

**CALIFORNIA COASTAL COMMISSION**

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

August 11, 2010



# F11a

## **ADDENDUM**

**To:** Commissioners and Interested Parties

**From:** John Ainsworth, Deputy Director  
Gary Timm, Coastal Program Manager  
Charles Posner, Staff Analyst

**Re:** Coastal Development Permit Amendment 5-08-294-A1 (Ballona Lagoon West Bank Enhancement Plan - Phase IIIA), City of Los Angeles.

### **I. Revised Special Condition of Permit Amendment 5-08-294-A1**

In response to the applicant's comments contained in the attached letter dated August 5, 2010, staff is recommending that the special condition of the permit amendment be revised as follows. Staff agrees that the term Rare Plant Preserve shall be replaced with "protected area", and that the required revised restoration and monitoring plan shall be prepared in close consultation with a qualified restoration ecologist (instead of "under the direction of..."). Staff also agrees that irrigation devices should not be used in the areas where the yellow pincushion plants exist or are to be planted. Staff, however, does not agree that the long-term monitoring provisions set forth in Section H of the condition should be relaxed as requested by the applicant.

New text in the revised condition below is identified by **underlined bold text** and text being deleted is crossed-out (~~deleted text~~).

#### **11. Restoration and Monitoring Plan to Protect Rare Plant Habitat in the Ballona Lagoon Environmentally Sensitive Habitat Area** ~~Plan for the Establishment and Maintenance of the Ballona Lagoon Rare Plant Preserve~~

PRIOR TO ISSUANCE OF THE PERMIT AMENDMENT, the permittee shall submit, for review and written approval of the Executive Director, a revised restoration and monitoring plan for the portion of the project site (west bank of Ballona Lagoon) between the public education/information area at Jib Street and 5102 Pacific Avenue (thirty feet south of Topsail Street). The restoration and monitoring plan shall be revised **in close consultation with** ~~under the direction of~~ a qualified restoration ecologist (approved by the CCC Executive Director) who has experience in dune scrub and dune habitat restoration.

The restoration and monitoring plan shall be revised in consultation with the California Department of Fish and Game (CDFG), and shall incorporate the City of Los Angeles

Department of Public Work's Draft Action Plan for the Conservation of the Orcutt's Pincushion (dated April 22, 2010).

The revised restoration and monitoring plan shall also include the following:

- A. **Identification** Creation of a **protected area Rare Plant Preserve** on the west bank of Ballona Lagoon, between the public education/information area at Jib Street and 5102 Pacific Avenue (thirty feet south of Topsail Street) that recognizes and protects the ESHA between the protective fencing and the lagoon waters; i.e. dune scrub, dune, and wetland habitats and the rare plants these habitats support including Orcutt's yellow pincushion, *Chaeanactis glabriuscula* var. *orcuttiana*, South Coast saltscale, *Atriplex pacifica*, red sand verbena, *Abronia maritima*, and wooly seablite, *Sueda taxifolia*.
- B. A map with the location of the 2010 pincushion population as well as the other rare plants identified in the area including South Coast saltscale, *Atriplex pacifica*, red sand verbena, *Abronia maritima*, and wooly seablite, *Sueda taxifolia*.
- C. Dune scrub and dune habitat plant palette and planting plan that provides detailed instructions for the appropriate mixture of seeds, cuttings, and container plants as well as the appropriate plant densities for the respective habitats. All plants shall be Southern California native plants appropriate to the natural habitat type (dune scrub - salt marsh to uplands). All seeds and cuttings employed shall be from local sources in the Los Angeles coastal area. Prior to the first planting cycle, the permittee shall provide the Executive Director with the quantities and sources of all plants used in the project.
- D. The schedule for the implementation of the revised restoration and monitoring plan.
- E. Methodology for the collection of rare plant seeds ~~and cuttings~~ performed by an authorized agency that maintains a seed collection and that holds a seed collection permit from CDFG. **Methodology and controls for taking and planting cuttings of rare plants in the protected area.**
- F. Permanent irrigation devices are not permitted. **Temporary irrigation is not permitted in areas where yellow pincushion plants exist or are to be planted.** Temporary irrigation **is permitted outside the yellow pincushion areas**, but only if considered necessary by the approved restoration ecologist to **help** keep the native plants **become established** healthy.
- G. Removal of Non-native Plants. Ongoing removal of non-native plants from the project area shall be done under the supervision of **a qualified biologist** ~~the approved restoration ecologist~~ using only hand-held tools while taking care to avoid disturbance of native plants. The permittee shall ensure that the native vegetation is protected from disturbance during the implementation of the approved revised restoration and monitoring plan. No

herbicides may be employed. No ~~dead~~ non-native plants **material generated by the on-going removal of non-native plants** shall be left on site and no persistent chemicals shall be employed.

- H. Provisions for following the status of all rare plants as part of the five-year monitoring plan. For at least five years following the initial planting, the permittee shall actively monitor the site, remove non-native plants and replant native vegetation that has failed. Commencing upon completion of the initial restoration planting, the permittee shall monitor and inspect the site no less than once each thirty days during the first year after this initial planting. Thereafter, the permittee shall monitor the site at least once every ninety days. Each year, for a minimum of five years from the date of permit issuance, the permittee shall submit for the review and approval of the Executive Director, an annual monitoring report, prepared by **in close consultation with** the approved restoration ecologist that **assesses whether** certifies the **protected area Rare Plant Preserve** is in conformance with the revised restoration and monitoring plan approved by the Executive Director. The annual monitoring report shall include photographic documentation of **the restoration plan's progress along with a qualitative/quantitative assessment of** plant species **presence/absence** and plant coverage. If the annual monitoring report indicates the **protected area Rare Plant Preserve** is not in conformance with or has failed to meet the performance standards specified in the revised restoration and monitoring plan approved pursuant to this permit amendment, the permittee shall submit a revised or supplemental restoration plan for the review and approval of the Executive Director. The revised restoration plan must be prepared by **in close consultation with** the approved restoration ecologist and shall specify measures to remediate those portions of the restoration plan that have failed or are not in conformance with the approved plan. The permittee shall implement the supplemental restoration plan approved by the Executive Director and/or seek another permit amendment if required by the Executive Director.
- I. Invasive Plants. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a "noxious weed" by the State of California or the U.S. Federal Government shall be utilized within the property.
- J. Plans that show that the public access path is a maximum of four feet in width and located immediately adjacent to Pacific Avenue (as close as legally allowed) for its entire length where the path abuts the **protected area Rare Plant Preserve**.
- K. Protective fencing, **at** least three feet in height, shall be installed immediately adjacent to the lagoon side of the path.
- L. Signage. "Please Stay on Path" signs shall be posted along the public access path at ninety-foot intervals. Interpretive signs that explain the

purpose and benefits of the **protected area** ~~Rare Plant Preserve~~ shall also be posted at 200-foot (minimum) intervals.

The permittee shall implement the revised restoration and monitoring plan in accordance with the final plan approved by the Executive Director pursuant to this permit amendment. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required pursuant to the requirements of the Coastal Act and the California Code of Regulations.

## **II. Correspondence**

The attached correspondence is added to the staff report as an exhibit.

**BOARD OF PUBLIC WORKS  
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**RECEIVED**  
**South Coast Region**

**AUG 11 2010**

August 5, 2010

**CALIFORNIA  
COASTAL COMMISSION**

Charles R. Posner  
Coastal Program Analyst  
California Coastal Commission  
200 Oceangate, Suite 1000  
Long Beach, CA 90802

Dear Mr. Posner:

**Ballona Lagoon Enhancement Plan Phase III (W.O. E6000776) Coastal  
Development Permit Amendment 5-05-294-A1**

We have reviewed and considered the July 21, 2010 staff report and have become concerned about two aspects of Special Condition 11: the use of the term "Rare Plant Preserve" and the requirement for long-term active adaptive management of the area under the direction of an outside expert.

We fully support the long-held determination that the project site is an Environmentally Sensitive Habitat Area (ESHA). The Ballona Lagoon Enhancement project is intended to implement Section 30240 of the Coastal Act, which provides for the protection and enhancement of ESHAs. However, the term "Rare Plant Preserve" is not sufficiently defined and therefore risks creating misunderstandings about future maintenance and operation activities. We do not have the time and resources at this time to establish the usual and necessary agreements with permitting and resource agencies that would be necessary to define what "Rare Plant Preserve" means in this case. We suggest the term "protected area".

We share the goal of enhancing in a sustainable way the natural aspects of the ESHA and managing the area for future generations to the best of our ability. However, in these times of severe financial limitations, we can't commit to the substantial additional costs of contracting with a "restoration ecologist" and continuing long-term actions to be defined later "to remediate those portions of the restoration plan that have failed or are not in conformance with the approved plan." The project and restoration plan are

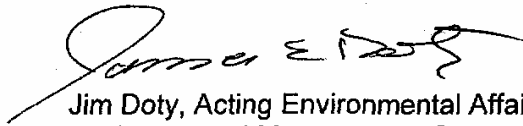


designed to maximize the probability of success and will be carried out as permitted, but the success will depend also on natural factors we can't predict or control.

The Ballona Lagoon Enhancement Project, either as originally permitted or amended as we propose, will benefit the ESHA. It is not a project that requires mitigation or offsets.

I am requesting that Special Condition 11 be revised as indicated in the attached. If you have any questions, please call William Jones at (213) 485-5760 or me at (213) 485-5759.

Sincerely,



Jim Doty, Acting Environmental Affairs Officer  
Environmental Management Group

JED/Request to revise Special Condition 11

Attachment: Special Condition 11 showing proposed revisions.

cc w/ attach: Hon. Bill Rosendahl, City Councilman, 6<sup>th</sup> Council District  
Paula A. Daniels, President Pro-tem, Board of Public Works Commissioners  
Gary Timm, S. Coast District Manager, California Coastal Commission

## City's Proposed Revision to CDP 5-08-294-A1 Special Condition 11

### 11. Restoration and Monitoring Plan to Protect Rare Plant Habitat in the Ballona Lagoon-Environmentally Sensitive Habitat Area (ESHA)

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Deleted: Rare Plant Preserve

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The revised restoration and monitoring plan shall also include the following:

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- B. A map with the location of the 2010 pincushion population as well as the other rare plants identified in the area including South Coast saltscale, *Atriplex pacifica*, red sand verbena, *Abronia maritima*, and wooly seablite, *Sueda taxifolia*.

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Prior to the first planting cycle, the permittee shall provide the Executive Director with the quantities and sources of all plants used in the project.

- D. The schedule for the implementation of the revised restoration and monitoring plan.

- E. Methodology for the collection of rare plant seeds performed by an authorized agency that maintains a seed collection and that holds a seed collection permit from CDFG.

- F. Permanent irrigation devices are not permitted. No irrigation, whether temporary or permanent, is permitted in areas where the pincushion exists or is to be planted. Temporary irrigation is permitted outside of the pincushion area, but only if considered necessary by the approved restoration ecologist to help the native plants become established.

Comment 1 (w/3): Cuttings are not stored with seeds. Cuttings would only be planted immediately adjacent to the restoration project. The use of cuttings would be limited to the restoration project area.

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Comment 1 (w/2): The restoration area is limited to the pincushion area. No irrigation is permitted in the pincushion area. Temporary irrigation is permitted outside of the pincushion area, but only if considered necessary by the approved restoration ecologist to help the native plants become established.

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approved revised restoration and monitoring plan. No herbicides may be employed. No non-native plant material generated by the on-going removal of non-native plants shall be left on site and no persistent chemicals shall be employed.

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- H. Provisions for following the status of all rare plants as part of the five-year monitoring plan. For at least five years following the initial planting, the permittee shall actively monitor the site, remove non-native plants and replant native vegetation that has failed. Commencing upon completion of the initial restoration planting, the permittee shall monitor and inspect the site no less than once each thirty days during the first year after this initial planting. Thereafter, the permittee shall monitor the site at least once every ninety days. Each year, for a minimum of five years from the date of permit issuance, the permittee shall submit for the review and approval of the Executive Director, an annual monitoring report, that assesses the success of the revised restoration and monitoring plan approved by the Executive Director. The annual monitoring report shall include photographic documentation of the restoration plan's progress, along with a qualitative/quantitative assessment of plant species presence/absence and plant cover.

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adjacent to the lagoon side of the path.

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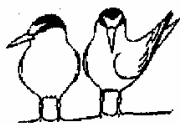
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## Friends of Ballona Wetlands

www.ballonafriends.org

August 3, 2010

Honorable Bonnie Neely, Chair  
California Coastal Commission  
Board of Supervisors  
825 Fifth Street, Room 111  
Eureka, CA 95501

Dear Commissioner Neely:

**Subject: Application No. 5-08-294-A1 – Material Amendment for Phase IIIA  
and IIIB of the Ballona Lagoon Enhancement Plan**

**RECEIVED**  
South Coast Region

AUG 4 - 2010

CALIFORNIA  
COASTAL COMMISSION

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Stephen Groner  
Dr. Edith Read  
Bob Shanman  
Michael Swimmer  
Richard Wegman

**Emeritus Board**  
Tim Rudnick  
Ed Tarvyd

Friends of Ballona Wetlands (FBW) staff have reviewed the updated Staff Report for the subject coastal permit amendment and reiterate our support for staff's recommendations. We continue to recommend adoption of the proposed amendment. Please refer to our initial comment letter dated July 9, 2010.

FBW do wish to highlight concerns raised about balancing public access and resource protection; in this case, for the protection of certain rare plants. Our understanding from discussions with the City's biologist and your staff ecologist is that other rare plants in this area do not actually occur in the specific area or footprint that will be impacted by the proposed new trail along Pacific Avenue. As recommended by CCC Staff, the location(s) of these plants will be verified by mapping to be conducted prior to issuance of the permit amendment, and the restoration plan revised as necessary so that construction will avoid impacts to these plants. It should be emphasized that the trail that is the subject of this amendment is already permitted, with a narrow trail proposed in an area that would have bisected the Orcutt's Yellow Pincushion population. On the basis of new information regarding the area occupied by the Pincushion, the City agreed to voluntarily narrow the path and move it as far away from the lagoon as possible to minimize impacts to the Pincushion population. The work will be performed under the supervision of a qualified restoration ecologist and there will only be irrigation if the ecologist deems it necessary. While it is estimated that this modified trail width and alignment would still impact an area occupied by about 1,200 Pincushion plants (or 4.5% of the population) as documented in the spring of 2010, this is an environmentally preferable alternative to the previously approved project, which would have impacted a greater portion of the population. Additionally we note that the Pincushion is an annual plant – if restoration and construction are scheduled in the summer or fall after seed dispersal has occurred, impacts to the population will be further minimized.

It is important to note that the project location is within a highly urbanized area where the public currently walks along the west side of Ballona Lagoon with some reckless abandon. That is, there are many unregulated "social trails" already in the area to be served by the proposed path.

211 Culver Blvd., Suite K, Playa del Rey, CA 90293  
ph: 310.306.5994 fax: 310.306.0031 e: info@ballonafriends.org

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August 3, 2010

Page 2

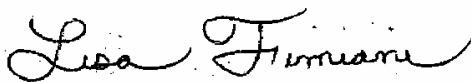
As noted in our July 9 letter, regulated public access to sensitive ecological resources can help prevent the formation or propagation of damaging "social trails" where no developed paths exist. Controlled access also enhances the public's educational experience by allowing them to see first-hand even sensitive habitats that may require special protection. Construction of this public access trail at this location was one of the main goals of the project, for reasons including the elimination of existing social trails.

While one may argue that the public (and trail) can be rerouted to cross Pacific Avenue at its intersection with Lighthouse Bridge to avoid the Pincushion population altogether, and we recognize that this alternative would be more protective of the Pincushion, there are potential public safety issues with this approach. While we do not possess expertise on traffic, transportation and public safety risks, common sense suggests that such risk exists. Most existing lagoon trail usage is on weekends, concurrent with the highest vehicle traffic on Pacific Avenue. Placing additional pedestrians in the path of cars, even where there is a clearly designated intersection with a stop sign, always creates new risk. In this case, given the substantial lengths to which the City has gone to minimize impacts to the rare plants, and given no credible evidence that the revised trail plan will adversely affect the long-term viability of the Pincushion population or other rare plants, we believe the possible risks to public safety of increased foot traffic across Pacific Avenue at the Lighthouse Bridge are not worth the benefit of rerouting the trail at this location.

Friends of Ballona Wetlands ([www.ballonafriends.org](http://www.ballonafriends.org)) is a non-profit 501(c)(3) membership organization with more than 6,000 individuals participating in our education and restoration programs each year. We represent the single largest group of stakeholders participating in the Coastal Conservancy's Ballona Wetlands Restoration Project. FBW has been dedicated to protecting and restoring the Ballona Wetlands for over 30 years with the help of more than 60,000 volunteers, and was instrumental in protecting the Ballona Wetlands from development through designation of the wetlands as a State Ecological Reserve.

If you have any questions, please feel free to call either of us at (310) 306-5994.

Sincerely,



Lisa Fimiani  
Co-Executive Director  
Friends of Ballona Wetlands

cc: Coastal Commissioners  
Charles Posner, CCC, Long Beach  
Jonna Engel, CCC, Ventura

**CALIFORNIA COASTAL COMMISSION**

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

**F11a**

Filed: 4/28/2010  
49th Day: 6/16/2010  
180th Day: 10/25/2010  
Staff: Charles Posner - LB  
Staff Report: 7/21/2010  
Hearing Date: August 13, 2010  
Commission Action:

**STAFF REPORT: MATERIAL AMENDMENT**

**AMENDMENT NUMBER:** 5-08-294-A1

**APPLICANT:** City of Los Angeles Department of Public Works

**AGENTS:** Ding Lee, Project Manager & William Jones, Environ. Specialist

**PROJECT LOCATION:** West bank of Ballona Lagoon between Via Marina and Grand Canal, (on publicly-owned property and easements), Venice, City of Los Angeles.

**ORIGINAL PROJECT DESCRIPTION - APPROVED APRIL 8, 2009:**

Implementation of Phases IIIA and IIIB of the Ballona Lagoon Enhancement Plan: 1) removal of non-native vegetation and encroachments; 2) re-vegetation with native dune plants, 3) realigning and improving the west bank public access trail between Topsail Street and Canal Court, 4) construction of a split rail fence along the public access trail and inland edge of easements, and 5) construction of a public education/information area with benches near Jib Street at Pacific Avenue.

**DESCRIPTION OF PERMIT AMENDMENT REQUEST:**

Revise the habitat restoration and monitoring plan and reduce the width of a segment of the public access path (from 5 feet to four feet wide) in order to accommodate an Orcutt's Yellow Pincushion (and other rare plants) preserve on the west bank of Ballona Lagoon as part of the implementation of Phase III of the Ballona Lagoon Enhancement Plan.

**SUMMARY OF STAFF RECOMMENDATION**

On April 8, 2009, the Commission approved Coastal Development Permit 5-08-294 for Implementation of Phases IIIA and IIIB of the Ballona Lagoon Enhancement Plan. While the City was in the process of removing non-native plants from the project area in February 2010, a rare native dune flower (Orcutt's Yellow Pincushion) was discovered growing in substantial numbers on the sandy west bank of the lagoon. The City stopped work, erected fencing to protect the rare plants, and has proposed to revise the previously approved restoration plan in order to preserve and expand the yellow pincushion (and other rare plant) habitat. The proposed changes include prioritizing the planting of yellow pincushion seeds in the planting plan, revising irrigation plans, and reducing to four feet the width of the re-located public access trail. Staff is recommending that the Commission **APPROVE** the amendment with a special condition that requires the City to revise the restoration plan under the direction of a qualified restoration ecologist approved by the Executive Director in order to minimize adverse impacts to sensitive habitat areas while maintaining the public access and recreational opportunities that are already authorized and required by the underlying coastal development permit. **See Page Two for the motion to carry out the staff recommendation.**

**PROCEDURAL NOTE:**

The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change,
- 2) Objection is made to the Executive Director's determination of immateriality, or
- 3) The proposed amendment affects conditions required for the purpose of protecting a coastal resource or coastal access.

In this case, the Executive Director has determined that the proposed amendment is a material change. If the applicant or objector so requests, the Commission shall make an independent determination as to whether the proposed amendment is material. [Title 14 California Code of Regulations 13166].

**STAFF RECOMMENDATION:**

The staff recommends that the Commission adopt the following resolution to **APPROVE** the permit amendment request with special conditions:

**MOTION:** *"I move that the Commission approve the proposed amendment to Coastal Development Permit 5-08-294 pursuant to the staff recommendation."*

Staff recommends a **YES** vote. Passage of this motion will result in approval of the amendment and adoption of the following resolution and findings. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

**I. Resolution for Approval of the Permit Amendment**

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

**II. Special Condition of Permit Amendment 5-08-294-A1**

[Staff Note: The Special Conditions of Coastal Development Permit 5-08-294 remain in effect, except in the case where the prior conditions may conflict with the condition of this permit amendment (e.g., this permit amendment reduces the width of the public access path between Jib Street and the southern end of the path from five feet to four feet and requires the submittal of a revised restoration plan). In the event of any conflict between the conditions of the underlying permit and the permit amendment, the conditions of this permit amendment shall supersede the conditions of the underlying permit. See Appendix A for the Special Conditions of Coastal Development Permit 5-08-294.]

**11. Plan for the Establishment and Maintenance of the Ballona Lagoon Rare Plant Preserve**

**PRIOR TO ISSUANCE OF THE PERMIT AMENDMENT**, the permittee shall submit, for review and written approval of the Executive Director, a revised restoration and monitoring plan for the portion of the project site (west bank of Ballona Lagoon) between the public education/information area at Jib Street and 5102 Pacific Avenue (thirty feet south of Topsail Street). The restoration and monitoring plan shall be revised under the direction of a qualified restoration ecologist (approved by the CCC Executive Director) who has experience in dune scrub and dune habitat restoration.

The restoration and monitoring plan shall be revised in consultation with the California Department of Fish and Game (CDFG), and shall incorporate the City of Los Angeles Department of Public Work's Draft Action Plan for the Conservation of the Orcutt's Pincushion (dated April 22, 2010).

The revised restoration and monitoring plan shall also include the following:

- A. Creation of a Rare Plant Preserve on the west bank of Ballona Lagoon, between the public education/information area at Jib Street and 5102 Pacific Avenue (thirty feet south of Topsail Street) that recognizes and protects the ESHA between the protective fencing and the lagoon waters; i.e. dune scrub, dune, and wetland habitats and the rare plants these habitats support including Orcutt's yellow pincushion, *Chaetanactis glabriuscula* var. *orcuttiana*, South Coast saltscale, *Atriplex pacifica*, red sand verbena, *Abronia maritima*, and wooly seablite, *Sueda taxifolia*.
- B. A map with the location of the 2010 pincushion population as well as the other rare plants identified in the area including South Coast saltscale, *Atriplex pacifica*, red sand verbena, *Abronia maritima*, and wooly seablite, *Sueda taxifolia*.
- C. Dune scrub and dune habitat plant palette and planting plan that provides detailed instructions for the appropriate mixture of seeds, cuttings, and container plants as well as the appropriate plant densities for the respective habitats. All plants shall be Southern California native plants appropriate to the natural habitat type (dune scrub - salt marsh to uplands). All seeds and cuttings employed shall be from local sources in the Los Angeles coastal area.

Prior to the first planting cycle, the permittee shall provide the Executive Director with the quantities and sources of all plants used in the project.

- D. The schedule for the implementation of the revised restoration and monitoring plan.
- E. Methodology for the collection of rare plant seeds and cuttings performed by an authorized agency that maintains a seed collection and that holds a seed collection permit from CDFG.
- F. Temporary irrigation, but only if considered necessary by the approved restoration ecologist to keep the native plants healthy. Permanent irrigation devices are not permitted.
- G. Removal of Non-native Plants. Ongoing removal of non-native plants from the project area shall be done under the supervision of the approved restoration ecologist using only hand-held tools while taking care to avoid disturbance of native plants. The permittee shall ensure that the native vegetation is protected from disturbance during the implementation of the approved revised restoration and monitoring plan. No herbicides may be employed. No dead non-native plants shall be left on site and no persistent chemicals shall be employed.
- H. Provisions for following the status of all rare plants as part of the five-year monitoring plan. For at least five years following the initial planting, the permittee shall actively monitor the site, remove non-native plants and replant native vegetation that has failed. Commencing upon completion of the initial restoration planting, the permittee shall monitor and inspect the site no less than once each thirty days during the first year after this initial planting. Thereafter, the permittee shall monitor the site at least once every ninety days. Each year, for a minimum of five years from the date of permit issuance, the permittee shall submit for the review and approval of the Executive Director, an annual monitoring report, prepared by the approved restoration ecologist that certifies the Rare Plant Preserve is in conformance with the revised restoration and monitoring plan approved by the Executive Director. The annual monitoring report shall include photographic documentation of plant species and plant coverage. If the annual monitoring report indicates the Rare Plant Preserve is not in conformance with or has failed to meet the performance standards specified in the revised restoration and monitoring plan approved pursuant to this permit amendment, the permittee shall submit a revised or supplemental restoration plan for the review and approval of the Executive Director. The revised restoration plan must be prepared by the approved restoration ecologist and shall specify measures to remediate those portions of the restoration plan that have failed or are not in conformance with the approved plan. The permittee shall implement the supplemental restoration plan approved by the Executive Director and/or seek another permit amendment if required by the Executive Director.

- I. Invasive Plants. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property.
- J. Plans that show that the public access path is a maximum of four feet in width and located immediately adjacent to Pacific Avenue (as close as legally allowed) for its entire length where the path abuts the Rare Plant Preserve.
- K. Protective fencing, least three feet in height, shall be installed immediately adjacent to the lagoon side of the path.
- L. Signage. “Please Stay on Path” signs shall be posted along the public access path at ninety-foot intervals. Interpretive signs that explain the purpose and benefits of the Rare Plant Preserve shall also be posted at 200-foot (minimum) intervals.

The permittee shall implement the revised restoration and monitoring plan in accordance with the final plan approved by the Executive Director pursuant to this permit amendment. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required pursuant to the requirements of the Coastal Act and the California Code of Regulations.

### **III. Findings and Declarations**

The Commission hereby finds and declares:

#### **A. Project Description and Background**

In April 2009, after many years of planning, public hearings, and litigation, the City of Los Angeles Department of Public Works obtained from the Commission approval of Coastal Development Permit 5-08-294 to enhance public recreational opportunities and to restore natural habitat areas along the west bank of Ballona Lagoon in Venice. The City vested the permit in early 2010 when it commenced development (removal of non-native vegetation, mostly iceplant) on the project site. Ballona Lagoon is located in the Silver Strand/Marina Peninsula area of Venice in the City of Los Angeles, adjacent to the Marina del Rey entrance channel (Exhibit #1). The certified Venice Land Use Plan (LUP) designates Ballona Lagoon and its lower banks as an Environmentally Sensitive Habitat Area (Exhibit #2: ESHA).

The project approved by Coastal Development Permit 5-08-294, Phases IIIA and IIIB of the Ballona Lagoon Enhancement Plan, includes only the west bank of Ballona Lagoon, from Grand Canal to Via Marina, with no work permitted below the high water line: elevation +2.7' mean sea level (MSL). The previously approved development includes: 1) removal of non-native vegetation (primarily comprised of large beds of iceplant) and unpermitted post-1972 encroachments from the protective lagoon buffer strip (including, but not limited to, unpermitted fences, walls, lighting, irrigation improvements, decks/patios, and residential landscaping); 2) re-vegetation with native dune plants, 3) realigning and improving the west bank public access trail between Canal Court (Grand Canal) and 5102 Pacific Avenue (thirty feet south of Topsail Street), 4) construction of a split rail fence along the public access trail and inland edge of the easements, and 5) construction of a public education/information area with benches near Jib Street at Pacific Avenue at the northern end of the lagoon. Phases I and II of the Ballona Lagoon Enhancement Plan restored and improved the east bank and subtidal portions of Ballona Lagoon, respectively, under separate coastal development permits.

While the City was in the process of removing the non-native plants from the west bank in February 2010, a rare native dune flower (Orcutt's Yellow Pincushion) was discovered growing in substantial numbers on the sandy west bank of the lagoon. The City stopped work and erected fencing to protect the rare plants, and has proposed to revise the previously approved restoration plan in order to preserve and expand the yellow pincushion (and other rare plant) habitat. The City's proposed revisions to the restoration plan include prioritizing the planting of yellow pincushion seeds in the planting plan, revising irrigation plans, and reducing to four feet the width of the previously approved public access trail that runs along the curb of Pacific Avenue (the existing trail runs closer to the water). Orcutt's yellow pincushion is an annual plant with a 1B.2 listing by the California Native Plant Society. 1B means the species is rare, threatened, or endangered in California or elsewhere and .2 indicates the species is fairly endangered in California.

The City's proposal to protect the rare plants on the west bank is contained in the document entitled: Draft Action Plan for the Conservation of the Orcutt's Pincushion (*Chaetanactis glabriuscula* var. *orcuttiana* (E. Greene) H. Hall) at Ballona Lagoon, Venice, California.



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Prepared by William Jones, City of Los Angeles Department of Public Works, Environmental Specialist II, Environmental Management Group), April 22, 2010. (See Exhibit #5).

Permit Amendment Request 5-08-294-A1 includes the following changes: 1) the planting plan will be modified to accommodate a Yellow Pincushion (and other native dune plants) preserve that includes the areas where the pincushion now exists as well as additional areas where it will be introduced, as shown on Page 14 of the Draft Action Plan; 2) the irrigation plan will be revised to eliminate irrigation from the Yellow Pincushion preserve areas; 3) the width of the public access path will be reduced from five feet to four-feet between Jib Street and the path's southern end thirty feet south of Topsail Street); 4) "Please Stay on Path" signs and interpretive signage will be installed to identify and explain the purposed of the Rare Plant Preserve to the public; and 5) a new vertical 4-inch drain connection will be installed under the path at Outrigger Street (in order to avoid impacting the lagoon bank). The permit amendment will also approve the methods for collecting pincushion seeds and replanting.



Ballona Lagoon, Venice. The existing west bank trail can be seen bisecting the project site, which is the area between the high water line and Pacific Avenue. The public access path approved by Permit 5-08-294 moves the trail all the way up to the curb of Pacific Avenue. The permit amendment reduces the width of the new trail (public access path).

The purpose of this permit amendment is to replace the former Commission-approved restoration plan with a revised restoration plan that will preserve and expand the native pincushion (and other rare plant) habitat, while further reducing adverse impacts to the ESHA and maintaining the improved public access trail and recreational opportunities that are already authorized and required by the underlying coastal development permit. Expansion of the pincushion habitat and the creation of the Ballona Lagoon Rare Plant Preserve are proposed in order to compensate for the loss of rare native plants that will occur when the public access path is re-located from the water's edge up to the road's edge (Pacific Avenue). It must be noted that the rejection of the permit amendment will not affect the status of the underlying coastal development permit. That is, the City will still hold the previously approved coastal development permit for Phase III of the Ballona Lagoon West Bank Enhancement Plan, even if the currently proposed revisions to the plan are not approved.

The Commission has certified a Land Use Plan (LUP) for the Venice area but has not certified the full LCP. The Coastal Commission has jurisdiction over this coastal development permit amendment application. Chapter 3 of the Coastal Act is the legal standard of review for this amendment application, with the certified Venice LUP used for guidance.

**B. Marine Resources and Environmentally Sensitive Habitat Areas (ESHA)**

The Coastal Act contains several policies that protect marine resources and sensitive habitat areas from the adverse impacts of development. The following Coastal Act policies apply to the restoration project that is proposed to be carried out in an area previously found to be an ESHA within the protective lagoon buffer strip that provides protection for the wetland and marine environments that exist in Ballona Lagoon. No fill or work is proposed below the high water line (+2.65' MHTL). The permit amendment for the revised west bank enhancement project is being conditioned to conform to the following Coastal Act policies.

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Section 30240 of the Coastal Act states:

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

Ballona Lagoon is an integral part of the larger Venice Canals/Ballona Lagoon wetlands system. Seawater enters the wetlands system through tidal gates that control the flow from the Marina del Rey entrance channel into Ballona Lagoon. The Venice LUP designates Ballona Lagoon as an Environmentally Sensitive Habitat Area (ESHA). The Commission also identified the lagoon and areas of its banks as ESHA in its review of the original permit application for this project. Sections 30230, 30231 and 30240 of the Coastal Act require that the natural resources of Ballona Lagoon and the ESHA on the banks be protected, restored and enhanced. In order to protect this ESHA, the Commission, through prior coastal development permit actions, has identified and required the provision of a protective lagoon buffer strip between the waters of the lagoon and the permitted development adjacent to the lagoon. The protective lagoon buffer strip includes the environmentally sensitive habitat areas (ESHA) that exist near the waters of the lagoon as well as the non-ESHA areas on the upper banks situated closer to the private residential development and Pacific Avenue.

Unfortunately, the wetland and upland habitats in and adjacent to Ballona Lagoon (i.e., salt marsh, sidebanks, mudflats, and marine habitat) are negatively affected by the lagoon's proximity to human activity, urban runoff, and the abundance of invasive non-native vegetation. Despite this, Ballona Lagoon provides habitat for a variety of benthic invertebrates, fish and shorebirds. [Biota of the Ballona Region, Los Angeles County Natural History Museum Foundation, Edited by Ralph W. Schreiber, 1981]. Polychaetes, molluscs and other invertebrates live in the mud bottom of the lagoon. Several species of fish have been documented and are known to inhabit the lagoon and canals, including: Topsmelt, California killifish, bay pipefish, longjaw mudsuckers, halibut, arrow goby, and diamond turbot. Fish-eating birds such as egrets and green herons are often seen foraging at the water's edge. Willets, dowitchers and dabbling ducks also forage on the mud banks, while domesticated ducks are attracted by food and water left by nearby human residents. Ballona Lagoon is a critical habitat area for the California least tern, *Sterna antillarum browni*. Both the least terns and Brown pelicans can be seen foraging in the lagoon.

### **Rare Plant Preserve**

Recently, the City has identified several rare plants on the west bank, including: Orcutt's yellow pincushion, *Chaeanactis glabriuscula* var. *orcuttiana*, South Coast saltscale, *Atriplex pacifica*, red sand verbena, *Abronia maritima*, and wooly seablite, *Sueda taxifolia*. In response to the discovery of the rare plants, the City has proposed to revise the previously approved restoration plan in order to create a Rare Plant Preserve that will preserve and expand the native pincushion (and other rare plant) habitat. The City's proposed revisions to the restoration plan include prioritizing the planting of yellow pincushion seeds in the planting plan,

revising the irrigation plan, and reducing to four feet the width of the previously approved public access trail that runs along the curb of Pacific Avenue (the existing trail runs closer to the water). The City's proposal to protect the rare plants on the west bank is contained in the document entitled: Draft Action Plan for the Conservation of the Orcutt's Pincushion (*Chaeanactis glabriuscula* var. *orcuttiana* (E. Greene) H. Hall) at Ballona Lagoon, Venice, California. Prepared by William Jones, City of Los Angeles Department of Public Works, Environmental Specialist II, Environmental Management Group), April 22, 2010. (Exhibit #5).

The Commission's staff ecologist has reviewed the City's proposal and determined that, while it is more protective of the rare plants and ESHA than the previously approved plan, it needs to be modified in order to incorporate additional mitigation measures that would protect and improve the habitat on the west bank and in the proposed Rare Plant Preserve (Exhibit #4).

The Commission's staff ecologist recommends that the following provisions be incorporated into the permit through this permit amendment:

1. Creation of a preserve from Jib Street to Topsail Street that recognizes and protects the ESHA between the protective fencing and the lagoon waters; i.e. dune scrub, dune, and wetland habitats and the rare plants these habitats support including Orcutt's yellow pincushion, *Chaeanactis glabriuscula* var. *orcuttiana*, South Coast saltscale, *Atriplex pacifica*, red sand verbena, *Abronia maritima*, and wooly seablite, *Sueda taxifolia*.
2. A map with the location of the 2010 pincushion population as well as the other rare plants identified in the area including South Coast saltscale, *Atriplex pacifica*, red sand verbena, *Abronia maritima*, and wooly seablite, *Sueda taxifolia*.
3. Dune scrub and dune habitat plant palette and planting plan that provides detailed instructions for the appropriate mixture of seeds, cuttings, and container plants as well as the appropriate plant densities for the respective habitats.
4. Methodology for the collection of rare plant seeds and cuttings performed by an authorized agency that maintains a seed collection and that holds a seed collection permit from the California Department of Fish and Game.
5. Temporary irrigation only if considered necessary by the approved restoration ecologist.
6. Provision for following the status of all rare plants in the monitoring plan.
7. Insurance that the trail is a maximum of 4 feet in width and located immediately adjacent to Pacific Avenue (as close as legally allowed) for its entire length and that project fencing is installed immediately adjacent to the lagoon side of the trail.
8. The revised enhancement project action plan must be reviewed and approved by the CCC Executive Director prior to implementation.

The above-stated recommendations would expand the Rare Plant Preserve over the entire Phase IIIA area south of the Jib Street overlook and require a detailed planting plan that prioritizes the native rare plants that have been recently discovered at the site. To create the proposed Rare Plant preserve, the permittee is required by Special Condition Eleven of this permit amendment to develop a revised restoration and monitoring plan under the direction of a qualified restoration ecologist (approved by the CCC Executive Director) who has experience in dune scrub and dune habitat restoration. All of the staff ecologist's recommendations are incorporated into Special Condition Eleven of the permit amendment. As conditioned, the Commission finds that the revised restoration plan and the permit amendment comply with the requirements of Sections 30230, 30231 and 30240 of the Coastal Act.

### **Alignment of the Public Access Trail**

The previously approved project includes improvements to the public access opportunities that exist along the west bank of Ballona Lagoon. A public trail loop that passes along both the east and west banks of Ballona Lagoon has been in existence for many years. The Ballona Lagoon Enhancement Plan (BLEP), developed in 1992 by the Ballona Lagoon Marine Preserve (BLMP) and the California State Coastal Conservancy, called for the improvement of the existing informal trail system as part of the overall restoration effort. Prior phases of the Ballona Lagoon Enhancement Plan, including the improved public trail system, have been implemented on the east bank, south end, and in the submerged areas of Ballona Lagoon pursuant to the Commission's approval of Coastal Development Permit 5-95-152 and subsequent permit amendments (City of LA/BLMP/Coastal Conservancy).

On the west bank of the lagoon, an unimproved trail exists between Canal Court on the northern end of the lagoon (near Grand Canal) and Topsail Street near the southern end of the lagoon (Exhibit #2). This public open space area is heavily used by the public and is a very popular dog walking area, as was evidenced by the prodigious amounts of canine feces. As part of Phase IIIA of the Ballona Lagoon Enhancement Plan approved by Coastal Development Permit 5-08-294, the existing west bank trail is being abandoned (and restored) and a new trail is being built further away from the water's edge next to Pacific Avenue (Exhibit #3). The new trail will be a decomposed granite public access path with protective fencing to keep domestic animals out of the restored area. The new trail, entirely on City land, connects the existing improved Grand Canal public accessway to the Pacific Avenue public sidewalk at Topsail Street. The old trail alignment, which currently bisects the area that will be the Rare Plant Preserve, will be restored with native dune plants.

In order to enlarge the area for native plants and reduce the impact of the new trail, the City proposes to reduce the width of the trail south of Jib Street from five feet to four feet (Exhibit #3). The trail itself is a necessary component of the restoration project and has been designed to be compatible with the ESHA (e.g., minimized width, permeable surface, and sited as far from the water and as close to the road as possible). As proposed, the trail will not significantly degrade the ESHA. A four-foot wide trail next to Pacific Avenue will displace approximately 1,200 pincushion plants (4.5%) out of an estimated 27,500 total plants. Without this amendment, the previously approved five-foot wide trail would displace approximately 1,700 pincushion plants (7%) out of an estimated 27,500 total plants (Exhibit #5, p.13). Therefore, the narrower trail is the better alternative for minimizing impacts to the yellow pincushions, and the placement of the trail next to Pacific Avenue is preferable to the alignment of the existing informal trails.



The footprint of the 2010 pincushion population was estimated to be 1,492 square meters (0.372 acre). The City estimates that the project site supports another 3500 square meters (0.5 acre) of potential pincushion habitat based on suitable soil type. The area of the rare plant preserve recommended by staff pursuant to this permit amendment would total 6880 square meters (1.7 acres). The previously approved trail would impact an estimated 212 square meters (0.052 acre) or 14% of the 2010 pincushion population while the revised more narrow trail is estimated to impact 148 square meters (0.037 acre) or 10% of the 2010 pincushion population. Given these figures, the ratio of preserved area suitable to the pincushion, to the impacted pincushion area, is 33 to 1. If we look at the whole preserve (6880 sq. m.) in relation to the area of impact, the mitigation ratio is 45 to 1.

While eliminating the previously approved public access trail between Jib Street and Topsail Street to create even more area for native plants may be possible, this approach is not feasible or desirable under existing circumstances for a number of reasons, as follows:

1. The Phase IIIA Ballona Lagoon Enhancement Project has already been permitted with a formal public trail to replace the existing unfenced trails that are closer to the water's edge. Therefore, the City will still hold the previously approved coastal development permit for Phase IIIA of the Ballona Lagoon West Bank Enhancement Plan, even if the currently proposed revisions to the restoration plan are not approved.
2. The 1992 Ballona Lagoon Enhancement Plan, prepared by the Coastal Conservancy, and the Ballona Lagoon Marine Preserve, calls for a formal public access trail (with fencing) along both banks of Ballona Lagoon, in conjunction with restoration of the natural habitat and educational panels.
3. The west bank of Ballona Lagoon, between Jib Street and Topsail Street, is a popular walking area and an important link in the existing public trail system. A number of meandering paths presently exist in the area which have been and will continue to be used by the public absent an improved trail with signage. Efforts to exclude the public entirely from this area would be difficult and unlikely to succeed given existing patterns of use, the density of nearby development, and the popularity of the area as a visitor destination.
4. The Commission has previously determined that the alignment of the public trail along the inland part of the protective lagoon buffer is consistent with Section 30240(b) and the marine resource policies of the Coastal Act, the public access and recreation policies of the Coastal Act, and the certified Venice Land Use Plan.
5. A small area between the street and any lagoon fencing is necessary to have space for vehicle doors to open so people can get out of vehicles and for a safe space for people and animals to be off the street. Therefore, even if no new trail were constructed, any protective fencing erected along Pacific Avenue to protect native plants would have to be placed at least 24 inches away from the curb for safety reasons.

Environmentally sensitive habitat (ESHA) policies recognize that certain types of development are dependent upon sensitive resources. While the types of development that fall within this category are very limited, they do include trails, fencing, and educational panels. Ballona Lagoon and its banks are designated in the certified Venice LUP as ESHA (Los Angeles City Department of Planning, 2001) and are protected as such. The Commission has previously found that the three phases of the Ballona Lagoon Enhancement Project, including trails, fencing, and educational panels, are resource dependent uses allowed under the Coastal Act and the City of Los Angeles' Land Use Plan.

The Commission's prior approval included a 36-inch high split rail fence (with green vinyl-coated chain-link fence) along the east (lagoon) side of the trail. In order to protect the proposed Rare Plant Preserve from trampling by people and domestic animals, the permit amendment is conditioned to require the erection of a protective fence, at least three feet high, on the lagoon side of the trail. In addition, Special Condition Eleven requires that "Please Stay on Path" signs shall be posted along the public access path at ninety-foot intervals, and interpretive signs that explain the purpose and benefits of the Rare Plant Preserve shall be posted at 200-foot (minimum) intervals.

Therefore, as conditioned, the Commission finds that the public trail with the reduced width and addition of appropriate signage situated on the inland side of the lagoon buffer will not significantly degrade the ESHA and is consistent with the requirements of Sections 30230, 30231 and 30240 of the Coastal Act.

### **Minimizing Adverse Impacts to Marine Resources**

The special conditions of the underlying permit (Coastal Development Permit 5-08-294) provide protection for the ESHA and marine resources of Ballona Lagoon (See Appendix A). The special conditions of Coastal Development Permit 5-08-294 remain in effect, except in the case where the prior conditions may conflict with the condition of this permit amendment (e.g., this permit amendment reduces the width of the public access path from five feet to four feet and requires the submittal of a revised restoration plan).

Special Condition Four of the underlying permit requires the permittee to implement the construction staging plan in order to prevent the unpermitted deposition, spill or discharge of any liquid or solid into coastal waters (which include Ballona Lagoon and the Venice Canals). The location of the construction staging and equipment and materials storage area is on City property at 3813-3819 Esplanade, near the intersection of Canal Court and Hurricane Street. No staging or storage is permitted on any beach, wetland or environmentally sensitive habitat area. As conditioned, the proposed project is consistent with Sections 30230 and 30231 of the Coastal Act.

In order to minimize adverse impacts on least tern foraging areas during the least tern nesting season, Special Condition Seven of the underlying permit prohibits the use of mechanized equipment or other types of loud and disturbing equipment within fifty feet of the water during the period commencing March 15 and ending September 1. The limit on mechanized equipment will reduce the noise that disturbs the wildlife. Re-vegetation of the lagoon bank by hand may occur during the least tern nesting season.

Special Condition Eleven, added by this permit amendment, requires an approved restoration ecologist to revise the restoration and monitoring plan that establishes a Rare Plant Preserve, prioritizes the planting of yellow pincushion seeds in the planting plan, revises the irrigation plans, and reduced the width of the re-located public access trail. Special Condition Eleven was drafted by the Commission staff Ecologist in consultation with DFG Biologist Kelly Schmoker. Staff incorporated a number of Ms. Schmoker's specific suggestions into the staff recommendation. As conditioned by the underlying permit approval and Special Condition Eleven of this amendment, the permit protects the least tern foraging area, existing wetland vegetation, and the biota in the channel. The non-native plants will be removed, and native vegetation will be preserved along the entire west bank lagoon buffer between the high water line and the public trail, thus improving and enlarging the upland habitat area. The restoration will be monitored for five years to ensure its success. Temporary irrigation in the Rare Plant Preserve will be permitted only if recommended by the approved restoration ecologist and Commission Executive Director. All adverse environmental effects of the proposed project have been minimized by the special conditions of approval. The proposed project, as conditioned, is designed to prevent significant impacts to the ESHA and is compatible with the habitat. Therefore, the Commission finds that the originally proposed project with the proposed amendment, as conditioned, is consistent with the ESHA and marine resource policies of the Coastal Act.

### **C. Public Access and Recreation**

One of the basic goals stated in the Coastal Act and the certified Venice Land Use Plan (LUP) is to maximize public access to and along the coast. The improvement of the existing Ballona Lagoon public trail system is one of the goals of the proposed project. The Coastal Act has several policies that protect public access along the shoreline and public recreational opportunities.

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30213 of the Coastal Act states:

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



Section 30214 of the Coastal Act states:

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

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

(b) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. Nothing in this section or any amendment thereto shall be construed as a limitation on the rights guaranteed to the public under Section 4 of Article X of the California Constitution.

(c) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Section 30220 of the Coastal Act states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30253 of the Coastal Act states, in part:

New development shall: (5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

The certified Venice LUP sets forth the following policy addressing public access around Ballona Lagoon:

**LUP Policy II. C. 3. Ballona Lagoon Enhancement Plan (Pedestrian Access).**

*Pedestrian access and interpretative overlooks to the Ballona Lagoon shall be enhanced without invading the privacy of adjoining residents. The existing public walkway on the east bank of Ballona Lagoon, and the overlook on the southern end of the lagoon near Via Marina, shall be maintained and protected for public access. (Refer also to Policy IV.B.1).*

**LUP Policy IV. B. 1. Ballona Lagoon.**

**a. Ballona Lagoon Enhancement Plan.** *The Ballona Lagoon shall be restored, protected and maintained for shallow tidal and intertidal marine habitat, fisheries and public access as provided in the Ballona Lagoon Enhancement Plan (See Coastal Commission Coastal Development Permit 5-95-152 and amendments). The plan is intended to improve water quality and tidal flushing; reduce the amount of garbage, sediment and other pollutants in the lagoon; maintain and expand habitat values for the endangered least tern, shorebirds and fisheries; restore native vegetation; protect banks from erosion; maintain and if possible increase the existing 50-year flood protection; and enhance public trails and interpretative overlooks without invading the privacy of adjoining residents. The goals and policies of the Enhancement Plan shall be carried out in a manner consistent with the policies of this LUP. The Ballona Lagoon tidal gates located beneath Via Marina shall be operated in a manner that sustains and enhances biological productivity in the lagoon by ensuring maximum water circulation.*

**b. Permitted Uses.** *Only uses compatible with preservation of this habitat shall be permitted in and adjacent to the lagoon. Uses permitted in or adjacent to the lagoon shall be carried out in a manner to protect the biological productivity of marine resources and maintain healthy populations of marine organisms. Such uses as open space, habitat management, controlled nature study and interpretation, and passive public recreation such as birdwatching, photography, and strolling shall be encouraged and promoted. No fill shall occur in Ballona Lagoon unless it is consistent with Coastal Act Section 30233 and is the least environmentally damaging alternative. No untreated runoff shall be directed into the lagoon.*

An unimproved trail already exists along the west bank of Ballona Lagoon, running between Canal Court and Topsail Street. The project, as revised, will realign the existing trail and improve it south of Jib Street as a four-foot wide decomposed granite public access path on the higher elevations of the west bank next to the eastern curblin of Pacific Avenue (Exhibit #3). A three-foot high split rail fence (with green vinyl-coated chain-link fence) will be erected along the entire east side of the trail to protect the lagoon habitat area from intrusion by people and domestic animals. The proposed new trail and fence would be located entirely on City land, connecting the existing improved Grand Canal public accessway to the Pacific Avenue public sidewalk at Topsail Street. No fill will be placed below the high water line in order to create the proposed trail. The existing Lighthouse Street pedestrian bridge, the only bridge over the lagoon and an important coastal access route, will not be affected by the proposed project.

At Jib Street near the northern end of the lagoon, the City is permitted to construct a public education/information wildlife observation area on an existing filled area on the west bank of the lagoon, with pedestrian access provided by the proposed new west bank public access trail. The public education/information wildlife observation area, which would have public benches and small information kiosks, provides one area along the west bank where people would be encouraged to get close to the water to observe the wildlife of Ballona Lagoon.

The underlying permit is conditioned to require that the City maintain the Ballona Lagoon public trail system, keep the accessways open to the public, and to remove any future encroachments after completion of the restoration project. In order to protect the sensitive habitat area of the west bank of Ballona Lagoon from intrusion by people and domestic animals, a protective fence (with wire fabric) at least three feet high, must be erected along the waterside of the entire public trail system. The protective fence will protect the habitat on the bank of the lagoon while still allowing the public to access a small part the west bank area to observe the habitat area without trampling it.

The proposed revised project includes the improvements necessary to complete the entire pedestrian access system around Ballona Lagoon, significantly enhancing the existing public trail system and improving public recreation opportunities. After completion of the project, the public will have gained improved access along the west bank of Ballona Lagoon. The proposed public access improvements will encourage public access that is consistent with the historical character and use of the area, as well as the goals of the Coastal Act and certified Venice LUP. Walking, jogging, bird watching, photography, and other popular forms of recreation will be improved by the proposed project. The certified Venice LUP requires that strolling, bird watching, photography shall be encouraged at Ballona Lagoon. Therefore, the Commission finds that the proposed amendment, as conditioned, is consistent with the public access and recreation policies contained in Chapter 3 of the Coastal Act.

#### **D. Local Coastal Program**

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3.

- (a) Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200). A denial of a Coastal Development Permit on grounds it would prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for such conclusion.

In addition to the certified LUP policies listed in the prior sections of this staff report, the certified Venice LUP contains the following relevant policies:

**LUP Policy II. C. 3. Ballona Lagoon Enhancement Plan (Pedestrian Access).**

*Pedestrian access and interpretative overlooks to the Ballona Lagoon shall be enhanced without invading the privacy of adjoining residents. The existing public walkway on the east bank of Ballona Lagoon, and the overlook on the southern end of the lagoon near Via Marina, shall be maintained and protected for public access. (Refer also to Policy IV.B.1).*

**Policy IV. B. 6. Domestic Animals.** *A program should be developed to protect the wetland area of Ballona Lagoon and the Grand Canal south of Washington Boulevard from intrusion by domestic animals and pets, particularly cats and dogs.*

**Policy IV. E. 1.** *The banks, waterways and public walkways of the Venice Canals, Ballona Lagoon and Grand Canal south of Washington Boulevard shall be periodically maintained by the City or other appropriate entity, to keep these areas free of accumulated trash and wastes, thereby maintaining the biological, water quality, recreational and aesthetic resources of these areas.*

**Policy V. A. 3. Infrastructure.** *New sewer, storm drain, and water lines shall be installed using the least environmentally disturbing method feasible. The City of Los Angeles Department of Public Works shall develop a comprehensive citywide Storm Water Management Program, as discussed further in Implementation Strategy of Policy IV.C.1 of this LUP, to control stormwater run-off from new public and private developments and, where feasible, to remove pollutants from that run-off. Development of infrastructure shall precede or be constructed concurrently with the construction of developments or in lieu-fee should be paid.*

**Policy IV. C. 2. Water Quality.** *The methods to improve water quality, recommended in California's Plan for the Control of Non-Point Source Pollution (January 2000), such as watershed planning and management programs, and habitat restoration projects, shall be considered and implemented by the City of Los Angeles where feasible opportunities exist. Selected Best Management Practices (BMPs) or suites of BMPs shall be designed to treat, infiltrate or filter the stormwater runoff from each runoff event up to and including the 85<sup>th</sup> percentile, 24-hour runoff event for volume based BMPs and/or the 85<sup>th</sup> percentile, 1 hour event, with an appropriate safety factor, for flow-based BMPs.*

The City of Los Angeles does not have a certified Local Coastal Program for the Venice area. The City of Los Angeles Land Use Plan (LUP) for Venice was effectively certified on June 14, 2001. As discussed above, as conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the permit amendment, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

**E. California Environmental Quality Act (CEQA)**

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

In this case, the City of Los Angeles is the lead agency and the Commission is the responsible agency for the purposes of CEQA. The City of Los Angeles has determined the project to be categorically exempt from CEQA pursuant to Classes 4(d), 4(f), and 33 of the City CEQA Guidelines (Article III, Section 1) and the State CEQA Guidelines (Section 15300 et seq.). Further, the proposed project, as conditioned, has been found consistent with the Chapter 3 policies of the Coastal Act. All adverse impacts have been minimized by the recommended conditions of approval and there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, can be found consistent with the requirements of the Coastal Act to conform to CEQA.

**APPENDIX A – SPECIAL CONDITIONS OF PERMIT 5-08-294**

1. Project Area - Lagoon Buffer Strip

Coastal Development Permit 5-08-294 approves the implementation of Phases IIIA and IIIB of the Ballona Lagoon Enhancement Plan (as described and conditioned in the **Staff Report dated March 19, 2009**) on the “protective lagoon buffer strip” along the west bank of Ballona Lagoon. The “protective lagoon buffer strip” includes: the City’s Esplanade West right-of-way (except for areas covered by pre-coastal development), Lots G through P, the unsubmerged portions of Lot C and Lot R, and the protected habitat areas and easements on private property that have been dedicated for habitat restoration and public access purposes as part of the west bank lagoon buffer strip on Blocks 1 through 5 of the Del Rey Beach Tract. On any privately owned lot adjacent to the southern portion of the Esplanade West, this coastal development permit also authorizes the City, subject to the permission of the property owner, to remove non-native plants and unpermitted development (including, but not limited to, fences, walls, lighting, irrigation improvements, decks/patios, and play sets) situated within any area designated (pursuant to an approved coastal development permit) as a “habitat buffer” or “lagoon buffer,” but over which the City holds no property interest.

2. Components of the Approved Plan

The permittee shall undertake all development in compliance with the terms of this condition in order to ensure the protection of marine resources, wildlife habitat, native vegetation, and the long-term protection of breeding, roosting, and nesting habitat of species that play an especially valuable role in the ecosystem.

- A. Re-vegetation Plan. All plant materials for the entire development shall be of southern California native plants appropriate to the natural habitat type (dune). All plant removal, planting and monitoring shall comply with the standards set forth in Special Condition Three.
- B. Existing non-native trees shall be removed from the project area, except for individual trees that have been determined by the biologists to not have any adverse effect on the adjacent habitat area and surrounding environment. No bird nests shall be disturbed at any time.
- C. Removal of Encroachments. Except for development that has been properly permitted by the Commission or has been in place continuously since February 1, 1973 or earlier, all development (including, but not limited to, fences, walls, lighting, irrigation improvements, decks/patios, and play sets) and non-native landscaping situated within the protective lagoon buffer strip shall be removed by the permittee concurrently with the restoration project in order to enhance habitat area and public access opportunities. The protective lagoon buffer strip includes the City’s Esplanade West right-of-way, Lots G through P, the unsubmerged portions of Lot C and Lot R, and the protected habitat areas and easements on private property that have been required and/or identified by previously approved coastal development permits. Removal of the encroachments shall be completed within 180 days of the commencement of Phase IIIB.

- D. Trail Alignment. The proposed five-foot wide west bank public access trail shall extend southerly from the existing Grand Canal public accessway system on the northern end of Ballona Lagoon (at Canal Court) to Topsail Street, near the southern end of the lagoon. In order to maximize the width of the protected lagoon bank area, the trail shall be aligned along the inland portion of the project site (i.e. farthest from the waters of the lagoon), except at the northern end of Ballona Lagoon, where the public trail must pass between the waters of the lagoon and existing private residences, the trail shall be designed as proposed, as shown on Exhibit #4, Page 2 of the staff report dated March 19, 2009. A five-foot landscaped buffer shall be provided between the trail and the pre-coastal decks.
- E. Fencing. A contiguous fence or similar barrier, not exceeding four feet in height (above natural grade), shall be installed along the most inland extent of the west bank protective lagoon buffer strip (including all habitat easements), except where the public access is permitted. Where the public access is permitted (the public trail, overlooks and public education/information area) the fence shall be placed along the side of the trail/public area nearest the lagoon. The fence shall be constructed of materials that are spaced in a manner that renders the fence impassable by common domesticated animals (e.g. dogs and cats). The fencing shall be installed concurrently with the restoration project. On the northern end of the project area, where the public trail passes between the west bank protective lagoon buffer strip and the private residential development, a privacy fence or wall greater than four feet *may* be constructed along the inland side of the trail.
- F. Pacific Avenue Crossing. In order to allow safe crossing of Pacific Avenue, a pedestrian crossing shall be installed and maintained at the intersection of Pacific Avenue and Topsail Street. Traffic at this crossing shall be controlled at this intersection by installing either a stop sign or traffic signal. The pedestrian crossing shall be installed concurrently with the restoration project.
- G. Pacific Avenue Street Drainage. Curbs shall be installed along the east side of Pacific Avenue (e.g., at Jib Street) to prevent uncontrolled sheet flow from leaving the street. Appropriate drainage connections shall be installed to control runoff from Pacific Avenue using the existing drains approved by Coastal Development Permit 5-00-161. Street drain filters shall be installed in all drains that discharge directly into Ballona Lagoon. Each street drain filter shall be designed and maintained to filter the stormwater runoff from each runoff event up to and including the 85<sup>th</sup> percentile, 24-hour runoff event for volume based BMPs and/or the 85<sup>th</sup> percentile, one-hour event, with an appropriate safety factor, for flow-based BMPs. The filters shall be maintained and replaced as necessary to prevent the drains from clogging and flooding the street.
- H. Gully Repairs. Clean fill shall be used to repair the gullies on the lagoon bank that have eroded east of Pacific Avenue at Jib Street and Topsail Street. In order to ensure that all existing wetland vegetation is protected from filling activities, no fill shall be placed below the five-foot contour line.

The permittee shall undertake development in accordance with the final plans approved by the Executive Director. To ensure compliance, the City shall include the requirements

of this condition on all plans and contracts issued for the project. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required pursuant to the requirements of the Coastal Act and the California Code of Regulations.

3. Re-vegetation and Erosion Control

Prior to the removal of non-native vegetation, a qualified biologist shall survey the project site and identify with flags all areas of existing native vegetation. The permittee shall ensure that the areas of existing native vegetation, except for those areas where public access improvements are permitted, are protected from disturbance during the implementation of the approved project, and that adequate water is provided to keep the plants healthy. Native vegetation that is removed from the areas where public access improvements are permitted shall be transplanted elsewhere within the project area.

Under the supervision of a qualified biologist, the permittee shall remove all non-native plants from the canal banks using only hand-held tools while taking care to avoid disturbance of native plants. No herbicides may be employed. No grading is permitted. No heavy machinery may be used, except on existing paved roads. Smaller mechanized vehicles with rubber tires (e.g. Bobcats) may be used to transport heavy loads between paved roads and work areas. No dead plants shall be left on site (unless deemed necessary by a biologist to prevent erosion of the banks) and no persistent chemicals shall be employed. The permittee shall landscape the west bank of Ballona Lagoon in conformance with the following requirements:

- A. Prior to weed abatement and removal of any plant material, a qualified biologist or ornithologist shall survey the project site to detect bird nests and submit a survey report to the permittee and the Executive Director of the Coastal Commission. The survey report shall include identification of all known nests. The permittee shall maintain a database of survey reports that includes a record of nests that is available as public information and to be used for future vegetation removal decisions. No bird nests shall be disturbed. Weed abatement and removal of any plant material may not proceed within 300 feet (500 feet for raptors) of a nest where evidence of courtship or nesting behavior is observed. In the event that any birds continue to occupy nests during the non-nesting season, work shall not take place until a qualified biologist or ornithologist has assessed the site, determined that courtship behavior has ceased, and given approval to proceed within 300 feet (500 feet for raptors) of any nest.
- B. All re-vegetation and development shall conform to the project plans approved by the Executive Director. All vegetation planted on the site will consist of native plants typically found in the dunes adjacent to the Ballona wetlands (including transitional marsh plantings where appropriate). The seeds and cuttings employed shall be from local sources adjacent to Ballona Lagoon, the Venice Canals, and the Ballona wetlands. Prior to the first planting cycle, the permittee shall provide the Executive Director with the quantities and sources of all plants used in the project.



- C. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.
- D. Erosion Control. Prior to removing the non-native plants and preparation of the soil, the permittee shall install silt curtains along the entire length of the water's edge to prevent siltation of the lagoon. Jute matting (with no plastic netting) shall be placed on all slopes immediately following the removal of the existing plant cover. In addition, the permittee shall implement the following temporary erosion control measures during the restoration project: temporary sediment basins (including debris basins, desilting basins or silt traps), temporary drains and swales, sand bag barriers, and additional silt fencing as needed.
- E. Re-vegetation shall commence as soon as possible following removal of non-native plants and preparation of the soil. The existing native vegetation and all required plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan. Re-vegetation activities may continue during the least tern nesting season
- F. Disposal of plant matter. All cut plant material shall be disposed of at an appropriate off-site location within ten days of cutting. A separate coastal development permit will be required prior to the placement of any cut plant material in the coastal zone unless the Executive Director determines that no permit is required pursuant to the requirements of the Coastal Act and the California Code of Regulations.
- G. Planting shall maintain views of the water from the public areas.
- H. Monitoring. The permittee shall actively monitor the site, remove non-natives and reinstall plants that have failed for at least five years following the initial planting. The permittee will monitor and inspect the site no less than once each thirty days during the first year that follows the initial planting. Thereafter, the permittee will monitor the site at least once every ninety days or on the City's regular landscape maintenance schedule, whichever is more frequent. Each year, for a minimum of five years from the date of permit issuance, the permittee shall submit for the review and approval of the Executive Director, an annual re-vegetation monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist that certifies the re-vegetation is in conformance with the approved re-vegetation plan. The annual monitoring report shall include photographic documentation of plant species and plant coverage. If the annual re-vegetation monitoring report indicates the re-vegetation is not in conformance with or has failed to meet the performance standards specified in the re-vegetation plan approved pursuant to this permit, the permittee shall submit a revised or supplemental re-vegetation plan for the review and approval of the Executive Director. The revised re-vegetation plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan. The permittee shall implement the supplemental re-

vegetation plan approved by the Executive Director and/or seek an amendment to this permit if required by the Executive Director.

The permittee shall undertake development in accordance with the final plans approved by the Executive Director. To ensure compliance, the City shall include the requirements of this condition on all plans and contracts issued for the project. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required pursuant to the requirements of the Coastal Act and the California Code of Regulations.

4. Construction Staging - Protection of Marine Resources

The permittee shall undertake all development in compliance with the project staging and construction plan approved by the Executive Director, including the specific staging and construction measures to prevent the unpermitted deposition, spill or discharge of any liquid or solid into coastal waters (which include Ballona Lagoon and the Venice Canals). The plan includes the following provisions:

- A. The location of the construction staging and equipment and materials storage area on City property at 3813-3819 Esplanade, near the intersection of Canal Court and Hurricane Street. Measures to control runoff from the staging area shall be implemented at the commencement of the project. Construction staging activities and equipment and materials storage are prohibited on any beach, wetland or environmentally sensitive habitat area.
- B. The storage or stockpiling of soil, silt, other organic or earthen materials, or any materials and chemicals related to the construction, shall not occur where such materials/chemicals could pass into coastal waters. Any spills of construction equipment fluids or other hazardous materials shall be immediately contained on-site and disposed of in an environmentally safe manner as soon as possible.
- C. Construction equipment and vehicles shall be inspected daily to ensure there are no leaking fluids. If there are leaking fluids, the construction equipment shall be serviced immediately. Equipment and machinery shall be serviced, fueled, maintained and washed only in confined areas specifically designed to control runoff and prevent discharges into coastal waters. Thinners, oils or solvents shall not be discharged onto the ground or into sanitary or storm sewer systems.
- D. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than fifty feet away from all stormdrains, open ditches and surface waters.
- E. All floatable debris and trash generated by construction activities within the project area shall be disposed of at the end of each day, or as soon as possible.
- F. Measures to control erosion shall be implemented at the end of each day's work.

The City (permittee) shall include the requirements of this condition on all plans and contracts issued for the project. The permittee shall implement and carry out the project

staging and construction plan during all construction, staging and cleaning activities consistent with the plan approved by the Executive Director.

5. Public Access

- A. The permittee shall complete all of the approved public access improvements (i.e., five-foot wide trail from Grand Canal to Topsail Street, connections to existing sidewalks, street end improvements) along the west bank of Ballona Lagoon consistent with the final approved plans and the special conditions of this permit. Any encroachments into the Ballona Lagoon public trail system shall be removed as part of the project.
- B. The permittee shall post and maintain signs that identify the approved west bank trail/walkway as a public accessway.
- C. By acceptance of this permit, the permittee agrees that the approved trail/walkway along the entire west bank of Ballona Lagoon from Grand Canal to Topsail Street is a public accessway, and that this accessway shall be maintained for general public use 24 hours a day and shall not be closed. The permittee shall periodically inspect the walkway, maintain the walkway and the fencing in good condition, and remove any impediments (i.e., encroachments) to public access.
- D. The permittee shall ensure that trash receptacles and free provisions (e.g. refuse bags) for the proper disposal of pet feces are provided along the public accessway, at a minimum of one location for each 300-foot section of the accessway. The permittee shall be responsible for ensuring that the trash receptacles are maintained and routinely emptied in order to prevent spillage of refuse.

6. Resource Agencies

The permittee shall comply with all requirements, requests and mitigation measures from the California Department of Fish and Game, Regional Water Quality Control Board, U.S. Army Corps of Engineers, and the U.S. Fish and Wildlife Service with respect to preservation and protection of water quality and marine environment. Any change in the approved project that may be required by the above-stated agencies shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

7. California Least Tern

In order to minimize adverse impacts on least tern foraging in Ballona Lagoon during the least tern nesting season, no mechanized or other types of noise-emitting equipment shall be used within fifty feet of the water during the period commencing March 15 and ending September 1.

8. No Fill in Wetlands

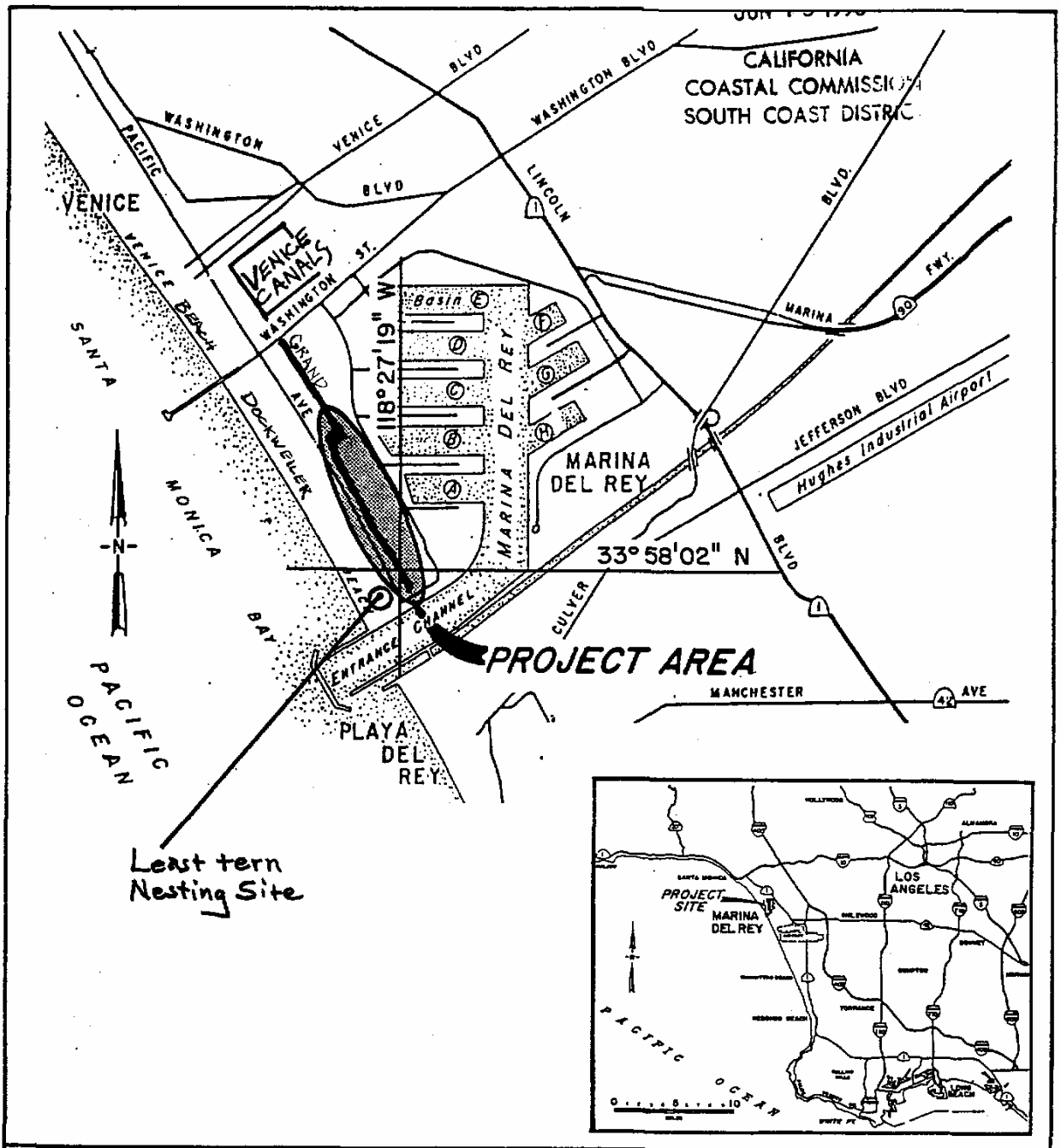
No fill shall be placed in any wetland or below the five-foot contour line (+5.0' MHTL).

9. Assumption of Risk

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

10. Operation of Tidal Gates

In order to enhance tidal exchanges and improve water quality in the lagoon, the permittee shall coordinate with the County of Los Angeles Department of Public Works to improve the operation of the Ballona Lagoon tidal gates located at the southern end of the lagoon beneath Via Marina. **PRIOR TO COMMENCEMENT OF THE APPROVED DEVELOPMENT**, the permittee shall provide the Executive Director with the tidal gate schedule of operation and the status/schedule for improvement and/or replacement of the tidal gate approved pursuant to Coastal Development Permit 5-07-210 (County of Los Angeles). Consistent with the need to limit the potential for flooding, the tidal gates shall be operated in a manner that maximizes water circulation and sustains and enhances biological productivity by allowing the incoming and outgoing tides to rise and fall naturally in Ballona Lagoon.



PURPOSE: WETLAND RECLAMATION

DATUM:

ADJACENT PROPERTY OWNERS:  
SEE ATTACHED LIST

#### VICINITY MAP



BALLONA LAGOON MARINE PRESERVE  
P.O. BOX 9244  
MARINA DEL REY, CA. 90295

# Ballona Lagoon

COASTAL COMMISSION  
5-08-294-A1

EXHIBIT # 1

PAGE 1 OF 1

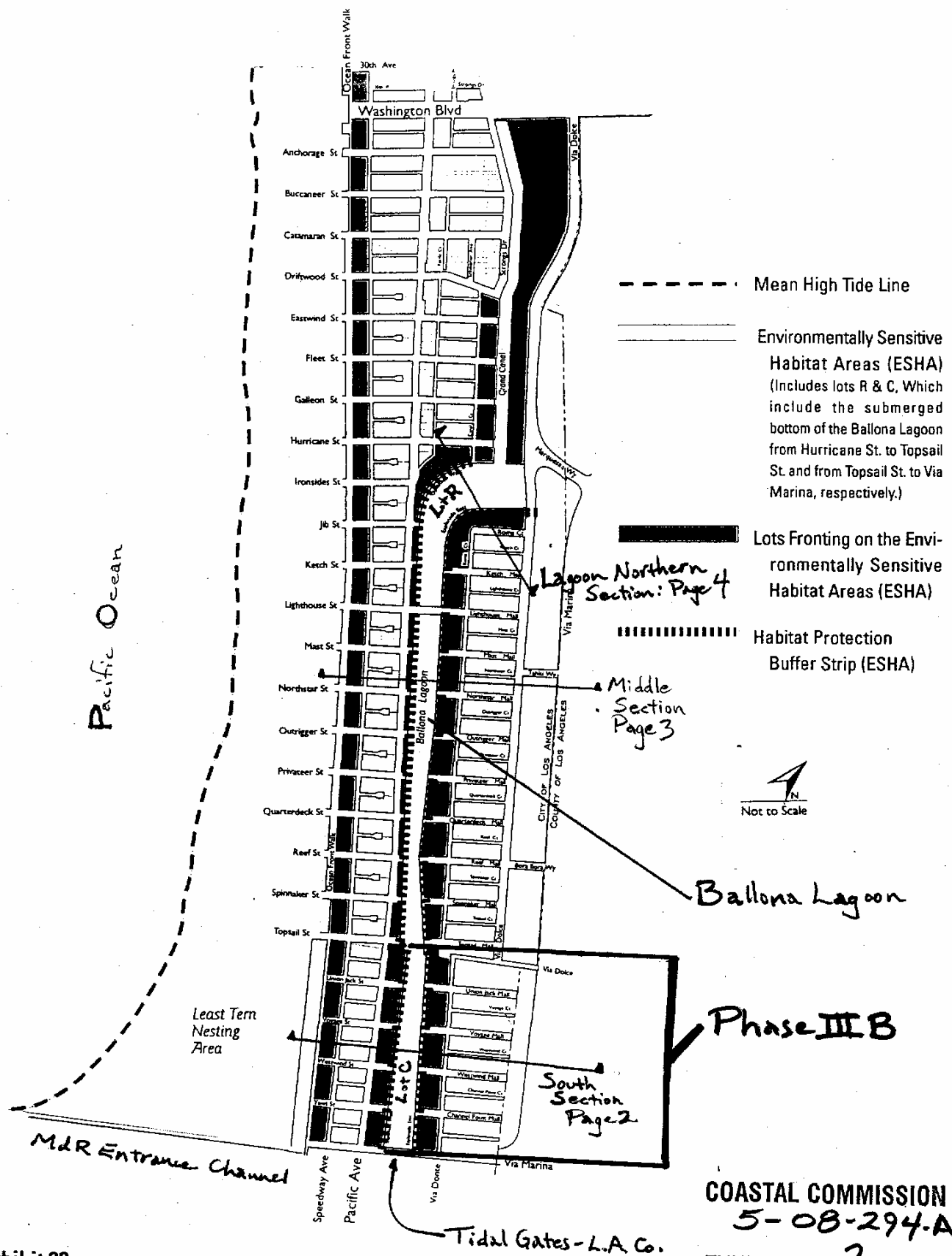


Exhibit 22c

# Environmentally Sensitive Habitat Areas

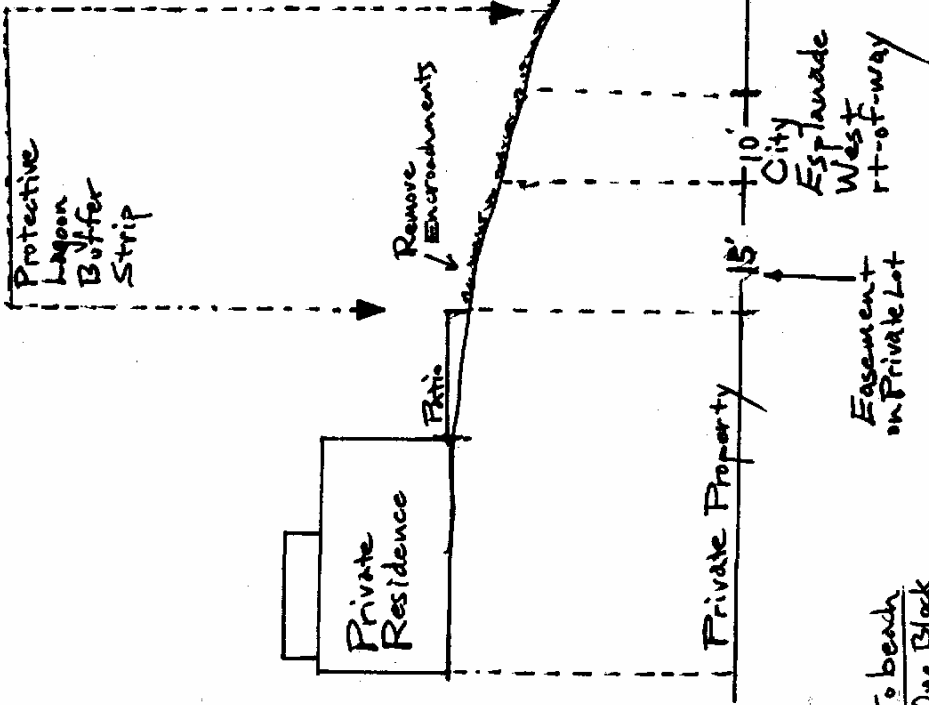
COASTAL COMMISSION  
5-08-294-A1

EXHIBIT # 2  
PAGE 1 OF 4

West Bank  
(project site)

East Bank  
(Not a part)

Ballona lagoon



(Not to Scale)

Exhibit #2 p.2

West Bank

East Bank  
(Not a part)

Project Site

Protective  
Lagoon  
Buffer  
Strip

Existing  
Informal  
Trail

One block  
to beach

Pacific  
Avenue  
Public  
Street

Ballona  
Lagoon

Lagoon

Lot C  
(Easement)

City-owned  
Alphabet Lots  
(Lots G-P)

West Bank  
Phase IIIA

Ballona Lagoon - Middle Section

East Bank  
Fenced Public  
Path

Private  
Residence

Roma  
Court  
Public  
Street

Private  
Property

City  
Esplanade  
East  
Rt-of-way

Easement on  
Private Lot

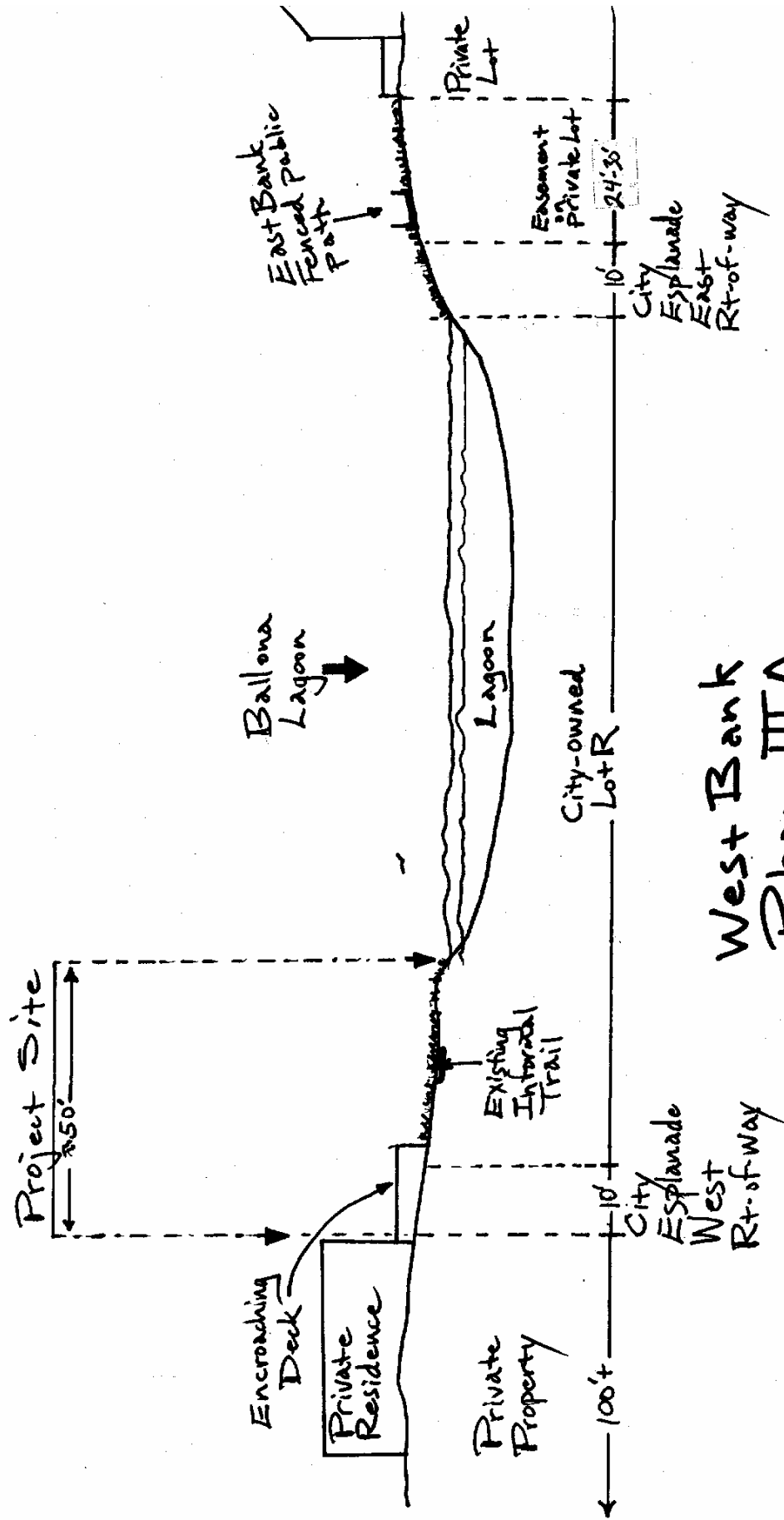
(Not to Scale)

Exhibit #2 p.3



West Bank

East Bank  
(Not a part)



West Bank  
Phase IIIA

Ballona Lagoon - Northern Section

(Not to Scale)

Exhibit #2 p.4

PROPOSED DECOMPOSED GRANITE  
PATH W/ SPLIT RAIL FENCE

PROPOSED REVEGETATION  
AREA

HIGH WATER  
LINE

PICKLEWEED

EXST. PICKLEWEED

Pacific Avenue

4'

West Bank

TYPICAL SECTION

Not to Scale

Proposed Plan

COASTAL COMMISSION

5-08-294-A1

EXHIBIT # 3

PAGE 1 of 1

**CALIFORNIA COASTAL COMMISSION**

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

**MEMORANDUM**

FROM: Jonna D. Engel, Ph.D.  
Ecologist

TO: Chuck Posner  
Coastal Analyst

SUBJECT: Ballona Lagoon Phase IIIa Enhancement Project

DATE: June 22, 2010

**Documents Reviewed:**

Jones, William (City of Los Angeles Department of Public Works, Environmental Specialist II, Environmental Management Group). April 22, 2010. Draft Action Plan for the Conservation of the Orcutt's Pincushion (*Chaetanactis glabriuscula* var. *orcuttiana* (E. Greene) H. Hall) at Ballona Lagoon, Venice, California. Ballona Lagoon Phase III Enhancement Project (E6000776)

Phase IIIa of the Ballona Lagoon Enhancement Project was approved April 8, 2009 (CDP#5-08-294). The project is located on the West bank of Ballona Lagoon between Via Marina and Grand Canal, (on City-owned property, public rights-of-way and publicly-owned easements), Venice, City of Los Angeles, Los Angeles County. Phase III of the enhancement plan includes: 1) removal of non-native vegetation and encroachments (including, but not limited to, fences, walls, lighting, irrigation improvements, decks/patios, and residential landscaping); 2) revegetation with native dune plants, 3) realigning and improving the west bank public access trail between Topsail Street and Canal Court, 4) construction of a split rail fence along the public access trail and inland edge of easements, and 5) construction of a public education/information area with benches near Jib Street at Pacific Avenue.

On Wednesday, April 28, 2010 I met Gary Timm, CCC South Coast Manager; Chuck Posner, CCC Coastal Analyst, William Jones, City of Los Angeles Environmental Specialist, and City representatives Ding Lee and Richard Liu, at the Ballona Lagoon Phase IIIa enhancement project site. The main reason for the site visit was to see the footprint of the recently discovered population of Orcutt's yellow pincushion, *Chaetanactis glabriuscula* var. *orcuttiana*, in relation to the enhancement project and to discuss project modifications that would insure the least possible adverse impacts to the pincushion population while still providing the improved public access trail and recreational opportunities approved by the permit (CDP# 5-08-294). Orcutt's yellow

**COASTAL COMMISSION****5-08-294-A1**EXHIBIT # 4PAGE 1 OF 4

pincushion is an annual plant with a 1B.2 listing by the California Native Plant Society. 1B means the species is rare, threatened, or endangered in California or elsewhere and .2 indicates the species is fairly endangered in California.

While eliminating the previously approved public access and recreational improvements between Jib and Topsail Streets to create a pincushion preserve may be possible, this approach is not feasible or desirable under the circumstances before us for a number of reasons:

1. The Phase IIIa Ballona Lagoon Enhancement Project has already been permitted with a formal public trail to replace the existing unfenced trails that are closer to the water's edge,
2. The 1992 Ballona Lagoon Enhancement Plan, prepared by the Coastal Conservancy, and the Ballona Lagoon Marine Preserve, calls for a formal public access trail (with fencing) along both banks of Ballona Lagoon, in conjunction with restoration of the natural habitat and educational panels,
3. A number of meandering paths presently exist in the area which have been and will continue to be used by the public absent the approved trail,
4. The project has been found consistent with the public access and recreation policies of the Venice Land Use Plan and Coastal Act by the Coastal Commission, and,
5. Even if no new trail were constructed, any protective fencing erected along Pacific Avenue to protect native plants would have to be placed at least 24 inches away from the curb.

Furthermore, environmentally sensitive habitat (ESHA) policies recognize that certain types of development are dependent upon sensitive resources. While the types of development that fall within this category are very limited, they do include trails, fencing, and educational panels. Ballona Lagoon and its banks are designated in the certified Venice LUP as ESHA (Los Angeles City Department of Planning, 2001) and are protected as such. The Commission has previously found that the three phases of the Ballona Lagoon Enhancement Project, including trails, fencing, and educational panels, are resource dependent uses allowed under the Coastal Act and the City of Los Angeles' Land Use Plan.

Following discovery of the Orcutt's yellow pincushion population the City of Los Angeles proposed the following modifications to their project to minimize impacts on this rare species. The City's modifications include:

1. Creation of a pincushion preserve that encompasses the footprint of this year's population as well as potential areas of introduction.

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2. Elimination of irrigation within the pincushion preserve; irrigation lines will be laid directly beneath the path and as close to the curb as possible to bypass the pincushion preserve.
3. Elimination of hydroseeding with mulch and 1-gallon plants that require irrigation in the pincushion preserve; seed of the pincushion and associated native plants will be included in the seed mix to be broadcast and raked under by hand.
4. Narrowing the trail along Pacific Avenue from five feet to four feet from Jib to Topsail Streets.
5. Interpretive signs on Orcutt's yellow pincushion and directional, "Please Stay on Path", signage.

In addition to adhering to special conditions 2, 3, and 4 in their permit (CDP# 5-08-294) and the modifications listed above, I recommend that the City of Los Angeles revise their enhancement project action plan, under the direction of a qualified restoration ecologist who has experience in dune scrub and dune habitat restoration (approved by the CCC Executive Director), in consultation with the California Department of Fish and Game, to include the following:

1. Creation of a preserve from Jib to Topsail Streets that recognizes and protects the ESHA between the protective fencing and the lagoon waters; i.e. dune scrub, dune, and wetland habitats and the rare plants these habitats support including Orcutt's yellow pincushion, *Chaetanactis glabriuscula* var. *orcuttiana*, South Coast saltscale, *Atriplex pacifica*, red sand verbena, *Abronia maritima*, and wooly seablite, *Sueda taxifolia*,
2. A map with the location of the 2010 pincushion population as well as the other rare plants identified in the area including South Coast saltscale, *Atriplex pacifica*, red sand verbena, *Abronia maritima*, and wooly seablite, *Sueda taxifolia*,
3. Dune scrub and dune habitat plant palette and planting plan that provides detailed instructions for the appropriate mixture of seeds, cuttings, and container plants as well as the appropriate plant densities for the respective habitats,
4. Methodology for the collection of rare plant seeds and cuttings performed by an authorized agency that maintains a seed collection and that holds a seed collection permit from the California Department of Fish and Game.
5. Temporary irrigation only if considered necessary by the approved restoration ecologist,

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6. Provision for following the status of all rare plants in the monitoring plan,
7. Insurance that the trail is a maximum of 4 feet in width and located immediately adjacent to Pacific Avenue (as close as legally allowed) for its entire length and that project fencing is installed immediately adjacent to the lagoon side of the trail, and
8. The revised enhancement project action plan must be reviewed and approved by the CCC Executive Director prior to implementation.

I believe that these modifications, along with those already proposed by the City of Los Angeles, and special conditions 2, 3, and 4 in their permit (CDP# 5-08-294), will insure the least possible adverse impacts to the Ballona Lagoon ESHA, including the Orcutt's yellow pincushion population, while still providing the improved public access trail and recreational opportunities approved by the permit (CDP# 5-08-294).

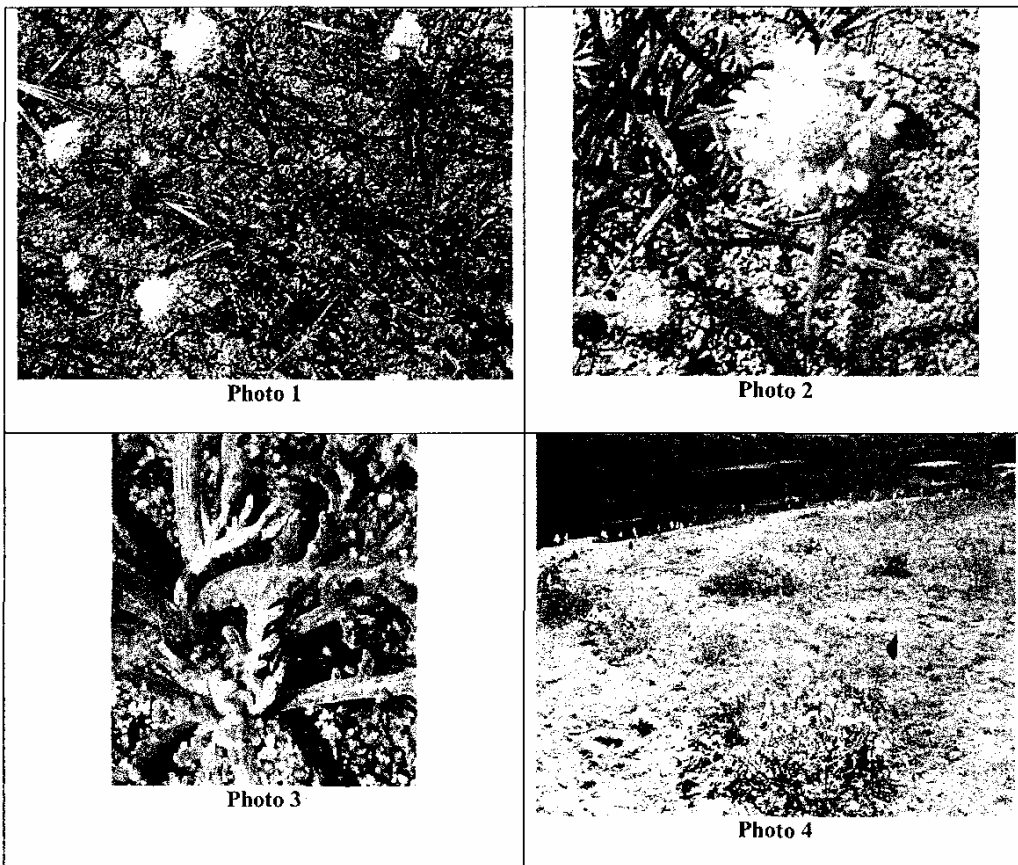
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Draft Action Plan for the conservation of  
Orcutt's Pincushion  
(*Chaetanactis glabriuscula* var. *orcuttiana* (E. Greene) H. Hall)  
at Ballona Lagoon, Venice, California

Ballona Lagoon Phase III Enhancement Project  
(E6000776)

April 22, 2010



Prepared by: William Jones,  
Environmental Specialist II  
Environmental Management

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## Introduction

The Ballona Lagoon Phase IIIa Enhancement Project is a four-acre site located on the West bank of Ballona Lagoon, in the Community of Venice, City of Los Angeles (Figure 1). Ballona Lagoon and adjacent City lands are generally located southwest of Marina Del Rey and northwest of Ballona Creek. Pacific Avenue forms part of the southwestern boundary from approximately Hurricane to Topsail Streets, while Esplanade East and Via Dolce form part of the northeastern boundary. Via Marina forms the southeastern boundary. The lagoon covers about 6.5 hectares (16 acres) in area, of which 0.6 hectares (1.5 acres) are occupied by vegetated, intertidal, coastal strand or coastal dune habitats. The elevation ranges from zero to about 2 meters (6 feet) above mean sea level.

Ballona lagoon and its banks are surrounded by both single-family and multiple-family residential land uses. Vacant city lots, adjacent to Pacific Avenue, approximately from Jib to Topsail Streets have been purchased by the City and designated as open space (Los Angeles Department of Building and Safety, 2002). The entire Lagoon has been designated as an Environmentally Sensitive Habitat Area (Los Angeles City Department of Planning, 2001).

The Ballona Lagoon Enhancement Phase III project is to restore of the west bank of the Ballona Lagoon, an estuary in the community of Venice. The work includes (1) removing non-native vegetation and encroachments; (2) re-vegetating with native dune plants; (3) realigning and improving the west bank public access trail (5 feet wide DG pathway) between Topsail Street and Canal Court; (4) constructing a 3-foot high fence along the public access trail; and constructing a public education/information area with benches near Jib Street at the northern end of the lagoon.

Habitat restoration is one of the primary goals of the Ballona Lagoon Enhancement Project, including preservation of sensitive, native species. The recent discovery of the pincushion requires modification of the project plans to ensure taxa's survival for future generations.

As part of the project scope, the Project Biologist (William Jones) flagged all native vegetation to be avoided prior to removal of non-native vegetation from the restoration area. During this period, the Project Biologist discovered the population of Orcutt's pincushion, (*Chaetanactis glabriuscula* DC var. *orcuttiana* (E. Greene) H. Hall), and immediately took action to protect the plants (Photos 1-4). Dr. C. Mark Porter of Rancho Santa Ana Botanic Garden and Dr. James Henrickson, Professor Emeritus, formerly of Cal State Los Angeles, verified identification. Voucher specimens were collected under USF&W collection permit TE-00918-3.1 (5/20/2011), and will be deposited at the Rancho Santa Ana Botanic Garden Herbarium (RSA-POM) in Claremont, California.

Work was stopped in all three identified areas that harbor pincushion plants. These areas were cordoned off (first with caution tape and then later with temporary construction fencing) (Photo 5). Work continued in areas away from the pincushion plants.



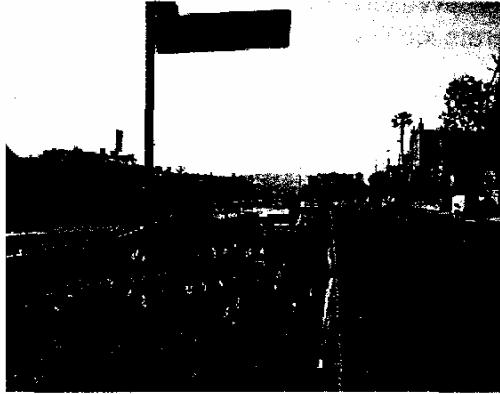


Photo 5

#### Action Plan Goals

The goal of this action plan is to preserve the existing, native pincushion habitat, as well as associated native vegetation, and to expand potential habitat to additional favorable sites on the west bank of Ballona Lagoon. In addition, the plan's implementation will compensate for the loss of existing pincushion habitat. Comprising essential elements to the successful restoration of habitat, the plan will involve collection of seed, as well as modifications to the plans and specifications. The nearest (Manhattan Beach) population was surveyed to serve as a reference for the action plan.

#### **Background**

Orcutt's Pincushion (*Chaeanactis glabriuscula* DC var. *orcuttiana* (E. Greene) H. Hall) is one of five recognized varieties of the species, *Chaeanactis glabriuscula* DC. The variety is characterized by its succulent leaves, arachnose (cob-webby) vestiture, and its twice-pinnate leaf pattern. There are 18 recognized species in the genus (*Chaeanactis*) in western North America, where *C. glabriuscula* DC is the only species with yellow flowers. The species is a member of the sunflower family (ASTERACEAE). Seeds are dry fruits, termed, "achenes."

The California Native Plant Society has ranked the Orcutt's yellow pincushion as "very threatened." The taxon is ranked as 1B.1- rare and is seriously threatened in California. It has been reported from at least 15 sites including all four southern California counties (Ventura, Los Angeles, Orange, and San Diego) and in Baja California. However, it is not state or federally listed as an Endangered, Threatened, or Rare Plant.

Based upon a review of herbarium records, listed by the Consortium of California Herbaria, the variety ranges from San Diego to Ventura Counties. Of the 57 specimens on file at the 17 member institutions, six specimens were collected in Los Angeles County. Areas included Playa Del Rey, Manhattan Beach, as well as Ballona Wetlands. Being the most recent database entry, Cooper collected a specimen (UCR209147) in Manhattan Beach in 2009. Earlier, Gustafson collected a specimen

(POM351747) from Ballona Wetlands in 1980. No specimens were on file for Ballona Lagoon, which is a separate locality from Ballona Wetlands, about 1 km to the south.

The next nearest population known to us of the Orcutt's pincushion lies approximately 9 km to the south of Ballona Lagoon at Manhattan Beach. The Manhattan Beach population is located at Sand Dune Park, which is operated by the City of Manhattan Beach. The site is currently closed to the public for maintenance purposes. The population was accessed and surveyed by permission on March 30, 2010. Orcutt's pincushion occupies approximately 241 square meters (0.059 acres) at the lower end of a narrow, vegetated draw, parallel to, and North of the sand dune. The substrate is pure sand, and faces east. Common native associates include sand verbenia (*Abronia umbellata*), beach evening primrose (*Camissonia cheiranthifolia*), and dune bush lupine (*Lupinus chamissonis*). Based upon quadrat data, the population was estimated to be about 1,350 ( $\pm$  425) individuals.

Orcutt's pincushion is an herbaceous annual plant with a short lifespan (late winter to early spring), where the normal flowering period extends from April to July. However, at Ballona Lagoon, flowering began about two months early, in mid February, and should be completed by May or June. Unlike trees, shrubs, or perennials, annual plants pursue a survival strategy where the life cycle is completed within a year. When environmental conditions are favorable, seeds germinate, plants grow and mature, bloom, produce seed, and then die prior to the onset of the summer dry season. Therefore, the plant can be "moved" in effect by collecting mature seeds and planting them elsewhere in other favorable sites.

The pincushion occurs within three discrete areas (1, 2, and 3) on the west bank of Ballona Lagoon, ranging from just North of Outrigger to just Northeast of Topsail Streets. Area (1) is just north of Outrigger Street, while Area (2) extends from just South of Outrigger Street to just South of Privateer Street. Area (3) lies to the northeast of Topsail Street. The pincushion inhabits a total of about 0.37 acres (1,509 square meters). The middle area (2) is the largest area, covering 0.29 acres (1,171 square meters), and contains the main population. Area (1) covers 0.02 acres (78 square meters), while Area (3) covers 0.06 Acres (229 square meters).

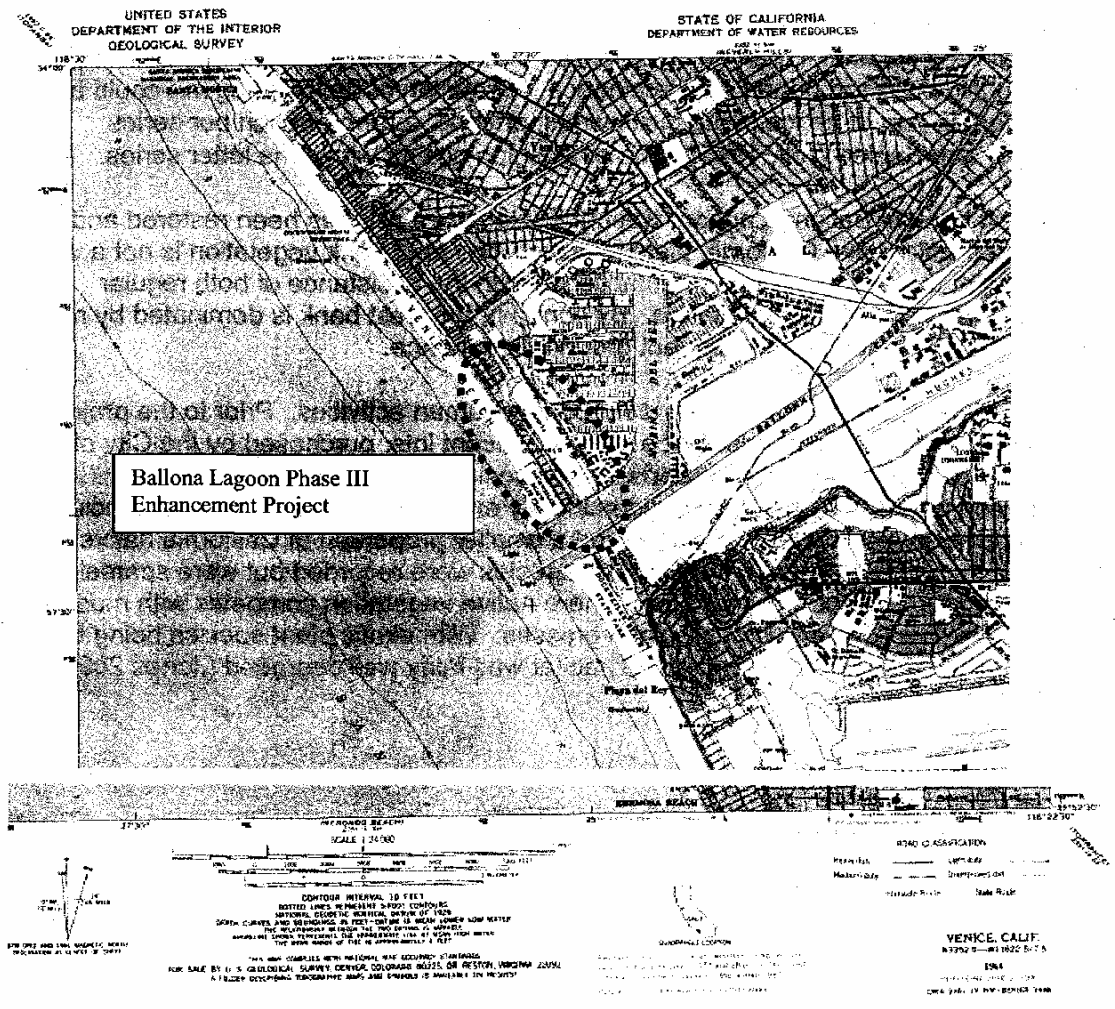
Pincushion habitat is characterized by open upland areas with mostly sandy soils, away from the upper high tide line. From a previous survey of Ballona Lagoon, a total of 86 plant species were recorded, about half were native California plant species (Jones, 2003). Within the pincushion-inhabited areas, a total of 33 plant species have been noted; twelve were native California species (Table 2). Only nine of the twelve native plant species are directly associated with the pincushion.

Many of the recorded California native plant species are found in one to several coastal vegetation community types, such as coastal strand, coastal salt marsh, or coastal sage scrub. Seven of the species can be normally found on open or disturbed sites within many vegetation community types. Coastal strand vegetation covers upland, beach, and dune habitats, while coastal salt marsh vegetation occupies lower intertidal

areas, subject to tidal inundation. Coastal sage scrub vegetation occupies higher and drier upper slopes that lie above the coastal strand community (Raven, et al, 1986). Alternatively, vegetation can be classified by dominant species in series, rather than by communities. Based upon local dominance, vegetation of Ballona Lagoon could be classified as part of an ice plant, pickleweed, or sand verbenabeach bur series (Sawyer and Keeler-Wolf, 1995). The pincushion occurs within the latter series.

The east bank of Ballona Lagoon, west of Esplanade East, has been restored and re-vegetated with native California plant species. The east bank vegetation is not a wild population; the plants have been established with the assistance of both regular irrigation and periodic maintenance. By contrast, the west bank is dominated by mostly ruderal species, adapted to frequent ground disturbance.

The west bank has been regularly disturbed by human activities. Prior to the project, the land was vacant, comprised of a string of vacant lots, purchased by the City of Los Angeles for habitat protection purposes, and designated as open space. Site vegetation included a mixture of predominantly exotic vascular plant species, including a number of invasive weedy species, and a smaller proportion of California native plant species than the east bank. Native plant species were recorded but were sparsely distributed throughout the west bank, where native vegetation competes with mostly non-native, low-lying shrubs herbs and grasses. With exotic plant species being locally dominant in this open community, the habitat was fairly well degraded (Jones 2003).



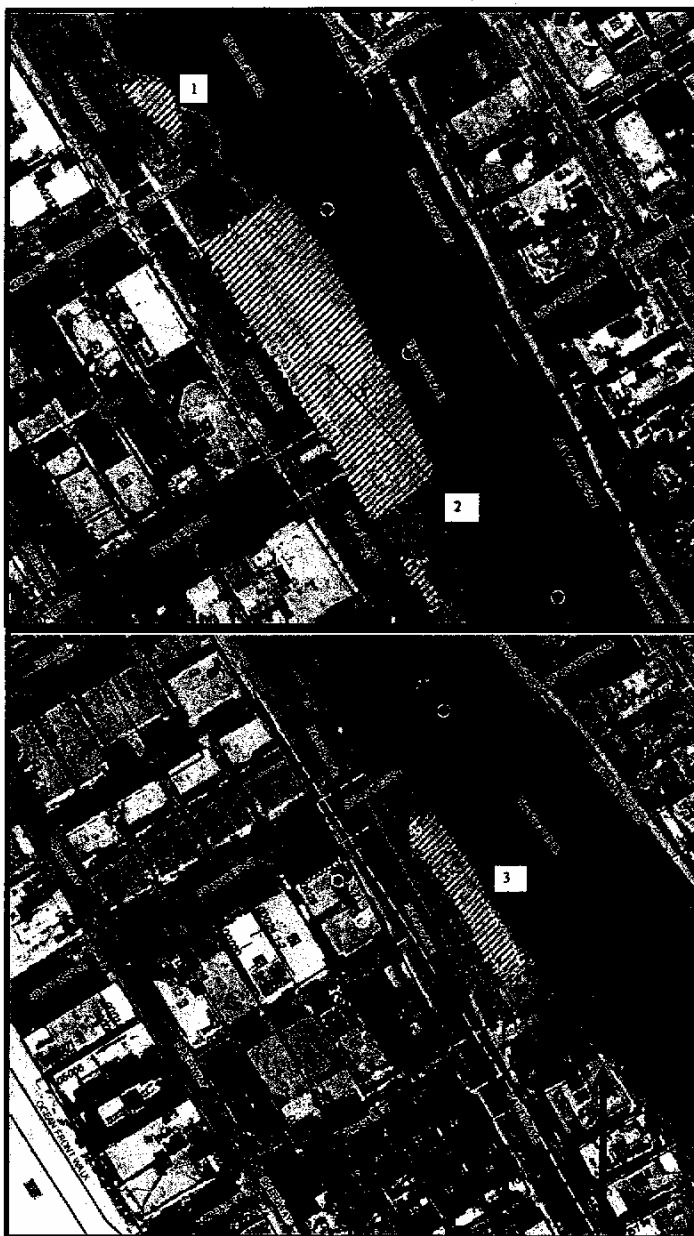
**Figure 1: Portion of Venice, California, USGS Topographic Map showing Project Location**

### Survey Methodology

The population was initially mapped (Figure 2) and a floristic survey was performed. Once boundaries were delineated, the population was sampled using quadrats. A total of 70 (0.49 meters square) quadrats were taken at random along parallel transects in all three areas (Table 1). The middle area (2) was split into two sections- potentially impacted zone (Area 2b) and outside the potentially impacted zone (Area 2a). A total of 34.3 square meters was sampled. Plant densities (plants per square meter) were calculated, and then estimated for each area by proportion. A small (29.5 square meter patch with 10 individuals) was not sampled (Area 2c). The patch was about 7 meters to the south of Area (2), and is included in the total area of potential impact.

**Table 1: Sampling Area Data (\* indicates potential impact areas).**

Area	Location	Total Area (sq m)	Area 2a/c (sq m)	# Quadrats	Sample Area (sq m)
1	North of Outrigger	77.6	0.019	8	3.9
2a	South of Outrigger to South of Privateer (outside potential impact area)	988.8	0.244	30	14.7
2b*	South of Outrigger to South of Privateer (within potential impact area)	182.2	0.045	14	6.9
2c*	South of Privateer (within potential impact area)	29.5	0.007	Not incl.	Not incl.
3	Northeast of Topsail	228.5	0.056	18	8.8
<b>Total</b>		<b>1492.6</b>	<b>0.372</b>	<b>70</b>	<b>34.3</b>



**Figure 2: *Chaenactis glabriuscula* var. *orcuttiana* areas:**  
 Upper (Areas, 1-2abc, Outrigger to Privateer); Lower (Area 3, in the vicinity of  
 Topsail). (3/23/10). (Light blue dashed lines circumscribe boundaries of the  
 respective pincushion-protected areas (crosshatch), while yellow-dashed lines  
 circumscribe mapped pincushion distributions).

## Results

The floristic and vegetation survey for the pincushion was performed on March 17, 2010. Repeat visits were made on April 2 and April 12 of 2010.

### Floristic Survey

As provided in Table 2, within the protected areas inhabited by the pincushion, associated species include native annuals such as sand verbena (*Abronia umbellata* Lam., beach evening primrose (*Camissonia cheiranthifolia* var. *cheiranthifolia* (Sprengel.) Raimann), and telegraph weed (*Heterotheca grandiflora* Nutt.), and one native shrub, beach burr (*Ambrosia chamissonis* (Les.) E. Greene). Salt grass is also common (*Distichlis spicata* (L.) E. Greene). Two other native annuals, Chinese caps (*Euphorbia crenulata* Engelm.) and slender phlox (*Phlox gracilis* E. Greene), were also locally abundant in area (2).

Other sensitive species are found within the four-acre project area. These include wooley sea-blight (*Suaeda taxifolia* (Standley) Standley), red sand verbena (*Abronia maritima* S. Watson), and south coast saltbush (*Atriplex pacifica* Nelson); however, none are associated with the pincushion.

Non-native species are abundant, species include ripgut and red brome (*Bromus diandrus* Roth and *B. madritensis* L. var. *rubens* (L.) Husnot.), mustard (*Brassica* sp), Cretan weed (*Hedypnois cretica* (L.) Dum.-Cours.), wild radish (*Raphanus sativus* L.), Russian thistle (*Salsola tragus* L.), crown daisy (*Chrysanthemum coronarium* L.), and storksbill (*Erodium cicutarium* L. (L'Her)). Prior to the project, highway ice plant (*Carpobrotus edulis* (L.) N.E. Br.) dominated vast areas of Ballona Lagoon's west bank.

Table 2: List of Associated Plant Species within the Pincushion Areas.

Ballona Lagoon Phase III  
 Chaenactis Associated Plant Species- West Bank of Ballona Lagoon  
 Survey Dates (3/17/2010, 4/2/2010 and 4/12/2010)

Area	Area 1	Area 2	Area 3	Genus	Species	Valley Ass.	Authority	Common Name	California Native
x	x	x	x	Abronia	umbellata		Lam.	Sand Verbena	Y
x	x	x	x	Ambrosia	chamissonis		(Less.) E Greene	Beach-Bur	Y
	x	x	x	Avena	fatua		L.	wild oats	
	x	x	x	Bromus	diandrus		Roth.	Ripgut Brome	
	x	x	x	Bromus	madritensis		L. (L) Husnot.	Foxtail Chess Grass	
	x	x	x	Camissonia	cheiranthifolia		Sprengel	Beach Evening Primrose	Y
	x	x	x	Carpobrotus	edulis		(L.) N.E. Br	highway iceplant	
x	x	x	x	Chaenactis	glabriuscula		(E. Greene) H. Hall	Orcutt's Pincushion	Y
	x	x	x	Chrysanthemum	coronarum		L.	Crown Daisy	
	x	x	x	Distichlis	spicata		E. Greene	saltgrass	Y
x	x	x	x	Erodium	circutarium		(L.) L'Her.	Filaree	
	x	x	x	Erodium	moschatum		(L.) L'Her.		
	x	x	x	Euphorbia	crenolata		Engelm.	Chinese Caps	Y
	x	x	x	Hedynopsis	cretica		(L.) Dum.-Cours.	Cretan weed	
	x	x	x	Herschfeldia	incana		Lagar-Fosset	Mustard	
x	x	x	x	Heterotheca	grandiflora		Nutt.	Telegraph Weed	Y
	x	x	x	Hordeum	munimum		L.	barley	
x-nearby	x	x	x	Jaumea	carnosa		(Less.) A. Gray	Jaumea	Y
x-nearby	x	x	x	Limnium	californicum		(Boiss.) A.A. Heller	Western marsh rosemary	Y
	x	x	x	Linum	lewisii		Pursh.	Flax	Y
	x	x	x	Malva	neglecta		Walr.	cheeseweed	
	x	x	x	Malva	niceensis		All.	bull mallow	
	x	x	x	Medicago	polymorpha		L.	burr clover	
	x	x	x	Melilotus	officinalis		L.	yellow sweetclover	
	x	x	x	Oxalis	corniculata		L.	Oxalis	
	x	x	x	Oxalis	pes-caprae		L.		
	x	x	x	Phlox	gracilis		L.	Bermuda Buttercup	Y
	x	x	x	Picris	echioides		E. Greene	slender phlox	
	x	x	x	Raphanus	sativas		L.	bristly Ox Tongue	
x-nearby	x	x	x	Salicornia	virginica		L.	Wild Raddish	
	x	x	x	Salsola	tragus		L.	Pickleweed	Y
	x	x	x	Schismus	barbatus		L.	tumbleweed	
	x	x	x	Sisymbrium	irio		(L.) Thell.	Old Han Schismus	
	x	x	x				L.	London Rocket	
Area 1	Area 2	Area 3	Area 4						
9	28	22		33 Total					
3	10	7		12 CA Native					

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### Vegetation Survey

A total of 627 individual pincushion plants were counted in the 70 quadrats for an average of 18.3 plants per quadrat (Table 3). The range was 0 to 103 individuals per quadrat. The mean overall pincushion density was  $8.686 \pm 16.282$  (SEM = 1.946) and ranged from 9.2 to 26.3 plants per square meter. Based upon the t-test, the result was significant ( $p < 0.001$ ). In Area (2), the mean density was lowest (9.2 plants per square meter) in the area of potential impact along Pacific Avenue, than elsewhere in this area (19.0 plants per square meter). As given in Table 3, the frequency of quadrats where *Chaenactis* was present was 64.3 percent for all quadrats, and ranged from 55.6 to 87.5 percent of quadrats, as calculated for each area. *Chaenactis* was present in 71.3 percent of quadrats in the potentially impacted area.

Based upon this survey, the total Ballona Lagoon pincushion population was estimated to be about 27,500 ( $\pm 7,800$ ) individuals. Based upon the variance to mean ratio, the distribution is in groups or clumps.

**Table3: Quadrat Data, Density, and Population Estimates.**

(Area) Density	Count	# Quad	Total Sample Area (sqm)	Density (#/sqm)	Estimated Area (sqm)	Mean Est. Population
(1) North of Outrigger	103	8	3.92	26.3	77.6	2039
(2a) South of Outrigger to South of Privateer (outside potential impact area)*	280	30	14.70	19.0	988.8	18834
(2b) South of Outrigger to South of Privateer (within potential impact area)*	63	14	6.86	9.2	182.2	1673
(2c) South of Privateer	10	n/a	29.5	0.3	30.0	10
(3) Northeast of Topsail	181	18	8.82	20.5	244.0	5007
<b>Overall</b>	<b>627</b>	<b>70</b>	<b>34.30</b>	<b>18.3</b>	<b>1492.6</b>	<b>27564</b>

\* indicates potential impact areas (5-ft wide path, 2-ft wide zone for fence and trench).

**Table 3: Quadrat Data, Frequency.**

<b>Location (Area)</b>	<b>Quadrats with <i>Chaenactis</i></b>	<b>Frequency</b>
(1)	7	87.5%
(2a)	18	60.0%
(2b)	10	71.4%
(2c)	na	na
(3)	10	55.6%
<b>Overall</b>	<b>45</b>	<b>64.3%</b>

### Assessment of Potential Impacts

The proposed path alignment would affect only a narrow portion of area (2), a seven-foot wide strip, immediately adjacent to Pacific Avenue. The potential area of impact is approximately 0.052 acres (212 square meters), or 14% of the total pincushion area. Plant density is lower along this strip. Consequently, the proposed path would affect an area inhabited by about 1,700 pincushion plants (or 7 percent) out the total Ballona Lagoon area population. About 93 percent of the pincushion population will not be impacted by construction. These proportions may vary slightly as new plants germinate. Narrowing the path to the minimum-recommendable width of four-feet is an option. The potential area of impact would be reduced to approximately 0.037 acres (148 square meters), or 9.8% of the total area. The narrower path would affect an area, presently inhabited by about 1,200 pincushion plants (or 4.5 percent) out the total Ballona Lagoon area population.

### Action Plan

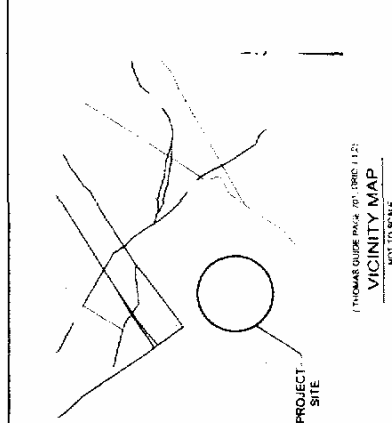
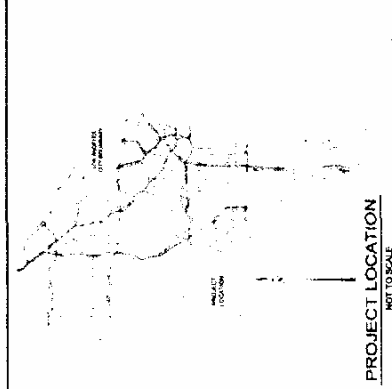
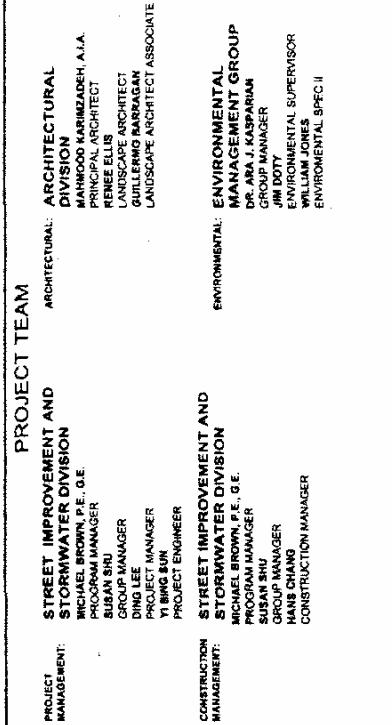
Once the identification of Orcutt's pincushion was verified, the project biologist instructed the project team to stop work within areas inhabited by these plants and to erect temporary barriers with stakes and flagging. The temporary barriers were later replaced by more resilient, construction fencing. The pincushion was added to the list of native plants, previously provided to the Contractor's crew. Crewmembers were also provided individual instruction on how to identify and avoid these plants. The California Department of Fish and Game as well as the California Coastal Commission were notified.

Weeding is essential. Based upon DFG guidance and performed under the supervision of the Project Biologist, hand weeding continued in the pincushion areas. Weeding was completed on April 14, 2010. Unless controlled, non-native weeds would out-compete, overwhelm, and prevent the successful return of the pincushion in future years. Other than hand weeding, no construction will occur in the protected areas during the pincushion's life cycle. This plan will follow appropriate agency procedures and guidelines for the conservation of rare plants.

For the pincushion, the best action would be to collect, store and reintroduce the seed back into the restored areas. Essentially, the intent is to collect mature seed during the flowering period. The Project Biologist will coordinate with the Payne Foundation to collect seed, and then temporarily store it at the Rancho Santa Ana Botanic Garden's seed bank facility. Some of the seed would be retained by both organizations for conservation purposes. For Rancho Santa Ana Botanic Garden, there is a \$2500 fee to establish a permanent conservation seed collection, along with a \$200 charge for cleaning and processing. A short-term, research, and recovery collection option is also available (Wall, 2010).

The Payne Foundation will also collect seed from other native plant species, including associated species, for use in the re-vegetation effort. Exotic weed (ice plant, brome, mustard, etc.) removal has opened up large areas of potential upland, sandy habitat for the Orcutt's pincushion. When the project site is ready for re-vegetation, the seed will be introduced into designated areas of similar habitat within the restoration area.

## BALLONA LAGOON ENHANCEMENT PHASE III



The previously approved restoration plan (planting and irrigation) will be revised to accommodate the pincushion. Plans will be modified to eliminate 1-gallon shrub plantings in the pincushion-inhabited areas (0.372 acres), as well as those areas designated for introduction of the pincushion (0.495 acres). Application of hydro seed and mulch will also be eliminated in these areas. In the designated pincushion-introduction areas, seed will be sown by hand, and will include seed of the pincushion, along with other native annual associates, such as sand verbena, beach evening primrose, and dune lupine (Figure 3). Irrigation lines will bypass the protected and potential introduction areas, and be placed beneath the path alignment along area (2). In Area 2, the path should be narrowed to four-foot width.

#### **Alternative Actions**

Avoidance has been considered, but not recommended. Inside the protected area, weeding had been limited to removal of ice plant. Meanwhile, other exotics (rip-gut brome, mustard, stork's bill, and Cretan weed) were rapidly moving toward seed set and would out-compete the pincushion, if no action was taken. Outside of the protected areas, exotics (ice plant, brome, mustard, etc.) removal has opened up large sandy areas of potential habitat for Orcutt's pincushion. It was deemed important to continue weeding in the protected areas. Moreover, there is currently no sidewalk along the eastern side of Pacific Avenue. Being adjacent to the street, the 50-foot wide strip along Pacific is subject to disturbance by pedestrians and domestic animals, walking on unimproved trails, littering and clandestine dumping activities.

To protect the plants, a meandered path was considered for the middle area. The currently proposed alignment, immediately adjacent to Pacific Avenue, was specifically set to maximize the amount of contiguous, protected habitat area. The footpath and barrier railing will protect habitat. Choosing a new alignment for the footpath could reduce the number of plants affected this year, but not avoid them entirely. Revising the path to meander through the protected area would severely fragment this habitat, and thus leave areas vulnerable to trampling, especially areas between the meandered path and the street. Even if fenced off, much of the future pincushion seeds will likely end up on the adjacent path or street, or mixed in with seeds of unwelcome, non-native weeds. Again, any alignment other than the one proposed would permanently reduce the amount of protected habitat. The City prefers to maintain the path alignment as provided in the Coastal Development Permit. Habitat area would be maximized and weed removal would meet restoration goals.

#### **Maintenance and Monitoring**

The monitoring period will follow conditions of Coastal Development Permit (CDP 5-08-294) (California Coastal Commission 2009). The Environmental Management Group will monitor the restoration site during a five-year period consisting of monthly visits during the first year, then quarterly visits during the second through fifth years. Monitoring will include systematic record keeping of the site restoration. The pincushion is to be included in the monitoring regimen. The Environmental Management Group will regularly supervise the restoration effort to ensure attainment

of permit conditions. Maintenance will be performed initially by the restoration Contractor (Nature's Image), then by the maintenance contractor (currently Mariposa).

Per the CDP conditions, annual written reports will be submitted to the California Coastal Commission and California Department of Fish and Game by January 1 following each year of monitoring. Annual reports will be prepared gauging plant survival, estimating (%) plant cover, and listing plant species present. The report will include the assessment methodology. Photos from designated photo stations will also be included. Permanently marked vantage reference points will be established for the photographic documentation. Annual photographs, from the same vantage points, will be taken to document the restoration project's progress.

#### Success Criteria

Because of the ephemeral and unpredictable nature of the *Chaenactis* taxa, success cannot be specifically gauged by their annual return. As long as the site is regularly monitored, and non-native plant species are removed, conditions will enable the pincushion and other native vegetation to regenerate naturally with minimal competition.

#### **Qualifications**

See attached resume, and partial list of biological/vegetation resource assessment studies.

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COUNTY CLERK'S USE

CITY OF LOS ANGELES  
OFFICE OF THE CITY CLERK  
ROOM 395, CITY HALL  
LOS ANGELES, CALIFORNIA 90012  
CALIFORNIA ENVIRONMENTAL QUALITY ACT

CITY CLERK'S USE

# NOTICE OF EXEMPTION

(Articles II and III - City CEQA Guidelines)

Submission of this form is optional. The form shall be filed with the County Clerk, 12400 E. Imperial Highway, Norwalk, California, 90650, pursuant to Public Resources Code Section 21152(b). Pursuant to Public Resources Code Section 21167(d), the filing of this notice starts a 35-day statute of limitations on court challenges to the approval of the project.

**LEAD CITY AGENCY AND ADDRESS:** Bureau of Engineering  
1149 South Broadway, Suite 600, Los Angeles, CA 90015.

**COUNCIL DISTRICT**  
11

**PROJECT TITLE:**  
BALLONA LAGOON PHASE III ENHANCEMENT PROJECT

**LOG REFERENCE**  
T.G. p 701, J2 to J2.

## PROJECT LOCATION:

West Bank of Ballona Lagoon, from Jib Street to 30 feet South of Topsail Street, Community of Venice, City of Los Angeles, California 90039.

**DESCRIPTION OF NATURE, PURPOSE, AND BENEFICIARIES OF PROJECT:** The proposed project is a modification of Ballona Lagoon Enhancement Plan Phase III, to implement a conservation plan for the Orcutt's pincushion including: protection of the existing, native pincushion habitat and associated native vegetation and expansion of potential habitat to additional favorable sites on the west bank of Ballona Lagoon. In addition, the plan's implementation would compensate for the loss of existing pincushion habitat along a narrow strip, adjacent to Pacific Avenue. The plan will involve seed collection, as well as modifications to the plans and specifications, as previously approved. Plans will be modified to eliminate irrigation and 1-gallon shrub plantings in the pincushion-inhabited areas, as well as in those areas designated for pincushion-introduction. Application of hydro seed and mulch will also be eliminated in these areas; pincushion seed will be sown by hand, and will include seed of other native annual associates, such as sand verbena, beach evening primrose, and dune lupine. Within the new path alignment, existing shrubs will be transplanted if possible to other parts of the restoration area. Irrigation lines will bypass the protected and potential introduction areas, and be placed beneath the path alignment as necessary. Temporary irrigation will be limited to maintaining transplanted material from the existing path alignment, or container material planted outside of the existing or potential pincushion areas- only as permitted. The path should be narrowed to a four-foot width, except for limited turn-around areas for wheelchairs, along Pacific Avenue. Existing unimproved trails will be restored, and the proposed fence will delineate and protect the restored areas from intrusion. Also included are drainage improvements to control erosion at the Outrigger Street.

**CONTACT PERSON**  
William Jones

**TELEPHONE NUMBER**  
(213) 485-5760

## EXEMPT STATUS: (Check One)

- ☐ MINISTERIAL  
☐ EMERGENCY PROJECT  
☐ GENERAL EXEMPTION  
☐ CATEGORICAL EXEMPTION  
Class 4(d), 4(f), and 33  
☐ OTHER (See Public Resources Code Sec. 21080(b) and set forth state and city guidelines provision)

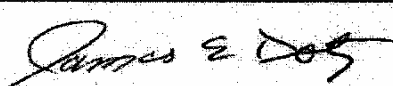
CITY CEQA  
GUIDELINES  
Art. II, Sec. 2b  
Art. II, Sec. 2a  
Art. II, Sec. I  
Art. III, Sec. I  
(City CEQA Guidelines)

STATE CEQA  
GUIDELINES  
Sec. 15268  
Sec. 15269  
Sec. 15061(b)(3)  
Sec. 15300 et seq.

**JUSTIFICATION FOR PROJECT EXEMPTION:** The project involves minor alterations to the land, water and/or vegetation that do not involve removal of scenic, mature trees, and lies within an existing officially designated wildlife management areas that will result in improvement of wildlife habitat, or wildlife resources. In addition, this project represents a small habitat restoration projects, less than 5-acres in size, to assure maintenance, restoration, enhancement, or protection of habitat for fish, plants, or wildlife provided that there would be no significant adverse impact on endangered, rare, or threatened species or their habitat, pursuant to Section 15065. No exceptions to this categorical exemption were found; see attached narrative.

## IF FILED BY APPLICANT, ATTACH CERTIFIED DOCUMENT OF EXEMPTION FINDING

**SIGNATURE:**  
James E. Doty



**TITLE:**  
Acting Manager, Environmental Group

**DATE:**  
6-30-10

**FEE:**  
\$75.00

**RECEIPT NO.**

**REC'D BY**

**DATE**

CEQA  
5-08-294-A1

# CATEGORICAL EXEMPTION NARRATIVE

## I. PROJECT DESCRIPTION

The proposed project is modification of Ballona Lagoon Enhancement Plan Phase III, currently in construction, to implement a conservation plan for the Orcutt's pincushion including: protection of the existing, native pincushion habitat and associated native vegetation and expansion of potential habitat to additional favorable sites on the west bank of Ballona Lagoon. In addition, the plan's implementation would compensate for the loss of existing pincushion habitat along a narrow area adjacent to Pacific Avenue. Comprising essential elements to the successful restoration of habitat, the plan will involve collection of seed, as well as modifications to the plans and specifications. Previously approved plans required modification. Under consultation with the Coastal Commission Staff, application was made for a permit amendment (5-08-294-A1). The amendment also included consideration of drainage improvements to control erosion at the Outrigger Street.

The Ballona Lagoon Enhancement Phase III project is to restore of the west bank of the Ballona Lagoon, an estuary in the community of Venice. The currently permitted work includes (1) removal of non-native vegetation and encroachments; (2) re-vegetation with native dune plants; (3) realigning and improving the west bank public access trail (5 feet wide DG pathway) between Topsail Street and Canal Court; (4) construction of 3 feet high fence along the public access trail; and construction of a public education/information area with benches near Jib Street at the northern end of the lagoon.

## II. PROJECT HISTORY

### Previous CEQA and Coastal Act Findings:

The Ballona Lagoon Phase III Enhancement Project is part of a multiphase project, intended to improve public facilities and to restore native habitat along the banks of Ballona Lagoon, in the Community of Venice, City of Los Angeles. The project has been implemented in phases, with the initial phase involving dredging of the deepwater pool, public access improvements, re-vegetation of the [eastern] lagoon bank and monitoring. The second phase involved street and sidewalk improvements at Via Dolce and Via Marina, as well as removal of remnants of an existing oil well platform from Ballona Lagoon.

The original Ballona Lagoon Enhancement Plan and alternatives were considered in a Negative Declaration, certified by the California Coastal Conservancy on October 20, 1993. The Negative Declaration stated that the Plan did not have a significant effect on the environment.

The 1993 Negative Declaration (ND) was based upon an Initial Study that stated, with respect to plant life, that the project would result in introduction of new species into the project area, and result in a change in species diversity. Since implementation of the

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Enhancement Plan would result in an increase in species diversity, no mitigation was required. As for introduction of new species, the ND stated that the new species were native dune, coastal strand or salt marsh species, previously known to exist at the Lagoon. The native plant species were designed to replace non-native, weedy vegetation that has dominated the lagoon banks. No mitigation was required.

The Coastal Commission issued Coastal Development Permit (CDP 5-95-152) with Conditions of Approval that adequately addressed and mitigated any potential adverse impacts caused by the project. The Coastal Commission found this plan as conditioned to be consistent with the Coastal Act and CEQA.

The second phase was found to be Categorically Exempt (10/09/1996) as minor alterations in the land, water and vegetation to improve habitat in an existing, designated ecological area. The Coastal Conservancy subsequently certified a second Negative Declaration on March 29, 1996, stating that the second project phase would not have a significant effect on the environment. The Coastal Commission approved Permit Amendment CDP 5-95-152-A, with conditions, on August 16, 1996.

The third phase, to replace unimproved trails with a constructed granite pathway, and to improve habitat through removal of exotic plant species and planting of native vegetation on the west bank, was determined to be Categorically Exempt (5/25/2000). The City's determination was based on the fact that Phase III was consistent with the Ballona Lagoon Enhancement Plan. Furthermore, Phase III was less intrusive than Phases I and II, which were determined to have no risk of significant impact. Inasmuch as Phase III incorporated the protective measures applied to the previous phases (such as use of native material and timing to avoid impact on the California Least Tern), the City determined that additional environmental documentation was not necessary. With conditions, the Coastal Commission approved CDP 05-08-294 on April 8, 2009, and found that the application, as conditioned to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA).

During construction, the City's biological monitor identified the presence of the Orcutt's yellow pincushion (scientific name *Chaetanactis glabriuscula* var. *orcuttiana* (E. Greene) H. Hall). The City immediately took action to protect the plants, stopping work in the area of the pincushion plants and cordoning off the area (first with caution tape and then later with temporary construction fencing). Some work continued in areas away from the pincushion plants.

The California Native Plant Society has ranked the Orcutt's yellow pincushion as "very threatened." It has been reported from at least 15 sites including all four southern California counties (Ventura, Los Angeles, Orange, and San Diego) and in Baja California. However, it is not State or Federally listed as an Endangered, Threatened, or Rare Plant.

About 6 percent of the pincushion plants are in the area proposed for the footpath; 94 percent of the pincushion plants on site will not be impacted by construction.

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The alignment of the footpath and barrier railing were specifically set to maximize the amount of protected habitat. Choosing a new alignment for the footpath could reduce the number of plants affected this year, but not avoid them entirely. However, any alignment other than the one proposed would permanently reduce the amount of protected habitat.

The City now proposes to voluntarily alter the project to accommodate conservation of the Orcutt's pincushion. A conservation plan has been prepared to characterize the existing pincushion distribution and status, and then to recommend actions that would preserve the existing, native pincushion habitat and associated native vegetation, and to expand potential habitat to additional favorable sites on the west bank of Ballona Lagoon. In addition, the plan's implementation would compensate for the loss of existing pincushion habitat along a narrow area adjacent to Pacific Avenue. Comprising essential elements to the successful restoration of habitat, the plan will involve collection of seed, as well as modifications to the plans and specifications. Previously approved plans required modification. Under consultation with the Coastal Commission Staff, application was made for a permit amendment (5-08-294-A1). The amendment also included consideration of drainage improvements to control erosion at the Outrigger Street drain. The plan modifications were evaluated for compliance with the Environmental Quality Act.

The conservation plan has been prepared in consultation with the California Department of Fish and Game, California Coastal Commission, and with native plant experts.

### **III. ENVIRONMENTAL REVIEW**

Under Article 19 of CEQA guidelines, three exemptions may apply: Class 4 (d), Class 4 (f), or Class 33.

#### **A. Class 4 Categorical Exemption**

Section 15304, Class 4, includes minor alteration to the land, water and/or vegetation that do not involve removal of scenic, mature trees. The Class includes (d) minor alterations on existing officially designated wildlife management areas that will result in improvement of wildlife habitat, or wildlife resources. The Ballona Lagoon Phase III Enhancement Project is on the Ballona Lagoon Significant Ecological Area, which is officially designated by the City and County of Los Angeles, and the project will restore native habitat. Class 4 also includes (f) minor trenching and backfilling where the surface is restored. The proposed project includes minor trenching, backfilling and restoration of the surface.

There are exceptions to the use of Categorical Exemptions under Class 4, with respect to location, cumulative impacts, significant effect due to unusual circumstances, or involves scenic highways, a hazardous waste site, or historical resource. No other projects of the same type are planned for this location; consideration of cumulative impacts would be moot. Pacific Avenue is not a scenic highway; the project site does not contain a

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designated hazardous waste site. Furthermore, the Venice Canals, an historic monument, are not part of this project. For a discussion of "significant effect," see below.

## **B. Class 33 Categorical Exemption**

Section 15333, Class 33, is for small habitat restoration projects, not to exceed 5-acres in size, to assure maintenance, restoration, enhancement, or protection of habitat for fish, plants, or wildlife provided that there would be no significant adverse impact on endangered, rare, or threatened species or their habitat, pursuant to Section 15065. Such projects include re-vegetation of disturbed areas with native plant species, projects that restore habitat that are carried out principally by hand labor, not mechanized equipment. The exemption is valid in that total project area is less than 5-acres in size; the total project area is about 4-acres, while the plan modification area is less, about 1.75 acres in size. As for the presence of a rare species in this case, for CEQA purposes, impact to a CNPS- listed rare species must be taken into consideration.

The question is does the project modification constitute a significant effect? The trail alignment will impact area, inhabited by Orcutt's Pincushion from just south of Outrigger Street to south of Privateer Street. With the path, narrowed to a minimum of four-feet, the potential area of impact would be approximately 0.037 acres (148 square meters), or 9.8% of the total area. The narrower path would affect an area, presently inhabited by about 1,200 pincushion plants (or 4.5 percent) out the total Ballona Lagoon area population. About 95 percent of the pincushion population will not be impacted by construction of the new path.

Orcutt's pincushion is an herbaceous annual plant with a short lifespan (late winter to early spring), where the normal flowering period extends from April to July. Unlike trees, shrubs, or perennials, annual plants pursue a survival strategy where the life cycle is completed within a year. When environmental conditions are favorable, seeds germinate; plants grow and mature, bloom, produce seed (achenes), and then die prior to the onset of the summer dry season. Seeds maintain the population until the next year, when conditions are again favorable. Therefore, the plant can be "moved" in effect by collecting mature seeds and planting them elsewhere in other favorable sites.

The previously approved restoration plan (planting and irrigation) will be revised to accommodate the pincushion. Plans will be modified to eliminate irrigation and 1-gallon shrub plantings in the pincushion-inhabited areas, as well as those areas designated for introduction of the pincushion. Application of hydro seed and mulch will also be eliminated in these areas. In the designated pincushion- introduction areas, seed will be sown by hand, and will include seed of the pincushion, along with other native annual associates, such as sand verbena, beach evening primrose, and dune lupine. Within the new path alignment, existing shrubs will be transplanted if possible to other parts of the restoration area. Irrigation lines will bypass the protected and potential introduction areas, and be placed beneath the path alignment as necessary. Temporary irrigation will be limited to maintaining transplanted material from the existing path alignment, or container material planted outside of the existing or potential pincushion areas- only as

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permitted. The path should be narrowed to four-foot width, except for limited turn-around areas for wheelchairs, along Pacific Avenue. Existing unimproved trails will be restored, and the proposed fence will delineate and protect the restored area.

We conclude that the proposed modification of the Ballona Lagoon Enhancement Plan Phase III project does not have the potential to: substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; or substantially reduce the number or restrict the range of an endangered, rare or threatened species.

### **Exceptions to the Use of Categorical Exemptions**

**1. Cumulative Impact:** This exception applies when, although a particular project may not have a significant impact, the cumulative impact of successive projects of the same type in the same place, over time is significant.

No other projects of the same type are planned for this location. Thus, this exception has no application here.

**2. Significant Effect:** This exception applies when, although the project may otherwise be exempt, there is a reasonable possibility that the project will have a significant effect due to unusual circumstances. Examples include projects that may affect scenic or historical resources.

The City CEQA Thresholds Guide provides that project would normally have a significant impact on biological resources if it could result in (among other things) the loss of individuals, or the reduction of existing habitat, of a state or federal listed endangered, threatened, rare, protected, or candidate species, or a Species of Special Concern or federally listed critical habitat. The Orcutt's pincushion is not a state or federal listed endangered, threatened, rare, protected, or candidate species, or a Species of Special Concern or federally listed critical habitat. There will be negligible to no loss of individual plants, because construction in the pincushion area will be delayed until after the plants have gone to seed and seeds will be collected and redistributed. The project will result in a net gain in habitat. Therefore, this exception has no application here.

**3. Scenic Highway:** This exception applies when a project may result in damage to scenic resources within a duly designated state scenic highway.

The proposed project does not contain any State designated scenic highway. Thus, this exception has no application here.

**4. Hazardous Waste Site:** This exception applies when a project is located on a site listed as a hazardous waste site under Government Code Section 65962.5.

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As of June 1, 2010, the State Department of Toxic Substances Control has not listed any site within the project area. So this exception has no application here. (Ref. Envirostor at [www.envirostor.dtsc.ca.gov](http://www.envirostor.dtsc.ca.gov))

**5. Historical Resources:** This exception applies when a project may cause a substantial adverse change in the significance of a historical resource.

No historical resource is involved in the proposed project so this exception has no application here.

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**CALIFORNIA COASTAL COMMISSION**

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

**MEMORANDUM**

FROM: Jonna D. Engel, Ph.D.  
Ecologist

TO: Chuck Posner  
Coastal Program Analyst

SUBJECT: Response to July 5, 2010 letter from Robert van de Hoek and Marcia Hanscom

DATE: July 8, 2010

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**Documents Reviewed:**

van de Hoek, R. and M. Hanscom. July 5, 2010. Letter addressed to The Honorable Bonnie Neely, Chair and Honorable Commissioners, California Coastal Commission. Re: Amendment #5-08-294-A1. Ballona Lagoon Restoration Project – Urgent rare plants needs protection.

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I am writing this memorandum in response to the letter from Robert van de Hoek, Co-Director, Ballona Institute, and Marcia Hanscom, Managing Director, CLEAN, to the California Coastal Commissioners regarding "Amendment #5-08-294-A1. Ballona Lagoon Restoration Project – Urgent rare plants needs protection."

Before the Commission is an amendment to Phase IIIa of the Ballona Lagoon Enhancement Project, which was approved by the Commission on April 8, 2009 (CDP#5-08-294). Upon discovery that the Orcutt's yellow pincushion, *Chaeanactis glabriuscula* var. *orcuttiana*, an annual plant with a 1B.2 listing by the California Native Plant Society, occupied approximately 1492 sq meters (0.372 acre) of the project footprint, the City of Los Angeles voluntarily halted work in order to modify the project to insure the least possible adverse impacts to the pincushion population while still providing the improved public access trail and recreational opportunities approved by the permit.

CDP #5-08-294 approved a five foot wide walking path to be located a minimum of ten feet from the lagoon. The City has made the following modifications to the trail in order to protect the pincushion:

- Pulled the trail back so that it will now be immediately adjacent to Pacific Avenue,
- Decreased the width of the trail from five feet to four feet, and

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**5-08-294-A1**

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- Placed protective fencing along the lagoon side of the trail along with interpretive signage panels that highlight the sensitive nature of the Ballona Lagoon habitats and rare plants including the pincushion and provide direction to "Please Stay on Path".

In addition to these changes, the staff report is requiring the City, among a list of other things (please refer to my June 22, 2010 memorandum and CDP# 5-08-294-A1), to revise their enhancement project action plan, under the direction of a qualified restoration ecologist who has experience in dune scrub and dune habitat restoration (approved by the CCC Executive Director), in consultation with the California Department of Fish and Game, to include the following:

- Creation of a preserve from Jib to Topsail Streets that recognizes and protects the ESHA between the protective fencing and the lagoon waters; i.e. dune scrub, dune, and wetland habitats and the rare plants these habitats support including Orcutt's yellow pincushion, *Chaetanactis glabriuscula* var. *orcuttiana*, South Coast saltscale, *Atriplex pacifica*, red sand verbena, *Abronia maritima*, and wooly seablite, *Sueda taxifolia*,
- Temporary irrigation only if recommended by the approved restoration ecologist and Commission Executive Director. (I think temporary irrigation will be unnecessary, except possibly for native plants other than dune scrub and dune species).

The plant preserve that the staff recommendation is requiring totals 6880 square meters (1.7 acres). As I mention above, the footprint of the 2010 pincushion population was estimated to be 1492 square meters (0.372 acre). The original trail was estimated to impact 212 square meters (0.052 acre) or 14% of the 2010 pincushion population while the revised trail is estimated to impact 148 square meters (0.037 acre) or 10% of the 2010 pincushion population. The City estimates that the project site supports another 3500 square meters (0.5 acre) of potential pincushion habitat based on suitable soil type.<sup>1</sup> Given these figures, the ratio of preserved area suitable to the pincushion, to the impacted pincushion area, is 33 to 1.<sup>2</sup> If we look at the whole preserve (6880 sq. m.) in relation to the area of impact, the mitigation ratio is 45 to 1.

Subsequent to Kelly Schmoker's June 1, 2010 email, "Fish and Game concerns at Ballona Lagoon", cited by Mr. van de Hoek and Ms. Hanscom, we consulted with Ms. Schmoker numerous times via email and phone conversations as we developed our

<sup>1</sup> Having conducted a site visit on April 28, 2010, I believe that there is likely more suitable pincushion habitat than 3500 square meters

<sup>2</sup> The 2010 pincushion footprint is 1344 sq. m. (1492-148=1344). This figure, plus the area estimated by the City to be potential pincushion habitat, 3500 sq. m., equals 4844 sq. m. The ratio of this figure (4844 sq. m.) which is the area that will be restored and protected pincushion habitat, to the area impacted by the four foot trail (148 sq. m.), is 33 to 1.

COASTAL COMMISSION

staff recommendations. We incorporated a number of Ms. Schmoker's specific suggestions into special condition 11 following these consultations.

I continue to believe that the modifications listed above and in CDP #5-08-294-A1, along with those already proposed by the City and special conditions 2, 3, and 4 to the permit (CDP# 5-08-294), will serve to restore, protect, and enhance Ballona Lagoon's habitats, including the Orcutt's yellow pincushion population, while still providing the improved public access trail and recreational opportunities approved by the City's permit (CDP# 5-08-294).

**COASTAL COMMISSION**

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South Coast Region

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CALIFORNIA  
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**Coastal Law Enforcement Network**

A biodiversity project of the  
International Humanities Center  
enforcing laws protecting the  
California coast

322 Culver Boulevard Suite 317  
Playa del Rey, CA 90293  
p: (310) 821-9045  
t: (310) 448-1219

**F10A**



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**Ballona Wetlands  
Restoration Committee**



*The Voice for Nature on the Los Angeles Coast*

**Wetlands  
Defense  
Fund**

The Honorable Bonnie Neely, Chair  
& Honorable Commissioners  
California Coastal Commission  
c/o 45 Fremont Street, Ste. 2000  
San Francisco, CA 94105

July 5, 2010

*sent by facsimile to San Francisco & Long Beach offices*

**Re: Amendment #5-08-294-A1**

**Ballona Lagoon Restoration Project – URGENT rare plants needs protection**

Dear Coastal Commission Chair Neely and Coastal Commissioners:

On behalf of Coastal Law Enforcement Action Network (CLEAN), Wetlands Defense Fund, Sierra Club and Ballona Institute, we write to ask you to approve the above amendment ONLY if the following conditions are added to the amendment to this permit. Otherwise, the protection of the rare Orcutt's Yellow Pincushion *Chaenactis glabriuscula* DC var. *orcuttiana* E. Greene H.M. Hall (OYP) will be compromised and its habitat altered, harming this species which is on the brink of extinction and in the process of being considered for listing on the federal and state endangered species lists.

**COASTAL COMMISSION**  
**5-08-294-A1**

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*California Coastal Commission-Orcutt's Yellow Pincushion*

*Chaenactis glabriuscula* var. *orcuttiana*

Re: Amendment #5-08-294-A1

*Letter from Ballona Institute, CLEAN, Sierra Club, Wetlands Defense Fund*

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While we are generally very pleased with the conditions that your staff ecologist has required, including the designation of a rare plant preserve, the revision of the plant palette (which we would like to review before issuance of final permit), proper protective signage and oversight by appropriate ecologists, we remain gravely concerned about two oversights which seem to elevate unreasonable amounts of public access over the preservation of ESHA and a rare plant population on the verge of extinction. The conditions we ask you to add include (and all references to project details that are contrary to these conditions need to be eliminated or altered in accordance with the intent of these conditions being added):

- A. The walk path starting north at the Venice Pumping Plant would proceed past Jib and to Lighthouse Bridge, at which point walking traffic would be directed to either cross Lighthouse Bridge to use the walk path on the east side of Ballona Lagoon or to cross the street and walk either to the beach walk path or to the sidewalk on the west side of Pacific.**
- B. The entire area from Lighthouse Bridge to Topsail will be included in the Rare Plant Preserve, with all irrigation lines removed and no further irrigation lines installed. Non-native weedy plants will be removed, and any plant planted in this area will be planted in a sparsely designed fashion, so as to leave significant amounts of clear, sandy soil for the possible growing of Orcutt's Yellow Pincushion and other rare plants which associate with this species. Any irrigation of new plants introduced to this area will be done by hand only.**

Attached is an email message that details concerns from the CA Dept. of Fish & Game botanist who clearly was concerned about this project going forward at all. Ballona Institute was represented in a meeting with this botanist and city officials where Ms. Schmoker, the DFG botanist, expressed her concern about the City not following CEQA and very concerned about the rare plants on this site which were not accounted for or targeted for protection according to the Protocols that DFG now has for plant species and rare dune habitats such as these. (see attached memo: "New Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Natural Communities.")

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*California Coastal Commission-Orcutt's Yellow Pincushion*

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We share the concerns that Ms. Schmoker has expressed re: CEQA, and we do not believe the California Coastal Commission will be in compliance with CEQA (California Environmental Quality Act) if you approve this permit amendment as proposed or if you allow the current permit the City holds to proceed as previously approved.

Here are the relevant facts. We hope these facts will prompt a decision by the Commission to adopt the conditions we've requested. Alternatively, we seek CEQA review, which will unfortunately further delay the project and is not our preference, but we believe will lead to ultimately protecting this imperiled plant population, which must be the priority:

1. There is significant NEW INFORMATION since the previous project was approved. Such new information requires subsequent review under CEQA. The discovery and identification of the rare Orcutt's Yellow Pincushion is significant.

The California Native Plant Society and California Department of Fish & Game have determined this plant has a serious threat, and when this plant population at Ballona Lagoon was found, it was ranked 1B.1, which means it has a high degree/ immediacy of threat. Since then, the State Botanist, Roxanne Bittman, with the California Natural Diversity Database, has changed the rank, due to new information about the extirpation of this species in several locations. The new rank is G5T1S1. This ranking signifies that the variety of Pincushion we have at Ballona Lagoon, the Orcutt's Yellow Pincushion is very rare and endangered. It has been determined to be imperiled.

As the DFG botanist, Kelly Schmoker, has pointed out, there are numerous other rare plant species identified in their documentation, and the presence of these species is sufficient to require an Environmental Impact Report to be prepared for this project. The project as proposed to the Coastal Commission was simply to remove nonnative species, such as iceplant and castor bean. We now know there were many native species present on the project site, including some which were ripped out during the beginning part of the "nonnative plant removal" phase of the project. An EIR would not only describe these impacts for the public of the rest of the removal project, but would further analyze and

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communicate to the public and to decision-makers the breadth of the environmental impacts, as required by law.

2. According to several recent legal cases brought against the California Coastal Commission in Los Angeles Superior Court, the Court has ruled that the Coastal Commission must provide 30 day notice to the public for review of permit approvals such as these. If there is no walk path south of Lighthouse Bridge and no irrigation there (not even temporary irrigation), then such notice would possibly not be necessary, but if the Pincushion habitat where plants were growing this spring is destroyed for construction of a walk path and irrigation, which will change the nature of the soil and conditions under which this population grows, there would indeed be required a 30-day notice of circulation of the Commission's staff report.

Here is a citation from one of the relevant cases:

November 30, 2009 decision. *Littlejohn v. California Coastal Commission*

"Public Resources Code section 21091(1) states that the 'public review period for a draft environmental impact report may not be less than 30 days.' The Coastal Commission is not exempt from section 21091, which is part of chapter 2.6 and regulatory programs certified under section 21080.5 in pertinent part are exempt only from Chapters 3 and 4. This regulatory program exemption also must be narrowly construed. See Ultramar, Inc. v. South Coast Air Quality Management District (1993) 17 Cal.App.4<sup>th</sup> 689, 699; City of Coronado, 69 Cal.App.3d 570, 581."

"In sum, the Coastal Commission is governed by section 21091's requirement for a 30-day review period for its staff report, the functional equivalent of an EIR."

The California Native Plant Society's web page includes some additional relevant information about compliance with CEQA for projects which include impacts to rare plant populations. According to this information, it is MANDATORY for CEQA to fully consider impacts to any species on the 1B list (see excerpt below).

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<http://cnps.org/cnps/rareplants/ranking.php>

**List 1B: Plants Rare, Threatened, or Endangered in California and Elsewhere**

The plants of List 1B are rare throughout their range with the majority of them endemic to California. Most of the plants of List 1B have declined significantly over the last century. List 1B plants constitute the majority of the plants in CNPS' Inventory with more than 1,000 plants assigned to this category of rarity.

All of the plants constituting List 1B meet the definitions of Sec. 1901, Chapter 10 (Native Plant Protection Act) or Secs. 2062 and 2067 (California Endangered Species Act) of the California Department of Fish and Game Code, and are eligible for state listing. It is mandatory that they be fully considered during preparation of environmental documents relating to CEQA.

**All of the plants constituting List 1B meet the definitions of Sec. 1901, Chapter 10 (Native Plant Protection Act) or Secs. 2062 and 2067 (California Endangered Species Act) of the California Department of Fish and Game Code, and are eligible for state listing. It is mandatory that they be fully considered during preparation of environmental documents relating to CEQA.**

3. The area where the population of OYP was found is considered ESHA (Environmentally Sensitive Habitat Area), as designated by the California Coastal Commission and as outlined in the Venice Local Coastal Program (LCP.) While we agree that sometimes it is appropriate to include interpretive and wayfinding signage in ESHA in order to protect further the ecological aspects of the area, we do not agree that adding unnatural irrigation (even if temporary) or constructing a walk path that displaces some of the most important characteristics of that ESHA is either warranted or allowed by law. In any case, any such impacts need further analysis and revealing of those impacts to the public, including notice to all relevant agencies, according to CEQA.

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In addition, while the Coastal Commission ecologist has included some very good conditions for this amendment, there are additional concerns about the project which appear to need further scrutiny, which can only be provided in the context of a full EIR (Environmental Impact Report.) We do not think a full EIR is required if the walk path and irrigation lines end at Lighthouse Bridge, but we **do** think that one is required if these features continue into the known OYP habitat area.

- a. One such aspect of the project is the 2 foot (24 in.) from the curb requirement (#5 on page 2 of the letter from Dr. Jonna Engel, page 33 of Commission staff report). Why is this 2 ft. requirement necessary? There is NO PARKING on the east side of Pacific, so this requirement seems unnecessary and contrary to protection requirements for the OYP, which take precedence under ESHA legal requirements of the Coastal Act.
- b. Another aspect is the "temporary irrigation." There is precedent for not needing irrigation in native plant restoration, as Ballona Institute is implementing such a project at Ballona Wetlands' Grand Canal Lagoon, to the north and east of this project site. We have observed and documented leaking of the irrigation lines as already installed before this Ballona Lagoon project was stopped. We also have documented and observed other leaking and broken irrigation lines in similar projects such as the County Public Works restoration on the south side of the Ballona Creek Estuary levee.
- c. Construction of Walk Path through the midst of the OYP habitat is not acceptable, not allowable at all without CEQA review, and perhaps not at all, given the California Native Plant Protection Act (§1911 of the California Fish & Game Code.) For the record, the path way construction would cut right through where documented OYP were growing this past spring and some individuals of this annual wildflower species are still in flower there.

We do not believe that the term CONSERVATION allows for the destruction of this habitat by removing it from existence and burying it beneath a walk path, especially when there are three walk paths along beach and lagoon areas in extremely close proximity to this location.

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California Coastal Commission-Orcutt's Yellow Pincushion

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**Fish & Game Code §1911. All state departments and agencies shall, in consultation with the department, utilize their authority in furtherance of the purposes of this chapter by carrying out programs for the *conservation* of endangered or rare native plants. Such programs include, but are not limited to, the identification, delineation and protection of habitat critical to the continued survival of endangered or rare native plants.(emphasis added)**

4. Under CEQA, all relevant public agencies must be consulted with. We believe that under Public Resources Code Section 21081.5, subdivision (d), the City of Los Angeles and the Coastal Commission are required to consult with the US Fish & Wildlife Service, which also has jurisdiction over imperiled plant species, like the Orcutt's Yellow Pincushion. The notice and consultation by this agency has not been done, and until it is, the obligations under CEQA have not been fulfilled.
5. Of great concern is the consultation which has happened with DFG, but whose advice (see attachment A) appears to have been ignored related to the irrigation and walk path placement. We can not imagine that the law requires consultation with this agency which is placed by law in a "trustee" position related to rare and imperiled plant populations and affiliated natural communities only to ignore its advice due to concerns raised by the applicant related to grant funding, local curb regulations and the like. We believe that all of the issues raised by the applicants as to why they can not and will not move the walk path are subservient to the State's obligation to protect this native plant species which is sliding toward

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*California Coastal Commission-Orcutt's Yellow Pincushion*  
*Chaenactis glabriuscula* var. *orcuttiana*

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extinction, and which this project may contribute toward its sliding if approved and implemented.

In summary, the project as currently being proposed by the City Bureau of Engineering includes installing a decomposed granite (DG) walk path and a digging of an irrigation trench for planting of native plants.

**As of March 16, 2010, due to the discovery of this plant population, the Coastal Commission staff had asked the city staff to re-route the walk path. Why did the Commission staff change its analysis or concern?** City staff has always maintained that they think the walk path can still be installed and seeds from the OYP simply collected to be put in a freezer at Rancho Santa Ana Botanic Garden. We do not believe that – on public land – the law supports such mitigation and that, instead, everything possible must be done to protect this species ON SITE in the same location where it was discovered to be surviving. The DFG botanist has also expressed concern about this. (see attachment A.)

Because this species was not known to be present when the permits were granted by the Coastal Commission and CEQA documents prepared by the City, we do not believe that the previous permits are valid, and therefore the rationale that the City has previous permits that would not protect the OYP is a specious argument, at best. If they are to proceed with this ecologically deficient plant, a full EIR be prepared before proceeding with the project in the area where the OYP was found.

Finally, we assert that, contrary to staff's assertion on page 18 that "all adverse impacts have been minimized and that there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment."

In fact, the conditions we have requested in the box on Page 2 of this letter (A & B) are indeed feasible mitigation measures available which would substantially lessen any significant adverse impact which this project may have on these rare, imperiled species and the ESHA of this site. The grant that the City has from the County is for a restoration project, and we believe that full protection of the Pincushion and other dune wildflower habitat in the "Rare Plant Preserve" would be completely in

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*California Coastal Commission-Orcutt's Yellow Pincushion*

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alignment with this grant and that the Los Angeles County Supervisors would agree with an adjustment of the grant proposal, making this an entirely feasible proposition.

**Please comply with CEQA, the California Coastal Act and the California Native Plant Protection Act by, preferably, approving these conditions we request from page 2.** In the alternative, we seek a delay on this project until the City can complete a full EIR or deny the project and require that the land in question, including this rare and obviously imperiled species, be protected, designating a rare plant preserve, according to the authority granted by these laws.

We emphasize once again that a delay to comply more fully with these laws is not our preference, as we think that legal compliance can occur if the two conditions we seek are included in the approval. However, we ask for the delay if you somehow feel you can not include these conditions, as it may be the only mechanism available for protection of the imperiled Orcutt's Yellow Pincushion.

With best regards,

/s/ *Robert Roy van de Hoek*

Robert van de Hoek

Biologist, Co-Director

Ballona Institute

/s/ *Marcia Hanscom*

Marcia Hanscom

Managing Director, CLEAN

Director, Wetlands Defense Fund

Chair, Sierra Club, Ballona Wetlands

Restoration Committee &

Vice Chair, Conservation Committee-

Sierra Club Angeles Chapter

Cc: The Honorable Bill Rosendahl, Los Angeles City Councilman, 11<sup>th</sup> District  
The Honorable Antonio Villaraigosa, Mayor City of Los Angeles  
The Honorable Ted Lieu, California Assemblymember, 53<sup>rd</sup> District  
The Honorable Jenny Oropeza, California State Senator

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**ATTACHMENT A:**

**From:** KSchmoker@dfg.ca.gov  
**Subject:** Fish and Game Concerns at Ballona Lagoon  
**Date:** June 1, 2010 11:21:02 AM PDT  
**To:** wetlandact@earthlink.net, ding.lee@lacity.org  
**Cc:** cposner@coastal.ca.gov, gtimm@coastal.ca.gov,  
Arturo.Pina@lacity.org, Jim.Doty@lacity.org,  
Michael.Brown@lacity.org, susan.shu@lacity.org,  
William.Jones@lacity.org, winter@marinapeninsula.org

Mr. Posner,

After meeting with the City of Los Angeles on May 13, I am really concerned about this project and the negative impacts it will have on several rare plants. The biological report prepared by Mr. Jones, indicates there are 3 other rare plants that occur on the project site in addition to the Orcutt's Pincushion (1.B.1).

\* south coast saltbush (*Atriplex pacifica*). This plant is as rare as the Orcutt's Pincushion and has a 1B.2 ranking.

\* red sand verbena (*Abronia maritima*). This plant is also listed as rare (4.2, S.3 G4) and is "nearly extirpated from S. Ca. (CNPS).

\* wooley sea-blight (*Suaeda taxifolia*). This plant is also rare (4.2, S.3 G4).

Mr. Jones report does not indicate where these plants were found, if they were impacted, will be impacted, and if there is any mitigation proposed for these species. The department is concerned that these plants are not being protected in the same manner as the Orcutt's Pincushion. Please provide the department additional information on the above listed species.

Additionally, after meeting with the City, the Department recommends that the area occupied by the pincushion (and by occupied area I mean the entire sand/ dune bank from Northstar Street to Yawl Street where appropriate habitat for pincushion exists- not just tiny circles drawn around the individual clumps of plants) be avoided and fenced as a preserve to protect rare plants. The Department feels the native

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vegetation and irrigation being proposed will negatively affect the rare plants on-site. At the meeting we discussed changing the project to include the portion of the boardwalk and landscaping above the lighthouse bridge, then directing pedestrians across the Lighthouse Street bridge and then having them join up with the existing path on that side of the channel and preserving the rest of the channel below the lighthouse bridge for plant conservation. City engineers thought they might be able to proceed with the portion of the project above the lighthouse bridge after we review the planting plan. However, without knowing where the other rare plants were found within the project impact footprint, the Department cannot concur with any work in the area.

We are also concerned that the CEQA document for this project did not disclose impacts to rare plant species that were known to occur on the project site. I have requested that the City of LA supply me with the botanical reports for surveys conducted this year as well as previous years, but have not received anything to date. Below is an excerpt from our rare plant survey protocols about CNPS ranking and CEQA (I have also attached this document for your reference):

Meet the definition of rare or endangered under CEQA §15380(b) and (d).

Species that may meet the definition of rare or endangered include the following:

- Species considered by the California Native Plant Society (CNPS) to be "rare, threatened or endangered in California" (Lists 1A, 1B and 2);

- w Species that may warrant consideration on the basis of local significance or recent biological information;

- Some species included on the California Natural Diversity Database's (CNDDDB) Special Plants, Bryophytes, and Lichens List (California Department of Fish and Game 2008).

- Considered a locally significant species, that is, a species that is not rare from a statewide perspective but is rare or uncommon in a local context such as within a county or region (CEQA §15125 (c)) or is so designated in local or regional plans, policies, or ordinances (CEQA Guidelines, Appendix G). Examples include a species at the

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outer limits of its known range or a species occurring on an uncommon soil type.

Thank you,  
Kelly

Kelly Schmoker  
Staff Environmental Scientist, Botanist  
Dept. of Fish and Game  
626-848-8382  
4949 Viewridge Avenue  
San Diego, CA 92123

On the first, second, and third Friday of each month I will be out of the office on furlough leave pursuant to Governor's Executive Order S-16-08 and S-13-09.

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**ATTACHMENT B:**  
**Protocols for Surveying and Evaluating Impacts to**  
**Special Status Native Plant Populations and Natural Communities**

State of California  
**CALIFORNIA NATURAL RESOURCES AGENCY**  
Department of Fish and Game  
November 24, 2009<sup>1</sup>

**INTRODUCTION AND PURPOSE**

The conservation of special status native plants and their habitats, as well as natural communities, is integral to maintaining biological diversity. The purpose of these protocols is to facilitate a consistent and systematic approach to the survey and assessment of special status native plants and natural communities so that reliable information is produced and the potential of locating a special status plant species or natural community is maximized. They may also help those who prepare and review environmental documents determine when a botanical survey is needed, how field surveys may be conducted, what information to include in a survey report, and what qualifications to consider for surveyors. The protocols may help avoid delays caused when inadequate biological information is provided during the environmental review process; assist lead, trustee and responsible reviewing agencies to make an informed decision regarding the direct, indirect, and cumulative effects of a proposed development, activity, or action on special status native plants and natural communities; meet California Environmental Quality Act (CEQA)<sup>2</sup> requirements for adequate disclosure of potential impacts; and conserve public trust resources.

**DEPARTMENT OF FISH AND GAME TRUSTEE AND  
RESPONSIBLE AGENCY MISSION**

The mission of the Department of Fish and Game (DFG) is to manage California's diverse wildlife and native plant resources, and the habitats upon which they depend, for their ecological values and for their use and enjoyment by the public. DFG has jurisdiction over the conservation, protection, and management of wildlife, native

<sup>1</sup> This document replaces the DFG document entitled "Guidelines for Assessing the Effects of Proposed Projects on Rare, Threatened and Endangered Plants and Natural Communities."

<sup>2</sup> <http://ceres.ca.gov/ceqa/>

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plants, and habitat necessary to maintain biologically sustainable populations (Fish and Game Code §1802). DFG, as trustee agency under CEQA §15386, provides expertise in reviewing and commenting on environmental documents and makes protocols regarding potential negative impacts to those resources held in trust for the people of California.

Certain species are in danger of extinction because their habitats have been severely reduced in acreage, are threatened with destruction or adverse modification, or because of a combination of these and other factors. The California Endangered Species Act (CESA) provides additional protections for such species, including take prohibitions (Fish and Game Code §2050 et seq.). As a responsible agency, DFG has the authority to issue permits for the take of species listed under CESA if the take is incidental to an otherwise lawful activity; DFG has determined that the impacts of the take have been minimized and fully mitigated; and, the take would not jeopardize the continued existence of the species (Fish and Game Code §2081). Surveys are one of the preliminary steps to detect a listed or special status plant species or natural community that may be impacted significantly by a project.

### DEFINITIONS

Botanical surveys provide information used to determine the potential environmental effects of proposed projects on all special status plants and natural communities as required by law (i.e., CEQA, CESA, and Federal Endangered Species Act (ESA)). Some key terms in this document appear in **bold font** for assistance in use of the document.

For the purposes of this document, **special status plants** include all plant species that meet one or more of the following criteria<sup>3</sup>:

- Listed or proposed for listing as threatened or endangered under ESA or candidates for possible future listing as threatened or endangered under the ESA (50 CFR §17.12).
- Listed<sup>4</sup> or candidates for listing by the State of California as threatened or endangered under CESA (Fish and Game Code §2050 et seq.). A species, subspecies, or variety of plant is **endangered** when the prospects of its survival and reproduction

<sup>3</sup> Adapted from the East Alameda County Conservation Strategy available at [http://www.fws.gov/sacramento/EACCS/Documents/080228\\_Species\\_Evaluation\\_EACCS.pdf](http://www.fws.gov/sacramento/EACCS/Documents/080228_Species_Evaluation_EACCS.pdf)

<sup>4</sup> Refer to current online published lists available at: <http://www.dfg.ca.gov/biogeodata>

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in the wild are in immediate jeopardy from one or more causes, including loss of habitat, change in habitat, over-exploitation, predation, competition, disease, or other factors (Fish and Game Code §2062). A plant is **threatened** when it is likely to become endangered in the foreseeable future in the absence of special protection and management measures (Fish and Game Code §2067).

- Listed as rare under the California Native Plant Protection Act (Fish and Game Code §1900 et seq.). A plant is rare when, although not presently threatened with extinction, the species, subspecies, or variety is found in such small numbers throughout its range that it may be endangered if its environment worsens (Fish and Game Code §1901).
- Meet the definition of rare or endangered under CEQA §15380(b) and (d). Species that may meet the definition of rare or endangered include the following:
  - Species considered by the California Native Plant Society (CNPS) to be “rare, threatened or endangered in California” (Lists 1A, 1B and 2);
  - Species that may warrant consideration on the basis of local significance or recent biological information<sup>5</sup>;
  - Some species included on the California Natural Diversity Database’s (CNDDDB) Special Plants, Bryophytes, and Lichens List (California Department of Fish and Game 2008)<sup>6</sup>
  - Considered a **locally significant species**, that is, a species that is not rare from a statewide perspective but is rare or uncommon in a local context such as within a county or region (CEQA §15125 (c)) or is so designated in local or regional plans, policies, or ordinances (CEQA Guidelines, Appendix G).

<sup>5</sup> In general, CNPS List 3 plants (plants about which more information is needed) and List 4 plants (plants of limited distribution) may not warrant consideration under CEQA §15380. These plants may be included on special status plant lists such as those developed by counties where they would be addressed under CEQA §15380. List 3 plants may be analyzed under CEQA §15380 if sufficient information is available to assess potential impacts to such plants. Factors such as regional rarity vs. statewide rarity should be considered in determining whether cumulative impacts to a List 4 plant are significant even if individual project impacts are not. List 3 and 4 plants are also included in the California Natural Diversity Database’s (CNDDDB) Special Plants, Bryophytes, and Lichens List. [Refer to the current online published list available at: <http://www.dfg.ca.gov/biogeodata>.] Data on Lists 3 and 4 plants should be submitted to CNDDDB. Such data aids in determining or revising priority ranking.

<sup>6</sup> Refer to current online published lists available at: <http://www.dfg.ca.gov/biogeodata>

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Examples include a species at the outer limits of its known range or a species occurring on an uncommon soil type.

**Special status natural communities** are communities that are of limited distribution statewide or within a county or region and are often vulnerable to environmental effects of projects. These communities may or may not contain special status species or their habitat. The most current version of the Department's *List of California Terrestrial Natural Communities*<sup>7</sup> indicates which natural communities are of special status given the current state of the California classification.

Most types of wetlands and riparian communities are considered special status natural communities due to their limited distribution in California. These natural communities often contain special status plants such as those described above. These protocols may be used in conjunction with protocols formulated by other agencies, for example, those developed by the U.S. Army Corps of Engineers to delineate jurisdictional wetlands<sup>8</sup> or by the U.S. Fish and Wildlife Service to survey for the presence of special status plants<sup>9</sup>.

### BOTANICAL SURVEYS

Conduct botanical surveys prior to the commencement of any activities that may modify vegetation, such as clearing, mowing, or ground-breaking activities. It is appropriate to conduct a botanical field survey when:

- Natural (or naturalized) vegetation occurs on the site, and it is unknown if special status plant species or natural communities occur on the site, and the project has the potential for direct or indirect effects on vegetation; or
- Special status plants or natural communities have historically been identified on the project site; or
- Special status plants or natural communities occur on sites with similar physical and biological properties as the project site.

<sup>7</sup> <http://www.dfg.ca.gov/biogeodata/vegcamp/pdfs/natcomlist.pdf>. The rare natural communities are asterisked on this list.

<sup>8</sup> <http://www.wetlands.com/regs/tlpge02e.htm>

<sup>9</sup> U.S. Fish and Wildlife Service Survey Guidelines available at <http://www.fws.gov/sacramento/es/protocol.htm>

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## **SURVEY OBJECTIVES**

Conduct field surveys in a manner which maximizes the likelihood of locating special status plant species or special status natural communities that may be present. Surveys should be floristic in nature, meaning that every plant taxon that occurs on site is identified to the taxonomic level necessary to determine rarity and listing status.

"Focused surveys" that are limited to habitats known to support special status species or are restricted to lists of likely potential species are not considered floristic in nature and are not adequate to identify all plant taxa on site to the level necessary to determine rarity and listing status. Include a list of plants and natural communities detected on the site for each botanical survey conducted. More than one field visit may be necessary to adequately capture the floristic diversity of a site. An indication of the prevalence (estimated total numbers, percent cover, density, etc.) of the species and communities on the site is also useful to assess the significance of a particular population.

## **SURVEY PREPARATION**

Before field surveys are conducted, compile relevant botanical information in the general project area to provide a regional context for the investigators. Consult the CNDDDB<sup>10</sup> and BIOS<sup>11</sup> for known occurrences of special status plants and natural communities in the project area prior to field surveys. Generally, identify vegetation and habitat types potentially occurring in the project area based on biological and physical properties of the site and surrounding ecoregion<sup>12</sup>, unless a larger assessment area is appropriate. Then, develop a list of special status plants with the potential to occur within these vegetation types.

This list can serve as a tool for the investigators and facilitate the use of reference sites; however, special status plants on site might not be limited to those on the list. Field surveys and subsequent reporting should be comprehensive and floristic in nature and not restricted to or focused only on this list. Include in the survey report the list of potential special status species and natural communities, and the list of references used to compile the background botanical information for the site.

## **SURVEY EXTENT**

<sup>10</sup> Available at <http://www.dfg.ca.gov/biogeodata/cnddb>

<sup>11</sup> <http://www.bios.dfg.ca.gov/>

<sup>12</sup> Ecological Subregions of California, available at <http://www.fs.fed.us/r5/projects/ecoregions/toc.htm>

Surveys should be comprehensive over the entire site, including areas that will be directly or indirectly impacted by the project. Adjoining properties should also be surveyed where direct or indirect project effects, such as those from fuel modification or herbicide application, could potentially extend offsite. Pre-project surveys restricted to known CNDDDB rare plant locations may not identify all special status plants and communities present and do not provide a sufficient level of information to determine potential impacts.

### FIELD SURVEY METHOD

Conduct surveys using systematic field techniques in all habitats of the site to ensure thorough coverage of potential impact areas. The level of effort required per given area and habitat is dependent upon the vegetation and its overall diversity and structural complexity, which determines the distance at which plants can be identified.

Conduct surveys by walking over the entire site to ensure thorough coverage, noting all plant taxa observed. The level of effort should be sufficient to provide comprehensive reporting. For example, one person-hour per eight acres per survey date is needed for a comprehensive field survey in grassland with medium diversity and moderate terrain<sup>13</sup> with additional time allocated for species identification.

### TIMING AND NUMBER OF VISITS

Conduct surveys in the field at the time of year when species are both evident and identifiable. Usually this is during flowering or fruiting. Space visits throughout the growing season to accurately determine what plants exist on site. Many times this may involve multiple visits to the same site (e.g. in early, mid, and late-season for flowering plants) to capture the floristic diversity at a level necessary to determine if special status plants are present<sup>14</sup>. The timing and number of visits are determined by geographic location, the natural communities present, and the weather patterns of the year(s) in which the surveys are conducted.

### REFERENCE SITES

<sup>13</sup> Adapted from U.S. Fish and Wildlife Service kit fox survey guidelines available at: [www.fws.gov/sacramento/es/documents/kitfox\\_no\\_protocol.pdf](http://www.fws.gov/sacramento/es/documents/kitfox_no_protocol.pdf)

<sup>14</sup> U.S. Fish and Wildlife Service Survey Guidelines available at: <http://www.fws.gov/sacramento/es/protocol.htm>

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When special status plants are known to occur in the type(s) of habitat present in the project area, observe reference sites (nearby accessible occurrences of the plants) to determine whether those species are identifiable at the time of the survey and to obtain a visual image of the target species, associated habitat, and associated natural community.

## USE OF EXISTING SURVEYS

For some sites, floristic inventories or special status plant surveys may already exist. Additional surveys may be necessary for the following reasons:

- Surveys are not current<sup>15</sup>; or
- Surveys were conducted in natural systems that commonly experience year to year fluctuations such as periods of drought or flooding (e.g. vernal pool habitats or riverine systems); or
- Surveys are not comprehensive in nature; or fire history, land use, physical conditions of the site, or climatic conditions have changed since the last survey was conducted<sup>16</sup>; or
- Surveys were conducted in natural systems where special status plants may not be observed if an annual above ground phase is not visible (e.g. flowers from a bulb); or
- Changes in vegetation or species distribution may have occurred since the last survey was conducted, due to habitat alteration, fluctuations in species abundance and/or seed bank dynamics.

## NEGATIVE SURVEYS

<sup>15</sup> Habitats, such as grasslands or desert plant communities that have annual and short-lived perennial plants as major floristic components may require yearly surveys to accurately document baseline conditions for purposes of impact assessment. In forested areas, however, surveys at intervals of five years may adequately represent current conditions. For forested areas, refer to "Guidelines for Conservation of Sensitive Plant Resources Within the Timber Harvest Review Process and During Timber Harvesting Operations", available at: <https://r1.dfg.ca.gov/portal/Portals/12/THPBotanicalGuidelinesJuly2005.pdf>

<sup>16</sup> U.S. Fish and Wildlife Service Survey Guidelines available at: [http://www.fws.gov/ventura/speciesinfo/protocols\\_guidelines/docs/botanicalinventories.pdf](http://www.fws.gov/ventura/speciesinfo/protocols_guidelines/docs/botanicalinventories.pdf)

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Adverse conditions may prevent investigators from determining the presence of, or accurately identifying, some species in potential habitat of target species. Disease, drought, predation, or herbivory may preclude the presence or identification of target species in any given year. Discuss such conditions in the report.

The failure to locate a known special status plant occurrence during one field season does not constitute evidence that this plant occurrence no longer exists at this location, particularly if adverse conditions are present. For example, surveys over a number of years may be necessary if the species is an annual plant having a persistent, long-lived seed bank and is known not to germinate every year. Visits to the site in more than one year increase the likelihood of detection of a special status plant especially if conditions change. To further substantiate negative findings for a known occurrence, a visit to a nearby reference site may ensure that the timing of the survey was appropriate.

## REPORTING AND DATA COLLECTION

Adequate information about special status plants and natural communities present in a project area will enable reviewing agencies and the public to effectively assess potential impacts to special status plants or natural communities<sup>17</sup> and will guide the development of minimization and mitigation measures. The next section describes necessary information to assess impacts. For comprehensive, systematic surveys where no special status species or natural communities were found, reporting and data collection responsibilities for investigators remain as described below, excluding specific occurrence information.

## SPECIAL STATUS PLANT OR NATURAL COMMUNITY OBSERVATIONS

Record the following information for locations of each special status plant or natural community detected during a field survey of a project site.

- A detailed map (1:24,000 or larger) showing locations and boundaries of each special status species occurrence or natural community found as related to the proposed project. Mark occurrences and boundaries as accurately as possible. Locations documented by use of global positioning system (GPS)

<sup>17</sup> Refer to current online published lists available at: <http://www.dfg.ca.gov/biogeodata>. For Timber Harvest Plans (THPs) please refer to the "Guidelines for Conservation of Sensitive Plant Resources Within the Timber Harvest Review Process and During Timber Harvesting Operations", available at: <https://r1.dfg.ca.gov/portal/Portals/12/THPBotanicalGuidelinesJuly2005.pdf>

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coordinates must include the datum<sup>18</sup> in which they were collected;

- The site-specific characteristics of occurrences, such as associated species, habitat and microhabitat, structure of vegetation, topographic features, soil type, texture, and soil parent material. If the species is associated with a wetland, provide a description of the direction of flow and integrity of surface or subsurface hydrology and adjacent off-site hydrological influences as appropriate;
- The number of individuals in each special status plant population as counted (if population is small) or estimated (if population is large);
- If applicable, information about the percentage of individuals in each life stage such as seedlings vs. reproductive individuals;
- The number of individuals of the species per unit area, identifying areas of relatively high, medium and low density of the species over the project site; and
- Digital images of the target species and representative habitats to support information and descriptions.

## FIELD SURVEY FORMS

When a special status plant or natural community is located, complete and submit to the CNDDDB a California Native Species (or Community) Field Survey Form<sup>19</sup> or equivalent written report, accompanied by a copy of the relevant portion of a 7.5 minute topographic map with the occurrence mapped. Present locations documented by use of GPS coordinates in map and digital form. Data submitted in digital form must include the datum<sup>20</sup> in which it was collected. If a potentially undescribed special status natural community is found on the site, document it with a Rapid Assessment or Relevé form<sup>21</sup> and submit it with the CNDDDB form.

<sup>18</sup> NAD83, NAD27 or WGS84

<sup>19</sup> <http://www.dfg.ca.gov/biogeodata>

<sup>20</sup> NAD83, NAD27 or WGS84

<sup>21</sup> [http://www.dfg.ca.gov/biogeodata/vegcamp/veg\\_publications\\_protocols.asp](http://www.dfg.ca.gov/biogeodata/vegcamp/veg_publications_protocols.asp)

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## VOUCHER COLLECTION

Voucher specimens provide verifiable documentation of species presence and identification as well as a public record of conditions. This information is vital to all conservation efforts. Collection of voucher specimens should be conducted in a manner that is consistent with conservation ethics, and is in accordance with applicable state and federal permit requirements (e.g. incidental take permit, scientific collection permit). Voucher collections of special status species (or suspected special status species) should be made only when such actions would not jeopardize the continued existence of the population or species.

Deposit voucher specimens with an indexed regional herbarium<sup>22</sup> no later than 60 days after the collections have been made. Digital imagery can be used to supplement plant identification and document habitat. Record all relevant permittee names and permit numbers on specimen labels. A collecting permit is required prior to the collection of State-listed plant species<sup>23</sup>.

## BOTANICAL SURVEY REPORTS

Include reports of botanical field surveys containing the following information with project environmental documents:

- **Project and site description**
  - A description of the proposed project;
  - A detailed map of the project location and study area that identifies topographic and landscape features and includes a north arrow and bar scale; and,

<sup>22</sup> For a complete list of indexed herbaria, see: Holmgren, P., N. Holmgren and L. Barnett. 1990. Index Herbariorum, Part 1: Herbaria of the World. New York Botanic Garden, Bronx, New York. 693 pp. Or: <http://www.nybg.org/bsci/ih/ih.html>

<sup>23</sup> Refer to current online published lists available at: <http://www.dfg.ca.gov/biogeodata>



- A written description of the biological setting, including vegetation<sup>24</sup> and structure of the vegetation; geological and hydrological characteristics; and land use or management history.

• **Detailed description of survey methodology and results**

- Dates of field surveys (indicating which areas were surveyed on which dates), name of field investigator(s), and total person-hours spent on field surveys;
  - A discussion of how the timing of the surveys affects the comprehensiveness of the survey;
  - A list of potential special status species or natural communities;
  - A description of the area surveyed relative to the project area;
  - References cited, persons contacted, and herbaria visited;
  - Description of reference site(s), if visited, and phenological development of special status plant(s);
  - A list of all taxa occurring on the project site. Identify plants to the taxonomic level necessary to determine whether or not they are a special status species;
  - Any use of existing surveys and a discussion of applicability to this project;
  - A discussion of the potential for a false negative survey;
  - Provide detailed data and maps for all special plants detected.
- Information specified above under the headings "Special Status Plant or Natural Community Observations," and "Field Survey Forms," should

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<sup>24</sup> A vegetation map that uses the National Vegetation Classification System (<http://biology.usgs.gov/npsveg/nvcs.html>), for example *A Manual of California Vegetation*, and highlights any special status natural communities. If another vegetation classification system is used, the report should reference the system, provide the reason for its use, and provide a crosswalk to the National Vegetation Classification System.

be provided for locations of each special status plant detected;

- Copies of all California Native Species Field Survey Forms or Natural Community Field Survey Forms should be sent to the CNDDDB and included in the environmental document as an Appendix. It is not necessary to submit entire environmental documents to the CNDDDB; and,

- The location of voucher specimens, if collected.

- **Assessment of potential impacts**

- A discussion of the significance of special status plant populations in the project area considering nearby populations and total species distribution;

- A discussion of the significance of special status natural communities in the project area considering nearby occurrences and natural community distribution;

- A discussion of direct, indirect, and cumulative impacts to the plants and natural communities;

- A discussion of threats, including those from invasive species, to the plants and natural communities;

- A discussion of the degree of impact, if any, of the proposed project on unoccupied, potential habitat of the species;

- A discussion of the immediacy of potential impacts; and,

- Recommended measures to avoid, minimize, or mitigate impacts.

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## QUALIFICATIONS

Botanical consultants should possess the following qualifications:

- Knowledge of plant taxonomy and natural community ecology;
- Familiarity with the plants of the area, including special status species;
- Familiarity with natural communities of the area, including special status natural communities;
- Experience conducting floristic field surveys or experience with floristic surveys conducted under the direction of an experienced surveyor;
- Familiarity with the appropriate state and federal statutes related to plants and plant collecting; and,
- Experience with analyzing impacts of development on native plant species and natural communities.

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**From:** Robert van de Hoek [mailto:robertvandehoek@yahoo.com]

**Sent:** Thursday, July 08, 2010 12:31 PM

**To:** Jonna Engel

**Cc:** Marcia Hanscom; stonebirdfly; Wayne Ferren; Susan Suntree; peggy.forster@prodigy.net; David De Lange; David Warren; David Barish; Nancy Marino; roy@naturespeace.org; roy@ballonainstitute.org; ballonainstitute@yahoo.com; Ballona Institute

**Subject:** Restoration Ecology - Translocation Experimentation - Genuine Sanctuary and Preserve Design

Greetings Dr. Jonna Engel:

Many thoughts that I've had in my mind for some time, are now congealing for me and ready to put on paper to share with you, as a result of our very nice phone conversation yesterday, where two very good ecologists, you and me, who, by the way, are both good conservation biologists as well, and I might add that both of us are very good restoration specialists as well, were able to have a nice dialogue, with two planners and an environmental-conservation advocate, listening to the two conservation-ecological scientists have a discussion. You and I together, were quite important, at the table, as we conversed about the ecology and all the complex needs of a pincushion ecosystem (Chaenactis glabriuscula orcuttiana ecosystem).

There are approximately 5 points for me to share with you as follows:

1. Potted plants will bring new pests with them, particularly argentine ants, slugs, mold-rust (fungi) and even other kinds of unintended guests. I've surveyed the pincushion area quite thoroughly many times, and I'm amazed at how the area is devoid of argentine ants, because no project has ever occurred here. The absence of argentine ants, and by the way, the presence of native harvester (red) ants, indicates the high potential success for translocation of the very rare and defacto-endangered Coast Horned Lizard to its former ecosystem, where historical records exist for this unique reptile. And by the way, small preserves work well for small reptiles because they do not travel very far in their lives, i.e. they have a small home range territory. Also, one of the main reptile associates of the Coast Horned Lizard is still here, i.e. Side-blotched Lizard, or Brown-shouldered Lizard, known to science as *Uta stansburiana*. No one until now, with this writing has considered the herpetofauna, or herptile aspects of the pincushion ecosystem.
2. The high number of domestic cats in the area, and the use of sandy soils by cats, for urination and defecation at night, and stirring the sand, and the seed bank needs to be studied, and at this time, considered negative, conservatively, until we have further data gathered, from the literature, or direct observation studies. One anecdotal observation that I've had with an important dune perennial shrub that I attempted to recover/restore/translocate is noteworthy here. At Playa Del Rey, I transplanted 4 *Ambrosia chamissonis* (Beach-Bur, Asteraceae) seedlings, approximately 1-2 weeks old, and only 1 inch tall, but with roots that were 2 inches in length (1:2 ratio of leaf:root) from a sandy beach sand soil near a volleyball court. I placed them on four artificially-created sand mounds that I established with permission of the City of LA (Councilman Rosendahl office), at 62nd Street Sand Dune adjacent to Ballona Creek and Del Rey Lagoon Park in Playa del Rey. The four seedlings, firsts doubled the number of leaves, then tripled, and quadrupled their number of leaves, and were now growing to about 2-3 inches in height, and the successive leaves were very robust, and developing their nice silvery-hairs on the leaves. And then I first observed a cat lying on the sand mounds resting and grooming, and sleeping in broad daylight morning. And then on successive mornings, I observed freshly buried cat feces, and small digging mounds that the paw of a cat would create, and my seedlings lying exposed in the air. The roots could now be observed and seen to have doubled and tripled in length and breadth, with countless new root hairs. And I felt very positive that the technique of growing Beach Bur, without the use of a nursery and potted plants and potting soil, and risk of collateral damage of pests in pots, could be accomplished for this native dune/strand plant and it followed on the success of another dune/strand plant that I've had success with in this type of transplantation-restoration, namely *Camissonia cheiranthifolia* (Dune Primrose). Even though the

experiment with BEACH BUR was interfered with by House Cat, I had enough data, to give me an indication of success in this method, cutting-edge restoration technique. Both Jonathan Coffin and Marcia Hanscom have assisted me in these kind of translocation-restoration experiments. One important conclusion and observation is the need to control the House Cat and prevent their entry into a dune/strand ecosystem, and this can be accomplished by a cat-proof fence, which has been demonstrably shown to work nearby at the Least Tern Colony, which is also successful as rat-proof, and people proof, and the public tolerates. A fence with these mammal protection features, can be modified at the top end to be more beautiful with a design, or wave-like nature, a sine-wave (radio-like/wave-like) a modification of the California Coastal Commission logo, and colored as pastel, or beige, or light blue can be beautiful. A gate can be on the fence, that is kept locked except for scientists, manager, and occasional interpreter-teachers to bring students or regular once month guided walk for a limited size tour of 5-10 people, with a waiting list, so that the Coastal Commission can meet the requirement of its guiding law and principle of access, and here would be a case of an optimal-quality access of a very endangered species, more imperiled in California, than even the California Condor, and one of the most imperiled of Los Angeles County and City, and in dire need of being listed and already de-facto endangered by legal agreement as a plant on List 1B, in the CNPS and CDFG legal agreement-settlement that is several decades now in existence.

3. Ecological philosophy of science of the amazing relationship of a delicate small butterfly, Wandering Skipper, which shows a preference as an adult for nectaring at members of the Family Asteraceae (sunflower family), such as *Heterotheca grandiflora* (Telegraph Weed) and *Jaumea carnosa* (Marsh Daisy), and also now at our Orcutt's Yellow Pincushion (OYP). And the Wandering Skipper, as a larvae, requires an entirely different kind of host, namely Saltgrass. There could not be a more inhospitable host, in *Distichlis spicata*, with high salt concentration in the plant tissue and on the outside of the leaves. How could a butterfly larva (i.e. caterpillar) have evolved the physiology in its gut-intestine to digest this kind of plant tissue. And then to also hide in the saltgrass blades during the day, by wrapping the leaves around its delicate worm-like body with small legs, and robust bulbous head that must be an efficient eating machine. This larva must undergo daily estivation-torpor, to avoid diurnal predator and heat, and continual salty environment. And, as far as we know, this larva, must choose Saltgrass (*D. spicata*) individuals that have their leaf growth always above the highest tidal area, knowing that many saltgrass leaves, roots, and stems, can be inundated daily by high tides, and survive. At this time, we do not think that the larvae of the Wandering Skipper can survive being under saltwater at high tide. But perhaps eventually a biologist, naturalist, or photographer, will document that this unique skipper is not just unique in its diet as a larva, but also unique in the butterfly (lepidopteran) world for being able to be underwater as a caterpillar. And by the way, we already know that this Wandering Skipper can nectar at *Jaumea carnosa* flowers that were underwater at high tide with fishing swimming around the flowers, so who knows what additional remarkable features the skipper caterpillar has in its survival-evolutionary equipment? And now knowing that that the Wandering Skipper nectars at OYP gives us pause and consideration of at least one link between the wetland vegetation (saltgrass) and the upland vegetation of the dune, i.e. OYP, a vegetation that is ephemeral in its above-ground time, and mostly a below-ground plant, as a seed, for at least 6 months each year undering going the most slow form of respiration known, seeds breathe oxygen very slowly, and are more amazing at this time period of "hibernation" (in quotes), than a Grizzly Brown Bear in winter, and on our state flag, walking on open ground with bushes or trees, in a meadow with gopher mounds, which are the black-brown spots showing on the green meadowy carpet around the grizzly brown bear legs and feet on our state flag. Check it out some time. Our flag is an ecology flag, as I think you can now appreciate.

4. Dogs on the proposed Decomposed Granite (DG) trail will defecate and urinate, which will mix with rainwater, changing soil chemistry, from a high alkaline-saline nature, to a more nitrogen-enriched acidic nature, favoring other kinds of plants, such as some non-native weedy-like plants that desire slightly enriched soils of lower salinity and higher nitrogen content. Also,

numerous dog-owners lift dogs over the fence, so they can be in the wild vegetation and sand, and go into the water. A completely preventative fence to the proposed OYP sanctuary preserve would solve this problem and the need for a DG trail. And if polls were taken, a high number of people that do not have dogs, likely more than 50% than dog-owners, or perhaps slightly less, data needed on recreation use impacts, prior to designing and opening this area as an improved walkway, with even more resultant dog use, if there is a manicured DG walkway for dogs. And how do non-dog pedestrians pass by alongside dog-owners on a narrow 4-foot wide DG trail, without the rights of the coastal access pedestrian who does not own dogs be resolved. A closed area would resolve this problem. The city allows dog use on the other side of the lagoon, and these issues already exist there.

5. Translocation of additional native-dune-strand animals, primarily vertebrates is needed to complete this ecosystem. We need an additional fossorial mammal to loosen the sand and cause the proper sand disturbance for the Pincushion, and to eliminate the weedy grass growth, which the Pocket Gopher does to a certain extent, but would be complemented by the California Ground Squirrel (a type of prairie-dog-like mammal that eats seeds, disturbs the sand naturally, and builds tunnels, aerating the soil, however the California Ground Squirrel, is known to harbor vectors undesirable to people in this kind of urban area, so we may wish to consider another kind of fossorial granivore mammal, which by the way did occur here historically, and is now definitely federally endangered and also state endangered (if I'm not mistaken) but at least state-sensitive. This small mammal, known commonly as the Pacific Pocket Mouse, and formerly as the Cantwell Pocket Mouse, named for a local Culver City naturalist named George Cantwell in the 1930s, by another local vertebrate zoologist, Jack von Bloeker, associated as a curator and lead scientist at the Los Angeles County Museum of Natural History. That history of natural history is important because the notes and articles of these two mammal specialists give us good solid natural history for this former mammal of the dunes of Ballona, Venice, Santa Monica, LAX, Manhattan Beach, and now barely holding on at Dana Point in Orange County. And this mammal after careful study at Dana Point has boom years, following bust years, at reproduction, and the extra young mammal rodents disperse and die, as the habitat area is restricted in acreage at Dana Point. A carefully designed translocation plan can remove a designated percentage of the small rodent that will perish in the boom years anyway, and translocate them to the OYP Sanctuary. An amendment to the federal recovery plan will be needed, and ultimately we would be providing a greater chance of preventing extinction, if the endangered Pacific Pocket Mouse is here in Los Angeles, not just in one location in Orange County and San Diego County. Our OYP Sanctuary would have to be of the highest caliber, in order for the USFWS federal scientists to consider translocation to OYP sanctuary.

#### SUMMARY and CONCLUSION and DISCUSSION:

The optimum sanctuary is within reach with guidance by CCC and an excellent ecologist on staff, with proof shown to protect the Great Blue Heron, and to understand the regional solution to conservation. That person is Dr. Jonna Engel, whom I believe, if works closely with the Ballona Institute, namely Robert van de Hoek, another fine conservation-restoration trained expert, can guide the OYP Sanctuary to a high-end sanctuary. If the points, 1-5 above are goals and achieved, we can bring back the Pacific Pocket Mouse and the Coast Horned Lizard, just for starters, to coexist alongside the OYP and a suite of other native more appropriate dune and marsh plants. And we must become more knowledgeable about the types of insects that we desire at the OYP, including at least one additional type of native ant, a smaller native ant than the Harvester Ant that is already present at the OYP Sanctuary. And more bees would be likely, and keep in mind that currently we do depend on the European-African honeybee for pollination of some OYP, and this non-native invasive bee utilizes non-native invasive trees such as Eucalyptus and other types of trees, and sometimes buildings, i.e. chimneys and eaves, old garages, for hives of the female to reproduce the colony of bees. As you can see, the complexity of restoration and recovery for the OYP is going to be delicate and complicated enough, and then even more difficult with encourage access on an improved DG trail with new landscaping of native plants with irrigation, and symbolic fence which will not prevent people and pets from impacting the OYP and the open sandy soil needed by this delicate annual wildflower OYP.

What will the ultimate tide gate alteration and mechanization which will have more regular tides, and not muted and altered as much as now, resulting in higher tidal inundation, and so the artificial sea-level will be raised, and further lateral movement of sea water into the steep sandy embankment soils, and also wetting higher on the surface as well, as underneath the sandy soil, which will result in a shift of salt marsh vegetation upslope, and very likely, a shift upslope in the upland dune/strand vegetation including the OYP, and the implications on insects that are pollinators of OYP, particularly, the Wandering Skipper and the Saltgrass, mentioned above in one of the 1-5 points mentioned above.

My recommendation is no project south of Lighthouse Bridge at the proposed OYP Sanctuary, i.e. no trail whatsoever and no irrigation, and no planting of any kind of native plant from a nursery and pots. And instead put a really protective fence with a beautification feature on its design, and allow a gate with a secure lock, so that scientists, managers, and an occasional public tour that is guided by an expert interpreter of OYP, that does not stay on a trail but wanders around between the OYP, which will shift its location with its shifting seed bank, year to year, depending on rainfall, disturbance of wind and rodents, and overall needs of a seed and seedling, mysteries still needed to be solved over several years of study by experts in plants, insects, mammals, pedologist (soil experts), and a marine biologist and ecologist, with a goal of synthesis and synergy of understanding of the OYP and the newly proposed OYP Sanctuary at the Ballona Lagoon Marine Preserve in the City of Los Angeles.

And everyone needs to keep in mind that this is public property of a local municipality, a county and city, with the same name, Los Angeles. And the County is funding the project of the City. And both the County and the City, are allowed to exist as political entities, drafted and chartered by the California Constitution. And so this County and City only exists at the leisure of the State of California. And the State of California is only allowed to exist politically as decided by the U.S. Congress and the President, under the Constitution of the United States. What I am trying to say is that the State of California and United States TRUMPS the wishes and desires of the City and County of Los Angeles. And that the elected representatives of the State and U.S. oversee the state and federal employees, who have fiduciary responsibility and regulatory responsibility to direct the City and County. In essence, the City and County employees are not in charge, the state and federal employees, both state/federal scientists and federal/state planners are ultimately responsible, not City, nor County employees and municipally elected officials. All municipal employees and electeds, councilmembers, mayors, and supervisors, must answer and follow the dictates of regulation of the State of California and the United States. And the State of California and United States has strong statements and laws governing both recognized government-designated rare wild species and endangered wild species, which includes the OYP and numerous animals, not yet addressed, namely specialized rare insects, other invertebrates, as well as vertebrates, and additional plants, not even yet being discussed or address by any scientist, manager, planner, politician, or concerned citizen conservationist or environmentalist.

Thank you for permission to be open and to write you Dr. Jonna Engel. And please do the due diligence and distribute this email letter, now official, by sending to you, on to others at the State of California, in various agencies, and to relevant United States agencies, and to your immediate chain of command, including the acting executive director, legal counsel. It is important to consider the legality and OYP and federal and state laws governing a rare and endangered species and to not move forward with the project. And to keep the existing fence intact at the OYP sites south of Lighthouse Bridge, and to monitor and enforce the temporary fences for a more extended and protracted period, due to no project moving forward, and to insure protection of the entire ecosystem that supports the well-being of OYP, the most imperiled of all the many species known at this time, and occurring at the Ballona Lagoon Marine Preserve (BLMP). There may very well be an insect that is more imperiled than even the OYP at BLMP.



The best available science now at your disposal and given to you by colleagial scientist, namely myself, provides you with the knowledge shared in a professional manner with you and the proper legal route in an open letter, utilizing conservation biology science and restoration ecology science, so that you now have knowledge, to guide you to recommend to the executive director and the 12 voting members of the Coastal Commission, that science needs to guide the politician and decision maker's appointees, to vote for protection of the natural resource over and beyond the desired recreation use of a trail and beautification with irrigation and landscaping. In this landscaping with native plants is completely inappropriate and will damage the existing natural resource, i.e. a rare and endagnered (1B) imperiled native plant, i.e. Orcutt's Yellow Pincushion (OYP).

I always look forward with dialogue and conversation with you related to science, particularly ecology, conservation biology, restoration ecology, marine biology, marine ecology, invertebrate zoology, plant ecology, and scientific natural history, because you are one of the finest scientists that I know, both in knowledge and experience, and also conscience, truth, and a genuine nature, so much needed in government today. And I do very much look forward to hearing back from you in regard to this letter, for continued fine dialogue and conversation, and not just related to the Orcutt's Yellow Pincushion and a proposed sanctuary, and so include here some additional geographies of California, namely the Greater Ballona Ecosystem, LAX-El Segundo Sand Dunes, Malibu Lagoon, and basically all the remaining natural ecosystem fragments of Los Angeles County, as well as Orange County, San Diego County, Ventura County, Santa Barbara County, and San Luis Obispo County. And we need to be thinking of our neighboring country to the south, namely Mexico, and the two states in Baja California, as the coastal ecosystems found there, do not pay attention to the political boundaries, as we both know very well and are very much aware. Please do stay in touch by email letter and phone conversation. I have magnificent appreciation for you as a professional biological-ecological scientist and as a civil servant for the citizens of the State of California.

Sincerely,

"Roy"

Robert Jan van de Hoek, Co-Director  
Restoration Ecologist and Conservation Biologist  
Ballona Institute  
322 Culver Boulevard, Suite 317  
Los Angeles (Playa Del Rey), CA 90293  
(310) 877-2435 cell  
(310) 823-7040 office  
[www.ballonainstitute.org](http://www.ballonainstitute.org)  
[www.naturespeace.org](http://www.naturespeace.org)

COASTAL COMMISSION  
5-08-294-A1

EXHIBIT # 9  
PAGE 5 OF 5

# California Native Plant Society

## Los Angeles / Santa Monica Mountains Chapter

3908 Mandeville Canyon Road, Los Angeles, California 90049

July 7, 2010

**RECEIVED**  
South Coast Region

The Honorable Bonnie Neely, Chair, and Honorable Commissioners  
California Coastal Commission  
c/o 45 Fremont Street, Suite 2000  
San Francisco, California 94105

JUL 7 2010

CALIFORNIA  
COASTAL COMMISSION

RE: Amendment #5-08-294-A1: Ballona Lagoon Restoration Project – URGENT – Protection needed for rare plants.

Dear Coastal Commission Chair Neely and Coast Commissioners:

The Los Angeles / Santa Monica Mountains Chapter of the California Native Plant Society agrees with other environmental organizations and the concerns of the Department of Fish and Game botanist, Ms. Schmoker, that Amendment #5-08-294-A1 (Ballona Lagoon Restoration Project) must be changed to provide protection for the extremely rare Orcutt's Yellow Pincushion (OYP) and other rare Ballona plant species found where the planned walk path is to be located. The path is to be surfaced with decomposed granite and watered with an irrigation system. Dumping decomposed granite on sandy soil holding the seedbank of a plant being driven to extinction, then compacting it as a walk path used by hundreds of people will smother the in situ seedbank of the OYP population known to be there and destroy the sandy soil drainage characteristics required by the rare OYP. Furthermore, even temporary irrigation during the summer can negatively impact native plants in summer dormancy. The habitat will be seriously compromised. If water is required for new plantings, only hand watering should be allowed.

The suggested changes to Amendment #5-08-294-A1 are as follows:

A. The walk path starting north at the Venice Pumping Plant would proceed past Jib and to Lighthouse Bridge, at which point walking traffic would be directed to either cross Lighthouse Bridge to use the walk path on the east side of Ballona Lagoon or to cross the street and walk either to the beach walk path or to the sidewalk on the west side of Pacific.

B. The entire area from Lighthouse Bridge to Topsail will be included in the Rare Plant Preserve, with all irrigation lines removed and no further irrigation lines installed. Non-native weedy plants will be removed, and any plant planted in this area will be planted in a sparsely designed fashion, so as to leave significant amounts of clear, sandy soil for the possible growing of Orcutt's Yellow Pincushion and other rare plants which associate with this species. Any irrigation of new plants introduced to this area will be done by hand only.

Thank you for your consideration.

Sincerely,

*Betsy Landis*

Betsy Landis, Education Chair

LA/SMM Chapter, CNPS

COASTAL COMMISSION

5-08-294-A1

EXHIBIT # 10  
PAGE 1 OF 1

F10a

5-08-294-A1

To: the California Coastal Commission

Re: Permit # 5-08-294-A1

Hearing Date - Friday June 9, 2010

To the Commissioners

I believe in the preservation of the  
Orcutt Pincushion plants, please continue  
your efforts to preserve it.

The path would be too restrictive  
at 4 feet wide.

Please keep it at 5 feet wide  
as planned.

Sincerely

Noté Nahmas  
5011 Roma Court

MDR

310 901-5300

**RECEIVED**  
South Coast Region

JUL 6 2010

CALIFORNIA  
COASTAL COMMISSION

EXHIBIT # 11  
PAGE 1 OF 1

## Chuck Posner

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**From:** garymad@ca.rr.com  
**Sent:** Thursday, July 08, 2010 5:35 PM  
**To:** Chuck Posner  
**Subject:** Canal along Pacific Avenue in Marina Del Rey...

Both my wife and I want to support the plan designed to protect the specific parcel at Outrigger on Pacific Avenue as set forth by the Coastal Commission staff. The time is NOW to reopen the paths that run along Pacific between Jib and Topsail so as to afford those of us who use it daily the opportunities we have patiently waited to regain since the restoration began in December, 2009. Seven months is more than enough time for this restoration to have been completed; any legal machinations to prolong it are insulting.

Also, any attempts to completely close this canal environment to human traffic is beyond unreasonable and insists that we who frequent this area are incapable of treating it with respect. In fact, history indicates the complete opposite; our desire to protect the unique plant species here is reflected in our desire to fence it off.

Let's not let the above simple solution devolve into a long and drawn out process between groups who both support and respect the environment. It is unnecessary and a waste of everyone's time, energy and resources.

Respectfully,

Gary N. Schneider  
12630 Bonaparte Avenue  
Los Angeles, CA. 90066

COASTAL COMMISSION  
5-08-294-A1

EXHIBIT # 12  
PAGE 1 OF 1

**Allen B. Sackler**

5302 Pacific Avenue, Marina Del Rey, CA 90292  
(310) 453-0911

July 1, 2010

**RECEIVED**  
South Coast Region

JUL 6 2010

California Coastal Commission  
South Coast District  
P.O. Box 1450  
200 Oceangate, 10<sup>th</sup> Floor  
Long Beach, CA 90802-4416

**CALIFORNIA  
COASTAL COMMISSION**

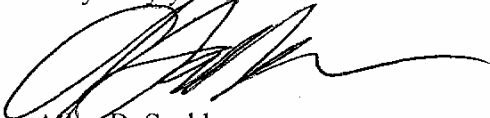
RE: (A) Permit Number 5-08-294-A1  
Phase III Ballona Lagoon Enhancement Plan  
West Bank of Ballona Lagoon between Via  
Marina and Grand Canal, Venice

(B) Item no. F10a

Dear Sir or Madam:

I have no objection to the reduction in width of the public path from 5 to 4 feet; but, the project enhancement is to terminate at Topsail Street on the south, not Via Marina.

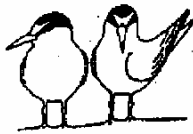
Very truly yours,



Allen B. Sackler

**COASTAL COMMISSION**  
**5-08-294-A1**

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PAGE 1 OF 1



## Friends of Ballona Wetlands

[www.ballonafriends.org](http://www.ballonafriends.org)

July 9, 2010

Honorable Bonnie Neely, Chair  
California Coastal Commission  
Board of Supervisors  
825 Fifth Street, Room 111  
Eureka, CA 95501

**Board of Directors**  
Catherine Tyrrell, President  
Dr. David Kay, Vice President  
Jacob Lips, Secretary  
John Gregory, Treasurer  
Ruth Lansford, Founder  
Micah Ali  
Dr. Pippa Drennan  
Lisa Fimiani  
Susan Gottlieb  
Stephen Groner  
Dr. Edith Read  
Bob Shanman  
Michael Swimmer  
Richard Wegman

**Emeritus Board**  
Tim Rudnick  
Ed Tarvyd

Dear Commissioner Neely:

**Subject: Application No. 5-08-294-A1 – Material Amendment for Phase IIIA and IIIB of the Ballona Lagoon Enhancement Plan**

Friends of Ballona Wetlands (FBW) staff have reviewed the Staff Report for the subject coastal permit amendment and supports staff's recommendations. We recommend adoption of the proposed amendment.

FBW agrees with proposed Special Condition No. 11, which requires staff approval of a restoration plan prepared by a qualified restoration ecologist prior to permit issuance. In addition, only temporary irrigation shall be approved. FBW scientists and other qualified experts agree that overhead sprinkler irrigation may be detrimental to the rare pincushion flower identified within the project area. Native annuals do not require irrigation, and frequent watering by overhead sprinklers tends to exhaust any existing seed bank, which could eventually result in population collapse. However, a drip irrigation system could be planned by the applicant which would have positive rather than adverse effects, but would need to be designed to help establish only planned shrubs or perennials, not the pincushion or other annuals. We are confident Coastal Commission staff ecologists will ensure such safeguards are designed into the restoration planned ultimately approved.

FBW supports the proposed trail project as carefully conditioned by the Coastal Commission. Regulated public access to wetland resources is critical to preventing the formation of damaging "social trails" where no developed paths exist. Controlled access also enhances the public's educational experience by allowing them to see first-hand even sensitive habitats that may require special protection.

The Friends of Ballona Wetlands ([www.ballonafriends.org](http://www.ballonafriends.org)) is a non-profit 501(c)(3) membership organization with more than 6,000 individuals participating in our education and restoration programs each year. We represent the single largest group of stakeholders

211 Culver Blvd., Suite K, Playa del Rey, CA 90293  
ph: 310.306.5994 fax: 310.306.0031 e: [info@ballonafriends.org](mailto:info@ballonafriends.org)

**COASTAL COMMISSION**  
**5-08-294-A1**

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PAGE 1 OF 2

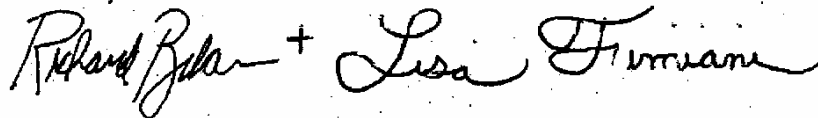
July 9, 2010

Page 2

participating in the Coastal Conservancy's Ballona Wetlands Restoration Project. FBW has been dedicated to protecting and restoring the Ballona Wetlands for over 30 years with the help of more than 65,000 volunteers, and was instrumental in protecting the Ballona Wetlands from development through designation of the wetlands as a State Ecological Reserve.

If you have any questions, please feel free to call either of us at (310) 306-5994.

Sincerely,

Handwritten signatures of Richard Beban and Lisa Fimiani, separated by a plus sign.

Richard Beban and Lisa Fimiani  
Co-Executive Directors  
Friends of Ballona Wetlands

cc: California Coastal Commissioners  
Charles Posner, CCC, Long Beach  
Jonna Engel, CCC, Ventura

COASTAL COMMISSION  
5-08-294-A1

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