitly, that there was no evidence that the repeated disturbance that prevented the reestablishment of ESHA was legally permitted. After visiting the site, I am more convinced that the site would now support coastal sage scrub and probably maritime chaparral had it not been repeatedly disturbed following the initial grading. PCR (2008) asserts that "...succession is toward fountain grass and not chaparral or coastal sage scrub." This is clearly not the case for the whole area. However, those pads that have been repeatedly and recently cleared of vegetation are dominated by fountain grass and other exotic weeds. PCR's claim that "eight or nine years have elapsed since the last habitat clearing" is false. At the least, most of the areas dominated by non-native

grasses and other exotic weeds were cleared in fall 2007. On the other hand, it is certainly true that these areas will never develop a native vegetation community if they are subject to frequent fuel modification in perpetuity.

Figure 1. Location of the Driftwood property (pink polygon). Figure courtesy of Penny Elia.

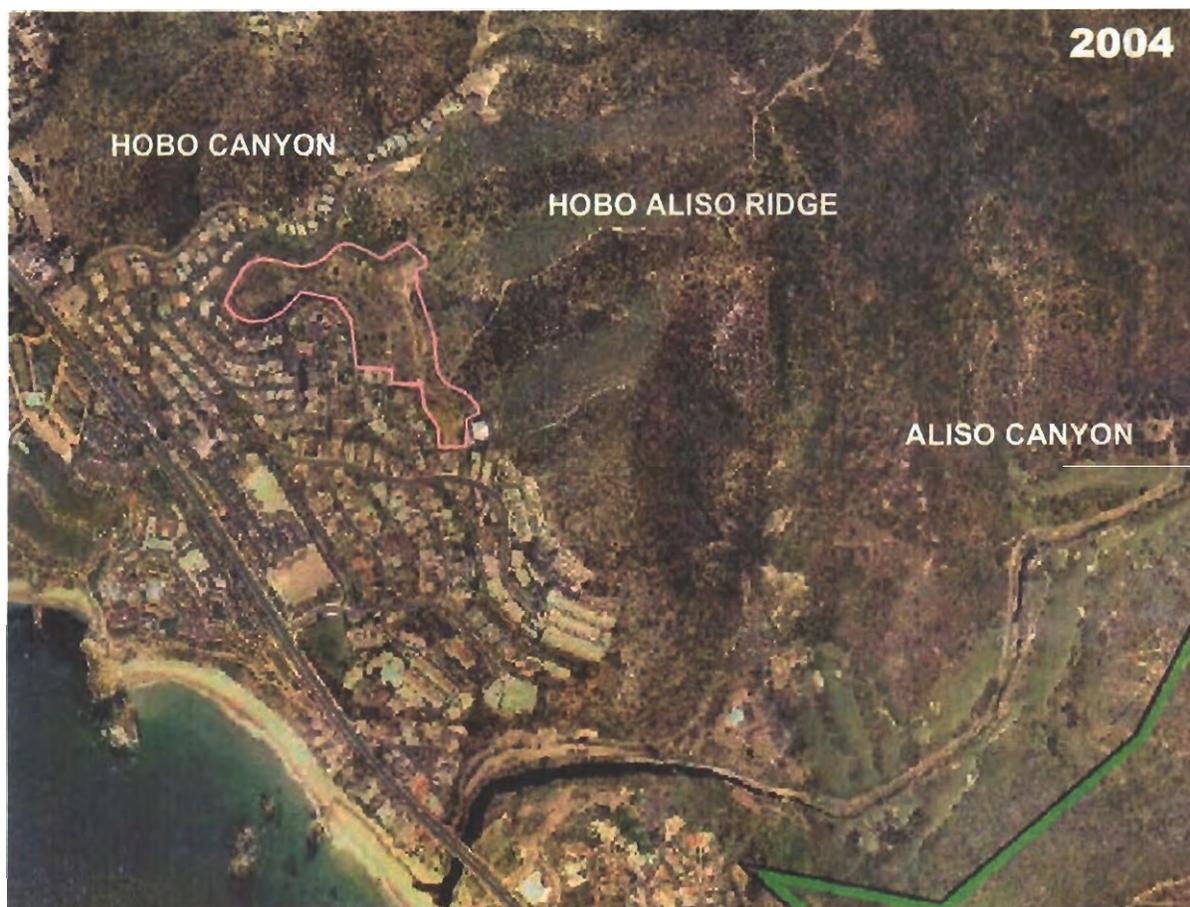


Figure 2. 1931 aerial photograph of the Hobo-Aliso ridge.



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Figure 3. 1964 aerial photograph of the Hobo-Aliso ridge showing the recently graded Driftwood property (indicated by the "D").



Figure 4. 1970 aerial photograph of the Hobo-Aliso ridge showing the Driftwood property and area where vegetation was removed from the hillside leaving an abrupt ecotone where clearing stopped.



Figure 5. 1977 aerial photograph of the Hobo-Aliso ridge and Driftwood property.



Figure 6. 1986 aerial photograph of the Hobo-Aliso ridge and the Driftwood property.



Figure 7. 1993 aerial photograph of the Hobo-Aliso ridge and the Driftwood property.



Figure 8. 2007 aerial photograph of the Hobo-Aliso ridge and the Driftwood property.

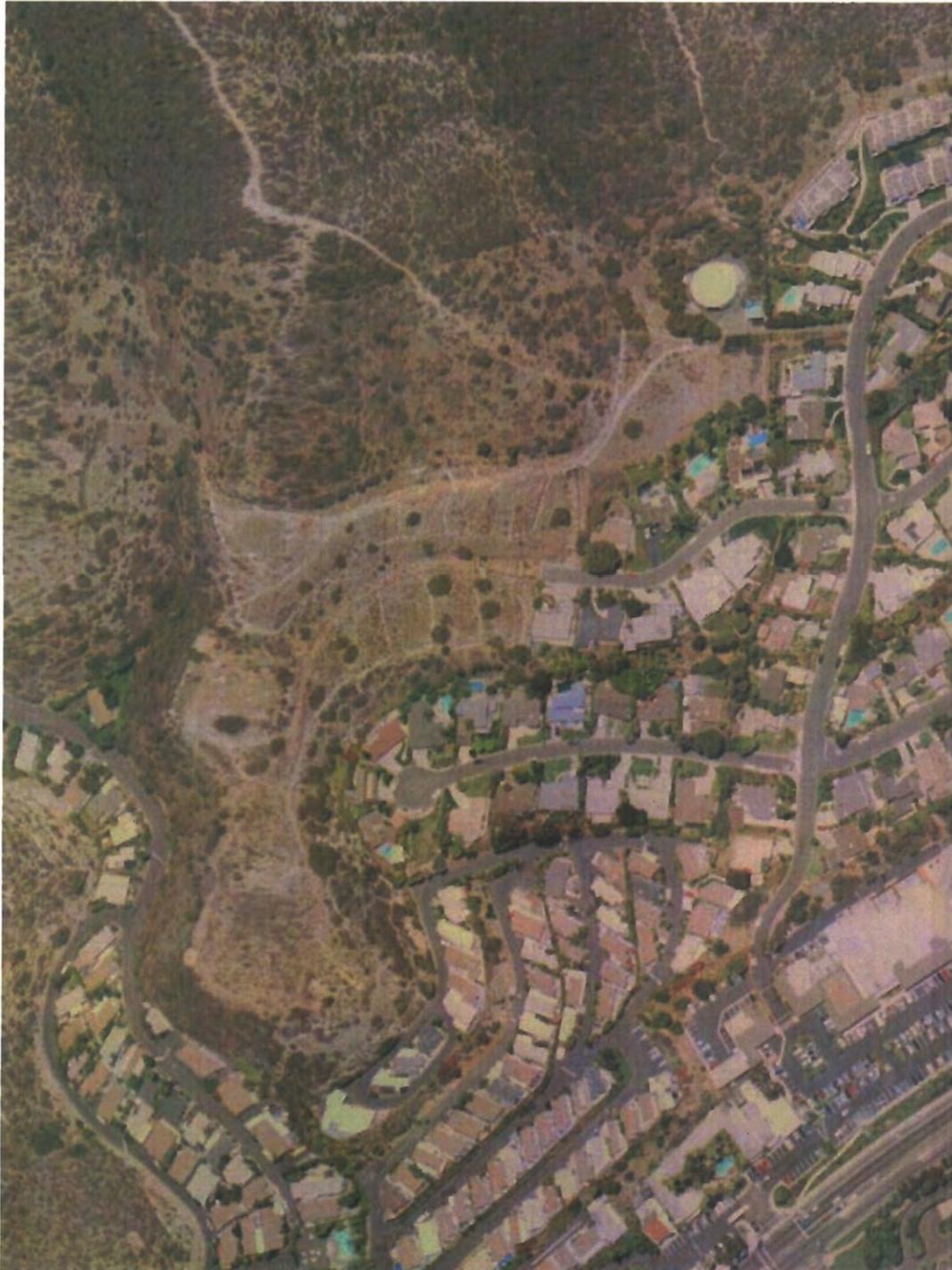


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Figure 9. Coastal sage scrub in the southwestern-most portion of the property, west of the fenced retention basin (photographs courtesy of Dan and Penny Elia). This area is dominated by California sagebrush (*Artemisia californica*). Other native species present include *Malacothamnus* sp., *Rhus integrifolia*, *Isocoma menziesii*, *Eriogonum fasciculatum*, *Baccharis pilularis*, *Salvia mellifera*, *Opuntia* sp., *Verbesina dissita* (crownbeard), and *Rhamnus crocea*. Non-native grasses are present in most openings among the shrubs and are prevalent along the edges of the graded pad along a trail, where a few exotic *Acacia* and *Myoporum* are also present. The area is currently dried and brown due to several seasons of drought.

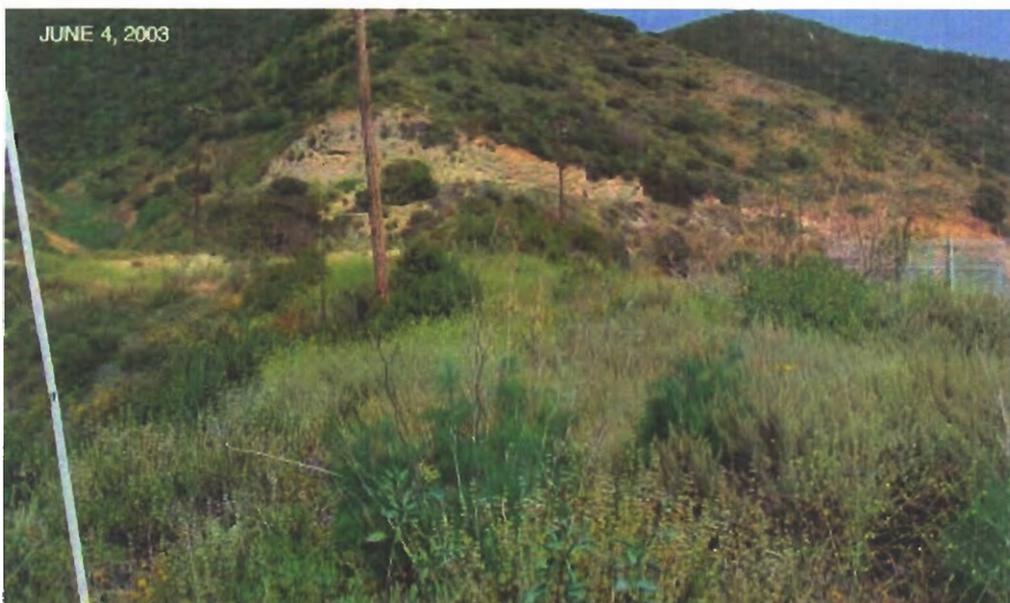
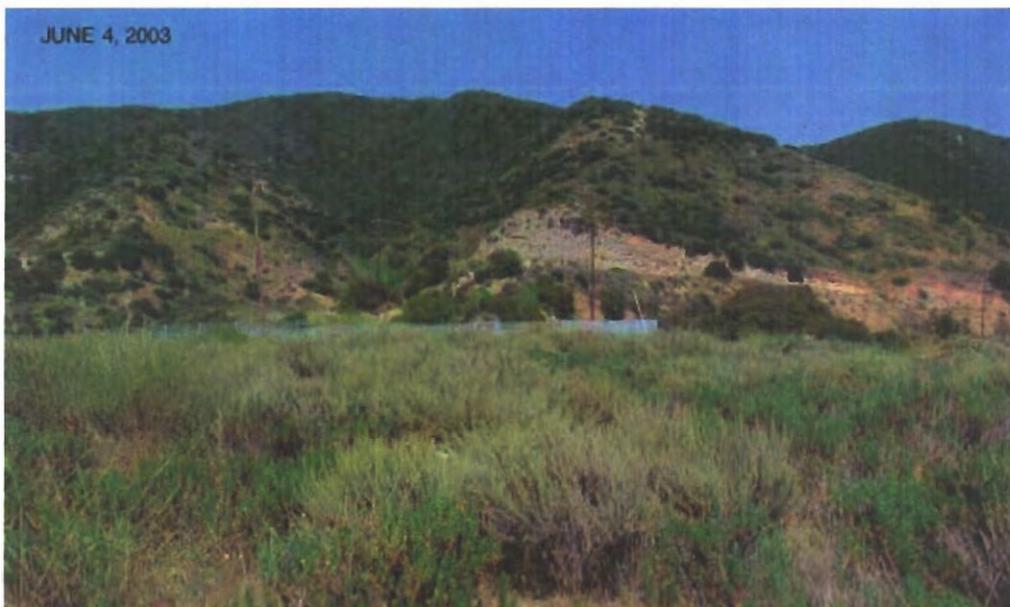


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Figure 10. Development of coastal sage scrub following vegetation removal. The area was apparently scraped shortly before the photograph was taken based on the near total lack of vegetation. The photograph is from Tettemer (1999). The June 30, 1999 date added to the photograph is the date of the report, not the photograph. The picture was probably taken on June 11, 1999, the day of the field assessment. By 2006 many coastal sage scrub species had colonized (photograph courtesy of Dan and Penny Elia). In 2008, most of the herbaceous cover is provided by non-native grasses, whereas most of the shrubs are native coastal sage scrub species, including *Artemisia californica*, *Eriogonum fasciculatum*, *Isocoma menziesii*, *Malosma laurina*, *Salvia mellifera*, *Ercelia californica*. Chaparral species are also present, including *Ceanothus megacarpus*, and *Rhamnus crocea*.



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Figure 11. Retention basin viewed from the west (photograph courtesy of Dan and Penny Elia). In 2008, the basin was dominated by native shrubs, including *Artemisia californica*, *Eriogonum fasciculatum*, *Malosma laurina*, *Mimulus aurantiacus*, *Rhus integrifolia*, *Malacothamnus* sp., and *Encelia californica*. There was very little cover by non-native species. Around 60% of the ground surface was unvegetated. The disturbance history of the retention basin is not known.

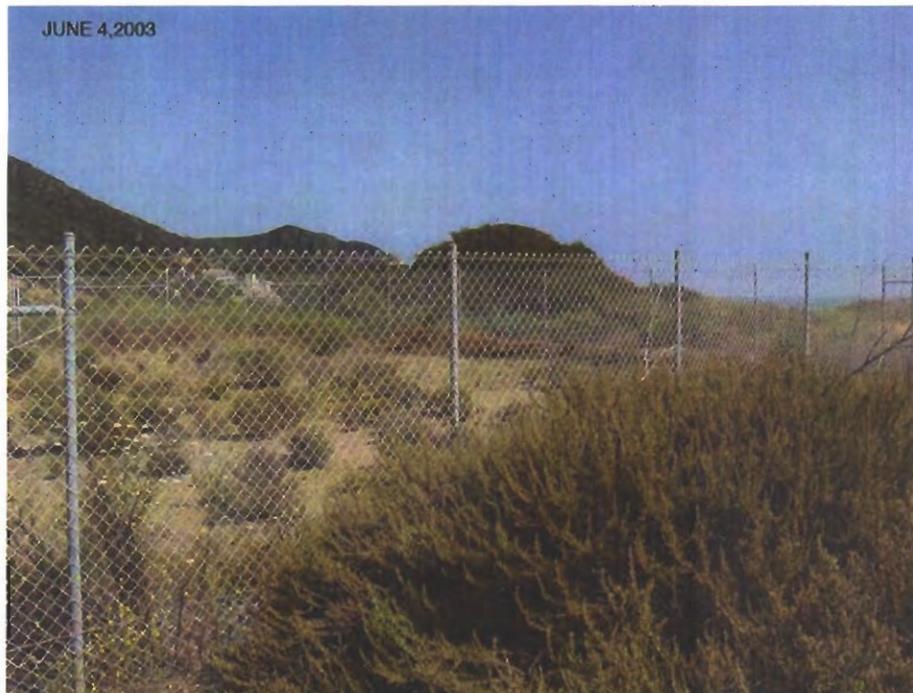


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Figure 12. Flowering crownbeard growing near the retention basin without benefit of overstory "nurse" plants (photographs courtesy of Dan and Penny Elia).



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ATTACHMENT A

Field Observations from a Site Visit on July 2, 2008

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M E M O R A N D U M

FROM: John Dixon, Ph.D.
Ecologist

TO: File

SUBJECT: Site visit to the Driftwood property, Laguna Beach, California

DATE: July 12, 2008

On July 2, 2008 I visited the Driftwood Property with representatives of the Athens Group, PCR, Glenn Lukos Associates, and other Coastal Commission staff. From about 0900 to about 1200, I walked the entire property and examined each graded pad by walking a haphazard zigzag path and noting the type of vegetation that was present and the dominant species. Tony Bomkamp of Glenn Lukos Associates verified species identifications in the field. Thienan Ly provided information on fuel modification activities that took place in October 2007. Tony Bomkamp and Thienan Ly of Glenn Lukos Associates reviewed an early draft of these notes and made minor corrections and additions that are incorporated herein. The areas referenced are shown on a map of the site (Figure 1, below).

Entry Adjacent to Water Tank

This area was grazed by goats for fuel suppression in fall 2007. It is now overwhelmingly dominated by non-native grasses and *Chrysanthemum coronatum*. Scattered native plants include *Isocoma menziesii*, *Malosma laurina*, *Verbesina dissita*, and *Eriogonum fasciculatum*.

Area 1

This graded pad was grazed by goats for fuel suppression in fall 2007. It is now dominated by non-native grasses and *Chrysanthemum coronatum*, with scattered *Hirschfeldia incana*. *Isocoma menziesii* is scattered among the exotics. Natives on the slope above the graded pad include *Malosma laurina*, *Verbesina dissita*, and *Encelia californica*.

Area 2

This graded pad was grazed by goats for fuel suppression in fall 2007. It is now dominated by non-native grasses, with scattered *Hirschfeldia incana*. Scattered native plants include *Isocoma menziesii* and *Encelia californica*.

Area 3

This graded pad was grazed by goats for fuel suppression in fall 2007. It is dominated by non-native grasses. The native plants *Isocoma menziesii*, *Encelia californica*, *Artemisia californica* and *Malosma laurina* are present, especially along the base of the slope above the graded pad.

Area 4

The southern 25% of this graded pad was grazed by goats for fuel suppression in fall 2007. However, the entire pad has a similar disturbed character as Areas 1-3, although native species are more common. It is dominated by non-native grasses, with fountain grass (*Pennisetum setaceum*) prominent. Native plants that are present include *Malosma laurina*, *Lotus scoparius*, *Salvia mellifera*, *Artemisia californica*, *Eriogonum fasciculatum*, and abundant *Isocoma menziesii*. The slope above the graded pad is dominated by *Pennisetum* with scattered *Eriogonum*.

Area 5

This graded pad was not reported to have been grazed in fall 2007. However, it has a similar disturbed character as Areas 1-3. It is dominated by non-native grasses, with fountain grass (*Pennisetum setaceum*) prominent. Native plants that are present include *Malosma laurina*, several large *Artemisia californica* along the seaward edge of the pad, *Eriogonum fasciculatum*, and *Isocoma menziesii*.

Area 6

This graded pad was not reported to have been grazed in fall 2007. There is a striking qualitative difference between Areas 1-5 and Area 6. Although *Pennisetum* and other non-native grasses are abundant, native species are much more apparent. Native plants include *Baccharis pilularis*, *Malosma laurina*, *Salvia mellifera*, *Hazardia squarrosa* and locally abundant *Artemisia californica* and *Eriogonum fasciculatum*. *Ceanothus megacarpus* is present at the edge of the seaward slope.

Area 7

Area 7 is below Area 6 at the base of a steep cut slope. This graded pad was not reported to have been grazed in fall 2007. The greatest ground cover is provided by low-lying non-native grasses. Several species of exotic succulents are also present. However, native species are quite prominent and include *Opuntia* sp., *Eriogonum fasciculatum*, *Artemisia californica*, *Malacothamnus* sp., *Salvia mellifera*, *Rhus integrifolia*, *Baccharis pilularis*, *Ceanothus megacarpus*, and *Verbesina dissita*. Small (c. 15 cm high) *Artemisia californica* are abundant.

Area 7a

Area 7a is below Area 7 and bounded to the west by the chain link fence surrounding a retention basin. It is at about the same elevation as the lower, seaward strip of graded pads. The southern portions of this area were hand cleared using weed wackers, chainsaws, or machetes in fall 2007. The dominant ground cover is provided by non-native grasses. Native species include *Malosma laurina*, *Artemisia californica*, *Eriogonum fasciculatum*, *Salvia mellifera*, *Isocoma menziesii*, *Encelia californica*, *Ceanothus megacarpus*, and *Rhamnus crocea*. Fairly recent fuel modification throughout the area is suggested by the low height of most of the vegetation and the broken woody debris below the *Malosma laurina*.

Retention Basin

The retention basin is a graded depression with a standpipe that is connected to a storm drain at the base of the northern slope adjacent to "K" Street. It is surrounded by a chain link fence. The ground surface is gravelly and a small area (probably less than 50 ft²) shows evidence of standing water in the form of soil cracks. Around 60% of the ground surface is unvegetated. There is very little cover by non-native species. The basin is dominated by native shrubs, including *Artemisia californica*, *Eriogonum fasciculatum*, *Malosma laurina*, *Mimulus aurantiacus*, *Rhus integrifolia*, *Malacothamnus* sp., and *Encelia californica*.

Area 8

Area 8 is the western-most portion of the property. It is west of the retention basin. The central portion of this area is dominated by fairly large (30-100 cm high) relatively dense *Artemisia californica*. Other native species present include *Malacothamnus* sp., *Rhus integrifolia*, *Isocoma menziesii*, *Eriogonum fasciculatum*, *Baccharis pilularis*, *Salvia mellifera*, *Opuntia* sp., *Verbesina dissita*, and *Rhamnus crocea*. Non-native grasses fill most openings among the shrubs and are prevalent along the edges of the graded pad along a trail, where a few exotic *Acacia* and *Myoporum* are also present.

Area 9

Area 9 is southeast of Area 7a and at about the same elevation. It was hand cleared for fuel suppression in fall 2007. It is the uppermost of the series of graded pads generally referred to as the "lower pads." It is dominated by non-native grasses. Scattered native species include *Malosma laurina*, *Artemisia californica*, *Eriogonum fasciculatum*, *Encelia californica*, *Baccharis pilularis*, *Rhus integrifolia*, and *Malacothamnus* sp. The steep hillside separating the upper and lower pads has much bare substrate and scattered *Eriogonum fasciculatum*, *Artemisia californica*, and *Rhamnus crocea*.

Area 10

This graded pad was hand cleared for fuel suppression in fall 2007. It is now dominated by non-native grasses. Ground cover is nearly 100% false brome (*Brachypodium distachyon*) thatch. Tony Bomkamp identified this grass, which is not included in the species list provided by PCR. Scattered native species include *Isocoma menziesii*, *Encelia californica*, *Malacothamnus* sp., *Eriogonum fasciculatum*. *Malosma laurina* occupies the slope above the pad.

Area 11

This graded pad was hand cleared for fuel suppression in fall 2007. It is now dominated by non-native grasses. Scattered native species include *Isocoma menziesii* and *Malacothamnus* sp. *Malosma laurina* occupies the slope above the pad.

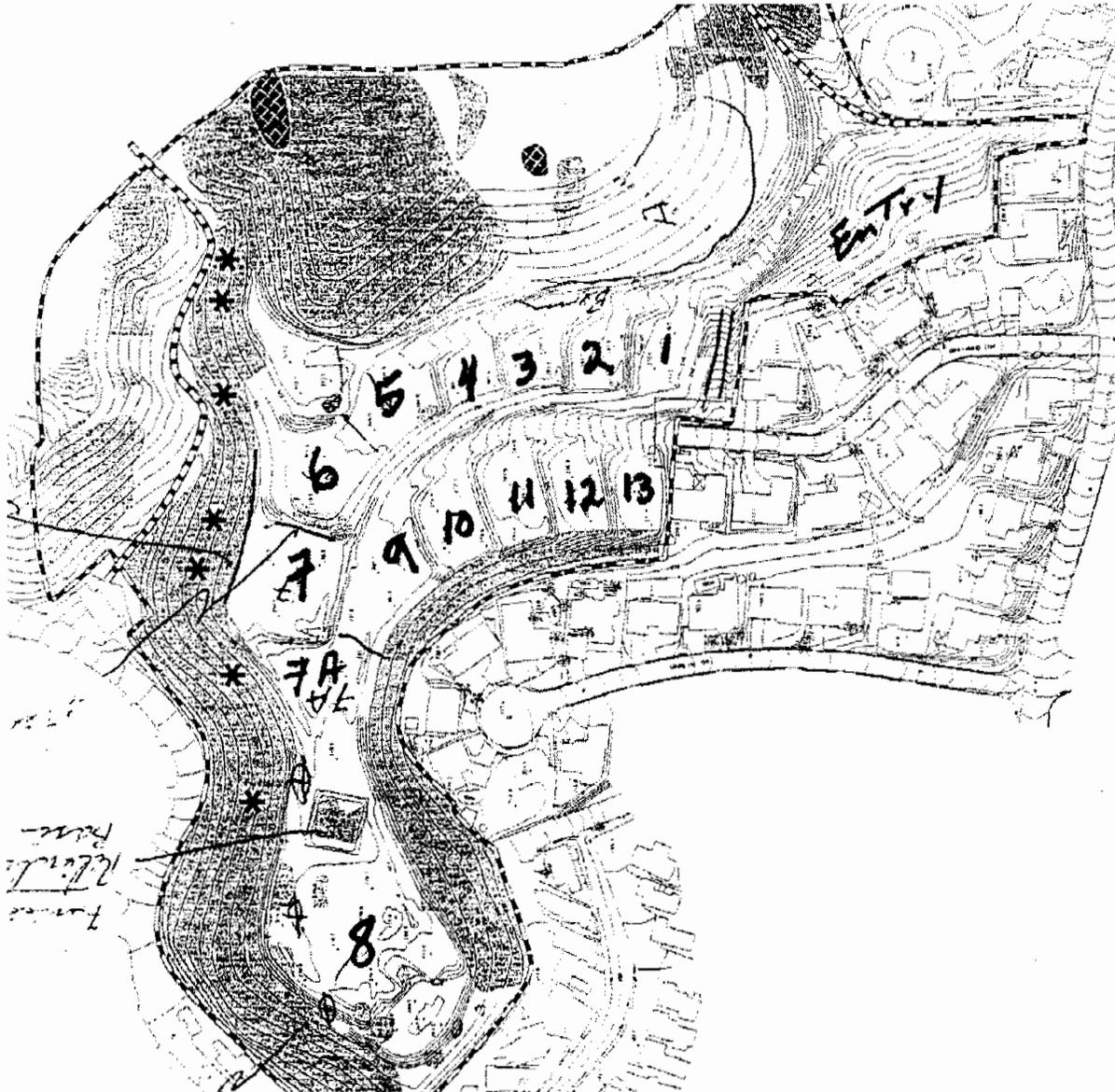
Area 12

This graded pad was hand cleared for fuel suppression in fall 2007. It is now overwhelmingly dominated by non-native grasses and *Chysanthemum coronatum*. Scattered native species include *Isocoma menziesii*, and *Malacothamnus* sp. *Rhus integrifolia* and *Malosma laurina* grow on the slope above the pad.

Area 13

This graded pad was hand cleared for fuel suppression in fall 2007. It is now dominated by non-native grasses and *Chysanthemum coronatum*. Native species that are present include *Malosma laurina*, *Isocoma menziesii*, *Salvia mellifera*, *Encelia californica*, *Eriogonum fasciculatum*, and *Malacothamnus* sp.

Figure 1. Map of the Driftwood Property with numbered areas that correspond to descriptions provided above. The retention basin is not labeled but is the square polygon between areas 7A and 8.



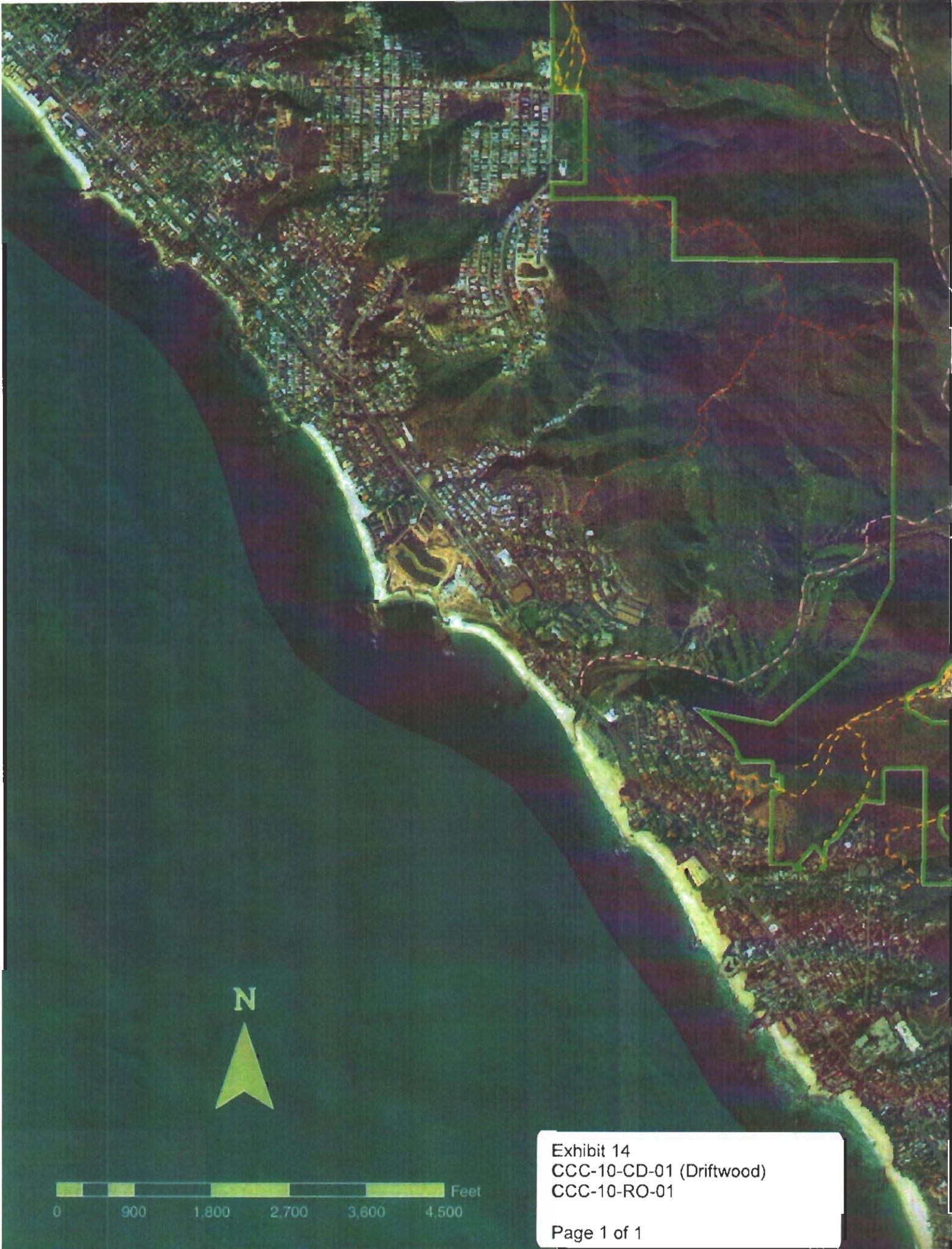


Exhibit 14
CCC-10-CD-01 (Driftwood)
CCC-10-RO-01