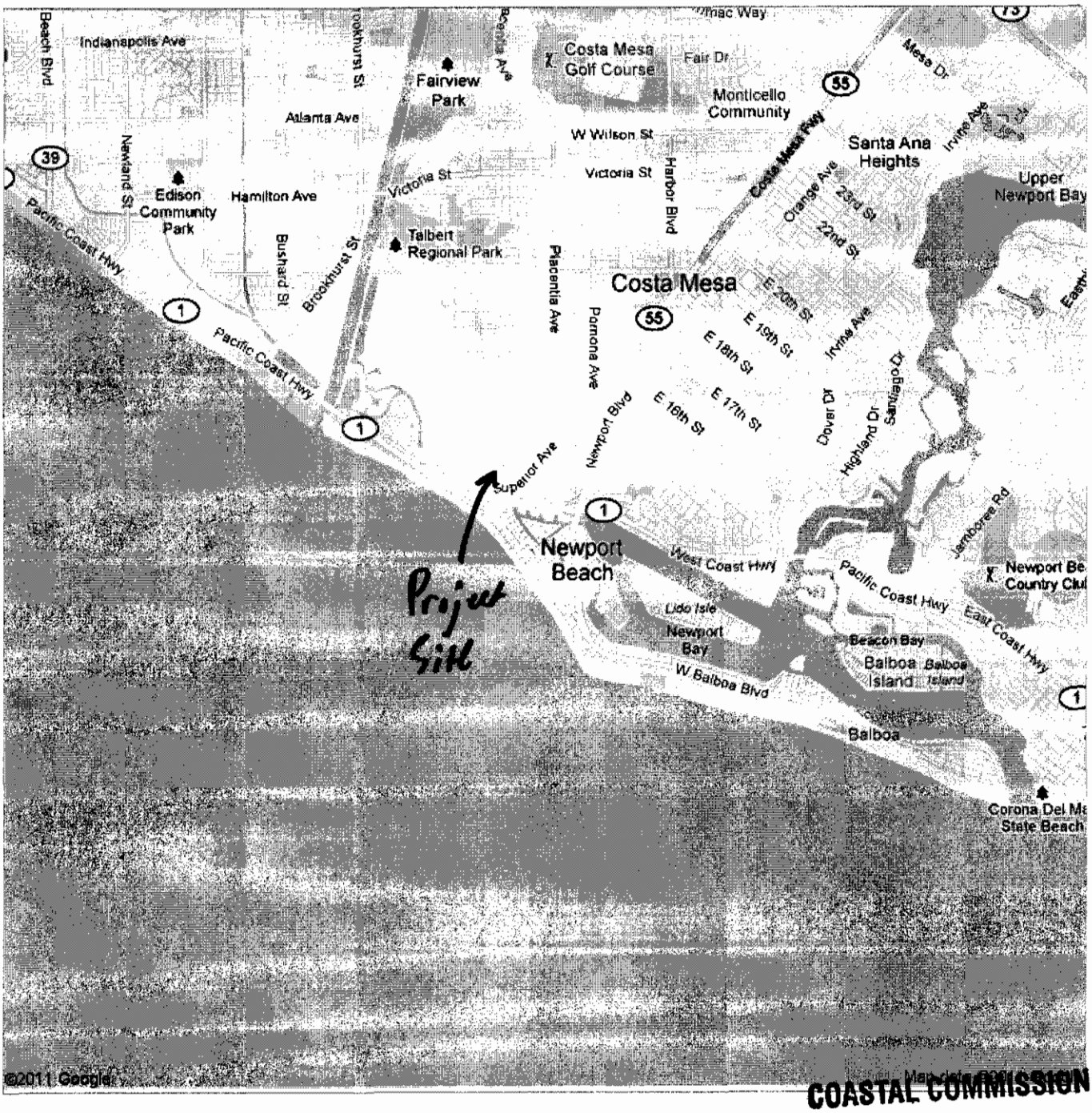
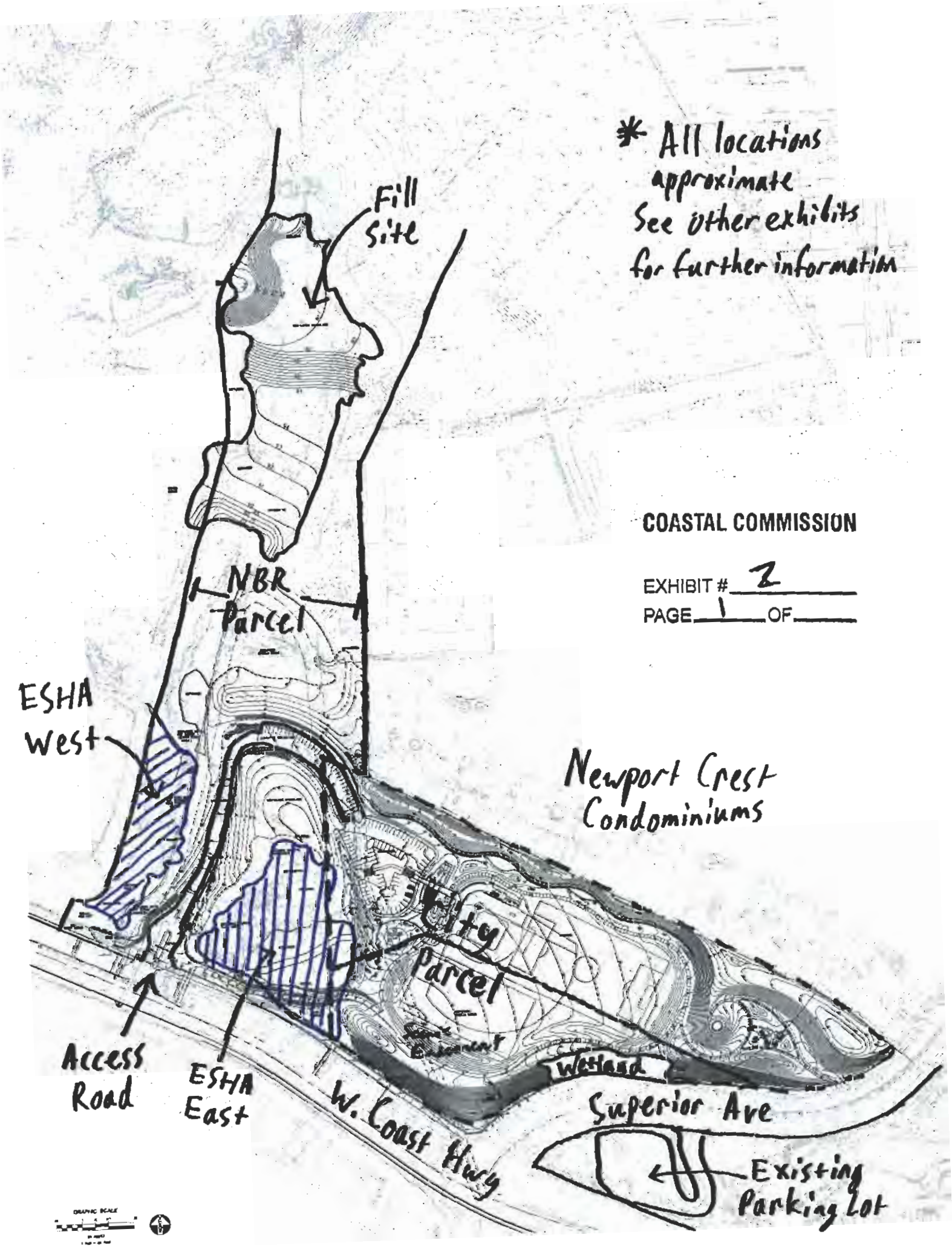
Google maps

Get Google Maps on your phone
Text the word "GMAPS" to 466453



COASTAL COMMISSION

EXHIBIT # 1
PAGE 1 OF



COASTAL COMMISSION

EXHIBIT # 2

PAGE 1 OF

LEGEND

- Existing Disturbed CSS - Native
  Acreage: .80 ac.
- Expanded CSS - Native
  Acreage: 1.20 ac.
- Entry Area - Non Irrigated, Non Native
  Acreage: 2.70 ac.
- Water Infiltration Area
  Acreage: .50 ac.
- Residential Buffer
  Acreage: 2.70 ac.
- Active Area - Ornamental Evergreen Grasses
  Acreage: 1.20 ac.
- Turf Area
  Acreage: 4.40 ac.
- Butterfly Garden
  Acreage: .10 ac.
- Streetscape Slope
  Acreage: 2.10 ac.
- Streetscape
  Acreage: .50 ac.
- Existing - Not to Be Disturbed*
  Acreage: .90 ac.
- Existing - Disturbed, Non Native*
  Acreage: 2.90 ac.
- Hardscape
  Acreage: 2.90 ac.

*Areas are outside of Grading Limits and are Not to Be Disturbed as part of the Sunset Ridge Park Project.

- NOV Areas
- Caltrans Scenic Easement
- Previous Park Entry Road Alignment Last Used: December 2010

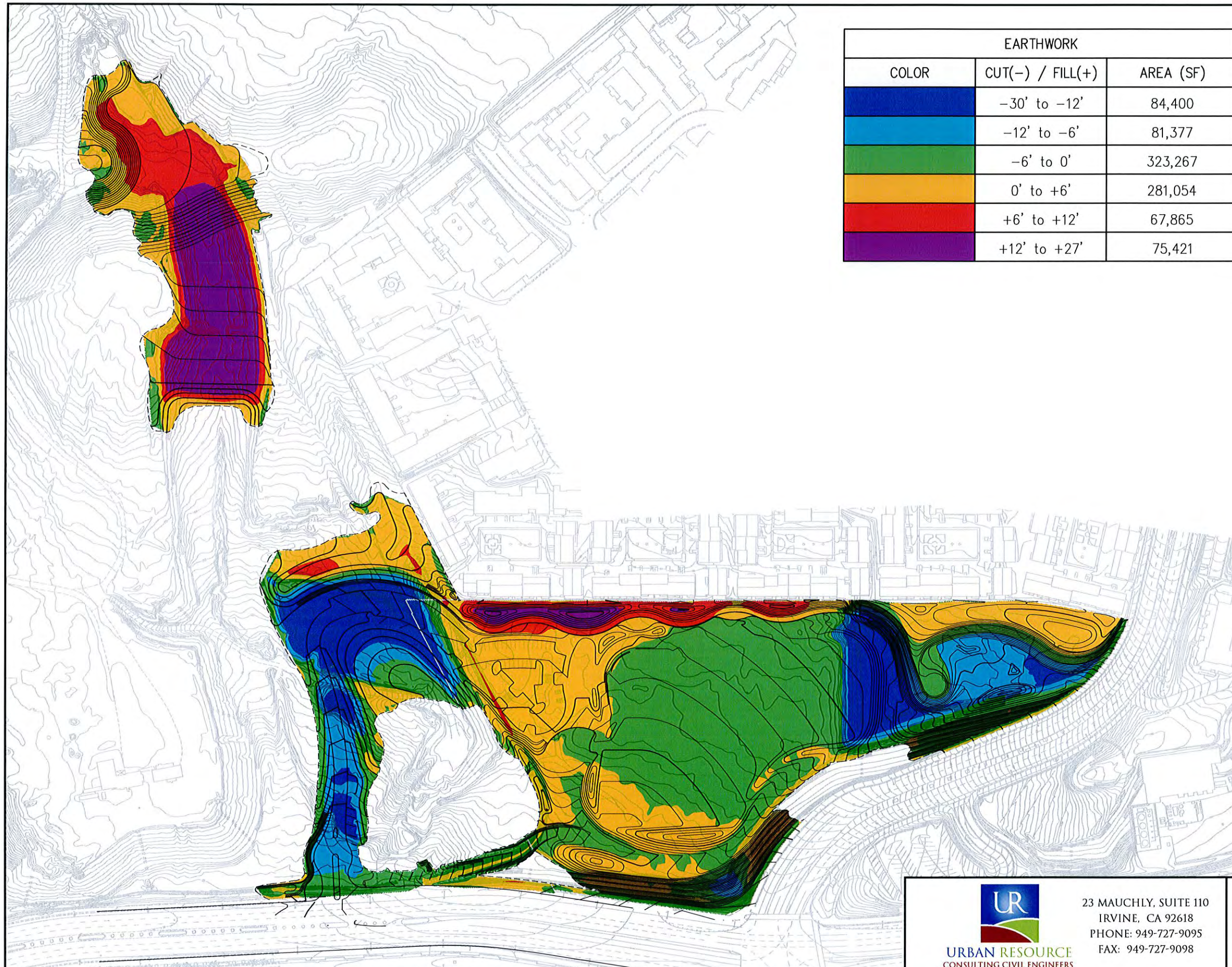
TOTAL PARK ACREAGE
20.00 ac.

Sunset Ridge Park Planting Concept

Plan

EXHIBIT# 3
Page 1 of 1
Application Number:
5-10-168
California Coastal Commission

EPTDESIGN
City of Newport Beach
09 September 2011



EARTHWORK		
COLOR	CUT(−) / FILL(+)	AREA (SF)
	−30' to −12'	84,400
	−12' to −6'	81,377
	−6' to 0'	323,267
	0' to +6'	281,054
	+6' to +12'	67,865
	+12' to +27'	75,421

ENTRY EARTHWORK QUANTITY

CUT	52,148 CY
FILL	4,432 CY
EXPORT	47,716 CY

*EXPANSION INDEX = 0

PARK SITE EARTHWORK QUANTITY

CUT	57,627 CY
FILL	27,951 CY
EXPORT	29,676 CY

*EXPANSION INDEX = 0

FILL SITE EARTHWORK QUANTITY

CUT	188 CY
FILL	69,315 CY
IMPORT	69,127 CY

*EXPANSION INDEX = 0

TOTAL EARTHWORK QUANTITY

CUT	109,963 CY
FILL	101,698 CY
EXPORT	8,265 CY

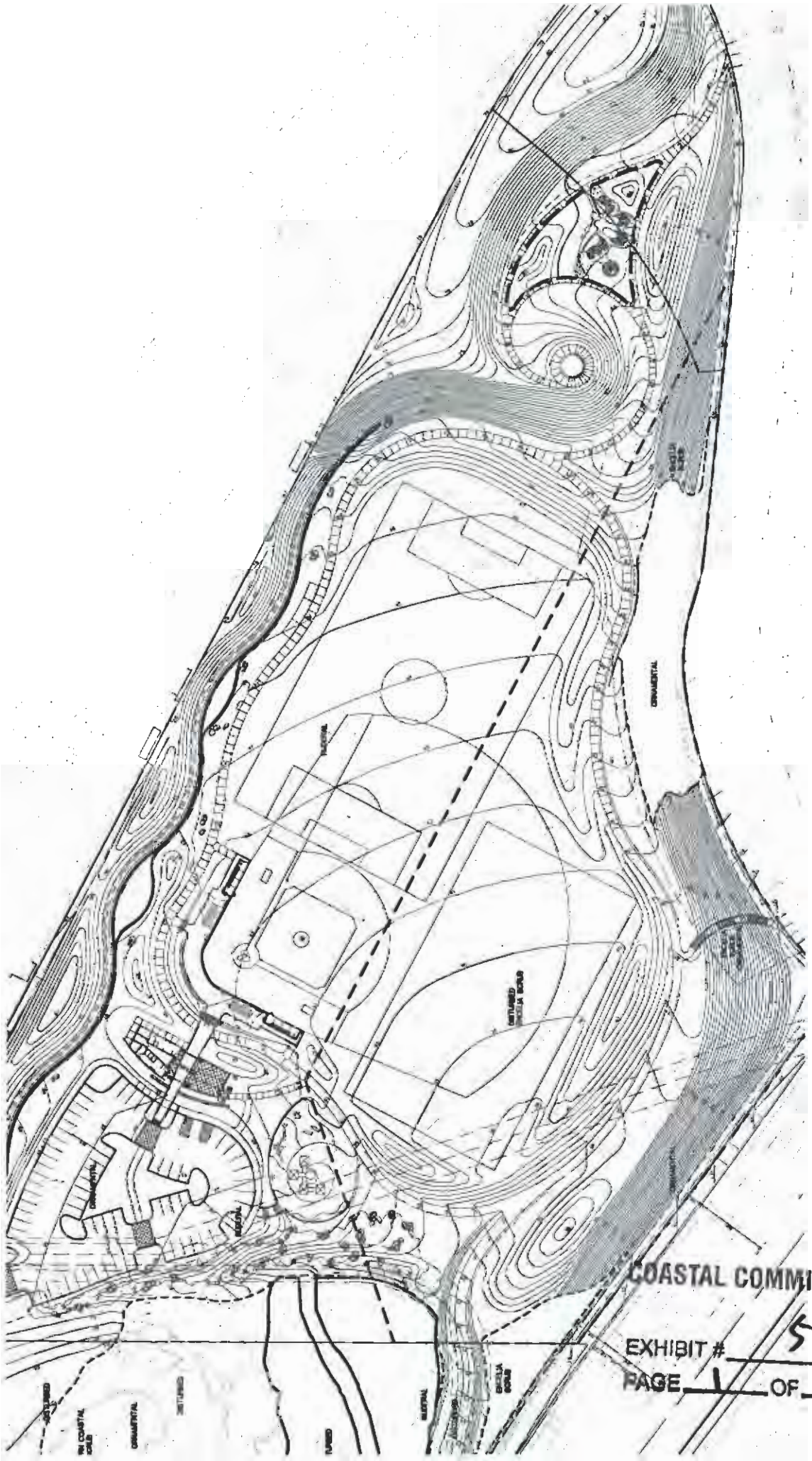
*EXPANSION INDEX = 0

EXHIBIT#4
Page 1 of 1
Application Number:
5-10-168
California Coastal Commission

URBAN RESOURCE
CONSULTING CIVIL ENGINEERS
23 MAUCHLY, SUITE 110
IRVINE, CA 92618
PHONE: 949-727-9095
FAX: 949-727-9098

SUNSET RIDGE PARK EARTHWORKS EXHIBIT

AUGUST 31, 2011



COASTAL COMMISSION

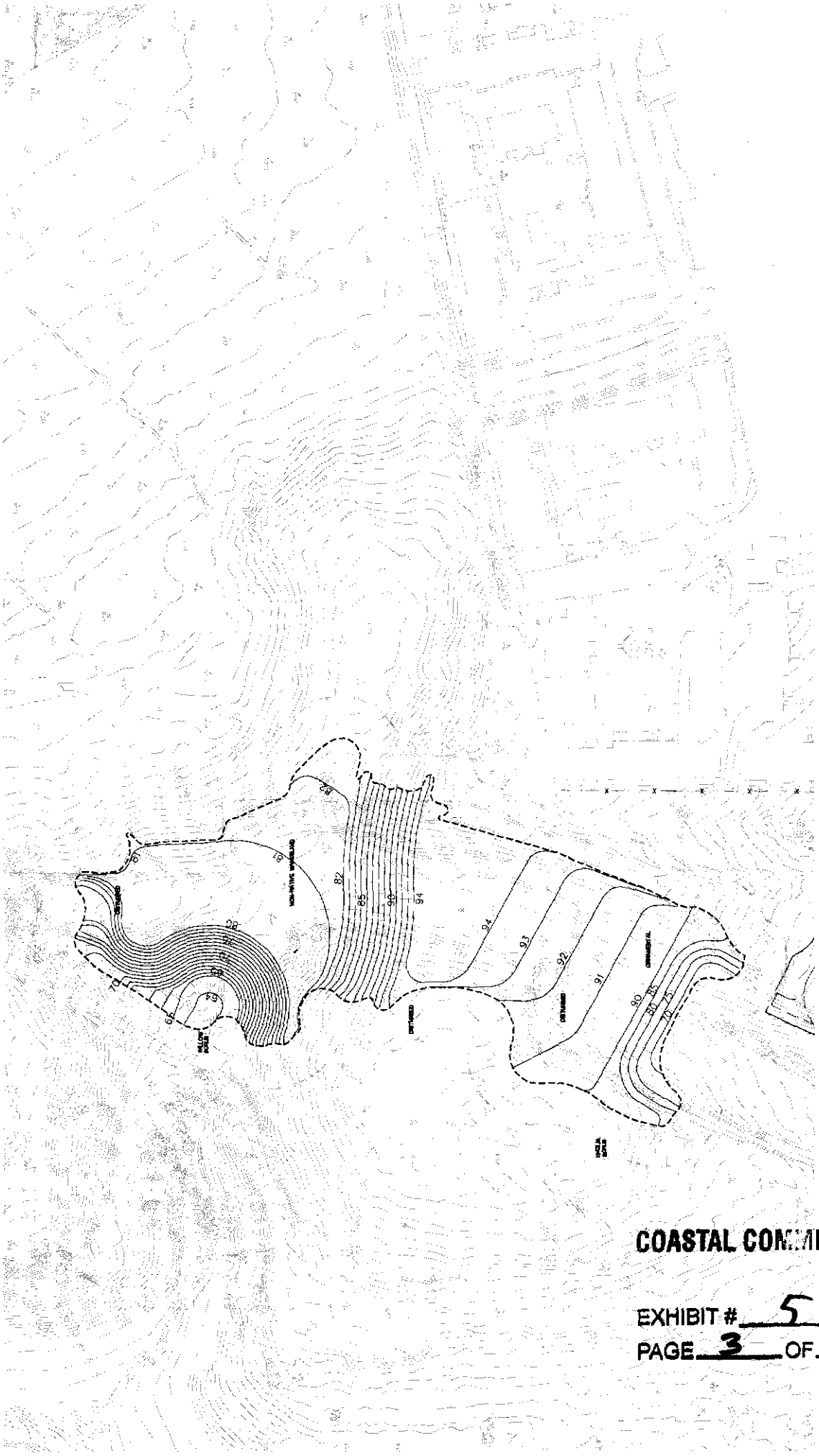
EXHIBIT # 5

PAGE 1 OF

COASTAL COMMISSION

EXHIBIT # 5

PAGE 2 OF


COASTAL COMMISSION
EXHIBIT # 5
PAGE 3 OF

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

Date and time of communication 8/11/11 12:45

Location of communication: (If communication was sent by mail or facsimile, indicate the means of transmission.) Wassonville CA

Identity of person(s) initiating communication Don Schmitz

Identity of person(s) receiving communication: Commissioner McClure

Description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material
California Coastal Commission
[CDP Application No. 5-10-168]

Applicant: City of Newport Beach

Agent: Schmitz & Associates, Inc.

Project Site/Property Address: 4850 West Coast Hwy, Newport Beach, CA; APNs:

Project Description: Sunset Ridge Park:

- Youth baseball field and two youth soccer fields
- Playground ("tot lot") and picnic areas
- Memorial garden, pedestrian paths, overlook area with shade structure and seating
- 1300 s.f. one-story restroom and storage facility (20 ft. max height)
- 97 public parking spaces
- Habitat enhancement plan

I, Commissioner Martha McClure, had ex parte communication with Don Schmitz, agent for the above-referenced project on August 11, 2011. During our discussion, we generally reviewed the proposed public park project components, the additional analysis and plan revisions that the City of Newport Beach has undertaken to address Banning Ranch Conservancy's and Coastal Staff's potential resource impact concerns, and the issues with alternative access off of Superior Avenue and with an off-site garage and bridge proposal.

8/15/11 Martha McClure

Date **Signature of Commissioner**

COASTAL COMMISSION

EXHIBIT # 6

PAGE 1 OF

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

Date and time of communication: 8/25/11 12:15P.M.

Location of communication: (If communication was sent by mail or facsimile, indicate the means of transmission.) Phone

Identity of person(s) initiating communication: Steve Ray, Executive Director Banning Ranch Conservancy

Identity of person(s) receiving communication: Commissioner McClure

Description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material
I spoke with Steve on two primary issues concerning Banning Ranch/ Sunset Ridge Park. 1. The History of Banning Ranch including size, cultural significance, local initiatives, farming and oil use of the land 2. Discussion of the project which included scope, ingress and egress, possible encouragement of development if entrance is on the Banning Ranch site, development being beyond need, alternatives to access locations and possible lack of adequate environmental review.

8/26/11 — Date

Michael McClure — Signature of Commissioner

COASTAL COMMISSION

EXHIBIT # 6
PAGE 2 OF

FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Name or description of project, LCP, etc.: Banning Ranch

Date and time of receipt of communication: 8/11/11 approx 12:30

Location of communication: Watsonville City Hall

Type of communication (letter, facsimile, etc.) Meeting

Person(s) initiating communication: Steve Ray

Person(s) receiving communication: Mary Shallenberger

Detailed substantive description of content of communication:
(Attach a copy of the complete text of any written material received.)

see attached

8/20/11
Date

Mary Shallenberger
Signature of Commissioner

If the communication was provided at the same time to staff as it was provided to a Commissioner, the communication is not ex parte and this form does not need to be filled out.

If communication occurred seven or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director within seven days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

COASTAL COMMISSION

If communication occurred within seven days of the hearing, complete this form, provide the information orally on the record of the proceeding and provide the Executive Director with a copy of any written material that was part of the communication.

EXHIBIT # 6
PAGE 3 OF

Aug 12, 20011 @ approx 12:30 PM

Watsonville City Hall

I met with Steve Ray, Executive Director of the Banning Ranch Conservancy.

He gave me a brief history of the Banning Ranch

- Sunset Ridge was slated to be an interchange until the passage of the Coastal Act
- Legislation authorized Caltrans to sell the Sunset Ridge to Newport Beach for a park
- The City decided to make it an active park (ball fields) even though there isn't adequate space for parking.
- The City decided to put the access road on the Banning Ranch in the exact alignment of the Banning Ranch proposed development.
- In 2006 the voters approved an initiative that required Banning Ranch to be preserved as open space/park.
- The Conservancy had the funds to purchase the Ranch but the owner doesn't want to sell until he has all the permits, which will increase the price of the land.

The Conservancy is objecting to the road. They haven't had a chance to review the relevant documents. The commission staff is still in the process of conducting the ESHA delineation and the conservancy won't have the time to review before the September meeting.

The Conservancy is asking to have the hearing in October in Huntington Beach but that would be 8 days after the permit streamlining deadline. So far the City hasn't agreed to an extension of the deadline.

Commission staff asked for alternatives, and the City came up with outrageous alternatives. Caltrans and a professional traffic engineer agree on a preferred alignment that goes straight from Hwy 1 to the park without going into the Banning Ranch.

The EIR is being litigated on the grounds that CEQA is being violated by dividing Banning Ranch into to parcels.

COASTAL COMMISSION

EXHIBIT # 6

PAGE 4 OF

RECEIVED
South Coast Region

DEC 1 5 2010

CALIFORNIA
COASTAL COMMISSION

To: Coastal Commissioners

From: Christy Flesvig

Date: December 12, 2010

Re: Banning Ranch and Wildlife Observations

I have lived at 9 Landfall Ct. in Newport Beach, CA for 5 years and 11 months. My townhouse faces the ocean and overlooks the city land that is a potential site for the proposed park. From both of my decks, I also see the Banning Ranch area and the area where they are proposing to build an entry road from PCH into these currently undeveloped properties.

I work from my home and my desk overlooks the ocean and the proposed park area, so I have been able to observe the activities of wildlife frequently throughout the day over the last 5 plus years. The animals I have observed include egrets, herrings, many squirrels, several hawks, many varieties of birds and coyotes. I often see the hawks circling and am worried about leaving my dog on the decks because I can tell that they are hunting for prey to eat. I have observed them eating prey (maybe squirrels?) in the field. Looking out the window now, I easily counted 15 squirrels hunting for food in the field close to my deck. A night, the coyotes often howl in the field and wake us up. I have seen them in the field as well. A bird just landed on my deck. We have one bird that keeps trying to get in the house and keeps hitting our window.

The hawks often land on our deck. One time when I was home a hawk crashed loudly into our downstairs window. My husband has video tape of a hawk on our deck which I am forwarding as well.

I am concerned that development of Banning Ranch, the park and road will endanger wildlife.

Sincerely,

Christy Flesvig

Christy Flesvig

9 Landfall Ct.

Newport Beach, CA 92663

Cell: 949-295-9089

OPPOSED

COASTAL COMMISSION

EXHIBIT # 7
PAGE 1 OF

RECEIVED
South Coast Region

AUG 4 2011

CALIFORNIA
COASTAL COMMISSION

Members of the California Coastal Commission
Coastal Commission Staff
45 Fremont St. Suite 2000
San Francisco, CA 94105
July 28, 2011
Re: *Coastal Development Permit for Sunset Ridge Park, No. 5-10-168*

Dear Honorable California Coastal Commissioners and Commission staff,

The inclusion of the controversial Banning Ranch entrance road into the Sunset Ridge Park plan has generated great concern in our local community. The proposed road traverses through one of the most active California Gnatcatcher areas on Banning Ranch.

Despite the City of Newport Beach's General Plan making preservation of Banning Ranch as open space a priority, the road as currently proposed for Sunset Ridge Park seems to be placed to serve as a future entrance road for proposed Banning Ranch development (EIR for Banning Ranch development expected to be released in September).

Sunset Ridge Park can be built with an alternative to this controversial entrance road.

The hearing for Sunset Ridge Park is currently scheduled for September in Crescent City, a nearly 800 mile drive from Orange County. As many of you are aware, members of the Banning Ranch Conservancy and the Sierra Club Banning Ranch Park and Preserve Task Force have been attending almost every local hearing over the past several years and either speaking at public comment or addressing the recent enforcement issue associated with this area.

We have done everything we can to communicate our concerns with this proposed project, and now is the time for us to comment on the critical Coastal Development Permit. However, to do so we are forced to make a very long and expensive trip to almost the border of Oregon.

When the Newport Beach City Council approved the EIR for Sunset Ridge Park in April 2010, the Newport Beach City Council Chambers was overflowing. The majority of those in attendance argued for an alternative to the controversial entrance road. We hoped to be able to show this same level of public concern at the upcoming CDP hearing.

With this in mind, we ask you to please re-schedule the hearing until a later date, when local residents can attend and speak. The October and November hearings are within a reasonable driving distance. If the hearing is re-scheduled to October, the applicant is being asked to postpone for only one month. We hope you can appreciate our position and support us on this requested postponement.

Thank you.

Sincerely,

Kenneth J. Riggs
404 62nd St
Newport Beach
Ca 92663

COASTAL COMMISSION

EXHIBIT # 7
PAGE 2 OF

RE: Sunset Ridge Park Project

Introduction:
The Banning Ranch Conservancy contends that the entrance road proposed by the applicant, the City of Newport Beach, for the Sunset Ridge Park project, if permitted to be constructed as currently planned, would violate both the letter and the intent of the California Coastal Act. Further, it would establish a precedent where such future violations could become commonplace. Plus, there is a better alternative.

1. Standard of Review:
The proposed entrance road for Sunset Ridge Park would be located on the adjacent Banning Ranch property, which, under the Coastal Act, is designated an Area of Deferred Certification. As such, the Coastal Act is the standard of review for all portions of the Sunset Ridge Park project which are located on Banning Ranch. In addition, since the City of Newport Beach does not have a certified Local Coastal Plan (LCP), the Coastal commission retains original jurisdiction not only on the Banning Ranch property, but also on the City-owned Sunset Ridge property. Although the Newport Beach Coastal Land Use Plan can provide guidance on the City-owned property, the Coastal Act remains the only standard of review for both properties in the proposed Sunset Ridge Park project.

2. ESHA Determination and Data Requirements:
Final determination of Environmentally Sensitive Habitat Area (ESHA) should not be made until all data is available to the Coastal Commission. The U.S. Fish & Wildlife Service (USFWS) has identified the entire Banning Ranch and Sunset Ridge sites as critical habitat for the federally threatened Coastal California Gnatcatcher (*Polioptila californica californica*). When a biologist conducts a protocol Gnatcatcher survey, specific and detailed information on where Gnatcatchers are observed is collected from *six separate episodes*. In the case of the Gnatcatcher surveys for 2002, 2006, 2007 and 2009, the data were subjectively "condensed" by the consultants down to a single point representing a bird, or pair of birds, for each year. This unscientific and non-standard practice excludes the vast majority of the data and vastly underrepresents the "home ranges" the birds occupy for nesting and foraging. In the exacting process of determining whether a particular area of vegetation is utilized by Gnatcatchers and should be identified as ESHA, it is unacceptable to use a single "condensation point" rather than the entire set of data. If ESHA is to be based on where Gnatcatchers are located, then all field data from the protocol studies must be made available, without the use of "condensation points". Gnatcatchers have been observed on Banning Ranch and Sunset Ridge in several areas that biological consultants BonTerra and Glenn Lukos Associates (GLA) have erroneously characterized as unsuitable. Most of the area in the vicinity of the proposed entrance road is suitable Gnatcatcher habitat and in the absence of compelling data showing lack of use, the habitat should be presumed to be utilized by breeding Gnatcatchers based upon the size of territory the birds typically occupy near the coast in southern California. To make final ESHA determinations without reviewing the actual field data would set a precedent where future developments (including the Banning Ranch development) could provide single "condensation points" to the Coastal

COASTAL COMMISSION

Commission during application for Coastal Development Permits (CDPs). The Banning Ranch Conservancy has discussed, and been in agreement with Coastal Commission staff, regarding the importance of reviewing the relevant field data collected by the EIR consultants. To date, however, the applicant has denied specific requests to allow the Coastal Commission staff and/or Conservancy to review the relevant data.

Please refer to the attached letter dated June 29, 2011, from Ann Johnston of BonTerra Consulting to Michael Sinacori of the City of Newport Beach. In this letter, Ms. Johnston provides her opinions about which portions of the Sunset Ridge project site do and do not satisfy ESHA criteria. There are too many distortions and erroneous statements in her letter to review in detail, but one part stands out as being especially egregious. The second paragraph on Page 2 refers to small patch of native encelia scrub:

> 0.08-Acre Encelia Scrub Northwestern Patch/Not ESHA. This vegetation type is dominated by bush sunflower, with several coastal prickly pear. The vegetation in this area occurs within a bowl shaped canyon that has been partially filled with large pieces of concrete and re-bar. The presence of a monotypic cover of bush sunflower, with little or no understory species in the small canyon, is common for this species that frequently occurs within areas subject to disturbance. Although gnatcatchers may periodically fly across the dirt/asphalt road (approximately 55-feet wide in this area), this area is not expected to provide important nesting opportunities for gnatcatchers in the area. Due to a mapping error, this area had previously been identified as the location of a pair of gnatcatchers by Glenn Lukos Associates. This erroneous location has been corrected (Appendix A). Based on the lack of known nesting observations, the lack of existing vegetation diversity, and significantly compromised soil conditions, this area is not expected to improve over time in regards to habitat quality (i.e., native species to not grow well in concrete and re-bar). The 0.08 acre area of encelia scrub is not considered ESHA.

First, California Gnatcatchers routinely occupy scrub consisting of bush sunflower mixed with coastal prickly-pear. If BonTerra was able to restore an area to dense sunflower mixed with prickly-pear there is no doubt they would consider this a success, and for a valid reason if the purpose was to create suitable habitat for California Gnatcatchers. The "compromised soil conditions" referred to above result from the land owner dumping rubbish in the native scrub. Although Ms. Johnston describes this basically as an intractable problem, the condition could, and should, be easily remedied by the land owner disposing of trash properly. What is most interesting, however, is the suggestion that California Gnatcatchers were erroneously mapped as nesting in this patch of scrub in 2002. This claim falls apart under the slightest scrutiny.

The "Appendix A" referred to by Ms. Johnston is the attached letter, dated 14 June 2011, which GLA biologist Tony Bomkamp wrote to Christine Medak of the USFWS. In this letter, Mr. Bomkamp discloses the following:

> During preparation of our submittal information to U.S. Fish and Wildlife Service for the Newport Banning Ranch Assessment, dated February 10, 2010, I noted that one of the [California Gnatcatcher] locations depicted in the year 2002 45-day report was incorrectly mapped. GLA corrected the error in our database such that the map February 10, 2010 submittal shows the corrected [California Gnatcatcher] location; however, I did not notice you of the change at that time.

COASTAL COMMISSION

EXHIBIT # 7
PAGE 4 OF

This is troubling on multiple levels. First, Mr. Bomkamp is admitting that he changed his company's database on Gnatcatcher locations and submitted the "corrected" version to the USFWS without mentioning the change. He does not explain why he waited more than a year to inform the Service (or anyone else) of this tampering with the original mapping. The implication is that either the mapping discrepancy was noticed, or was likely to be noticed, as people started paying close attention to the dots that are being used to represent bird ranges over the course of a season. This explains the need to issue this "damage control" letter in June 2011.

Second, Mr. Bomkamp is admitting that he changed the database *eight years after the fact* based on a "clear recollection" that his original mapping was wrong. Please examine Exhibit 2 attached to his letter. The location where he originally mapped "Pair 1" in 2002 (using two dots to represent two birds) was in the location described in Ms. Johnston's letter. His 2002 mapping shows this as a small, distinct area of green, which represented "bluff scrub or succulent scrub." Compare the 2002 map with Exhibit 1 in Ms. Johnston's letter and appreciate how clearly defined this area is – 0.08 acre of scrub in a small, bowl shaped canyon that stands apart from the more extensive patch of scrub to the west, where Mr. Bomkamp re-mapped the pair's location in 2010. According to Mr. Bomkamp, in 2002 he placed the two dots representing the Gnatcatcher pair in this rather conspicuous outpocket of scrub because he did not have access to "sub-meter GPS combined with highly accurate GIS technology." But the map in question does show topography, and the topography shown in that area is rather well defined: it is a small, bowl shaped canyon on the east side of the main canyon, set apart from the scrub in the mainstem of the canyon by a flat, cleared area. As a biologist and wetland delineator, Mr. Bomkamp has worked with topographic maps at a very fine level of detail for many years. In fact, in 2002 he mapped the scrub in this small canyon just as it appears today. It simply defies credibility for him to argue, *eight or nine years later*, that he mapped the birds in that little canyon in error, and that he intended to map them 100-200 feet away, on the west side of the mainstem of the canyon. The fact that Mr. Bomkamp admits to altering GLA's database in 2010, and then submitting the doctored map to the USFWS without notifying anyone of the change, is but one more valid reason to be skeptical of these very odd and unlikely claims.

Another remarkable aspect of this entire issue is the fact that Ms. Johnston and Mr. Bomkamp are treating the placement of the dots representing the gnatcatcher pair in 2002 as though they represent anything other than perhaps the location of a nest. In fact, California Gnatcatchers roam over substantial areas in search of food to feed themselves and their young. They routinely use small patches of sunflower and cactus, even when these areas are separated from larger patches of occupied scrub by distances of 55 feet or more. There is no credible argument otherwise, and so the tactic of BonTerra and GLA appears to be to convince everyone that "condensation points" represent appropriate and useful depictions of Gnatcatcher home ranges. If they are successful, perhaps the Coastal Commission will be persuaded to exclude from ESHA areas of suitable native coastal scrub that are, presumably, used regularly by California Gnatcatchers.

The CDP application for Sunset Ridge Park must be considered incomplete until all field data from the 2002, 2006, 2007 and 2009 studies is produced. Additionally, the more recent data from the 2010 and 2011 studies must be provided and considered. The doctoring of the 2002 map cannot be allowed to stand.

3. ESHA Protection:
The Coastal Act clearly states that ESHA must be protected from development. Section 30240 of the Coastal Act states:

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

4. Grading:
Grading is defined as "development" under the Coastal Act. Section 30106 states:

*"**Development" means**, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; **grading, removing**, dredging, mining, or extraction **of any materials**; **change in** the density or **intensity** of use of land, ... and **the removal or harvesting of major vegetation** ... .*

5. Buffers Defined:

The areas of setback between ESHA and development are known as "buffers".

Since the City of Newport Beach's Coastal Land Use Plan may serve as guidance, it defines "buffer" in Chapter 5, Pg. 5-4, as follows:

*"A **buffer is a development setback that provides essential open space between development and protected habitat**. Buffers keep disturbance at a distance, accommodate errors in estimation of habitat boundaries and **provide important auxiliary habitat** that may be used, for example, **for foraging**, maintenance of pollinators, or refuge from high tides. **Buffers should be measured from the delineated boundary of an ESHA or wetland** or, for streams, from the top of bank or landward edge of riparian vegetation, which ever provides the larger buffer."*

Under Govt. Code 65560(b) "open space land" is defined as:

"any parcel or area of land or water that is essentially unimproved and devoted to an open space use as defined in this section, and that is designated on a local, regional or state open-space plan as any of the following:

(1) Open space for the preservation of natural resources including, but not limited to, areas required for the preservation of plant and animal life, including habitat for fish and wildlife species, areas required for ecological and other scientific study purposes; rivers, streams and estuaries; and coastal beaches, lakeshores, banks of rivers and streams, and watershed lands."

The significance of the above is that "graded areas" cannot qualify as "unimproved land...for the preservation of natural resources..." Thus, under both state law and the Newport Beach LUP "buffer" definition "graded areas" are not open space and cannot serve as ESHA protection.

6. Coastal Act Precedent on Buffers:
In previous Coastal Commission decisions, ESHA buffers have been required to be as large as 600 feet (for raptors at Bolsa Chica). For Gnatcatchers, the most relevant example, based on its location on the Orange County coast and presence of a Gnatcatcher population, is the Marblehead project, in San Clemente. There, the Coastal Commission recommended ESHA buffers of 100 feet, with a minimum general requirement of 50 feet, with grading clearly excluded from ESHA buffers. Indeed, the owners of Banning Ranch brought up the Coastal Commission staff report on the Marblehead project in discussions with the City concerning Sunset Ridge (see Public Records on Sunset Ridge mowing, provided to Coastal Commission staff by the Banning Ranch Conservancy) further underlining its importance as a guiding document. According to the Commission staff report on Marblehead (March 2003),

Page 22 says, *"Upland ESHA shall have 100-foot wide (horizontally) buffers, where feasible. The minimum buffer width shall be 50 feet wide (horizontally).* ***There shall be no development, including grading, within 50 feet of ESHA boundaries and no grading within 50 feet of*** *coastal bluff scrub, Blochman's dudleya populations, native grasslands and* ***those stands of CSS within gnatcatcher use areas.****"*

Page 97 says, *"Other than the exceptions outlined below, there should be* ***no grading within 50 feet of ESHA boundaries****, and* ***no grading at any time within 50 feet of coastal bluff scrub*** *or native grasslands"*

While the "exceptions" were focal exceptions where a few ESHA buffers were less than 50 feet at Marblehead, the great majority of the Gnatcatcher ESHA had buffers ranging from 50 feet to over 100 feet.

In accordance with the legal and Coastal Act requirements for ESHA "buffers", in keeping with precedent-setting permitting decisions of the Coastal Commission on

COASTAL COMMISSION
EXHIBIT # 7
PAGE 7 OF

comparable proposed projects and even in line with the Newport Beach Coastal Land Use Plan, the appropriate "buffer" requirements for the Sunset Ridge Park project and roadway must be a minimum of 50 feet, a recommended minimum of 100 feet, and with no development permitted in the ESHA's or their "buffers".

7. Grading in Buffers and Restoration:
Based on the revised July 12, 2011, project plan proposal for the entrance road through Banning Ranch and into Sunset Ridge Park, the distance from the Coastal Commission staff's tentative (but not final until "field data" is secured) ESHA delineations to the edge of the grading range from 0 feet - 47 feet. *Nowhere do the ESHA buffers even reach the minimum 50 feet.*

Every effort is being made to "squeeze" in this road. The applicant wants to grade right through the buffers up to the edge of the ESHA boundaries, but promises to restore the buffers as Gnatcatcher habitat. Perhaps the applicants don't understand that nature, in this case the Gnatcatchers, do not follow our rules, but live by their own. And the Coastal Act (30240) requires that there not be "*any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those*" ESHAs and buffers. That excludes the applicant's bulldozers. To allow grading of the ESHA buffers along so much of the road, even if it is promised to be restored as Gnatcatcher habitat, would set a precedent and would require a re-interpretation of the Coastal Act. There are no preceding projects known to us where grading has been allowed in ESHA buffers, certainly not to the extent proposed here. Simply stated, there can be no grading in buffers. Grading is development and development is not allowed in buffers.

Additionally, there is no guarantee that the graded areas could be restored as viable Gnatcatcher habitat. The Gnatcatchers may not wait around a few years to see if the "new" habitat is successful. Plus, there are examples of failed habitat restoration programs in Southern California, such as Hobo Aliso Ridge, and Laguna Terrace Mobile Home Park in Laguna Beach, and the Campbell case in Torrance. These failures were due to a variety of unforeseen circumstances, any one of which could occur here, anywhere in this long process (keep in mind this is really two projects, one right after the other - Sunset Ridge followed by Banning Ranch). And due to staffing and fiscal shortages, monitoring and enforcement is often difficult.

Furthermore, it must be added that the applicant has a history of lack of cooperation. They mounted a strong contrary position against the Coastal Commission on the recent violations concerning the illegally cleared polygons, and despite ultimately signing the Consent Orders, wherein two of the polygons were declared to be ESHA, the applicant still publicly maintains that none of the cleared polygons represent ESHA. Additionally, despite requests from the Coastal Commission and the Banning Ranch Conservancy, the applicant has, to date, failed to produce requested information in the form of the "field data" on Gnatcatcher studies. Indeed, they refused to cooperate with Commission staff requests for a variety of information related to the application for the project.

8. The Banning Ranch Road:

It must be stated again that that this road would also be used as the entrance road for the anticipated Banning Ranch Development project. The EIR for the proposed Banning Ranch development, which was released for public review on September 9, 2011, envisions expansion of the Sunset Ridge Park entrance road to a four-lane primary roadway (Bluff Road) through the entire Banning Ranch property, including this portion of it that is attached to the Sunset Ridge project. If the four-lane entryway and two-lane road can be "squeezed" in for Sunset Ridge, and done so with minimal buffers and, even, grading, in those buffers, the plan may be to just keep "squeezing" to get the whole four lanes for the Banning Ranch development. There is an "Access Agreement" contract between the City of Newport Beach and the owners of Banning Ranch, and passed by the City Council as part of the approval of the Sunset Ridge Park project, that states that the two lanes being built for the Sunset Ridge project on Banning Ranch property "shall align with the two eastern lanes" of the road for the Banning Ranch development. Therefore, approval of this "squeezed" in road may, in some form, presage approval of the Banning Ranch project road.

9. Alternative Roadway:
There is an alternative to the proposed roadway on the Banning Ranch property, one that would exit off of Coast Highway directly onto the Sunset Ridge property, totally avoiding any involvement with the Banning Ranch property. While it may not serve the Council's goal to spur development of the Banning Ranch, it is a road that will fulfill all of the stated goals of the proposed Sunset Ridge Park project. Plus, it is an environmentally superior alternative, it is easier, simpler, costs much less to complete than the proposed roadway, and will relieve many of the concerns of the public and the Banning Ranch Conservancy relative to the proposed Sunset Ridge project. The Conservancy will provide additional information to the Coastal Commission on this alternative roadway under separate cover in the near future.

10. Vernal Pool/Wetlands:
The Banning Ranch Conservancy has identified at least four potential vernal pool/wetlands on the Banning Ranch property at the proposed dump site for the Sunset Ridge project. It is estimated that 40,000 cubic yards of excess dirt excavated from the Sunset Ridge/Banning Ranch roadway project will be dumped in the wetlands, thereby destroying them. Since the endangered San Diego Fairy Shrimp exists in other vernal pool/wetlands on Banning Ranch, it is possible they may also exist at this site. If not, it is highly probable that they would meet the Coastal Act definition of wetland and would need to be protected. As yet, no protocol studies have been conducted on these potential vernal pool/wetlands. Further, staff from the Commission and the USFWS were scheduled to visit the site to view and analyze the vernal pool/wetlands, but the owners of Banning Ranch denied staff permission to enter the property and canceled the visit.

11. Finally, it must be re-stated that Banning Ranch is the last large parcel of privately-held unprotected coastal open space remaining in Orange County. The contiguous Banning Ranch and Sunset Ridge properties are home to several listed endangered species and others of special concern. The proposed Newport Banning Ranch develop[illegible] nearly as large as the five previous large Orange County coastal

COASTAL COMMISSION

EXHIBIT # 7
PAGE 9 OF

developments, combined, and, at least, three times as dense as the next highest. With the Banning Ranch roadway attached to the Sunset Ridge Park project, the two projects actually comprise just one project. As a note, the Banning Ranch Conservancy is currently in litigation with the City of Newport Beach alleging that the City has violated the California Environmental Quality Act (CEQA) by segmenting the project between two Environmental Impact Reports and finding no cumulative or growth-inducing impacts from the City building a roadway that will spur the development of the Banning Ranch project. While the Coastal Commission may have no consideration for the litigation, we feel obligated to inform that the Commission may revisit this issue in the future.

Summary:
The proposed entrance road for the Sunset Ridge Park project, if permitted to be constructed as currently planned, would violate both the letter and intent of the Coastal Act, and establish a precedent where such future violations would be more commonplace. We assign no credibility to the claim of GLA and BonTerra that the mapping of California Gnatcatchers in 2002 was in error. As we have demonstrated, the area where the birds were originally mapped -- a small, scrub-filled canyon set apart from the main canyon -- is as obvious on the 2002 map as it is today. Tony Bomkamp's belated claim that he placed dots there in error, and that he really meant to put them in an area of much different topography 100-200 feet farther west, insults our intelligence. We have full faith in Mr. Bomkamp's ability to read a topographic map, and in 2002 he mapped the scrub in that small canyon with admirable accuracy. As ludicrous as it is to depict birds as occupying point locations, if this is the way the applicant's consultants insist on proceeding they must at least be honest about where the dots are placed.

Additional information is required from the applicant for the project, especially field data from Gnatcatcher studies and protocol studies for potential vernal pool/wetlands, among others. ESHA "buffers" must be a minimum of fifty feet, and preferably more, to adequately protect the resources -- with no grading permitted in those buffers. Approval of a roadway that is "squeezed" in for the Sunset Ridge Park project will provide the gateway for the massive Newport Banning Ranch development project. The roadway on the Banning Ranch property that is proposed for the Sunset Ridge project is not necessary, as a preferable alternative roadway is available.

The Banning Ranch Conservancy recommends denial of the Sunset Ridge Park project as currently proposed with the Banning Ranch roadway. If the applicant does not cooperate and provide all the requested and necessary information, the Conservancy would recommend denial with the opportunity for the applicant to re-submit the application with ALL the required information, including an alternative roadway that is environmentally superior to the one currently proposed.

For any questions or additional information, please feel free to contact the u[illegible] Steve Ray, Executive Director of the Banning Ranch Conservancy via email at

COASTAL COMMISSION

EXHIBIT # 7
PAGE 10 OF

steve.banningranch@hotmail.com, or via phone at 310-961-7610. You may also visit our website at www.banningranchconservancy.org. Thank you.

COASTAL COMMISSION

EXHIBIT # 7
PAGE 11 OF

August 23, 2011

RECEIVED
South Coast Region
AUG 30 2011
CALIFORNIA
COASTAL COMMISSION

California Coastal Commission
Attn: Mr. John Del Arroz, Coastal Program Analyst; & Mr. Karl Schwing, Supervisor, Planning & Regulation
200 Oceangate, 10th Floor
Long Beach, CA 90802-4302

Subject: Sunset Ridge Park Vehicle Access
Response to 8/12/11 Letter from Newport Crest HOA Board of Directors

Dear Mr. Del Arroz & Mr. Schwing:

As concerned residents of the Newport Crest community, we feel compelled to provide you with additional information in response to the recent letter you received from our Board of Directors (attached). We believe that our Board failed to reflect the majority opinion of its residents when it stated its preference for the "current evolving design" of the access road to Sunset Ridge Park.

Although we are not necessarily opposed to an entrance road to the park from Coast Highway, we are adamantly opposed to a road that would include the adjacent Banning Ranch property. Prior to the Board voting on the matter, they received several letters opposing their action to support the current road alignment. We are not aware of any letters received in support of such an action.

Additionally, the undersigned have had the opportunity to discuss the Banning Ranch issue with many of our neighbors and know firsthand the feelings of our community on the Banning Ranch issue. In an initial door-to-door campaign held December 2010, the overwhelming majority of those contacted expressed opposition to development on Banning Ranch and support for the property remaining as open space. We believe that an entrance road to the park that traverses onto the Banning Ranch property and includes an agreement with its property owners is, essentially, the first stage of development on the property.

Thank you for your consideration of our comments. Please contact Dorothy Kraus (medjkraus@yahoo.com, 949-337-6651) or Bill Bennett (shokobennett@gmail.com, 949-642-8616) if you would like to discuss this important matter further.

Respectfully,
Concerned residents of Newport Crest (signatures attached)

cc: Newport Crest Homeowners Association Board of Directors

Attachments (2)

August 23, 2011
Letter to California Coastal Commission
Re: Sunset Ridge Park Vehicle Access
Page 2

RECEIVED
South Coast Region
AUG 30 2011
CALIFORNIA
COASTAL COMMISSION

Signature	Address
Helen Nadel	
Richard F. Cruce	17 SWIFT COURT NPB 92663
Suzanne Forte	8 Summerwind Court
Mary Lee	7 Summerwind Court
Allan Jonta	8 Summerwind Court
[illegible]	17 Swift Ct, Newport Bch Ca 92
Dorothy & Michael Kraus	10 Wild Goose Ct Newport Beach Ca 926
Cathy Hale	7 Aries Ct.
Dave Sutherland	12 Summerwind
Natalie Sutherland	12 Summerwind
Bill Bento	10 ODYSSEY CT
Christy Schmidt	11 Summerwind Ct
Sandra McCaffery	9 Summerwind Ct
Mike Federoff	

COASTAL COMMISSION

EXHIBIT # 7
PAGE 13 OF

RECEIVED
South Coast Region

JUL 14 2011

CALIFORNIA
COASTAL COMMISSION

California Coastal Commission
c/o Karl Schwing and John Del Arroz
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

July 12, 2011

SUBJECT: City of Newport Beach – Sunset Ridge Park Project
Coastal Development Permit Application # 5-10-168

Dear Coastal Commissioners:

I am a resident of the Newport Shores community in Newport Beach. The Sunset Ridge Park Project is located just southeast of Newport Shores and I would like to express my support for this much needed park facility.

The western portion of Newport Beach is a wonderful place to live, but one thing the area is distinctly lacking is a modern park facility that is easily accessible to the general public. This park will not only be used by local Newport residents but by all of the surrounding Orange County communities.

Lack of parking commonly discourages many visitors from enjoying the coastal resources located in this area. The plans for the Sunset Ridge Park include ample parking for visitors to come and enjoy the park amenities and wonderful vista views that are not readily available to the general public.

As with most development projects in the Coastal Zone, the Coastal Commission staff may have concerns that development of the park will impact environmentally sensitive habitat areas (ESHA: protection policy of the Coastal Act Section 30240). I encourage the Commissioners to exercise their authority under the "balancing" provisions of sections 30007.5 and 30200 of the Coastal Act. In the case of the Sunset Ridge Project, balancing is perfectly appropriate to resolve conflicts between the ESHA policies of the Act and the policies of the Act which promote public access (Section 30210) and encouragement of lower cost visitor-serving and recreational facilities (Section 30213). On balance, the latter two provide a greater level of consistency with the Coastal Act.

Thank you for your consideration in this matter and I urge you to approve this much needed public park project.

SUPPORT

COASTAL COMMISSION

EXHIBIT # 8
PAGE 1 OF

Sincerely,

Paul Bopp

Paul A. Bopp
Resident
Newport Beach, CA

NEWPORT CREST
NEWPORT BEACH

RECEIVED
South Coast Region
AUG 17 2011
CALIFORNIA
COASTAL COMMISSION

August 12, 2011

CALIFORNIA COASTAL COMMISSION
Attention : Mr John Del Arroz, Coastal Program Analyst
Mr Karl Schwing, Supervisor, Planning and Regulation
200 Oceangate, 10th Floor
Long Beach, CA 90802-4302

Subject : Sunset Ridge Park Vehicle Access
Statement of Preference from Newport Crest Homeowners Association's Board of Directors

Dear Mr Del Arroz and Mr Schwing,

On behalf of the Board of Directors of the Newport Crest Homeowners Association, we are writing this letter in preference of vehicle access from PCH to SRP as city proposed. We have always and will continue to favor a completely passive park. The City has worked with Newport Crest HOA in developing this balanced park project which is both passive and active. In addition, the City has worked with addressing numerous issues raised by residents of Newport Crest HOA. The current proposed project design reflects this collaboration.

As the community which will be the most impacted by the development of the Sunset Ridge Park project, we believe the City has developed a project which considers public-need. We believe that the current evolving design is superior to other options contemplated and we urge the Commission to approve the project with the access entrance from PCH.

We understand the City has submitted an Alternative Access analysis that includes an entry from Superior or a potential pedestrian bridge/parking structure alternative off of Superior. We would strongly oppose any option that would create a point of vehicle ingress and egress to/from the Park from Superior Avenue, and any option that would block public views traveling on Superior Avenue. Both of these options would have a negative impact on our community and the general public.

Please note that our Board of Directors is an elected five member board representing 460 homes. The approval to send this letter of support was obtained at our scheduled meeting of the Board of Directors on August 11th, 2011. The vote was 3 to 2.

Sincerely,

COASTAL COMMISSION

Newport Crest HOA Board of Directors
Mark Gonzalez, Steve Porter, Ginny Lombardi, Mike Rosenthal, Sharon Boles

EXHIBIT # 8
PAGE 2 OF

Cc: Mike Sinacori, City of Newport Beach Assistant City Engineer (Public Works)
Dave Kiff, City of Newport Beach City Manager

HOMEOWNERS ASSOCIATION
201 Intrepid Street • Newport Beach, CA 92663 • 949.631.0925 • Fax 949.631.5433
www.NewportCrest.org

RECEIVED
South Coast Region
AUG 29 2011
CALIFORNIA
COASTAL COMMISSION

August 8, 2011

California Coastal Commission
C/O Karl Schwing and John Del Arroz
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

SUBJECT: City of Newport Beach – Sunset Ridge Park Project
Coastal Development Permit Application # 5-10-168

Dear Coastal Commissioners,

As a resident of the city of Newport Beach for the past 56 years I have seen first hand the urgent need for park and recreation facilities continue to be an ever-present issue facing the city and it's surrounding communities. I have six children all of whom have played youth sports within the community. Each year the field "load" increases and the availability of fields for youth sports continues to be a much talked about issue. The new park is part of the city charter and is a rare opportunity to add park areas to our city.

I have seen the impact of the lack of fields and the inability of letting the fields rest for best use.

As a past board member of AYSO Region 97 I see first hand the need for the facility and I urge you to continue with your plans for the successful building and completion of the Sunset Ridge Park. This will not only bring much needed facilities and sports accommodations to our community and our city but will also allow the 3,000+ youth athletes across all sports in our immediate area a place where they can continue to develop into healthy young adults.

As you know the city of Newport Beach offers many diverse opportunities for all lifestyles and this project would only enhance its viability and visibility within the Southern California Community.

The city engineers have worked tirelessly to make the part fit nicely in the neighborhood, adds a nice space for the environment, and adds a safe access to the park.

Thank You,

Ted Barry
Fields Manager
AYSO Region 97

COASTAL COMMISSION
EXHIBIT # 8
PAGE 1 OF

RECEIVED
South Coast Region

AUG 1 1 2011

CALIFORNIA
COASTAL COMMISSION

August 8, 2011

California Coastal Commission
C/O Karl Schwing and John Del Arroz
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

SUBJECT: City of Newport Beach – Sunset Ridge Park Project
Coastal Development Permit Application # 5-10-168

Dear Coastal Commissioners,

As a resident of the city of Newport Beach for the past 9 years I have seen first hand the urgent need for park and recreation facilities continue to be an ever-present issue facing the city and it's surrounding communities. I have three children all of whom play youth sports within the community. Each year the field "load" increases and the availability of fields for youth sports continues to be a much talked about issue.

As a board member of AYSO Region 97 I see first hand the need for the facility and I urge you to continue with your plans for the successful building and completion of the Sunset Ridge Park. This will not only bring much needed facilities and sports accommodations to our community and our city but will also allow the 3,000+ youth athletes across all sports in our immediate area a place where they can continue to develop into healthy young adults.

As you know the city of Newport Beach offers many diverse opportunities for all lifestyles and this project would only enhance its viability and visibility within the Southern California Community.

Thank You,

Alex Kassouf
Assistant Regional Commissioner
AYSO Region 97

COASTAL COMMISSION

EXHIBIT # 8
PAGE 1 OF

August 8, 2011

RECEIVED
South Coast Region

AUG 1 1 2011

CALIFORNIA
COASTAL COMMISSION

California Coastal Commission
C/O Karl Schwing and John Del Arroz
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

SUBJECT: City of Newport Beach – Sunset Ridge Park Project
Coastal Development Permit Application # 5-10-168

Dear Coastal Commissioners,

I understand that the Coastal Commission will be considering the proposed Sunset Ridge Park project in the city of Newport Beach at an upcoming hearing. I am writing to express my full support for approval of this project.

I've been a resident of the City of Newport Beach for the past 10 years and a resident of the immediate area for over 20 years. I am also an AYSO Region 97 Board member and a volunteer coach for the past 6 years. As such, I realize the need for additional park and recreation facilities in the City of Newport Beach. I have three children all of whom play youth sports within the community. Each year, the issue of field availability and quality is a topic of discussion amongst the community. With too few fields to adequately accommodate the local youth sports, existing fields get "over-played" which diminishes the quality and thus affects the experience for the youth athletes.

We have a desperate need for the additional soccer and baseball fields that would result from the completion of the Sunset Ridge Park project. The location is convenient for visitors and provides a unique, enjoyable playing environment for our 3000+ youth athletes with views that are truly representative of the City of Newport Beach. I know that the City carefully listened to the community and balanced the issues well in creating this outstanding park project. We are also pleased that ample parking and safe areas to load and unload equipment is provided with this project design.

Youth athletic programs play a critical role in guiding and developing our community's children into healthy young adults. This Sunset Ridge Park project will only improve our City's ability to accommodate these programs.

We urge you to approve this beautiful and much-needed public park project.

Thank you.

Sincerely,

Preston Kenney
AYSO Region 97 Board Member

COASTAL COMMISSION

EXHIBIT # 8
PAGE 5 OF

RECEIVED
South Coast Region

JUN 29 2011

CALIFORNIA
COASTAL COMMISSION

playNHBA.com

June 27, 2011

California Coastal Commission
c/o Karl Schwing and John Del Arroz
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

SUBJECT: City of Newport Beach – Sunset Ridge Park Project:
Coastal Development Permit Application # 5-10-168

Dear Coastal Commissioners:

We understand that the City of Newport Beach's Sunset Ridge Park project proposal will be considered by you at a Commission hearing in the very near future. On behalf of Newport Harbor Baseball Association, I am writing to express our full support for this project. Newport Harbor Baseball Association is comprised of over 600 families from Newport Beach, Costa Mesa, and the surrounding areas. Accordingly, we see first-hand the health and social benefits for our youth athletes from participating in these team activities.

Having adequate facilities for practices and games for our kids is critical. The youth baseball field and two soccer fields proposed as part of the City of Newport Beach's Sunset Ridge Park project are much-needed in this region. The location of this park is both convenient for visitors and unique in the beautiful vistas it offers.

As we were involved in some of the initial community meetings during the planning phase of this project, we know that the City carefully listened to the community and balanced the issues well in creating this outstanding park project. We are also pleased that ample parking and safe areas to load and unload equipment is provided with this project design.

We urge you to approve this beautiful and much-needed public park project.

Sincerely,

Lantz Bell
President
Newport Harbor Baseball Association

COASTAL COMMISSION

EXHIBIT # 8
PAGE 6 OF

RECEIVED
South Coast Region

JUL 7 - 2011

CALIFORNIA
COASTAL COMMISSION

June 30th, 2011

California Coastal Commission
c/o Karl Schwing and John Del Arroz
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

SUBJECT: City of Newport Beach – Sunset Ridge Park Project:
Coastal Development Permit Application # 5-10-168

Dear Coastal Commissioners:

We understand that the City of Newport Beach's Sunset Ridge Park project proposal will be considered by you at a Commission hearing in the very near future. On behalf of Newport Beach Bat Rays Youth baseball, I am writing to express our full support for this project. The Bat Rays is comprised of approximately 100 kids ranging from 8 years old to13 years old. Accordingly, we see first-hand the health and social benefits for our youth athletes from participating in these team activities.

Having adequate facilities for practices and games for our kids is critical. The youth baseball field and two soccer fields proposed as part of the City of Newport Beach's Sunset Ridge Park project are much-needed in this region. The genuine desire for new facilities has been expressed to me and our organization by numerous parents and residents of Newport Beach. The location of this park is both convenient for visitors and unique in the beautiful vistas it offers.

As we were involved in some of the initial community meetings during the planning phase of this project, we know that the City carefully listened to the community and balanced the issues well in creating this outstanding park project. We are also pleased that ample parking and safe areas to load and unload equipment is provided with this project design.

We urge you to approve this beautiful and much-needed public park project.

Thank you.

Sincerely,

Scott Liolios
Parent, Resident and Business Owner
Newport Beach, CA.

COASTAL COMMISSION

EXHIBIT # 8
PAGE 1 OF

September 12, 2011

Via Hand Delivery

Karl Schwing and John Del Arroz
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

RE: City of Newport Beach – Sunset Ridge Park Project [CDP Application No. 5-10-168]

Dear Karl and John:

Pursuant to our recent discussions, we are submitting the following to you for your consideration:

1. **Park Plan** (reduced copy attached; full-size copy was delivered to your office on August 12, 2011 and digital copy was emailed to you on August 25, 2011) This plan was revised to reflect our discussions and, in particular, the following design changes and staff suggestions:
   a. The reduction in width of the Park access road entrance at West Coast Highway from 85 ft. to 54 ft. – i.e. an approximately 36% reduction.
   b. The narrowing of the median near the Park access road entrance from 33 ft. down to 12 ft. – i.e. an approximately 63% reduction.
   c. The relocation of the proposed Park parking lot and "tot lot" to be further setback from the "southeast polygons."

2. **Updated Existing Vegetation Exhibit**: (reduced copy attached; full-size copy was delivered to your office on August 12, 2011) The content of the project vegetation plan has not been revised, but only updated to correspond with the aforementioned revised Park plan.

3. **Revised Planting Diagram**: (reduced and full-size copies) The planting diagram was updated to correspond with the scope of the aforementioned revised Park plan.

4. **Revised Grading Plan Exhibit**: (reduced and full size copies) This exhibit was prepared to correspond with the scope of the aforementioned revised Park plan.

COASTAL COMMISSION

EXHIBIT # 9
PAGE 1 OF

SCHMITZ & ASSOCIATES, INC.
PROVIDERS OF LAND USE PLANNING FOR A BETTER COMMUNITY
HEADQUARTERS - MALIBU OFFICE
29350 PACIFIC COAST HWY., SUITE 12
MALIBU, CA 90265
TEL: 310.589.0773 FAX: 310.589.0353
REGIONAL - CONEJO VALLEY OFFICE
5234 CHESEBRO ROAD, SUITE 200
AGOURA HILLS, CA 91301
TEL: 818.338.3636 FAX: 818.338.3423
EMAIL: INFO@SCHMITZANDASSOCIATES.NET WEBSITE: WWW.SCHMITZANDASSOCIATES.COM

5. **Supplemental Biological Report prepared by BonTerra**: Please find enclosed a report prepared by project consulting biologist Ann Johnston of BonTerra dated September 9, 2011. Please be advised that this report contains additional information to address specific points and concerns raised by CCC staff such as those related to alleged vernal pools and supersedes Ms. Johnston's reports dated June 29, 2011 and July 15, 2011. This September 9, 2011 report addresses the following items:

   - Banning Ranch Conservancy's vernal pools claims are unsubstantiated by professional biological assessments. Nevertheless, the applicant commissioned its consulting biologists - who also enlisted the services of a recognized vernal pool expert – to once again assess the four alleged vernal pools in the Park project's proposed spoils site. The enclosed report includes analysis and findings prepared through established and recognized professional protocol from established experts in the assessment of vernal pools. It is their collective conclusion that there are no vernal pools located within the Sunset Ridge Park project proposal, and specifically the subject spoils site.

   - Delineation of certain native vegetation boundaries along the Western and Eastern portions of the project site in the park entrance road area and assessment of the setback of the proposed project limits from these boundaries. It should be noted that this delineation is being provided in support of the City's project and its proposed areas of development. As such, this information is qualified as to the City's project only and has no application to areas beyond the boundary of the City's project boundary with the exception of a 50-foot buffer from any areas of proposed development;

   - Delineation of encelia scrub within the northwestern and southern portions of the project site that do <u>not</u> support any possible determinations of ESHA; and

   - Delineation of the location of native vegetation at the intersection of Pacific Coast Highway and Superior Avenue that do <u>not</u> support any possible determination of ESHA.

6. **Shapefiles**: As you know, on June 30th, we previously submitted on disc the requested CCC identified supposed native vegetation lines in AutoCAD format that were requested by Dr. Engel on the June 7, 2011 site visit. Pursuant to Mr. Del Arroz's email request dated August 11, 2011, please find enclosed a disc with BonTerra's GPS coordinates in a shapefile format. We have included Dr. Engel's identified native vegetation lines as well as the BonTerra identified westerly native vegetation line. As noted in the September 9, 2011 letter from BonTerra, BonTerra believes the western native vegetation line is further west of the line identified by Dr. Engel.

COASTAL COMMISSION

EXHIBIT # 9
PAGE 2 OF

7. **Raw Data**: The City's project biologist received an emailed request from Dr. Jonna Engel dated July 6, 2011 and a second request on August 22, 2011 for "the individual /pair sighting data underlying (that was compiled to create) your gnatcatcher survey single point observations." The City's policy is to not release this information as they are not public records.

   As you know, there is no professional protocol on the recordation of data gathered in the field and therefore the interpretation of said notes is appropriately made by the note taker her/himself. As you are also aware, the City has retained professionals to prepare technical biological documents for this project and said documents reflect the independent professional judgment of the consulting biologists, which is appropriately reviewed and considered by the California Coastal Commission (CCC) in its biological assessment of the project. If CCC Staff has specific questions about the findings in any of these reports, we can make our consulting biologists available at your convenience to review and discuss their conclusions with your office.

8. **Open Space Deed Restriction Request:** During our discussions, CCC staff suggested that an Open Space Deed restriction be imposed on the property adjacent to the access road as a special condition. As you know, this property is not owned by the City and therefore the City has no legal ability to consent to such a special condition. We understand that the owner of this property has not been contacted by CCC staff to discuss the matter. Further, based on our discussion with the property owner, we believe they will not agree to such a restriction. Given the Park project's scope of development and the limitations on the City's ability to impose restrictive covenants on privately-owned property, we believe this suggested special condition is unreasonable, disproportionate, and inappropriate.

9. **Areas Beyond the Project Boundary**: As noted above, certain data is being provided to you in support of the City's application, in response to CCC's staff request for additional information, and presumably to support CCC staff's recommendations on the City's Park project. As you know, in 2010, the City entered into an "Access Agreement Between the City of Newport Beach and Newport Banning Ranch, LLC Regarding Sunset Ridge Park", which facilitates the City's development of the Sunset Ridge Park by permitting the City to construct certain improvements within a designated easement area located on property owned by Newport Banning Ranch, LLC. Given the limited area in which the City's development is authorized, it is our position that, to the extent that the data requested references areas beyond the City's project area, such information is irrelevant, unqualified and cannot be used to support any findings for the City's application. One exception to this limitation, and

consistent with the City's Coastal Land Use Plan, is a 50-foot buffer area depicted from the City's development boundary area and, in some locations, extending slightly beyond the Access Agreement area.

10. **Digital Copies**. Please find enclosed a disc containing all of the items submitted to your office today with this transmittal. The requested shapefiles are located on a separate disc as noted above.

Thank you for your continuing assistance and consideration of the City of Newport Beach's Sunset Ridge Park project application. Should you have any questions, please do not hesitate to contact us.

Sincerely,
SCHMITZ & ASSOCIATES, INC.

Donna Tripp
Regional Manager

CC: Michael J. Sinacori, PE, City of Newport Beach
Ann Johnston, BonTerra
Teresa Henry, District Manager, CCC
Sharilyn Sarb, Deputy Director, CCC
Dr. Jonna Engel, Ecologist, CCC

Attachments:
Revised Site Plan (Aerial & Topographic formats, reduced size)
Revised Site Plan with Existing Vegetation Shown (Aerial & Topographic formats, reduced size)
Revised Planting Diagram (reduced and full size)
Revised Earthwork Exhibit – Dated September 1, 2011 (reduced and full size)
BonTerra Supplemental Biological Resource letter dated September 9, 2011 (this letter replaces and supersedes the pevious letters submitted by Bonterra's Ann Johnston dated June 29, 2011 and July 15, 2011)
Disc containing requested shapefiles.
Disc containing digital copies of today's submittal.

BonTerra CONSULTING

PASADENA COSTA MESA

T: (714) 444-9199 F: (714) 444-9599 | 151 Kalmus Drive, Suite E-200
www.BonTerraConsulting.com | Costa Mesa, CA 92626

September 9, 2011

Mr. Michael Sinacori, P.E.
Public Works Department
City of Newport Beach
330 Newport Boulevard
Newport Beach, California 92663

VIA EMAIL
MSinacori@city.newport-beach.ca.us

Subject: Supplemental Biological Resource Information for the Sunset Ridge Park Project

Dear Mr. Sinacori:

This Letter Report presents supplemental information regarding biological information requested by the California Coastal Commission (CCC) staff for specific biological information listed below, and supersedes our previous letters submitted on June 29 and July 15, 2011 regarding biological resources. The following specific items requested by CCC staff have been addressed in this letter:

- delineation of the BonTerra and CCC native vegetation boundary along the western portion of the project site in the park entrance road area,
- delineation of the BonTerra and CCC native vegetation boundaries along the eastern portion of the park entrance road and proposed park natural open space area;
- delineation of encelia scrub within the northwestern and southern portions of the project site that do not support potential determinations of Environmentally Sensitive Habitat Area (ESHA);
- delineation of the location of native vegetation at the intersection of West Coast Highway (WCH) and Superior Avenue that do not support a determination of ESHA; and
- lack of vernal pools on the project site.

At the outset, the City of Newport Beach wishes to clarify the scope of its response. The CCC staff's request was made in order to assist in the preparation of a staff recommendation on the City's application for a Coastal Development Permit (CDP) for its proposed Sunset Ridge Park project. The application proposes development on three separate areas: (1) development of the park on 13.7 acres owned by the City; (2) development of a two-lane access road from WCH to the park on approximately 7 acres of land owned by Aera/Cherokee over which the City has an agreement with Newport Banning Ranch LLC for access over that portion of its property used for the access road; and (3) placement of fill on 4 acres of property also owned by Aera/Cherokee. Therefore, for purposes of responding to the CCC staff's questions, the information addresses those three areas that are the subject of the City's CDP application.

CCC Western Native and Non-Native Vegetation

The vegetation line that was delineated by CCC biologist Dr. Jonna Engel on the June 7, 2011 site visit as the western native vegetation boundary occurs along the western portion of the project site, west of the proposed park entrance road on property owned by Aera/Cherokee (Exhibit 1). The native vegetation boundary identified by CCC staff in

COASTAL COMMISSION
EXHIBIT # 9
PAGE 5 OF

this area includes substantial areas dominated by myoporum (*Myoporum laetum*) and hottentot fig (*Carpobrotus edulis*), non-natives that do not constitute high value habitat areas in the opinion of the BonTerra biologists. BonTerra's opinion is that any designation of areas of significance should be further to the west.

The existing dirt/gravel access road on the Aera/Cherokee property is on average 44 feet (0-feet closest point/99-farthest point) from the limits of CCC western native vegetation boundary. The proposed construction limits in this same area will be the closest to the CCC western native vegetation boundary at two locations (18 and 12 feet). The remainder of the construction limits will be on average 38 feet from the CCC western native vegetation boundary.

The finished road edge will be 47 feet from the CCC western native vegetation boundary at its closest point. The remainder of the road edge will be on average 69 feet from this CCC western native vegetation boundary. In addition, the road will on average be 7 feet lower in elevation than the western most edge of construction (i.e., the road will be below natural grade). When compared to WCH, the CCC western native vegetation boundary is 58 feet from WCH. The 2-lane park access road will be at an average greater distance away from the CCC western native vegetation boundary than from the existing and heavily traveled WCH.

WCH in this location includes 6 lanes of traffic. According to the project Environmental Impact Report (EIR), existing noise level contours of 65 and 60 dba CNEL occur within 50 and 170 feet into the project in the vicinity of the proposed access road. Relative to the CCC western native vegetation boundary, these noise contours cover approximately 50 percent of the area identified by CCC as western native vegetation. Based on the most recent gnatcatcher surveys, gnatcatchers have been located within the 60 dba CNEL contour, which indicates that the gnatcatchers in the area have become accustomed to the long-term, existing noise that is generated by traffic along WCH. With the addition of the 2-lane park access road, which is at a greater distance from this mapped CCC western native vegetation boundary, the noise levels will not appreciably increase within the area already generated by WCH.

BonTerra Western Native and Non-Native Vegetation and Fragments

Four small fragmented areas of habitat (with a higher occurrence of native vegetation than surrounding areas) occur separate from the western native vegetation boundary identified by CCC staff. The mapping of the fragmented areas focused on those native plant that are important nesting and foraging elements for the coastal California gnatcatcher. In this area, these plants include bush sunflower (*Encelia california*), mule fat (*Baccharis salicifolia*), goldenbush (*Isocoma menziesii*), and arroyo willow (*Salix lasiolepis*). Areas that were not included within the fragmented areas include vegetation dominated by non-native, invasive species such as hottentot fig, pampas grass (*Cortaderia selloana*), and myoporum. The fragmented areas with a higher occurrence of native plant species have been known to support gnatcatchers in conjunction with the habitats west of the CCC identified western native vegetation boundary under consideration. The three southernmost and smallest areas contain scattered mule fat and bush sunflower, with a significant understory of hottentot fig. The forth area to the north primarily contains arroyo willow and mule fat, with scattered sunflower and a significant understory of hottentot fig throughout this area. In total, these four small areas are 0.137 acre in size.

The native vegetation boundary identified by BonTerra biologists extends off the project site to the west of the western vegetation boundary, further onto the Aera/Cherokee property. This western vegetation boundary area includes vegetation of a higher biological value that those areas identified by CCC staff due to the lower occurance of invasive/non-native species species and connection of vegetation to other high value areas.

COASTAL COMMISSION

EXHIBIT # 9
PAGE 6 OF

BonTerra Eastern Native Vegetation

The area identified as the BonTerra eastern native vegetation boundary occurs along the eastern portion of the project access road. Two eastern boundary lines are again depicted on Exhibit 1. The green line is the extent of native vegetation identified by Bon Terra biologist, and the red line is where the CCC staff biologist would establish the native vegetation boundary line. This area also coincides with planned park natural open space. These boundaries were delineated by focusing on those native plants that are important nesting and foraging elements for the coastal California gnatcatcher. In this area, these plants include bush sunflower, goldenbush, California buckwheat *(Eriogonum fasciculatum)*, bladderpod *(Isomeris arborea)*, mule fat, saltbush (*Atriplex* sp.), coastal cholla *(Opuntia prolifera)*, and coastal prickly pear (*Opuntia littoralis)*. Areas that were not included within the eastern vegetation boundary include those areas dominated by non-native, invasive species such as hottentot fig, myoporum, tocalote (*Centaurea melitensis*), crystalline iceplant (*Mesembryanthemum crystallinum*), castor bean (*Ricinus communis*), and black mustard (*Brassica nigra*). This entire BonTerra eastern native vegetation area is 0.75 acre in size.

CCC Eastern Native Vegetation

The area identified as the CCC eastern native vegetation boundary occurs along the eastern portion of the project access road. This area also coincides with planned park natural open space.

The existing dirt/gravel access road on the Aera/Cherokee property is on average 83 feet (0-feet closest point/154-farthest point) from the limits of the CCC eastern native vegetation boundary. The proposed construction limits in this same area will be 8 feet at its closest point to the eastern native vegetation boundary. The remainder of the construction limits will be on average 28 feet from the CCC eastern native vegetation boundary.

The finished road edge will be 51 feet from the CCC eastern native vegetation boundary at its closest point. The remainder of the road edge will be on average 85 feet from this eastern native vegetation boundary. In addition, the road will be between 8 feet and 31 feet lower in elevation than the western edge of the CCC eastern native vegetation boundary (i.e., the road will be below natural grade). When compared to existing WCH, the CCC eastern native vegetation boundary is 59 feet from existing WCH at its closes point. The 2-lane park access road will be at an average greater distance away from the CCC eastern native vegetation boundary than the existing WCH.

The proposed park also includes a parking area to the east of the CCC eastern native vegetation boundary. At its closest point the parking area will be 51 feet from the CCC eastern native vegetation boundary. In addition to this horizontal difference, there will be a vertical distance of between 10 and 15 feet, to provide an additional barrier between parking lot activities and the CCC eastern native vegetation boundary.

As discussed previously for the CCC western native vegetation boundary, the EIR documents the existing noise level contours of 65 and 60 dba CNEL, which occur within 50 and 170 feet into the project in the vicinity of the proposed access road. Relative to the CCC eastern native vegetation boundary, these noise contours cover approximately 50 percent of the area identified by the CCC as the eastern native vegetation boundary. Based on the most recent gnatcatcher surveys, gnatcatchers have been located within the 60 dba CNEL contour to the west, which indicates that the gnatcatchers in the area have become accustomed to the long-term, existing noise that is generated by traffic along WCH. The addition of the park access road at a greater distance from this mapped eastern native vegetation boundary, will not appreciably increase the noise levels.

0.08-Acre Encelia Scrub - Northwestern Patch

This vegetation type is dominated by bush sunflower, with several coastal prickly pear. The vegetation in this area occurs within a small bowl shaped area that has been partially filled with large pieces of concrete and re-bar. The presence of a monotypic cover of bush sunflower, with little to no understory species in the small area, is common for this species that frequently occurs within areas subject to disturbance. Although gnatcatchers may periodically fly across the existing dirt/asphalt road (approximately 55-feet wide in this area), this area is not expected to provide important nesting opportunities for gnatcatchers in the area. Due to a mapping error, this area had previously been identified as the location of a pair of gnatcatchers in 2002 by Glenn Lukos Associates. This erroneous location has been corrected (Appendix A). Based on the lack of known nesting observations, the lack of existing vegetation diversity, and significantly compromised soil conditions, this area is not expected to improve over time in regards to habitat quality (i.e., native species do not grow well on concrete and re-bar). This 0.08 acre area of encelia scrub does not have high biological value and is not considered potentially sensitive.

0.10-Acre Encelia Scrub - Southern Patch

This vegetation type is dominated by bush sunflower, with California buckwheat and saltbush occurring in lesser quantities. The vegetation in this area is surrounded on all sides by large concrete culverts that are actively maintained. These culverts are frequently used by pedestrians in the area to cross the park site, or by skate board riders who utilize the site culverts for jumps. In addition, this area is immediately adjacent (within 10 feet) of manufactured slopes along WCH that are subject to regular vegetation and trash removal by Caltrans. In addition, 6 lanes of 50-mile per hour traffic occurs within 26 feet of this area. Although gnatcatchers may periodically use this area (e.g., during the non-breeding season), this habitat patch is less than optimal in support of nesting gnatcatchers and their long term survival in this area. The 0.10 acre area of encelia scrub does not have high biological value and is not considered potentially sensitive

0.09-Acre Encelia Scrub/Ornamental Patch

A small area of encelia scrub/ornamental occurs at the intersection of WCH and Superior Avenue on a slope manufactured by Caltrans. This area supports fragmented bush sunflower, saltbush, mule fat, hottentot fig, pampas grass, and bare ground (Exhibit 1). This area is also surrounded by large concrete culverts (both upslope and downslope) that are actively maintained. These culverts are also frequently used by pedestrians and skate board riders. In addition, this area is also immediately adjacent (within 10 feet) of manufactured slopes along WCH that are subject to regular vegetation and trash removal by Caltrans. In addition, 10 lanes (including turn lanes) of traffic occur within 60 feet of this area. Although gnatcatchers may periodically use this area (e.g., during the non-breeding season), this habitat patch is less than optimal in support of nesting gnatcatchers and their long term survival in this area. The 0.09 acre area of encelia scrub/ornamental vegetation does not have high biological value and is not considered potentially sensitive.

Vernal Pool Habitat

Although no vernal pool habitat had previously been documented on the project site, at the request of the City, BonTerra Consulting Biologist Allison Rudalevige conducted a site visit on July 11, 2011 with Michael Sinacori to confirm the absence of vernal pool resources. Ms. Ruadlevige is a biologist with both vegetative and hydrological expertise relative to vernal pools and is also permitted by the U.S. Fish and Wildlife Service (10(a) permit:TE177979-0) to conduct surveys for listed fairy shrimp.

No vernal pools were observed onsite. However, Ms. Rudalevige did note three areas of cracked soils, a potential indicator of ponding water. These areas were dominated by a mix of perennial and annual vegetation including, but not limited to, deerweed (*Acmispon glaber* [*Lotus scoparius*]), fascicled tarweed (*Deinandra fasciculata* [*Hemizonia fasciculata*]), white-stem gum-plant (*Grindelia camporum*), curly dock (*Rumex crispus*), foxtail chess (*Bromus madritensis* ssp. *rubens*), soft chess (*Bromus hordeaceus*), and wild oat (*Avena* sp.). Moving south along the access road to the proposed fill site, vegetation was increasingly dominated by hottentot fig with smaller amounts of tocalote, non-native grasses, black mustard, and crystalline iceplant.

In order to determine whether these, or any other portions of the access road/fill area, are considered "vernal pools", one must consider not just whether the areas hold water temporarily during the rainy season, but also the biological characteristics of the area. A Manual of California Vegetation (Sawyer, Keeler-Wolf, and Evens 2009) considers vernal pools to be "seasonally wet habitats with high levels of biological diversity described as 'complex ecosystems' including plants, insects, and crustaceans". According to the Recovery Plan for Vernal Pool Ecosystems of California and Southern Oregon (USFWS 2005), almost all California vernal pool plants are annuals and many are endemic and exhibit unique adaptations to survive in vernal pools.

The vegetation observed on the project site is predominantly upland and there is a large amount of perennial species present. Plant species characteristic of the vernal pools (e.g., perennial spike rush [*Eleocharis macrostachya*] and woolly marbles [*Psilocarphus brevissimus*]) and ephemeral ponds know to occur in the area (e.g., woolly marbles, goldfields [*Lasthenia californica*] and grass poly [*Lythrum hyssopifolium*]) were not observed during the site visit. Therefore, due to the lack of plant species characteristic of vernal pools, lack of sustained/observable ponding over multiple years of surveys onsite, the project site does not contain vernal pools.

The City received a PowerPoint Presentation from the Banning Ranch Conservancy (BRC) titled "Complete Banning Ranch Mesa Vernal Pools/Wetlands, First Edition - 6-27-11" on August 15, 2011 provided by Terry Welsh. The information contained in this PowerPoint provides no evidence of vernal pools. Vernal pools (as described above) must consider not just whether the areas hold water temporarily during the rainy season, but also the biological characteristics of vernal pools that include the unique assemblages of native plants, insects, and crustaceans. The BRC PowerPoint does not utilize any appropriate vernal pool identification protocol for this resource issue, as it does not document ponding duration, soil types present, plant indicator species, invertebrate activity, and other necessary parameters. Never the less, our office conducted a second field review on August 31, 2011 of the areas identified on PowerPoint slide 6 as features 34, 35, 36 and 39. These features identified by BRC occur in the proposed fill site. Tony Bomkamp from GLA and Jeff Crain from BonTerra were present for this second field review. Mr. Bomkamp is a permitted expert with the USFWS regarding vernal pools and also performs graduate level instructions on the subject at California State University Fullerton. Mr. Crain is also permitted by the USFWS to conduct surveys for listed fairy shrimp (10(a) permit:TE-047998-1). Photographs of each area are provided to show the lack of any vernal pool habitat (Exhibit 2). Mr. Bomkamp provided the following statement regarding the field walk and his observations:

> "On August 31, 2011, I attended a site visit with biologists Ann Johnston and Jeff Crain of BonTerra Consulting to review four features identified as pools 34, 35, 36, and 39 in the Banning Ranch Conservancy Power Point Presentation dated June 27, 2011. After reviewing the features, it is clear that none of the four features are vernal pools as all of the features lack vernal pool indicator plant species and all of the features occur on previously graded areas and exhibit a predominance of upland plant species such as fascicled tarplant (*Deinandra fasciculata*, UPL), soft chess (*Bromus hordeaceus*, FACU), and coastal goldenbush (*Isocoma menziesii*, UPL)."

Based on the EIR and the two subsequent field reviews in July and August 2011 we again assert and conclude that no vernal pool habitat is present on the Sunset Ridge Park project site.

Conclusions

The park project has been revised at the request of CCC staff to further avoid direct impacts to those areas identified as the western and eastern native vegetation boundaries by CCC staff in the areas to the west and east of the 2-lane park access road. For both the western and eastern areas (as defined by CCC), the road limits will be on average 76 feet from the boundaries. In addition, a significant portion of the access road will be either below the grade of the native vegetation boundaries or substantially above the grade of the native vegetation boundaries (e.g. the park parking area). Because construction impacts will occur outside of the native vegetation boundaries with an average distance of 34 feet from the native vegetation boundaries, any construction within the vicinity of the western and eastern native vegetation boundaries are not expected to impact the root zones of the native sage scrub plants based on known root structure forms for these species. Construction impacts are temporary in nature and will also involve removing a significant amount of invasive, non-native species that are currently detrimental to the native vegetation. The removal of the non-native species during construction will be a benefit to the native vegetation and gnatcatchers in the area.

The park site does not contain vernal pools, and no additional surveys or documentation regarding this issue is warranted for the project.

The proposed park site is expected to provide adequate avoidance from both direct and indirect impacts to important biological resources through modifications of the proposed plan and implementation of EIR mitigation measures (Attachment C). No additional buffers or areas of avoidance are warranted beyond that which is illustrated in the current proposed City plan.

BonTerra Consulting appreciates the opportunity to assist with this project. Please contact Ann Johnston at (714) 444-9199 if you have questions or comments.

Sincerely,

BONTERRA CONSULTING

Ann M. Johnston

Ann M. Johnston
Principal

Attachments: Exhibit 1
Exhibit 2
Attachment A – Glen Lukos Associates Memorandum
Attachment B – Biological Resource Mitigation Measures

R:\Projects\EPTDes\J002\Engle_Comments_Letter_Revised-090911.doc

Native Vegetation Aerial View

Exhibit 1

BBC Features 34, 35, 36, and 39

Exhibit 2

Sweet Ridge Pad

Map not to scale

Prepared by Pentera Consulting

ATTACHMENT A

GLEN LUKOS ASSOCIATES MEMORANDUM

COASTAL COMMISSION

EXHIBIT # 9
PAGE 13 OF

MEMORANDUM

GLENN LUKOS ASSOCIATES

Regulatory Services

PROJECT NUMBER: 04720008BANN

TO: Christine Medak

FROM: Tony Bomkamp

DATE: June 14, 2011

SUBJECT: Clarification Regarding CAGN Mapping from 2002 Protocol Surveys Conducted by Glenn Lukos Associates for West Newport Oil

---

During preparation of our submittal information to U.S. Fish and Wildlife Service for the Newport Banning Ranch Biological Assessment, dated February 10, 2010, I noted that one of the CAGN locations depicted in the year 2002 45-day report was incorrectly mapped. GLA corrected the error in our database such that the map in February 10, 2010 submittal shows the corrected CAGN location; however, I did not notice you of the change at that time.

The correction was made for the location of Pair Number 1 as this pair was incorrectly depicted approximately 100-200 feet east of the actual location where this pair was observed. Exhibit 1 shows the incorrect location as depicted on the 2002 map and the corrected location, which is consistent with all of the mapping that we have provided to you. I did not notice this error at the time the mapping was prepared and submitted in 2002 and only became aware of this during the preparation of the documents for the Biological Assessment. I would note that GLA did not have GIS Technology in 2002 and the map was prepared by attaching "sticky dots" to the base map, a process that was not as accurate as using sub-meter GPS combined with highly accurate GIS technology. The actual location of the pair, based on a clear recollection of their location (I conducted the surveys personally) was on the slope immediately adjacent to the area later designated as the Northwest Polygon during the processing of the Notice of Violation recently completed with the California Coastal Commission. Attached is a copy of the original 2002 map showing the location of Pair 1 and the February 10, 2010 map that shows the corrected location for the 2002 survey. As already noted, this corrected location is shown on all maps that have been submitted beginning with the February 10, 2010 submittal as well as in all submittals to the Coastal Commission relative to the recent Notice of Violation and Consent Order.

This does not in any way affect the analysis of use areas or carrying capacity that has been performed in support of the Biological Assessment, nor does it affect the proposed mitigation. My purpose for submitting this at this time is to ensure that the record is as accurate as possible. Exhibit 1 is a close-up of the area showing the incorrect location and the corrected location. Exhibit 2 is the original 2002 map and Exhibit 3 is the revised and accurate composite map submitted to you in February of 2010.

29 Orchard • Lake Forest • California 92630-8300
Telephone: (949) 837-0404 Facsimile: (949) [illegible]

COASTAL COMMISSION

EXHIBIT # 9
PAGE 14 OF

ATTACHMENT B
BIOLOGICAL RESOURCE MITIGATION MEASURES REGARDING COASTAL SAGE SCRUB AND GNATCATCHER IMPACTS FROM THE MITIGATION MONITORING AND REPORTING PROGRAM

SUNSET RIDGE PARK PROJECT, NEWPORT BEACH, CALIFORNIA SCH NO. 2009051036

MM 4.6-1: Project-related activities likely to have the potential to disturb suitable bird nesting habitat shall be prohibited from February 15 through August 31, unless a Project Biologist acceptable to the City of Newport Beach surveys the Project area prior to disturbance to confirm the absence of active nests. Disturbance shall be defined as any activity that physically removes and/or damages vegetation or habitat or any action that may cause disruption of nesting behavior such as loud noise from equipment and/or artificial night lighting. Surveys shall be conducted weekly, beginning no earlier than 30 days and ending no later than 3 days prior to the commencement of disturbance. If an active nest is discovered, disturbance within a particular buffer shall be prohibited until nesting is complete; the buffer distance shall be determined by the Biologist in consideration of species sensitivity and existing nest site conditions. Limits of avoidance shall be demarcated with flagging or fencing. The Biologist shall record the results of the recommended protective measures described above and shall submit a memo summarizing any nest avoidance measures to the City of Newport Beach to document compliance with applicable State and federal laws pertaining to the protection of native birds.

Similarly, for preserved vegetation that occurs within 50 to 100 feet of construction activities, if construction is occurring during the nesting season, preserved vegetation shall be surveyed for the presence of nesting birds.

MM 4.6-2: To the maximum extent practicable, habitats that provide potential nest sites for raptors/burrowing owls shall be removed from September 1 through January 31. If Project construction activities are initiated during the raptor/burrowing owl nesting season (February 1 to August 31), a nesting raptor/burrow survey shall be conducted. Seven days prior to the onset of construction activities, a qualified Biologist shall survey within the limits of the proposed Project disturbance area for the presence of any active raptor nests/burrows (common or special status). Any nest/burrow found during survey efforts shall be mapped on the construction plans. If no active nests/burrows are found, no further mitigation would be required, and survey results shall be provided to the CDFG.

If nesting activity is present, the active site shall be protected until nesting activity has ended to ensure compliance with Section 3503.5 of the California Fish and Game Code. To protect any nest/burrow site, the following restrictions on construction are required between February 1 and August 31 (or until nests/burrows are no longer active, as determined by a qualified Biologist): (1) Clearing limits shall be established a minimum of 300 feet in any direction from any occupied nest/burrow and (2) access and surveying shall be restricted within 200 feet of any occupied nest/burrow. Any encroachment into the 300- and/or 200-foot buffer area(s) around the known nest/burrow shall only be allowed if a qualified Biologist determines that the proposed activity shall not disturb the nest occupants. During the non-nesting season, proposed work activities can occur only if a qualified Biologist has determined that fledglings have left the nest/burrow.

If an active nest/burrow is observed during the non-nesting season, a qualified Biologist shall monitor the nest site; when the raptor/owl is away from the nest, the Biologist shall flush any raptors to open space areas or exclude the owl from the burrow and then remove the burrow so the owl cannot return.

COASTAL COMMISSION

EXHIBIT # 9
PAGE 15 OF

MM 4.6-3: The NCCP/HCP does not authorize Incidental Take resulting from the conversion of habitat occupied by coastal California gnatcatchers in Existing Use Areas. Consistent with Federal Endangered Species Act (FESA) processes, the City has two options to mitigate for the impacts to the coastal California gnatcatcher:

a. On-site avoidance of habitat that would constitute Incidental Take of gnatcatcher habitat or

b. Mitigation of Incidental Take through a Section 7 or Section 10 process.

In addition, the following construction-related minimization measures shall be required:

1. All activities involving the removal of gnatcatcher/coastal sage scrub habitat shall be prohibited during the breeding and nesting season (February 15 to July 15) unless otherwise directed by the USFWS.

2. The use of any large construction equipment during site grading shall be prohibited within 200 feet of an active gnatcatcher nest during the breeding and nesting season of these species (February 15 to July 15) unless otherwise directed by the USFWS.

3. All areas containing habitat suitable for occupation by the gnatcatcher adjacent to the impact area shall be delineated by the use of orange snow fencing or the use of lath and ropes/flagging.

4. All grubbing operations shall be monitored by a qualified Biologist. The monitoring Biologist shall ensure that only the amount of coastal sage scrub habitat approved for removal by the USFWS will be removed.

5. The monitoring Biologist shall flush gnatcatchers from occupied habitat areas immediately prior to brush-clearing and earth-moving activities. It shall be the responsibility of the monitoring Biologist to assure that gnatcatchers shall not be directly impacted by brush-clearing and earth-moving equipment in a manner that also allows for construction activities on a timely basis.

6. If construction occurs during the nesting season, a summary of construction monitoring activities shall be provided to the USFWS and the CDFG following completion of construction.

Following the completion of initial clearing activities, all areas of coastal sage scrub habitat to be avoided by construction equipment and personnel shall be marked with temporary fencing or other appropriate markers clearly visible to construction personnel. No construction access, parking, or storage of equipment shall be permitted within such marked areas.

MM 4.6-4: Implementation of the Project would result in the loss of 0.41 acre of coastal sage scrub habitat. Permanent impacts on coastal sage scrub vegetation shall be mitigated at a two to one (2:1) ratio on the Project site or in suitable off-site locations in the Newport Beach/Costa Mesa area. A 2:1 ratio for mitigation is appropriate for the habitat impacted which is non-typical for gnatcatchers and subject to degradation by invasive, non-native species. A coastal sage scrub restoration plan shall be prepared by the City prior grading activities. The City shall be responsible for implementing the restoration plan. Restoration shall consist of seeding and planting of containers of appropriate coastal sage scrub species and cactus cuttings. The restoration areas shall be maintained and monitored by the City until the success criteria documented in the restoration plan have been met.

COASTAL COMMISSION

EXHIBIT # 9
PAGE 16 OF

The restoration plan shall contain the following items.

1. ***Responsibilities and qualifications of the personnel to implement and supervise the plan.*** The responsibilities of the landowner, specialists, and maintenance personnel that shall supervise and implement the plan shall be specified.

2. ***Site selection.*** The site shall be located in a dedicated open space area and shall be contiguous with other natural open space areas.

3. ***Site preparation and planting implementation***, including protection of existing native species; trash and weed removal; native species salvage and reuse (i.e., duff); soil treatments (i.e., imprinting, decompacting); erosion control measures (i.e., rice or willow wattles); and seed mix application.

4. ***Schedule.*** Establishment of restoration/revegetation sites shall be conducted between October and January 30. Seeding and planting of container plants shall take place immediately after preparation of the restoration sites.

5. ***Maintenance plan/guidelines.*** The maintenance plan shall include weed control; herbivory control; trash removal; irrigation system maintenance; maintenance training; and replacement planting.

6. ***Monitoring Plan.*** The monitoring plan shall be conducted for three years, depending upon the performance of the mitigation site, and shall include qualitative monitoring (i.e., photographs and general observations); quantitative monitoring (i.e., randomly placed transects); performance criteria; and monthly reports for the first year, bimonthly reports thereafter, and annual reports for all three years.

7. ***Long-term preservation.*** Long-term preservation of the site shall be outlined in the conceptual mitigation plan to ensure the mitigation site is not impacted by future development. A conservation easement and a performance bond shall be secured prior to implementation of the site.

8. ***Identification of performance standards for the revegetation of coastal sage scrub.*** Restoration shall be considered successful at three years if the percent cover and species diversity of the restored and/or created habitat areas are similar to percent cover and species diversity of adjacent existing habitats, as determined by quantitative testing of existing, restored, and created habitat areas.

In addition, earth-moving equipment shall avoid maneuvering in areas outside the identified limits of grading in order to avoid disturbing open space areas that would remain undeveloped. Prior to grading, the natural open space limits shall be marked by the Construction Supervisor and the Project Biologist. These limits shall be identified on the grading plan. No earth-moving equipment shall be allowed within the open space areas.

COASTAL COMMISSION

EXHIBIT # 9
PAGE 17 OF

GLENN LUKOS ASSOCIATES
Regulatory Services

September 19, 2011

COASTAL COMMISSION

EXHIBIT #_____
PAGE_____OF_____

Erin McCarthy
U.S. Fish & Wildlife Service
6010 Hidden Valley Road
Carlsbad, California 92009

SUBJECT: Results of Dry-Season Survey for Listed Fairy Shrimp for a Single Feature at the 412.5-acre Newport Banning Ranch Property, City of Newport Beach and Unincorporated Orange County, Orange County, California

Dear Ms. McCarthy:

Please accept this letter and attachments as the final report regarding the results of a dry-season survey for listed fairy shrimp within a single feature (BRC 39) at the above referenced property. The survey of the subject feature was conducted in coordination with Chris Medak of USFWS, who suggested that a dry-season survey for this feature be conducted.

The Newport Banning Ranch property is approximately 412 acres and is located within both the City Newport Beach as well as an unincorporated portion of Orange County. The property is located north of Pacific Coast Highway (PCH), east of the Santa Ana River, south of 19th Street, and west of existing residential and commercial areas. The Project is situated within Unsectioned areas of Township 6 South, and Range 10 West of the USGS Newport Beach 7.5' Topographic quadrangle maps [Exhibit 1 – Vicinity Map]. The Study Area occurs at Universal Transverse Mercator (UTM) coordinates 412214 mE and 3722187 mN.

As noted in our September 14, 2011 notification, David Moskovitz (TE-084606-1) is the point of contact for GLA and Frank Wegscheider (TE-038716-2) conducted the dry-season sampling in accordance with the U.S. Fish and Wildlife Service Vernal Pool Branchiopods Survey Guidelines (USFWS 1996). The survey was limited to one disturbed feature located near the southeast corner of the site consisting of a low area in a drainage swale that currently supports a predominance of upland grasses and forbs but which ponded water in late December 2010 following extreme rainfall events. A photograph of BRC 39 is included as Exhibit 2.

COASTAL COMMISSION

29 Orchard ▪ Lake Forest ▪ California 92630-8300
Telephone: (949) 837-0404 Facsimile: (949) 837-5834

EXHIBIT # 10
PAGE 1 OF

METHODS

Soil Collection

Soil sample collection was conducted by Frank Wegscheider and followed the USFWS Interim Survey Guidelines to Permittees for Recovery Permits Under Section 10(a)(1)(A) of the Endangered Species Act for the Listed Vernal Pool Branchiopods (April 1996). The subject feature was sampled at 10 equidistant points starting at the edge of the feature continuing lengthwise and widthwise, including at least two samples from the lowest portions. Soil samples of approximately 100-milliliter (ml) aliquots were removed at each sub-sample site (for a total of 1 liter/ponded area) and transferred to labeled plastic bags for future analysis. The feature had been previously mapped by Tony Bomkamp of GLA using sub-meter global positioning system (GPS) technology and photographed.

Soil Analysis

USFWS-approved branchiopod biologist Frank Wegscheider conducted soil analyses. Soil samples were placed into a one-gallon plastic container and allowed to pre-soak in water. The resulting slurry was slowly poured into a graded set of stacked U.S. standard eight-inch soil sieves (710, 300, and 150 micron), while concurrently being gently washed with flowing water. Water was directed through the samples for a time period sufficient to wash all of the resting eggs (cysts) into the 150-micron sieve. Soil remaining in the 150-micron and 300-micron sieves was used for analysis. The Project site lies outside of the currently documented range of the federally endangered vernal pool tadpole shrimp (*Lepidurus packardi*), which is endemic to California's Central Valley; therefore, it was unnecessary to examine the 300-micron sample. Nonetheless, the 300-micron sample was examined for the presence of cladoceran ephippia. To facilitate the analyses, the 150-micron samples were transferred to a saturated sodium chloride (NaCl) solution whereupon the organic components were twice decanted. The remaining organic contents were then examined under a Bausch & Lomb dissecting microscope at 10-30X for the presence of anostracan cysts.

RESULTS OF THE 2011 DRY-SEASON STUDY

Anostracan (fairy shrimp) cysts were not detected within the feature and it is concluded that listed fairy shrimp, specifically the San Diego fairy shrimp does not occur within this feature. Notably, cysts of widespread and common seed shrimp (Ostracoda) were also not detected within the feature. A number of hexapod (insect) parts were found in the soil samples taken from this feature but were not identified to species.

Table 1: Feature BCR 39					
Subsample number	Cyst quantity	Genus/species	Ostracod cysts	Hexapod exoskeleton	Cladocera ephippia
1	0	N/A	0	+	0
2	0	N/A	0	+	0
3	0	N/A	0	+	0
4	0	N/A	0	+	0
5	0	N/A	0	+	0
6	0	N/A	0	+	0
7	0	N/A	0	+	+
8	0	N/A	0	+	+
9	0	N/A	0	+	+
10	0	N/A	0	+	0

DISCUSSION

In our notification, we noted that based on separate site assessments conducted by BonTerra Consulting permitted Biologists Allison Rudalevige (TE177979-0) and Jeff Crain (TE-047998-1)[1] as well as by Tony Bomkamp of GLA (TE-825679-1 - permit currently inactive), BRC-39 is not a vernal pool, lacking not only vernal pool indicator species but also lacking a predominance of wetland indicator plants along with a complete absence of indicators for hydric soils, showing that it rarely ponds and then for only short duration. The dry-season survey results confirm this, and the lack of not only Anostracan cysts but also cysts of Ostracoda demonstrates that the feature as noted ponds at best rarely, and when it does (i.e., following extreme rainfall in late December 2010), the ponding lasts for only brief periods. In our notification, GLA proposed a modified protocol consisting of one dry-season sampling as a "complete" survey in the event that fairy shrimp cysts are absent, including the listed San Diego fairy shrimp and common versatile fairy shrimp (both of which are absent). Given the complete absence of Anostracan cysts, GLA believes that the dry-season survey has definitively demonstrated that listed species do not occur within feature BRC-39 due to the lack of suitable habitat and that a "Complete" survey has been accomplished for this feature. No additional wet- or dry-surveys are necessary.

[1] The results of the BonTerra's review of the site relative to potential areas of seasonal ponding are included in a report dated September 9, 2011 referencing: *Supplemental Biological Resource Information for the Sunset Ridge Park Project*. This report was submitted to Chris Medak of your office.

COASTAL COMMISSION

EXHIBIT # 10
PAGE 3 OF

If you have any questions regarding this request, please call me at (949) 837-0404, ext. 42, or Tony Bomkamp at ext. 41.

I certify that the information in this survey report and attached exhibits fully and accurately represents my work.

GLENN LUKOS ASSOCIATES, INC.

	TE-084606-1	9/19/2011
David F. Moskovitz Biologist	Permit #	Date

s:0472-8a.2011_dry survey_90 day.doc

CC: Christine Medak (U.S. Fish and Wildlife Service)
Jonna Engel (California Coastal Commission)

GLENN LUKOS ASSOCIATES

Exhibit 1

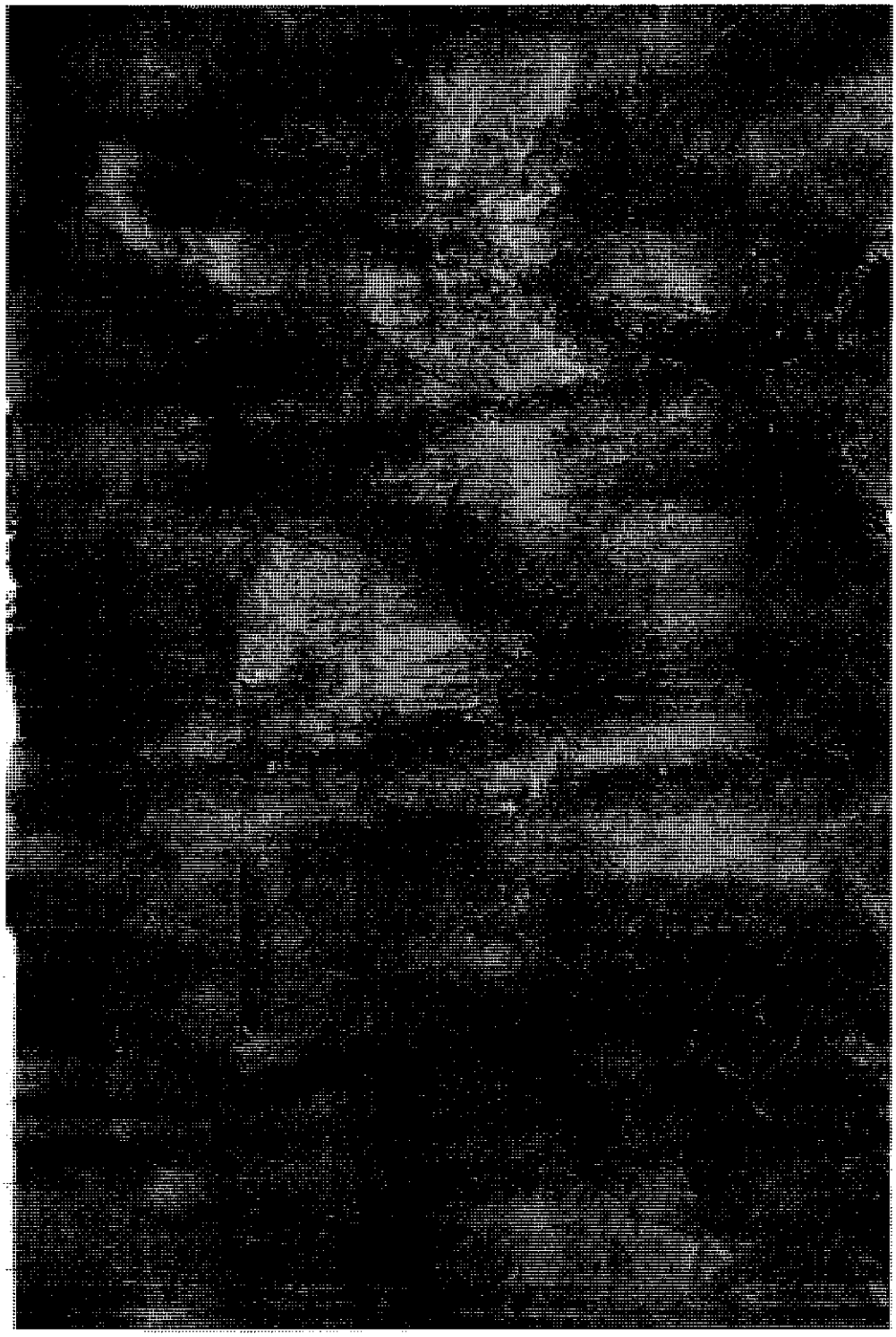
NEWPORT BANNING RANCH

Vicinity Map

Adapted from USGS Newport Beach, CA quadrangle

NORTH

0 1,000 2,000 4,000 Feet



Feature BRC-39 exhibiting predominance of upland vegetation. No fairy shrimp cysts were detected.

GLENN LUKOS ASSOCIATES

EXHIBIT 2

NEWPORT BANNING RANCH

Fairy Shrimp Surveys: Site Photograph

COASTAL COMMISSION

EXHIBIT # 10

PAGE 6 OF

Tom Brohard and Associates

September 16, 2011

Mr. Steve Ray, Executive Director
Banning Ranch Conservancy
PO Box 16071
Newport Beach, CA. 92659-6071

SUBJECT: Sunset Ridge Park – Access Review and Safety Evaluation

Dear Mr. Ray:

As requested, Tom Brohard, P.E., has reviewed access alternatives for the proposed Sunset Ridge Park at the northwest corner of West Coast Highway and Superior Avenue in the City of Newport Beach. This evaluation included a field review of the existing conditions at the park site with you on August 30, 2011 as well as review of various documents relating to the Proposed Project including:

- October 2009 Traffic Impact Study prepared by Kimley-Horn and Associates
- Letters from Schmitz & Associates to the California Coastal Commission
- A 1"=50' scale topographic map provided by the City of Newport Beach

From my review of these documents and information gathered during my field review at the site, direct driveway access from the Sunset Ridge Park site to West Coast Highway about 350 feet west of Superior Avenue as shown on the enclosed Conceptual Drawing is the best alternative from a traffic engineering viewpoint. This report explains the current traffic conditions as well as those that are expected to occur in 2013 with development of Sunset Ridge Park and provides technical traffic engineering support for direct driveway access to West Coast Highway. While concerns regarding traffic safety of this access (Alternative B) have been expressed in the March 2, 2011 letter from Schmitz & Associates to the California Coastal Commission, those concerns have been dramatically overstated, are not supported by traffic engineering analyses, and do not reflect the conditions that will occur with direct access from Sunset Ridge Park to West Coast Highway.

Education and Experience

Since receiving a Bachelor of Science in Engineering from Duke University in Durham, North Carolina in 1969, I have gained over 40 years of professional engineering experience. I am licensed as a Professional Civil Engineer both in California and Hawaii and as a Professional Traffic Engineer in California. I formed Tom Brohard and Associates in 2000 and now serve as the City Traffic Engineer for the City of Indio and as Consulting Transportation Engineer for the Cities of Big Bear Lake, Mission Viejo, and San Fernando. I have extensive experience in traffic engineering and transportation planning. During my career in both the public and private sectors, I have reviewed numerous environmental

COASTAL COMMISSION
EXHIBIT # 11
PAGE 1 OF

81905 Mountain View Lane, La Quinta, California 92253-7611
Phone (760) 398-3885 Fax (760) 398-3897
Email tbrohard@earthlink.net

documents and traffic studies for many projects in California. Several recent assignments are highlighted in the enclosed resume.

Trip Generation of Proposed Project

From Table 5 on Page 16 of the October 2009 Sunset Ridge Park Traffic Impact Study, the development of two soccer fields at the site is forecast to generate 143 daily trips. Of these, two trips including one inbound and one outbound are forecast to occur during the weekday AM peak hour. In the weekday PM peak hour, 42 trips including 29 inbound and 13 outbound are forecast.

While these traffic volumes are extremely low, Land Use 488, Soccer Complex, in Trip Generation, 8th Edition published by the Institute of Transportation Engineers (ITE) notes "Caution should be used when applying these data. Peaking at soccer complexes typically occurred in time periods shorter than one hour. These peaking periods may have durations of 10 to 15 minutes."

The City Department of Parks and Recreation will utilize staggered scheduling between games on each soccer field. Assuming there will be 30 minutes between the end of one game and the start of warm up for the next game on each field, trips would be spread out over the entire PM peak hour as follows:

- Field 1 game ends at 5:00 PM; next Field 1 game warm up begins at 5:30 PM
  - 7 outbound vehicles depart between 5:00 PM and 5:15 PM
  - 15 inbound vehicles arrive between 5:15 PM and 5:30 PM

- Field 2 game ends at 5:30 PM; next Field 2 game warm up begins at 6:00 PM
  - 6 outbound vehicles depart between 5:30 PM and 5:45 PM
  - 14 inbound vehicles arrive between 5:45 PM and 6:00 PM

Staggering of Ending and Starting Times for Games

In my recent review of traffic and parking issues associated with up to 13 fields in simultaneous operation at the Youth Athletic Park in the City of Mission Viejo, it was confirmed that staggered scheduling of ending times and starting times of games is necessary to avoid traffic and parking problems.

On Page 8 of the March 2, 2011 letter to the California Coastal Commission, the City recognized the importance of staggered scheduling by stating "As proposed by the City Department of Parks and Recreation, scheduling of the games will be managed by this Department to ensure that they are adequately staggered such that the majority of participants in games are leaving the Park before participants in a subsequent game are arriving."

COASTAL COMMISSION

EXHIBIT # 11
PAGE 2 OF

Page 14 of the same March 2, 2011 letter to the California Coastal Commission contradicts the proposed staggered scheduling and identifies a "Stacking Traffic Hazard" at the driveway stating "...given that these games will have specific start times (and specific end times), the likelihood of visitors arriving (and departing) at similar times is great; this presents a potential stacking problem, especially if adequate deceleration and right-turn in lanes are not or cannot be provided."

Queuing (Stacking) of Traffic at Project Driveway

With the extremely low traffic volumes spread out across the PM peak hour with planned staggered scheduling between games, the arrival rate would average one vehicle per minute in the peak 15 minutes before warm up for the next game. There would be no queuing on the driveway itself after entering from West Coast Highway based on the very low entering traffic volumes and the access road distance of about 300 feet between West Coast Highway and the parking area. Any queuing on West Coast Highway would be nominal with only a short duration to allow pedestrians on the sidewalk to pass or westbound bicyclists in the bike lane to cross the driveway. A "potential stacking problem" would not occur.

Right Turn Deceleration Lane

According to Figure 5-25 on Page 5-55 of Transportation and Land Development, 2nd Edition published by ITE, right turn bays (lanes) are recommended when the right lane volume equals or exceeds 350 vehicles per hour. The forecast of 29 inbound right turns in the PM peak hour for two soccer fields at Sunset Ridge Park is less than 10 percent of the recommended minimum right turn volume that is needed for a right turn lane. A commercial type driveway approach with curb radius returns of 25 feet on both sides would facilitate entry and exit at the driveway (in contrast to a dustpan type driveway approach).

W. Coast Highway/Superior Avenue/W. Balboa Boulevard Signal Operation

Existing lane configurations and traffic control at the five intersections evaluated in the October 2009 Traffic Impact Study for Sunset Ridge Park (referenced above) are shown in that report in Figure 3 on Page 7. No geometric or operational changes are planned through 2013 at Intersection #4, West Coast Highway and Superior Avenue/West Balboa Boulevard. This intersection is controlled by a traffic signal that includes protected left turn green arrows for each leg and U-turns prohibited in all four directions. Northbound traffic on West Balboa Boulevard and southbound traffic on Superior Avenue proceeds at different times rather than simultaneously. The two right turn lanes from Superior Avenue to West Coast Highway receive a right turn green arrow at the same time as eastbound left turns are made from West Coast Highway to Superior Avenue.

COASTAL COMMISSION

EXHIBIT # 11
PAGE 3 OF

Calculations of the traffic signal operation on West Coast Highway at Superior Avenue/West Balboa Boulevard are included in Appendix C to the October 2009 Traffic Impact Study for various conditions. For Cumulative Conditions (existing volumes plus growth plus committed and cumulative projects) together with Project traffic in the PM peak hour in 2013, Page 10-1 indicates this intersection would operate at Level of Service C with an average delay of 28.9 seconds per vehicle. The traffic signal cycle, the amount of time needed to serve each movement at this intersection, is 100 seconds or just less than two minutes. At different times during each traffic signal cycle, westbound traffic on West Coast Highway at the Park access driveway includes northbound left turns from West Balboa Boulevard, southbound right turns from Superior Avenue, and westbound through traffic on West Coast Highway. Near the bottom of the calculation sheet, the green time allocated to each of these three movements for PM peak hour conditions in 2013 with Project traffic is calculated (Green/Cycle) as follows:

- Northbound left turns from West Balboa Boulevard – 14 percent
- Southbound right turns from Superior Avenue – 39 percent
- Westbound through traffic on West Coast Highway – 46 percent

It is very important to note that traffic volumes are heavier at the beginning of each green signal display for these three movements. Toward the end of each of these three signal phases, traffic is lighter and more spread out, resulting in fewer vehicles passing the proposed Park access driveway as well as correspondingly larger gaps.

While the calculations indicate the westbound traffic volumes on West Coast Highway are high during the weekday PM peak, left turns from West Balboa Boulevard can be made safely at up to 30 miles per hour and southbound right turns from Superior Avenue can be made safely at up to 25 miles per hour on a green light for these turning movements. At other times, right turning traffic from southbound Superior Avenue is faced with a red signal indication requiring these vehicles to stop. As discussed below, vehicles turning right from the Park driveway will have ample sight distance and time to perceive and then react to turning traffic from West Balboa Boulevard and from Superior Avenue before entering West Coast Highway.

Page 14 of the March 2, 2011 letter to the California Coastal Commission states "...due to rapid speeds of drivers using the dual right-turn lanes from southbound Superior onto West Coast Highway particularly on uninterrupted (constant green) and downhill speeds from Superior onto the Highway..." As discussed above, southbound right turns from Superior Avenue can only be safely made at up to 25 miles per hour on a green light to avoid losing control, and the green indication for this movement is displayed only 39 percent of the time. Concerns expressed regarding the "downhill speeds from Superior" and the "uninterrupted (constant green)" are unfounded.

COASTAL COMMISSION
EXHIBIT # 11
PAGE 4 OF

OCTA Bus Stop on West Coast Highway

OCTA provides local bus service on Pacific Coast Highway between San Clemente and Long Beach every day with a bus stop and bus shelter located on the north side of West Coast Highway about 150 feet west of Superior Avenue. Northbound service on OCTA Route 1 is provided 16 times per weekday with stops approximately every hour between 5:48 AM and 9:16 PM. During the PM peak hour, northbound busses are scheduled to stop at this location at 4:22 PM and at 5:28 PM. Northbound OCTA Route 1 stops at this location 14 times on Saturdays between 6:55 AM and 7:57 PM and 14 times on Sundays and holidays between 7:00 AM and 7:56 PM.

According to data collected in January 2010 by Stops and Zones at OCTA, an average of one passenger got on/three passengers got off the 4:22 PM bus and two passengers got on/eight passengers got off the 5:28 PM bus at this location. The unloading and loading of passengers at this bus stop typically takes less than 60 seconds. While the OCTA Route 1 bus may wait at this stop, a time point, if it is running ahead of schedule, this rarely occurs during congested conditions in the PM peak hour. Temporary stopping of the OCTA northbound Route 1 bus for less than 60 seconds once each peak hour (less than the amount of time of 100 seconds needed for the traffic signal to serve all movements at West Coast Highway and Superior Avenue/West Balboa Boulevard) has a nominal impact and should not create any issues or conflicts with the proposed Sunset Ridge Park access driveway.

Geometry at West Coast Highway Park Access

The access driveway for the proposed Sunset Ridge Park is proposed to be located near the western edge of the Park frontage on West Coast Highway about 350 feet west of Superior Avenue. Turning movements at the driveway would be restricted to only right turns in and only right turns out by the existing raised median on West Coast Highway. Traffic entering West Coast Highway from the driveway would be required to stop before turning right.

At this location about 350 feet west of Superior Avenue/West Balboa Boulevard, the West Coast Highway roadway provides three westbound travel lanes and a westbound bicycle lane. From the 1"=50' scale topographic map provided by the City of Newport Beach and my field review, the inside westbound vehicle lane closest to the raised median is about 13 feet wide, the center westbound vehicle lane is about 12 feet wide, the outside westbound vehicle lane closest to the north curb is about 22 feet wide, and the westbound bicycle lane is about 8 feet wide. In the area of the proposed driveway, the four westbound lanes on West Coast Highway that end about 200 feet west of Superior Avenue/West Balboa Boulevard gradually transition to three westbound lanes about 800 feet west of Superior Avenue/West Balboa Boulevard, resulting in a gradual narrowing of the

outside westbound vehicle lane. A sidewalk about 11 feet wide is also provided along the Park frontage in this area.

As identified in the October 2009 Traffic Impact Study, 42 trips including 29 inbound and 13 outbound are forecast in the PM peak hour for the two soccer fields proposed at Sunset Ridge Park. These trips would be spread out over the entire PM peak hour with the staggered scheduling of games proposed and managed by the City's Department of Parks and Recreation. From the example earlier in this report, entering trips would average one vehicle per minute during the peak 15 minutes of the PM peak hour and exiting trips would average less than one vehicle every two minutes during the peak 15 minutes of the PM peak hour. These volumes are extremely light. From my experience and considering the geometry and lane widths on West Coast Highway, there would be no unusual conditions or circumstances at this driveway that would negatively impact traffic safety as has been alleged in different letters from Schmitz & Associates to the California Coastal Commission.

Sight Distance at West Coast Highway Park Access

From my field review of the site, the posted speed limit on West Coast Highway in this area is 50 MPH. In addition, Page 14 of the March 2, 2011 letter to the California Coastal Commission states that "...the average measured speeds on West Coast Highway are 52 MPH." Since the California Department of Transportation (Caltrans) has jurisdiction over West Coast Highway, this report follows the provisions of their Highway Design Manual rather than those contained in A Policy on Geometric Design of Highways and Streets 2004 published by the American Association of State Highway and Transportation Officials.

For urban driveways, Page 200-26 of the Highway Design Manual states "Corner sight distance requirements are not applied to urban driveways." Instead, Caltrans uses stopping sight distance as the controlling criteria. Stopping sight distance is comprised of brake reaction time (the distance traveled from the instant the driver sights an object necessitating a stop to the instant the brakes are applied) plus braking distance (the distance needed to stop the vehicle from the instant brake application begins). Stopping sight distance is based on the design speed of the roadway, a speed that is typically about 10 miles per hour higher than the posted speed limit. Based upon the posted speed limit of 50 MPH, a design speed of 60 MPH should be used to evaluate sight distance at the proposed driveway location.

Table 201.1 on Page 200-1 of the Highway Design Manual indicates 580 feet of stopping sight distance should be provided for a design speed of 60 MPH. At this location, the right turning vehicle would be able to easily turn into the 22 foot wide third westbound travel lane or could alternatively utilize a portion of the 8 foot

wide bicycle lane as to accelerate and safely merge into the westbound West Coast Highway vehicle traffic lanes.

Left turns from West Balboa Boulevard to West Coast Highway can be safely made at up to 30 MPH on a green light. The view of approaching left turning traffic on a green light from West Balboa Boulevard at a "worst case" of 30 MPH requires 200 feet of stopping sight distance. The stopping sight distance from the driveway 350 feet west exceeds 200 feet and is more than adequate.

Right turns from Superior Avenue to West Coast Highway can be safely made at up to 25 MPH on a green light. The view of approaching right turning traffic on a green light from Superior Avenue at a "worst case" of 25 MPH requires 150 feet of stopping sight distance. The stopping sight distance from the driveway of 350 feet west exceeds 150 feet and is more than adequate.

From the proposed driveway location 350 feet west of Superior Avenue on West Coast Highway, the view of approaching through traffic on West Coast Highway at 60 MPH requires 580 feet of stopping sight distance. The stopping sight distance from the driveway of more than 600 feet (through and beyond the east crosswalk across West Coast Highway at the east side of Superior Avenue/West Balboa Boulevard) is more than adequate.

Page 13 of the March 2, 2011 letter to the California Coastal Commission states "In order for a driver to safely decelerate while traveling westbound on West Coast Highway to safely turn onto the City property directly, he/she would have to begin decelerating well before the intersection of Superior and West Coast Highway resulting in unsafe driving speeds on West Coast Highway." Based on my field review and measurements from the City's scaled topographic map, this statement is incorrect. Drivers westbound on West Coast Highway will be turning into the park access driveway at about 15 MPH. The 45 MPH change in speed from the design speed of 60 MPH to the right turn speed of 15 MPH requires about 500 feet and would begin at the east crosswalk of the Superior Avenue/West Balboa Boulevard intersection, not "well before the intersection."

Page 14 of the March 2, 2011 letter to the California Coastal Commission states "Moreover, as the Park will host visiting youth athletes, many Park users may not be familiar with the Park location until a sign at the intersection of Superior and West Coast Highway becomes visible resulting in attempts to rapidly and unsafely decelerate along westbound West Coast Highway in order to turn into the Park access road per Alternative B."

While guide signing for the park on West Coast Highway should be located west of Superior Avenue, the sign legend would be clearly visible to westbound motorists on West Coast Highway prior to Superior Avenue. These motorists will be able to begin reacting to the directional sign before entering the signalized

COASTAL COMMISSION

EXHIBIT # 11
PAGE 7 OF

intersection. Most first time visitors to the park would probably receive directions to the park and/or use their GPS devices. These motorists would be cautiously looking for the park rather than traveling at high speeds on westbound West Coast Highway. First time visitors turning left at up to 30 MPH from West Balboa Boulevard or turning right at up to 25 MPH from southbound Superior Avenue will have ample time to see and react safely to the park directional signing.

Design Considerations for Park Access Roadway and Parking

As indicated earlier in this report, it would be desirable to construct a commercial type driveway approach at West Coast Highway with curb radius returns of 25 feet on both sides to facilitate entry and exit. The access should provide two 13 foot wide travel lanes, one inbound and one outbound. A relatively flat area immediately behind the driveway for one vehicle (about 20 feet in length) should be provided. A roadway design profile of 7 percent, commonly used for local streets, would be adequate for the park access. With a difference in elevation between West Coast Highway and the lower mesa in the park of about 20 feet, the roadway would "daylight" into the park about 300 feet north of West Coast Highway, about midway across the park site and directly into the parking lot as it has been currently designed.

As illustrated on the enclosed conceptual drawing, the access roadway would be located a minimum of 50 feet from the ESHA. Changing the access to a direct driveway connection to West Coast Highway would require the redesign and relocation of about 30 parking spaces that are currently shown at the entrance to the parking area as it has been designed. The enclosed conceptual drawing illustrates three different areas that should be considered to replace the 30 parking spaces and include the following:

- Construct perpendicular parking on both sides of the alternate access driveway just before it enters the parking area.
- Change parallel parking to perpendicular parking along the west side of the parking area.
- Expand the parking area as currently designed to the east so it is closer to the proposed baseball diamond and relocate any potentially conflicting features from the expanded parking area.

Summary of Access Review and Safety Evaluation

In summary, a direct driveway connection between Sunset Ridge Park and West Coast Highway is the best of several different access options to serve this facility. As discussed throughout this letter, I disagree with many of the comments in the March 2, 2011 letter to the California Coastal Commission. In my professional opinion, right turns in to and out of a driveway located on the north side of West Coast Highway about 350 feet west of Superior Avenue/West Balboa Boulevard

can be made safely and no adverse traffic impacts will occur. With West Coast Highway under the jurisdiction of Caltrans, an encroachment permit will be needed before the driveway can be built. With the proximity of the existing bus stop, OCTA Stops and Zones should also be given the opportunity to review the final plans for the driveway.

If you have questions regarding these comments, please call me at (760) 398-8885 your convenience.

Respectfully submitted,

Tom Brohard and Associates

Tom Brohard

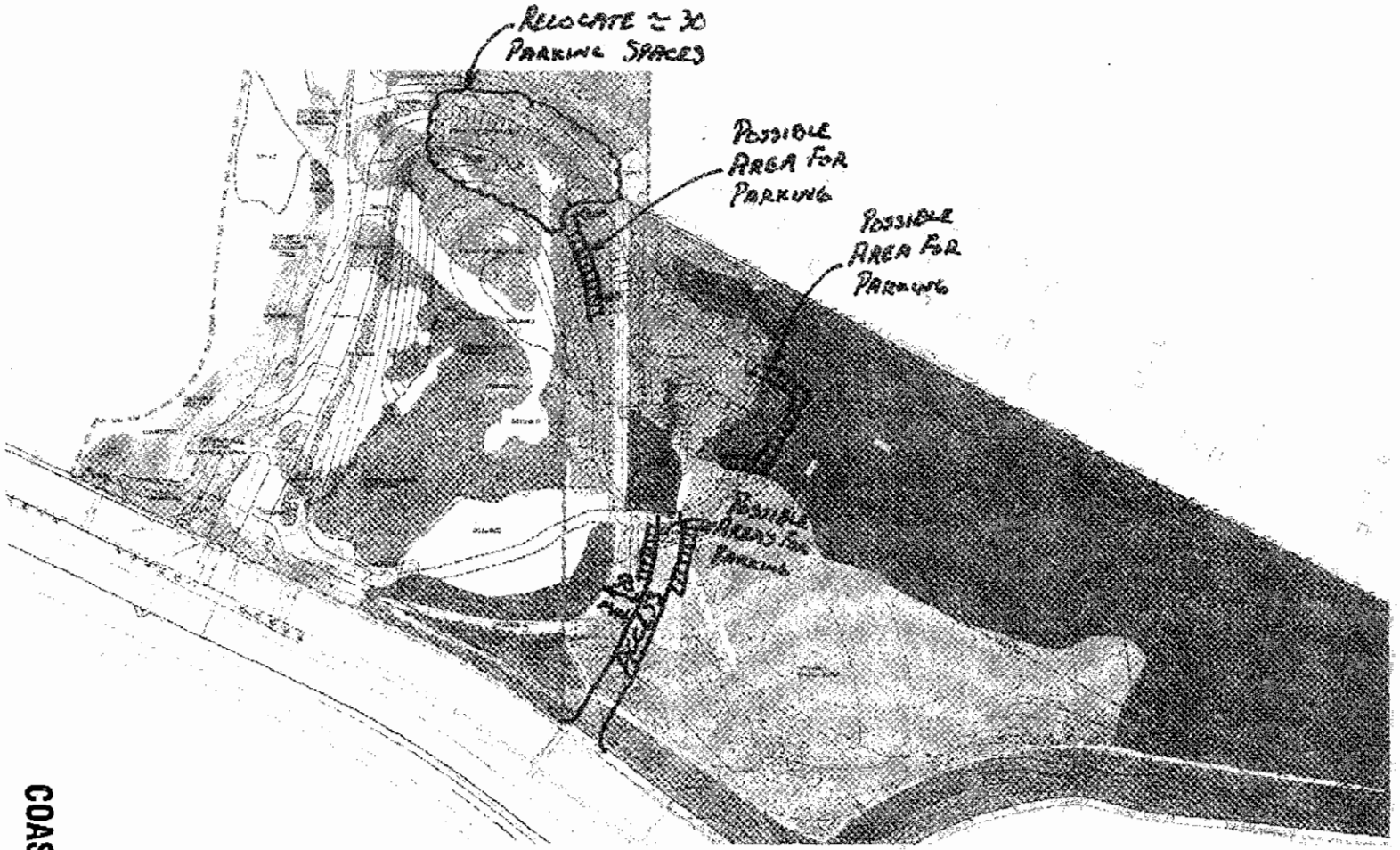
Tom Brohard, PE
Principal

Enclosures

COASTAL COMMISSION

EXHIBIT # 11
PAGE 9 OF

CONCEPTUAL DRAWING



CONCEPTUAL DRAWING

ALTERNATE ACCESS VIA DIRECT DRIVEWAY CONNECTION TO WEST COAST HIGHWAY

▥ INDICATES POSSIBLE AREA FOR PARKING

ACCESS ROADWAY TO BE 50' MINIMUM FROM ESHA

Tom Bouland 9/16/2011

COASTAL COMMISSION

EXHIBIT # 11

PAGE 10 OF

Land Use: 488
Soccer Complex

Description

Soccer complexes are outdoor parks that are used for non-professional soccer games. They may consist of one or more fields, and the size of each field within the land use may vary to accommodate games for different age groups. Ancillary amenities may include a fitness trail, activities shelter, aquatic center, picnic grounds, basketball and tennis courts and a playground.

Additional Data

Caution should be used when applying these data. Peaking at soccer complexes typically occurred in time periods shorter than one hour. These peaking periods may have durations of 10 to 15 minutes.

One study noted that ridesharing was common for teams traveling to out-of-town matches.

The sites were surveyed in the 1990s in Indiana and Washington.

To assist in the future analysis of this land use, it is important to collect driveway counts in 10-minute intervals.

Source Numbers

377, 519, 565

COASTAL COMMISSION

EXHIBIT # 11

PAGE 11 OF

Warrants for Right-Turn Bays

Warrants for right-turn lanes are not as universally adopted as for left-turns. However, many states follow a practice of striping right-turn bays where wide shoulders are already present. Suggest warrants are given in Figure 5–25.

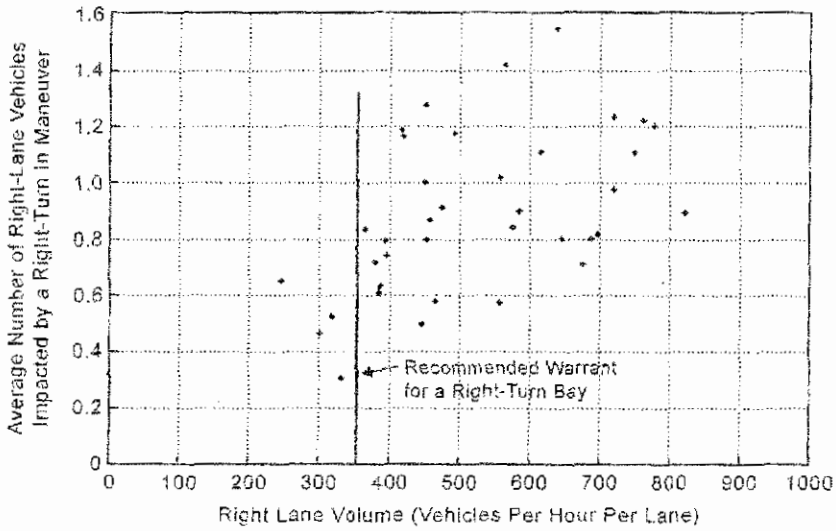


Figure 5–25. ***Suggested Warrant for Right-Turn Bays***

Source: Unpublished information from NCHRP Project 3-52.

Right-Turn Bay Length

The length of a right-turn bay should permit drivers to clear the through traffic lane at a speed differential of 10 mph (15 km/h) or less and decelerate to a stop before reaching the end of the stopped queue. The deceleration/maneuver distance may be obtained using Table 5–13. Table 5–14 can be used to estimate the resulting speed differential when the length of the turn bay to be provided is less than the desirable length. Urban arterial-residential collector intersections typically have low right-turn volumes during off-peak periods. The on-site circulation system should be designed to internally store traffic after the vehicles have entered the site. Similarly, the corner clearance on public streets should be sufficient so that conflicts at a downstream intersection do not cause spill-back onto the major street (Figure 5–26). Therefore, only minimum storage for right-turning vehicles should be needed at unsignalized access connections.

COASTAL COMMISSION

EXHIBIT # 11
PAGE 12 OF

Sunset Ridge Park Traffic Impact Study
Cumulative Conditions With Project PM Peak Hour
HCM Methodology

Level Of Service Computation Report
2000 HCM Operations Method (Future Volume Alternative)

Intersection #3 Bluff Rd at PCH

Cycle (sec): 100 Critical Vol./Cap.(X): 0.634
Loss Time (sec): 0 (Y+R=4.0 sec) Average Delay (sec/veh): 0.6
Optimal Cycle: 62 Level Of Service: A

Street Name:	Bluff Road						Pacific Coast Hwy					
Approach:	North Bound			South Bound			East Bound			West Bound		
Movement:	L	T	R	L	T	R	L	T	R	L	T	R
Control:	Protected			Protected			Protected			Protected		
Rights:	Include			Include			Include			Include		
Min. Green:	0	0	0	0	0	0	0	0	0	0	0	0
Lanes:	0 0	0	0 0	1 0	0	0 1	1 0	3	0 0	0 0	3	0 1
Volume Module: PM Peak Hour												
Base Vol:	0	0	0	0	0	0	0	1487	0	0	2818	0
Growth Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.04	1.04	1.04	1.04	1.04	1.04
Initial Bse:	0	0	0	0	0	0	0	1547	0	0	2932	0
Added Vol:	0	0	0	12	0	1	3	196	0	0	137	26
Approved Pr:	0	0	0	0	0	0	0	102	0	0	177	0
Initial Fut:	0	0	0	12	0	1	3	1845	0	0	3246	26
User Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
PHF Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
PHF Volume:	0	0	0	12	0	1	3	1845	0	0	3246	26
Reduct Vol:	0	0	0	0	0	0	0	0	0	0	0	0
Reduced Vol:	0	0	0	12	0	1	3	1845	0	0	3246	26
PCE Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
MLF Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
FinalVolume:	0	0	0	12	0	1	3	1845	0	0	3246	26
Saturation Flow Module:												
Sat/Lane:	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900
Adjustment:	1.00	1.00	1.00	0.95	1.00	0.85	0.95	0.91	1.00	1.00	0.91	0.85
Lanes:	0.00	0.00	0.00	1.00	0.00	1.00	1.00	3.00	0.00	0.00	3.00	1.00
Final Sat.:	0	0	0	1805	0	1615	1805	5187	0	0	5187	1615
Capacity Analysis Module:												
Vol/Sat:	0.00	0.00	0.00	0.01	0.00	0.00	0.00	0.36	0.00	0.00	0.63	0.02
Crit Moves:				****			****				****	
Green/Cycle:	0.00	0.00	0.00	0.01	0.00	0.01	0.00	0.99	0.00	0.00	0.99	0.99
Volume/Cap:	0.00	0.00	0.00	0.62	0.00	0.06	0.63	0.36	0.00	0.00	0.63	0.02
Delay/Veh:	0.0	0.0	0.0	103.3	0.0	50.5	199.8	0.1	0.0	0.0	0.3	0.0
User DelAdj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
AdjDel/Veh:	0.0	0.0	0.0	103.3	0.0	50.5	199.8	0.1	0.0	0.0	0.3	0.0
LOS by Move:	A	A	A	F	A	D	F	A	A	A	A	A
HCM2kAvgQ:	0	0	0	1	0	0	1	1	0	0	1	0

Note: Queue reported is the number of cars per lane.

Sunset Ridge Park Traffic Impact Study
Cumulative Conditions With Project PM Peak Hour
HCM Methodology

Level Of Service Computation Report
2000 HCM Operations Method (Future Volume Alternative)

Intersection #4 Superior Ave at PCH

Cycle (sec): 100 Critical Vol./Cap.(X): 0.750
Loss Time (sec): 0 (Y+R=4.0 sec) Average Delay (sec/veh): 28.9
Optimal Cycle: 91 Level Of Service: C

Street Name:	Superior Avenue						Pacific Coast Hwy					
Approach:	North Bound			South Bound			East Bound			West Bound		
Movement:	L	T	R	L	T	R	L	T	R	L	T	R
Control:	Split Phase			Split Phase			Protected			Protected		
Rights:	Include			Ovl			Include			Include		
Min. Green:	0	0	0	0	0	0	0	0	0	0	0	0
Lanes:	1 1	0	1 0	1	1	1 0	2	0	3 0	1	0	3 1 0
Volume Module: >> Count Date: 12 Feb 2005 << Existing PM Peak Hour												
Base Vol:	254	208	78	228	243	710	258	986	243	226	1854	162
Growth Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.04	1.04	1.04	1.04	1.04	1.04
Initial Bse:	254	208	78	228	243	710	268	1026	252	235	1929	169
Added Vol:	3	0	0	90	0	16	10	188	1	0	144	64
Approved Pr:	0	16	1	0	27	110	63	36	3	0	67	0
Initial Fut:	257	224	79	318	270	836	349	1250	257	235	2140	233
User Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
PHF Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
PHF Volume:	257	224	79	318	270	836	349	1250	257	235	2140	233
Reduct Vol:	0	0	0	0	0	0	0	0	0	0	0	0
Reduced Vol:	257	224	79	318	270	836	349	1250	257	235	2140	233
PCE Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
MLF Adj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
FinalVolume:	257	224	79	318	270	836	349	1250	257	235	2140	233
Saturation Flow Module:												
Sat/Lane:	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900	1900
Adjustment:	0.91	0.91	0.91	0.93	0.93	0.95	0.92	0.91	0.85	0.95	0.90	0.90
Lanes:	1.38	1.20	0.42	1.62	1.38	2.00	2.00	3.00	1.00	1.00	3.61	0.39
Final Sat.:	2379	2074	731	2852	2422	3842	3502	5187	1615	1805	6145	668
Capacity Analysis Module:												
Vol/Sat:	0.11	0.11	0.11	0.11	0.11	0.39	0.10	0.24	0.16	0.13	0.35	0.35
Crit Moves:			****			****	****				****	
Green/Cycle:	0.14	0.14	0.14	0.26	0.26	0.39	0.13	0.39	0.39	0.21	0.46	0.46
Volume/Cap:	0.75	0.75	0.75	0.43	0.43	0.75	0.75	0.62	0.41	0.62	0.75	0.75
Delay/Veh:	45.3	45.3	45.3	31.1	31.1	29.1	48.5	25.3	22.7	39.1	23.1	23.1
User DelAdj:	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00	1.00
AdjDel/Veh:	45.3	45.3	45.3	31.1	31.1	29.1	48.5	25.3	22.7	39.1	23.1	23.1
LOS by Move:	D	D	D	C	C	C	D	C	C	D	C	C
HCM2kAvgQ:	8	8	8	6	6	14	7	12	6	7	18	18

Note: Queue reported is the number of cars per lane.

COASTAL COMMISSION
EXHIBIT # 11
PAGE 13 OF

CHAPTER 200
GEOMETRIC DESIGN AND STRUCTURE STANDARDS

Topic 201 - Sight Distance

Index 201.1 - General

Sight distance is the continuous length of highway ahead visible to the driver. Four types of sight distance are considered here: passing, stopping, decision, and corner. Passing sight distance is used where use of an opposing lane can provide passing opportunities (see Index 201.2). Stopping sight distance is the minimum sight distance to be provided on multilane highways and on 2-lane roads when passing sight distance is not economically obtainable. Stopping sight distance also is to be provided for all elements of interchanges and intersections at grade, including private road connections (see Topic 504, Index 405.1, & Figure 405.7). Decision sight distance is used at major decision points (see Indexes 201.7 and 504.2). Corner sight distance is used at intersections (see Index 405.1, Figure 405.7, and Figure 504.3J).

Table 201.1 shows the standards for stopping sight distance related to design speed, and these shall be the minimum values used in design. Also shown are the values for use in providing passing sight distance.

Chapter 3 of "A Policy on Geometric Design of Highways and Streets," AASHTO, contains a thorough discussion of the derivation of stopping sight distance.

201.2 Passing Sight Distance

Passing sight distance is the minimum sight distance required for the driver of one vehicle to pass another vehicle safely and comfortably. Passing must be accomplished assuming an oncoming vehicle comes into view and maintains the design speed, without reduction, after the overtaking maneuver is started.

Table 201.1
Sight Distance Standards

Design Speed(1) (mph)	Stopping(2) (ft)	Passing (ft)
20	125	800
25	150	950
30	200	1,100
35	250	1,300
40	300	1,500
45	360	1,650
50	430	1,800
55	500	1,950
60	580	2,100
65	660	2,300
70	750	2,500
75	840	2,600
80	930	2,700

(1) See Topic 101 for selection of design speed.
(2) For sustained downgrades, refer to advisory standard in Index 201.3

The sight distance available for passing at any place is the longest distance at which a driver whose eyes are 3 ½ feet above the pavement surface can see the top of an object 4 ¼ feet high on the road. See Table 201.1 for the calculated values that are associated with various design speeds.

In general, 2-lane highways should be designed to provide for passing where possible, especially those routes with high volumes of trucks or recreational vehicles. Passing should be done on tangent horizontal alignments with constant grades or a slight sag vertical curve. Not only are drivers reluctant to pass on a long crest vertical curve, but it is impracticable to design crest vertical curves to provide for passing sight distance because of high cost where crest cuts are involved. Passing sight distance for crest vertical curves is 7 to 17 times longer than the stopping sight distance.

Ordinarily, passing sight distance is provided at locations where combinations of alignment and

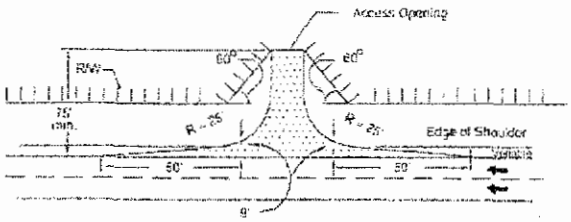
COASTAL COMMISSION
EXHIBIT # 11
PAGE 19 OF

line is not normal to the right of way line, care should be taken in designing the joint opening so that both owners are adequately served.

(5) *Surfacing.* All points of private access should be surfaced with adequate width and depth of pavement to serve the anticipated traffic. The surfacing should extend from the edge of the traveled way to the right of way line.

Figure 205.1

Access Openings on Expressways



RECESSED OPENING

NOTES:

- By widening the expressway shoulder, deceleration lanes may be provided where justified.
- This detail, without the recess, may be used on conventional highways.

205.2 Private Road Connections

The minimum private road connection design is shown on Figure 205.1. Sight distance requirements for the minimum private road connection are shown on Figure 405.7 (see Index 405.1(2)(c)).

205.3 Urban Driveways

These instructions apply to the design of driveways to serve property abutting on State highways in cities or where urban type development is encountered.

Details for driveway construction are shown on the Standard Plans. Corner sight distance requirements are not applied to urban driveways. See Index 405.1(2) for further information.

(1) *Correlation with Local Standards.* Where there is a local requirement regulating driveway construction, the higher standard will normally govern.

(2) *Driveway Width.* The width of driveways for both residential and commercial usage is measured at the throat, exclusive of any flares. ("W" as shown in Standard Plan A87A).

(3) *Residential Driveways.* The width of single residential driveways should be 12 feet minimum and 20 feet maximum. The width of a double residential driveway such as used for multiple dwellings should be 20 feet minimum and 30 feet maximum. The width selected should be based on an analysis of the anticipated volume, type and speed of traffic, location of buildings and garages, width of street, etc.

(4) *Commercial Driveways.* Commercial driveways should be limited to the following maximum widths:

(a) When the driveway is used for one-way traffic, the maximum width should be 25 feet. If the driveway serves a large parcel, where large volumes of vehicles or large vehicles are expected, the entrance maximum width should be 40 feet and the exit maximum width should be 35 feet.

(b) When the driveway is used for two-way traffic, the maximum width should be 35 feet. If the driveway serves a large parcel, where large volumes of vehicles or large vehicles are expected, then the maximum width should be 45 feet.

(c) When only one driveway serves a given property, in no case should the width of the driveway including the side slope distances exceed the property frontage.

(d) When more than one driveway is to serve a given property, the total width of all driveways should not exceed 70 percent of the frontage where such a frontage is 100 feet or less. Where the frontage is more than 100 feet, the total driveway

COASTAL COMMISSION
EXHIBIT # 11
PAGE 15 OF

Tom Brohard, PE

Licenses:	1975 / Professional Engineer / California – Civil, No. 24577 1977 / Professional Engineer / California – Traffic, No. 724 2006 / Professional Engineer / Hawaii – Civil, No. 12321
Education:	1969 / BSE / Civil Engineering / Duke University
Experience:	40+ Years
Memberships:	1977 / Institute of Transportation Engineers – Fellow, Life 1978 / Orange County Traffic Engineers Council - Chair 1982-1983 1981 / American Public Works Association - Member

Tom is a recognized expert in the field of traffic engineering and transportation planning. His background also includes responsibility for leading and managing the delivery of various contract services to numerous cities in Southern California.

Tom has extensive experience in providing transportation planning and traffic engineering services to public agencies. Since May 2005, he has served as Consulting City Traffic Engineer for the City of Indio. He also currently provides "on call" Traffic and Transportation Engineer services to the Cities of Big Bear Lake, Mission Viejo, and San Fernando. In addition to conducting traffic engineering investigations for Los Angeles County from 1972 to 1978, he has previously served as City Traffic Engineer in the following communities:

- Bellflower ..... 1997 - 1998
- Bell Gardens ..... 1982 - 1995
- Huntington Beach ..... 1998 - 2004
- Lawndale ..... 1973 - 1978
- Los Alamitos ..... 1981 - 1982
- Oceanside ..... 1981 - 1982
- Paramount ..... 1982 - 1988
- Rancho Palos Verdes ..... 1973 - 1978
- Rolling Hills ..... 1973 - 1978, 1985 - 1993
- Rolling Hills Estates ..... 1973 - 1978, 1984 - 1991
- San Marcos 1981
- Santa Ana ..... 1978 - 1981
- Westlake Village ..... 1983 - 1994

During these assignments, Tom has supervised City staff and directed other consultants including traffic engineers and transportation planners, traffic signal and street lighting personnel, and signing, striping, and marking crews. He has secured over $5 million in grant funding for various improvements. He has managed and directed many traffic and transportation studies and projects. While serving these communities, he has personally conducted investigations of hundreds of citizen requests for various traffic control devices. Tom has also successfully presented numerous engineering reports at City Council, Planning Commission, and Traffic Commission meetings in these and other municipalities.

COASTAL COMMISSION

EXHIBIT # 11
PAGE 16 OF

In his service to the City of Indio since May 2005, Tom has accomplished the following:

- Oversaw preparation and adoption of the Circulation Element Update of the General Plan including development of Year 2035 buildout traffic volumes, revised and simplified arterial roadway cross sections, and reduction in acceptable Level of Service criteria under certain constraints. Reviewed Riverside County's updated traffic model for consistency with the adopted City of Indio Circulation Plan.

- Oversaw preparation of fact sheets/design exceptions to reduce shoulder widths on Jackson Street over I-10 as well as justifications for protected-permissive left turn phasing at I-10 on-ramps, the first such installation in Caltrans District 8 in Riverside County; reviewed plans and provided assistance during construction of a $1.5 million project to install traffic signals and widen three of four ramps at the I-10/Jackson Street Interchange under a Caltrans encroachment permit.

- Oversaw preparation of fact sheets/design exceptions to reduce shoulder widths on Monroe Street over I-10 as well as striping plans to install left turn lanes on Monroe Street at the I-10 Interchange under a Caltrans encroachment permit; reviewed plans to install traffic signals and widen three of four ramps at the I-10/Monroe Street Interchange.

- Reviewed traffic impact analyses for Project Study Reports evaluating different alternatives for buildout improvement of the I-10 Interchanges at Jefferson Street, Monroe Street, Jackson Street and Golf Center Parkway.

- Oversaw preparation of plans, specifications, and contract documents and provided construction assistance for over 40 traffic signal installations and modifications.

- Reviewed and approved over 600 work area traffic control plans as well as signing and striping plans for all City and developer funded roadway improvement projects.

- Oversaw preparation of a City wide traffic safety study of conditions at all schools.

- Prepared over 500 work orders directing City forces to install, modify, and/or remove traffic signs, pavement and curb markings, and roadway striping.

- Oversaw preparation of engineering and traffic surveys to establish enforceable speed limits on over 200 street segments.

- Reviewed and approved traffic impact studies for more than 25 major developments.

- Developed the Golf Cart Transportation Program and administrative procedures; implemented routes forming the initial baseline system.

Since forming Tom Brohard and Associates in 2000, Tom has reviewed many traffic impact reports and environmental documents for various development projects. He has provided expert witness services and also prepared traffic studies for public agencies and private sector clients.

COASTAL COMMISSION

EXHIBIT # 11

PAGE 17 OF

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

M E M O R A N D U M

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

TO: John Del Arroz, Coastal Analyst

SUBJECT: Sunset Ridge Park ESHA Determination, Buffer Dimension Recommendation, and other Considerations

DATE: September 22, 2011

Documents Reviewed:

Johnston, A.M. (BonTerra). September 9, 2011. Supplemental Biological Resource Information for the Sunset Ridge Park Project. Letter to Michael Sinacori, Public Works Department, City of Newport Beach.

Johnston, A.M. (BonTerra). July 15, 2011. Supplemental Biological Resource Information for the Sunset Ridge Park Project Regarding Vernal Pool Habitat and Buffers for Gnatcatcher Habitat. Letter to Michael Sinacori, Public Works Department, City of Newport Beach.

Johnston, A.M. (BonTerra). June 29, 2011. Supplemental Biological Resource Information for the Sunset Ridge Park Project. Letter to Michael Sinacori, Public Works Department, City of Newport Beach.

Meideiros, G.A. (BonTerra). June 29, 2011. Response to California Coastal Commission Staff Email Dated June 8, 2011 Regarding CDP Application No. 5010-168 (City of Newport Beach – Sunset Ridge Park), Specifically Jurisdictional Delineation of Slope Areas Along Superior Avenue. Letter to Michael Sinacori, Public Works Department, City of Newport Beach.

Bomkamp, T. (Glenn Lukos Associates). June 14, 2011. Clarification Regarding CAGN Mapping from 2002 Protocol Surveys Conducted by Glenn Lukos Associates for West Newport Oil. Memorandum to Christine Medak, USFWS.

Meideiros, G.A. (BonTerra). February 11, 2011. Response to California Coastal Commission Correspondence Dated September 1, 2010 Regarding CDP Application No. 5010-168 (City of Newport Beach – Sunset Ridge Park). Letter to Michael Sinacori, Public Works Department, City of Newport Beach.

Hamilton, Robb (Hamilton Biological). December 14, 2010. Reply to LSA Memorandum; Bluff Road/Sunset Ridge Park Entrance. Memorandum from Hamilton Biological to Jonna Engel, California Coastal Commission.

Hamilton, Robb (Hamilton Biological). December 11, 2010. Review of ESHA Issues; Bluff Road/Sunset Ridge Park Entrance. Memorandum from Hamilton Biological to Jonna Engel, California Coastal Commission.

LSA Associates. December 9, 2010. California Gnatcatcher Issues at the Sunset Ridge Park/Newport Banning Ranch Site. Memorandum from Art Homrighausen and Richard Erickson, LSA Associates, to Mike Sinacori, City of Newport Beach, Department of Public Works. This memorandum includes LSA's 1991 vegetation map and LSA's annual gnatcatcher survey maps from 1992 through 1996.

Ahrens, Jeff. (Glenn Lukos Associates) October 13, 2010. California Gnatcatcher Use of Polygons Addressed in Notice of Violation. Memorandum to Jonna Engel, CCC.

Bomkamp, Tony. (Glenn Lukos Associates) August 26, 2010. Response to Coastal Commission Notice of Violation dated May 14, 2010 for Vegetation Removal on Portions of Newport Banning Ranch and City of Newport Beach Properties. Memorandum to Michael Mohler, Newport Banning Ranch, LLC.

Hamilton, Robb (Hamilton Biological). December 10, 2009. Review of Biological Resource Issues, Sunset Ridge Draft EIR. Memorandum from Hamilton Biological to Janet Johnson Brown, City of Newport Beach.

BonTerra Consulting. October 2009. Draft Environmental Impact Report: Sunset Ridge Park Project. SCH No. 2009051036. Vol I & II. Prepared for the City of Newport Beach.

Glenn Lukos Associates. September 24, 2009. Habitat Characterization for Areas Affected by Alleged Clearing near Southeast Corner of Banning Ranch Referenced in July 29, 2009 Letter from California Coastal Commission. Memorandum to Andrew Willis, CCC.

BonTerra Consulting. June 25, 2009. Results of Coastal California Gnatcatcher Surveys for Newport Banning Ranch Project Site, Orange County, California. Letter addressed to Ms. Sandy Marquez, USFWS.

Bartel, Jim A. (Field Supervisor, USFWS). April 2, 2009. Formal Section 7 Consultation for Montebello Hills Development and Conservation Project, City of Montebello, Los Angeles County, California. Montebello Biological Opinion. To: Colonel Thomas H. Magness, IV District Engineer, U.S. Army Corps of Engineers

Glenn Lukos Associates. August 2008. The Newport Banning Ranch Biological Technical Report. Report prepared for Mike Mohler, Newport Banning Ranch, LLC.

Glenn Lukos Associates. July 19, 2007. Submittal of 45-Day Report for coastal California gnatcatcher Surveys for the 412.5 Newport Banning Ranch Property, City of Newport Beach and Unincorporated Orange County, Orange County, California. Survey report from Glenn Lukos Associates Biologist Ingrid Chlup to Sandra Marquez, USFWS.

Glenn Lukos Associates. July 25, 2006. Submittal of 45-Day Report for Coastal California Gnatcatcher Presence/Absence Surveys for the 412.5 Newport Banning Ranch Property, City of Newport Beach and Unincorporated Orange County, Orange County, California. Survey report from Glenn Lukos Associates Biologist Jeff Ahrens to Daniel Marquez, USFWS.

Glenn Lukos Associates. October 14, 2002. Protocol Surveys for the Coastal California Gnatcatcher; West Newport Oil Property, Orange County California. Survey report from Glenn Lukos Associates Biologist Tony Bompkamp to Leonard Anderson, West Newport Oil Property.

Gnatcatcher survey map. 2000. Unknown source (we believe the source is PCR Services).

PCR Services. 1998. Gnatcatcher survey map.

PCR Services. 1997. Gnatcatcher survey map.

LSA. 1996. Spring 1996 California Gnatcatcher Survey. Survey report from LSA Biologist Richard Erickson to Leonard Anderson.

LSA. 1995. Spring 1995 California Gnatcatcher Survey. Survey report from LSA Biologist Richard Erickson to Leonard Anderson.

LSA. 1994. Results of 1994 Gnatcatcher and Wren Surveys. Survey report from LSA Biologists Robb Hamilton and Richard Erickson to Leonard Anderson, West Newport Oil Company.

The City of Newport Beach (hereafter ‘City’) is proposing to construct an active recreational park (Sunset Ridge Park) on a site approximately 20 acres in size at the northwest corner of the intersection of West Coast Highway and Superior Avenue. The proposed park site includes 6.3 acres in the southeast corner of Newport Banning Ranch, a 505 acre property located near the mouth of the Santa Ana River in Orange

County, California (Figure 1). The City has an access agreement with Newport Banning Ranch that allows the park entrance road to occur on ranch property. The project site is one of 28 areas identified in the City's general plan as an Environmental Study Area (ESA) which are undeveloped areas that support natural habitats defined as potentially capable of supporting sensitive biological resources. The two properties that comprise the proposed Sunset Ridge Park site do support a number of important and sensitive habitats and plant and animal species.

On September 15, 2010, I accompanied several other Coastal Commission staff on a site visit to observe and study the biological resources on the proposed park property, in particular, at and around three disturbed areas referred to as the southeast, northwest, and northeast polygons that were the subject of a violation on Newport Banning Ranch that will be resolved once compliance with the Commission's Consent Order is fully carried out[1] (Figure 2). During our site visit we examined the various plant communities supported by the property and discussed the current and historical use of the site by California gnatcatchers. Representatives of Newport Banning Ranch and the City, Newport Banning Ranch's biological consultant (Tony Bomkamp, Glenn Lukos Associates), and Southern California Edison's biologist (Tracy Alsobrook) were also along on the site visit.

I visited the site again on December 15, 2010, with other Coastal Commission staff to review the biological resources on the proposed park site and in and around the three polygons and to discuss the history of gnatcatcher use, the nature of gnatcatcher survey collection, and my approach to making an ESHA determination. Representatives of Newport Banning Ranch, the City, and Southern California Edison, Newport Banning Ranch's biological consultant (Tony Bomkamp, Glenn Lukos Associates), the City's biological consultant's (Art Homrighausen and Richard Erickson, LSA & Ann Johnston, BonTerra), and a USFWS biologist (Christine Medak), accompanied us on the site visit. On both site visits we spent several hours walking and talking while I made visual and audio observations of the natural resources on the proposed park site.

I visited the site again on June 7, 2011 with John Del Arroz, CCC Coastal Analyst; Don Schmitz, Principle, Don Schmitz and Associates; Mike Sinacori, Engineer, City of Newport Beach; Ann Johnston, Biologist, BonTerra Consulting, and Ann Johnston's assistant. During this site visit we carefully examined the seep areas along Superior Avenue. We also walked, and BonTerra mapped (using a GPS unit), the boundary of the ESHA/non-ESHA areas that I had preliminarily mapped on an aerial based on gnatcatcher individual point and use area data spanning 1992 to 2009, vegetation mapping, and site visit observations. In addition to the site visits, I have reviewed the documents listed above (presented in chronological order), peer reviewed literature, and aerial photographs to determine the history of gnatcatcher use and the nature of the habitat on the site of the proposed Sunset Ridge Park in order to make an Environmentally Sensitive Habitat Area (ESHA) determination, buffer size recommendations, and to discuss other considerations such as burrowing owls, coastal

[1] CCC-11-CD-03 and CCC-11-RO-02 issued by the Commission on April 14, 2011.

sage scrub improvement and restoration, invasive species, cowbird parasitism, and predation.

ESHA Definition

Section 30107.5 of the Coastal Act defines Environmentally Sensitive Habitat as:

> *Any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.*

Plants and animals and habitats that meet the rarity criterion under this definition may include rare plant communities identified by the California Department of Fish and Game (CDFG), federal and state listed species, California Native Plant Society "1B" and "2" plant species, California species of special concern, and habitats that support the type of species listed above.

The City of Newport Beach Coastal Land Use Plan (CLUP) also provides criteria for determining what constitutes ESHA. CLUP policy 4.1.1-1 states that the following site attributes are among those characteristics that are determinative of whether an area constitutes ESHA:

- The presence of natural communities that have been identified as rare by the California Department of Fish and Game.
- The recorded or potential presence of plant or animal species designated as rare, threatened, or endangered under State or Federal law.

CLUP Section 4.1.1 states that coastal sage scrub is an especially important habitat and "where coastal sage scrub occurs adjacent to coastal salt marsh or other wetlands, or where it is documented to support or known to have the potential to support rare species such as the coastal California gnatcatcher, it meets the definition of ESHA because of its especially valuable role in the ecosystem... coastal sage scrub also provides essential nesting and foraging habitat for the coastal California gnatcatcher, a rare species designated threatened under the Federal Endangered Species Act."

Habitats - Plant Communities

The 20-acre site proposed for Sunset Ridge Park supports a number of different habitats. There are several types of coastal scrub communities on the property including coastal sage, coastal bluff, and maritime succulent scrub. Other habitats occurring in large swaths are disturbed encelia scrub, disturbed mulefat/goldenbush scrub, non-native grasslands, and ruderal and ornamental areas (Figure 3; Exhibit 6 of the DEIR Biological Technical Report). There are several small wetland seeps along the slope bordering Superior Avenue and the Banning Ranch Conservancy has alleged that several vernal pools exist in the upper Western corner of the site in the project

footprint. All the native plant communities are invaded by non-native plants to a greater or lesser extent.

Coastal Sage Scrub

Coastal sage scrub is comprised of dominant species that are semi-woody and low-growing, with shallow, dense roots that enable them to respond quickly to rainfall[2]. The species composition and structure of individual stands of coastal sage scrub depend on moisture conditions that derive from slope, aspect, elevation and soil type. Sawyer & Keeler-Wolf (1995) divide coastal scrub communities into series including California sunflower (*Encelia californica*), California buckwheat (*Eriogonum fasciculatum*), and coast prickly-pear, (*Opuntia litteralis*) series[3]. The coastal sage scrub found within the Sunset Ridge park footprint (including the southeast corner of Newport Banning Ranch), it is best characterized as California sunflower series; however, there are also patches of California buckwheat and coast prickly-pear series. Coastal sage scrub is increasingly rare in the coastal zone and provides an especially valuable ecosystem service when occupied by the coastal California gnatcatcher or other rare species.

Coastal Bluff Scrub

Coastal bluff scrub is found in localized areas along the coast below Point Conception [4] and is identified as a rare plant community in CDFG's Natural Diversity Data Base. It often intergrades with other scrub community types, as is the case within the Sunset Ridge Park project footprint (southeast corner of Newport Banning Ranch). Coastal bluff scrub is comprised of small stature woody or succulent plants including dwarf shrubs, herbaceous perennials, and annuals[5]. Dominant species include California sunflower, live-forever (*Dudleya sp.*), and prickly pear[6].

Maritime Succulent Scrub

Maritime succulent scrub, also identified as a rare plant community in CDFG's Natural Diversity Data Base, is a low growing, open (25% - 75% ground cover) scrub community dominated by drought deciduous, semi-woody shrubs that grow on rocky or sandy soils of coastal headlands and bluffs[7]. This community type has a very limited distribution along the coast between southern California and northern Baja California and on the Channel Islands. Characteristic species include California sunflower, prickly pear, and California box-thorn (*Lycium californicum*)[8]. Box-thorn is a CNPS list 4.2 species and is the only special status plant species found on the project site (Figure 4). Like coastal bluff scrub, maritime succulent scrub intergrades with other scrub community types, as is the case on the site proposed for Sunset Ridge Park.

---

[2] Holland, R.F. 1986. Preliminary Descriptions of the Terrestrial Natural Communities of California. State of California, The Resources Agency, Department of Fish and Game.
[3] Sawyer, J. and T. Keeler-Wolf. 1995. A manual of California vegetation. California Native Plant Society.
[4] Holland (1986) op cit.
[5] Ibid.
[6] Ibid.
[7] Ibid.
[8] Ibid.

The coastal scrub communities within the Sunset Ridge Park project footprint tend to be dominated by California sunflower and distinguished by those species which are diagnostic of the particular coastal scrub community types. BonTerra lumps some of the coastal scrub communities together as "southern coastal bluff scrub" and finds a total of 1.15 acres of this habitat type on the site (Figure 3). BonTerra treats California sunflower separately and maps the following habitats; "Encelia Scrub", "Disturbed Encelia Scrub", and "Encelia/Ornamental Scrub". All of the coastal scrub communities are invaded to a greater or lesser degree by non-native and invasive species, such as highway iceplant (*Carpobrotus edulis*), crystalline iceplant (*Mesembryanthemum crystallinum*), castor bean (*Ricinus communis*), myoporum (*Myoporum laetum*), pampas grass (*Cortaderia selloana*), tree tobacco (*Nicotiana glauca*), fennel (*Foeniculum vulgare*), black mustard (*Brassica nigra*), tocalote (*Centaurea melitensis*), and European annual grasses (*Bromus diandrus, B. madritensis, B. hordeaceus, Lolium multiflorum*).

<u>Encelia Scrub</u>
BonTerra mapped 0.53 acres of "Encelia Scrub", 3.64 acres of "Disturbed Encelia Scrub", and 0.21 acres of "Encelia/Ornamental Scrub" (Figure 3). The western-most area that BonTerra mapped as "Encelia Scrub" is an area that has a history of California gnatcatcher use and is an area I include in my "ESHA East" delineation (see ESHA discussion below and Figure 12). In addition to the "Encelia Scrub" patch that is included in my "ESHA East" delineation, there are several patches of "Encelia Scrub" along West Coast Highway and Superior Avenue (Figure 7; BonTerra Exhibit 2, Detailed vegetation types and other areas). All of these patches are adjacent to or very close to the large patch (approximately 3.3 acres) of "Disturbed Encelia Scrub" (Figure 3). The patches of "Encelia Scrub" (Figure 7) along the slope are within areas where foraging gnatcatchers have been observed by Robb Hamilton (Figure 30).

California sunflower is one of the dominant native scrub species found in the coastal scrub communities on the City and Newport Banning Ranch property. Weaver (1998) found that gnatcatcher densities in northern San Diego County were highest in areas where California sunflower or California buckwheat were co-dominate with sagebrush[9]. Both areas mapped as "Disturbed Encelia Scrub" by BonTerra are areas routinely mowed once or twice a year to ground level by the City and Newport Banning Ranch.

Page 14 of Appendix E, Sunset Ridge Park Draft EIR states:

> *The 3.64 acres of disturbed Encelia scrub is regularly mowed for fuel modification and weed abatement purposes and contains a high percentage of non-native weeds; therefore, it is not considered special status.*

I disagree with this statement and believe that in absence of the routine mowing, the areas identified as "Disturbed Encelia Scrub" would become dense stands of robust, nearly pure, California sunflower. California sunflower is a fast growing shrub and if it wasn't mowed it would reach heights of two to three feet over one growing season.

[9] Weaver, K.L. 1998. Coastal sage scrub variations of San Diego County and their influence on the distribution of the California gnatcatcher. Western Birds, Vol. 29: 392-405.

During my site visits I have seen these areas numerous times and have observed how closely spaced the mowed individual California sunflower plants are to each other. I have also reviewed the photographs of fresh growth during the growing season in Robb Hamilton's December 10, 2009 memorandum to Janet Johnson Brown, City of Newport Beach, "Review of Biological Resource Issues, Sunset Ridge Draft EIR" and I have no doubt that these areas would be dominated by California sunflower suitable for gnatcatcher foraging and possibly nesting without continued mowing. If the periodic mowing is legal, this area would not be ESHA, however, if the mowing is not legal, the area would be ESHA.

The area mapped "Encelia Scrub/Ornamental" by BonTerra, that includes native big saltbush (*Atriplex lentiformis*) and the invasive species, pampas grass, and highway iceplant, is on the slope on the corner of West Coast Highway and Superior Avenue. The patch of "Encelia Scrub/Ornamental" is between the two patches mapped as "Encelia Scrub". The patches of "Encelia Scrub" (Figure 7) and "Encelia Scrub/Ornamental" (Figure 3) on the slope of the property are within areas where California gnatcatchers have been observed foraging on several occasions (Figure 30).

<u>Disturbed Mulefat/Goldenbush Scrub</u>
BonTerra mapped 0.48 acres of "disturbed mulefat/goldenbush scrub" which they describe as co-dominated by mulefat and goldenbush and invaded by myoporum, highway iceplant, and pampas grass (Figure 3). In addition to the species identified by BonTerra as inhabiting this area, I have also observed a significant amount of California sunflower and black mustard. This habitat has a history of California gnatcatcher use and is within the area I have delineated "ESHA West" (see ESHA discussion below and Figure 12).

<u>Non-native Grasslands</u>
BonTerra mapped the majority of the project site (6.58 acres) directly north of the proposed park entry road as non-native grasslands "dominated by a mix of non-native species including ripgut grass (*Bromus diandrus*), foxtail chess (*Bromus madritensis* ssp. *rubens*), black mustard, and tocalote" (Figure 3).

This same area was mapped as mixed scrub or scrub/grassland by Glenn Lukos Associates in 2002 (Figure 5; Glenn Lukos Associates 2002 vegetation map) and as a mix of non-native grassland, disturbed goldenbush scrub, and invasive/ornamental in 2008 (Figure 6; Exhibit 9, Glenn Lukos Associates, August 2008, Draft Biological Technical Report for Newport Banning Ranch). In the DEIR BonTerra makes the following statement about the site grasslands, as well as the ruderal, ornamental, and disturbed areas:

> *These areas generally have low biological value because they are composed of unvegetated areas or are vegetated with non-native species. These areas generally provide limited habitat for native plant and wildlife species although they may occasionally be used by native species. Therefore, impacts on these areas would not be considered significant, and no mitigation would be required.*

While the grassland areas are clearly disturbed in that they are regularly mowed and dominated by non-native European annual grasses, I do not agree with BonTerra's assessment that they have low biological value and provide limited habitat for native plant and wildlife species. If these areas were not mowed I believe they would transition into a more mixed scrub/ grassland habitat that would support higher biodiversity including numerous native plants and animals. However, currently the non-native grasslands provide dwelling habitat for burrowing animals and significant foraging habitat for numerous species including mammals, birds, and reptiles. Robb Hamilton reported seeing large numbers of grasslands bird species in just two visits: "two Red-tailed Hawks, an American Kestrel, 14 Killdeers, 25 American Pipits, 70 Western Meadowlarks, 100 Mourning Doves, and 100 House Finches (minimum estimates provided for the last four species)"[10]. The non-native grasslands are important raptor foraging habitat and suitable habitat for burrowing owls, a sensitive species that has been documented nearby in similar habitat (see below, Figure 32). CDFG under CEQA recommends 0.5 ac of preservation for every 1.0 ac of non-native grassland impacted to provide raptor foraging opportunities.

Ruderal and Ornamental Areas

BonTerra maps a total of 7.75 acres as "Ruderal" and a total of 3.19 acres as "Ornamental" (Figure 3). The ruderal areas are described by BonTerra as dominated by black mustard and tocalote. They also state that:

> *They consist of areas that have been previously disturbed and now consist primarily of non-native vegetation that is well adapted to disturbed conditions and high nitrogen soils. The ruderal vegetation that covers most of the park portion of the Project site appears to be periodically mowed.*

I believe that in the absence of disturbance (including mowing) ruderal areas would become a mixture of grassland and scrub that would slowly transition from an area dominated by non-natives to an area dominated by natives.

BonTerra describes the areas they mapped as "ornamental" as dominated by a mix of invasive species including highway iceplant, myoporum, pampas grass, and castor bean; this is consistent with my observations of the site.

Wetlands

There are several areas on the slope along Superior Drive with water seeps. Several of the plants associated with these seeps are wetland species including narrowleaf cattail (*Typha angustifolia*), spike-rush (*Eleocharis* sp.) growing in mud and standing water, spike bentgrass (*Agrostis exarata*), rabbitfoot grass (*Polypogon monspeliensis*), marsh fleabane (*Pluchea odorata*), and seaside heliotrope (*Heliotropium curassavicum*). In addition, Mediterranean tamarisk (*Tamarix ramosissima)*, a non-native species with

[10] Hamilton, R. (Hamilton Biological). December 10, 2009. Review of Biological Resource Issues, Sunset Ridge Draft EIR. Memorandum from Hamilton Biological to Janet Johnson Brown, City of Newport Beach.

wetland plant status, also occurs in this area. Pampas grass, another non-native species, is abundant in this area. While the federal government has yet to assign pampas grass a wetland indicator status, this species grows in damp soils along river margins in its native range in South America[11]. In coastal California it is an insidious invader colonizing disturbed areas including moist slopes in urban centers. Robb Hamilton reports that examination of 82 records of Pampas Grass in California showed that 32 percent were from wetlands[12]. Upon my request, BonTerra mapped in detail the slope along the southern perimeter of the proposed park site (Figure 7; BonTerra Exhibit 2, Detailed vegetation types and other areas). The wetland seeps occur in the areas mapped "Cattail" and "Tamarisk" and within some of the areas mapped "Pampas Grass".

In many areas the soils in these moist areas have a salt crust and/or what appear to be oxidation stains. BonTerra dug two soil pits in the seep areas and in both cases found hydric soils (Figure 8; BonTerra Exhibit 1, Detailed vegetation types and other areas, soil sample sites). BonTerra has maintained that the seep areas are not wetlands for numerous reasons including their determination that the water source is artificial[13], the presence of non-native species, and that the seeps are "small areas of low function/value hydrophytic vegetation".

I disagree with this conclusion. In fact, the small seeps and surroundings supporting a preponderance of hydrophytic plants, or hydric soils, or wetland hydrology meet the definition of wetlands in the Coastal act and the Commission's regulations. Whether or not wetland plants are non-native, or wetlands are degraded, or residential development contributes to wetland hydrology is not germane. Although the City's biological consultant, BonTerra, erroneously concluded that the slope seeps are not wetlands, the City revised the park plans to avoid these areas.

Vernal Pools

The Banning Ranch Conservancy has alleged that four vernal pools exist on the proposed park site at the fill area to the north of the access road, and states that these pools could contain the endangered San Diego Fairy Shrimp. They submitted a powerpoint presentation titled "Complete Banning Ranch Mesa Vernal Pools/Wetlands First Edition 6-7-11" on June 30, 2011 in which they assign the potential vernal pools numbers "34", "35", "36", and "39" (Figure 9, BonTerra Exhibit 2, BRC Features 34, 35, 36, and 39). In response to the vernal pool allegation, BonTerra consulting biologist Allison Rudalevige revisited these areas along with BonTerra consulting biologist Jeff Crain and Glenn Lukos Associates biologist Tony Bomkamp. They observed three

[11] Connor, H.E. and D. Charlesworth. 1989. Genetics of male-sterility in gynodioecious *Cortaderia* (Gramineae). Heredity, Vol. 63: 373–382.

[12] Hamilton, R. (December 10, 2009) op. cit.

[13] Leighton Consulting's geotech report, found in the project DEIR states that "Our exploration showed that the site is underlain by marine terrace deposits over bedrock. The subsurface materials at the site were found to consist of medium dense to dense silty sand and stiff to very stiff clay. Groundwater was encountered within two of our borings during our exploration. Seepage was noted within all borings along a sand and clay layer interface. The seepage was very likely generated from surface runoffs within the site and from the residential developments north of the site".

areas of cracked soil, a potential indicator of ponding water, but state that "it is clear that none of the four features are vernal pools as all of the features lack vernal pool indicator plant species and all of the features occur on previously graded areas and exhibit a predominance of upland plant species." They conclude that "Therefore, due to the lack of plant species characteristic of vernal pools, lack of sustained/observable ponding over multiple years of surveys onsite, the project site does not contain vernal pools.[14]" Regarding the Banning Ranch Conservancy's powerpoint presentation BonTerra states "The BRC PowerPoint does not utilize any appropriate vernal pool identification protocol for this resource issue, as it does not document ponding duration, soil types present, plant indicator species, invertebrate activity, and other necessary parameters.[15]"

I requested to visit the site with USFWS vernal pool experts to examine these areas but to date that request has not been fulfilled by the City or Newport Banning Ranch. In the absence of an onsite survey, I requested that USFWS review the powerpoint submitted by the Banning Ranch Conservancy. Christine Medak, USFWS biologist, provided a detailed review via an email sent to me on September 13, 2011 (Appendix 1) and concluded the following:

> *After reviewing the available information we conclude that all four areas (VP 34, 35, 36, and 39) could potentially support San Diego fairy shrimp if ponding sufficient to support the species happens at a time when cysts are present. Extensive vernal pool habitat once occurred on the coastal plain of Los Angeles and Orange counties (Mattoni and Longcore 1997) and soils over the majority of Banning Ranch are likely suitable. However, the probability that ponding will be adequate to support the species is low in VP 34, 35, and 36 because the "pools" are located in a drainage and hydrological processes (including erosion and water flow) are not currently impeded by substantial alterations in the natural topography. In the absence of maintenance these ponds are unlikely to persist or to support the species over time. Vernal pool 39 has a higher probability of supporting the species because fill deposited in the drainage is likely contributing to longer periods of ponding. The rings of vegetation around the pool are another indication that ponding may occur at a freqency [sic] and for a length of time sufficient to support San Diego fairy shrimp. In the absence of maintenance we expect VP 39 will continue to pond (and pond for longer periods over time as silts collect in basin), unless the roadway fill is removed. To ensure the proposed project does not result in unintended impacts to listed species, we recommend protocol surveys for San Diego fairy shrimp are conducted in VP 39 prior to filling the pool.*

I have reviewed BonTerra's vernal pool analyses and the Banning Ranch Conservancy powerpoint. I find that both are inconclusive regarding the existence or non-existence of vernal pools. Comprehensive vernal pool protocol surveys require two full wet season

[14] Johnston, A.M. (BonTerra Consulting). September 9, 2011. Supplemental Biological Resource Information for the Sunset Ridge Park Project. Letter to Michael Sinacori, Public Works Department, City of Newport Beach.

[15] Ibid.

surveys done within a 5-year period or two consecutive seasons of one full wet season survey and one dry season survey (or one dry season survey and one full wet season survey**).** In addition, as BonTerra points out, appropriate vernal pool identification protocol includes documentation of ponding duration, identification of soil types and plant species present, invertebrate activity, and other necessary parameters. Neither BonTerra nor the Banning Ranch Conservancy have submitted the full complement of information necessary to make a firm conclusion regarding the existence or not of vernal pools on the proposed Sunset Ridge Park site. It is important to point out that vernal pools are a special type of wetland that are especially valuable because of the rare and unique species that they support. However, regardless of whether presumptive wetlands are vernal pools, they are protected under the Coastal Act. Given the lack of information and considering the review and conclusions of the USFWS, I recommend that a technical wetland delineation be conducted and that vernal pool protocol surveys be required on all four purported vernal pools.

California Gnatcatcher

Coastal sage scrub in southern California provides habitat for about 100 rare species, many of which are also endemic to limited geographic regions[16]. One such species is the coastal California gnatcatcher (*Polioptila californica)*. The California gnatcatcher is an obligate, year-round resident of coastal sage scrub communities[17]. California gnatcatchers typically live a total of 4 to 6 years. They primarily feed on insects, which are eaten directly off coastal scrub and other vegetation. California gnatcatchers range from Baja California north to Ventura and San Bernadino Counties in southern California. Gnatcatchers in southern California preferentially nest and feed in coastal scrub vegetation on mesas and gentle slopes that are characterized by varying abundances of California sagebrush, California sunflower; and California buckwheat[18]. Gnatcatcher densities in northern San Diego County were found to be highest in areas where California encelia and California buckwheat were co-dominant with sagebrush[19]. Where these species are in low abundance, California gnatcatchers will forage on other species, including some non-natives such as black mustard[20]. They also use grassland, chaparral, and riparian habitats in proximity to sage scrub for dispersal and foraging[21].

In the last 60 years extensive southern California suburban sprawl has reduced and fragmented coastal scrub habitats, resulting in a significant decline in California gnatcatcher populations. In addition, the majority of remaining coastal scrub habitats

[16] Westman, W.E. 1981. Diversity relations and succession in Californian coastal sage scrub. Ecology, Vol. 62: 170-184

[17] Atwood, J.L. and D.R. Bontrager. 2001. California Gnatcatcher (*Polioptila californica). In* The Birds of North America, No. 574 (A. Poole and F. Gill, eds.). The Birds of North America, Inc. Philadelphia, PA.

[18] Ibid.

[19] Weaver (1998) op. cit.

[20] Dixon, J. Dec. 18, 2002. ESHA Determination for the Marblehead Property. Memorandum to Karl Schwing

[21] Ibid.

are disturbed to a greater or lesser extent by non-native and invasive plant species. In response to the drop in gnatcatcher numbers in southern California due to the habitat loss and fragmentation resulting from urban and agricultural development, the northernmost subspecies (*Polioptila californica californica*) was listed as federally threatened in 1993[22]. The California gnatcatcher is also a California Species of Special Concern. Loss of gnatcatcher coastal scrub habitat in southern California is estimated to be 70 to 90 percent[23,24] and, in 1999, the United States Fish and Wildlife Service (USFWS), estimated the number of gnatcatcher breeding pairs in Los Angeles, Orange and San Diego Counties at only 144, 643, and 1,917, respectively[25]. Fragmented habitats have reduced biological integrity due to the increased potential for human disturbance. An increase in recreational use of habitats, fire frequency, trash dumping, air pollution, invasive species, predators, cowbird parasitism, domestic pets, herbicides and pesticides, and night lighting are directly associated with development and can have adverse impacts on the quality of gnatcatcher habitat.

In 2007, the USFWS identified and mapped critical gnatcatcher habitat in southern California[26]. In determining areas to designate they "consider the physical and biological features (primary constituent elements (PCEs)), that are essential to the conservation of the species". Primary constituent elements define the actual extent of habitats that contribute to the primary biological needs of foraging, nesting, rearing of young, intra-specific communication, roosting, dispersal, genetic exchange, or sheltering. Primary constituent elements for California gnatcatcher critical habitat include not only intact sage scrub habitats, but also "non-sage scrub habitats such as chaparral, grassland, riparian areas, in proximity to sage scrub habitats that provide space for dispersal, foraging, and nesting." The USFWS defines sage scrub as a broad category of vegetation that includes coastal sage scrub, coastal bluff scrub, and maritime succulent scrub in their extensive list of the various sage scrub plant communities. The USFWS designated all of the City's property and all of Newport Banning Ranch as critical habitat for California gnatcatchers in 2007[27] (Figure 10; California Gnatcathcer Critical Habitat Unit Map). In designating this block of land as critical habitat, USFWS noted that the area was occupied by gnatcatchers at the time of listing and at the time of designation of critical habitat and the area "contains all the features essential to the conservation of the coastal California gnatcatcher."[28] This

[22] Department of the Interior, Fish and Wildlife Service, 50 cfr part 17, RIN 1018–AV38, Endangered and threatened wildlife and plants; Notice of determination to retain the threatened status for the coastal California gnatcatcher under the endangered species act. Federal Register 60:72069. (March 1993).

[23] Westman (1981) op. cit.

[24] Michael Brandman Associates. 1991. Unpubl. Report. A rangewide assessment of the California Gnatcacher (Polioptila californica). Prepared for Building Industry Assoc. of Southern California; July 23.

[25] Department of the Interior, Fish and Wildlife Service, 50 cfr part 17, RIN 1018–AV38, Endangered and threatened wildlife and plants; Revised designation of critical habitat for the Coastal California Gnatcatcher (*Polioptila californica californica*). 50; Federal Register 72:72069. (December 19, 2007).

[26] Ibid.

[27] Ibid. See also Exhibit 13, Banning Ranch DEIR.

[28] USFWS (Dec. 19, 2007) op. cit.

block of land is the only immediately coastal land mapped as critical gnatcatcher habitat in Unit 7 in Orange County (Figure 11; USFWS Federal Register Vol. 72, No. 243). USFWS pointed out in the final rule that the critical habitats in northern Orange County "may require special management considerations or protection to minimize impacts associated with habitat type conversion and degradation occurring in conjunction with urban and agricultural development." It is important to note that specific observations of gnatcatchers within any particular area are not necessary in order to conclude that the area is "occupied" by gnatcatchers. If gnatcatcher foraging or nesting is observed in the general proximity of a site, it is considered "occupied." Therefore, based on the many observations of gnatcatcher use, the USFWS concluded that all of the City property and Newport Banning Ranch is occupied by coastal California gnatcatchers.

California gnatcatcher breeding season territories range in size from less than 2.5 acres to 25 acres[29,30], with a mean territory size generally greater for inland populations than coastal populations[31]. Nesting territories typically have greater than 50 percent shrub cover and an average shrub height that exceeds 2.3 ft; nests are most often at 3 feet above the ground[32]. The relative density of shrub cover influences gnatcatcher territory size, with territory size increasing as shrub cover decreases presumably as a result of limited resources. In a 1989 to 1992 study of two sites in San Diego County, breeding season territories averaged 20 acres; non-breeding season territories were larger[33]. In studies by Bontrager (1991)[34] and Preston et al. (1998)[35], territory size during the non-breeding season increased 82 percent and 78 percent, respectively. Increase in non-breeding season territory size is thought to serve two purposes; to allow gnatcatchers to acquire more habitat resources and to obtain information about potential mates. California gnatcatchers are known to occupy (i.e., to breed, nest, and forage in) year round various locations of coastal scrub habitat on the city's property and Newport Banning Ranch. Numerous gnatcatcher surveys have been conducted on Newport Banning Ranch; only one survey has been conducted on the city property. The USFWS California gnatcatcher survey protocols, published in 1997, require a minimum of six or more surveys covering all potentially occupied habitat areas during the gnatcatcher breeding season which extends from March 15 to June 30[36,37]. All surveys must take

---

[29] Atwood, J.L., S.H. Tsai, C.H. Reynolds, J.C. Luttrell, and M.R. Fugagli. 1998. Factors affecting estimates of California Gnatcatcher territory size. Western Birds, Vol. 29: 269-279.

[30] Preston, K.L., P.J. Mock, M.A. Grishaver, E.A. Bailey, and D.F. King. 1998. Calfornia Gnatcatcher territorial behavior. Western Birds, Vol. 29: 242-257.

[31] Ibid.

[32] Beyers, J.L. and W.O. Wirtz. 1997. Vegetative characteristics of coastal sage scrub sites used by California gnatcatchers: Implications for management in a fire-prone ecosystem. In Greenlee, J. M. (ed.), Proceedings: First conferenc on fire effects on rare and endangered species and habitats, Coeur d'Alene, Idaho, November 1995. International Association of Wildland Fire, Fairfield, Washington. pp. 81-89.

[33] Atwood and Bontrager (2001) op. cit.

[34] Bontrager, D.R. 1991. Unpublished Report: Habitat requirements, home range and breeding biology of the California Gnatcatcher (Polioptila californica) in south Orange County. Prepared for Santa Margarita Co., Rancho Santa Margarita, CA; April.

[35] Preston et. al. (1998) op. cit.

[36] U.S. Fish and Wildlife (USFWS). 1997a (February 28). Coastal California Gnatcatcher (Polioptila californica californica) Presence/Absence Survey Protocol. Washington, D.C.:USFWS.

place during the morning hours and no more than 80 acres of suitable habitat may be surveyed per visit. Typically gnatcatcher survey reports include a compilation of gnatcatcher observations (dot/point locations) in the form of a map of gnatcatcher breeding pair use areas (breeding territories).

The gnatcatcher survey data for the southeast corner of Newport Banning Ranch, made available to us from Newport Banning Ranch, City of Newport Beach, and Newport Banning Ranch Conservancy (via USFWS), includes the following: gnatcatcher use areas and gnatcatcher observations collected by LSA from 1992 through 1994, gnatcatcher use areas collected by LSA in 1995 and 1996, gnatcatcher use areas and gnatcatcher observations collected by PCR in 1997, gnatcatcher observations collected by PCR in 1998, gnatcatcher use areas in 2000 (collector unknown, we believe it may have been PCR), gnatcatcher observations collected by GLA in 2002, 2006, and 2007, and gnatcatcher observations collected by BonTerra in 2009. For some years we have the reports associated with the data maps (1994 - 1996, 2002, 2006, 2007, and 2009) and for other years we do not (1992, 1993, 1997, 1998, and 2000).

We also have breeding season and non-breeding season gnatcatcher observations collected by Robb Hamilton in 2009 and 2010[38]. Mr. Hamilton was one of the biologists who collected gnatcatcher data for LSA in the early 1990's. Mr. Hamilton currently runs his own environmental consulting firm, Hamilton Biological, and holds a permit to conduct gnatcatcher presence/absence surveys (No. TE-799557).

The Newport Banning Ranch gnatcatcher survey efforts (number of days per annual survey), methodology (timing, areal coverage, etc.), and data presentation vary among the biological consulting firms. LSA surveyed for nine days in 1992, three in 1993, and four each from 1994 through 1996. Regarding the presentation of their data LSA states that:

> *Each year of the LSA surveys, composite maps were prepared that showed the distribution of approximate gnatcatcher territory boundaries at NBR. …The composite territories thus identified generally represented the most conservative polygons possible that combined all observation points. Notions of what might constitute gnatcatcher habitat were put aside; only those areas where gnatcatchers were observed were mapped. However, because polygons were mapped by combining all outlying observation points, on a finer scale many areas within polygons never were actually used by gnatcatchers. Most of the polygons depicted include suitable habitat as well as unused pockets (e.g., ice plant, barren of developed areas), and the territory maps do not distinguish*

[37] U.S. Fish and Wildlife (USFWS). 1997b (July 28). Coastal California Gnatcatcher (Polioptila californica californica) Presence/Absence Survey Protocol. Washington, D.C.:USFWS.

[38] Mr. Hamilton did not have access to Newport Banning Ranch so his observations are limited to those areas of the southeastern corner of Newport Banning Ranch that he could survey from the property boundary.

> *suitable habitat from unsuitable habitat such as solid ice plant, roads, and structures.*[39]

PCR conducted surveys in 1997, 1998, and 2000[40]. We do not have any information regarding these surveys other than the survey maps.

Glenn Lukos Associates and BonTerra present gnatcatcher sightings for individuals and breeding pairs as dot/point observations on their annual survey maps. We asked Glenn Lukos Associates to interpret their dot/point observations and they said they represent an interpolation of a few to multiple individual gnatcatchers and/or a gnatcatcher pair within a use area (pers. comm. Tony Bomkamp, January 3, 2011). We asked BonTerra the same question and they said their dot/point observations were their best approximation or estimation of the center point of observed gnatcatcher activity (pers. comm. Ann Johnston, December 15, 2010).

The only protocol gnatcatcher survey that was performed specifically for the proposed Sunset Ridge Park site was the 2009 survey conducted by BonTerra. Since that time numerous gnatcatcher sightings have occurred on the site including those of Robb Hamilton discussed above (Figure 30). In addition to Mr. Hamilton's gnatcatcher observations, Christine Medak, USFWS biologist, and Andrew Willis, CCC Enforcement Analyst, have observed gnatcatchers on several occasions in the location identified on the emails and maps attached here (Appendix 2).

The USFWS California gnatcatcher survey protocols require a minimum of six surveys conducted in the morning during the gnatcatcher breeding season. Surveys conducted in the early '90's did not always meet the six-day minimum, however, they did take place in the morning during the breeding season. We are assuming that surveys conducted from 1997 on followed the USFWS gnatcatcher survey protocols. We are also assuming that gnatcatcher survey data presented as dot/point observations have associated use polygons subject to gnatcatcher habitat requirements. Our conclusions are based on the data we have and our assumptions regarding these data. The gnatcatcher survey results are reported below in the ESHA discussions. The details of the observations are not critical, because it is clear that any suitable gnatcatcher habitat on the City property and on Newport Banning Ranch must be considered "occupied."

ESHA Delineation

Areas of coastal scrub habitat with significant gnatcatcher use perform an important ecosystem function, are increasingly rare, and are easily disturbed and therefore meet the definition of ESHA under the Coastal Act and the City of Newport LUP.

---

[39] Quote from December 9, 2010 "California Gnatcatcher Issues at the Sunset Ridge Park/Newport Banning Ranch Site" letter to Mick Sinacori, City of Newport Beach, Department of Public Works from Art Homrighausen and Richard Erickson of LSA

[40] The 2000 gnatcatcher use map is unlabeled and therefore, while the format suggests it was made by PCR, we can not be sure who created the exhibit.

In general, relatively pristine coastal sage scrub, scrub vegetation with significant coastal California gnatcatcher use, and appropriate gnatcatcher habitat in "occupied" areas[41] are increasingly rare in coastal California and meet the definition of ESHA. However, all ESHA determinations are based on an analysis of site-specific conditions. Since the entire Newport Banning Ranch and City property have been identified by the USFWS as California gnatcatcher critical habitat the determination of ESHA is appropriately based on both observations of gnatcatcher use, which is assumed in "occupied" areas, and on the presence of vegetation that constitutes suitable habitat.

I applied the following criteria in determining what areas of the proposed park site rose to the level of ESHA:

1. Areas occupied by California gnatcatchers (the entire site), and
2. Areas supporting habitat suitable for gnatcatchers, and
3. Unfragmented patches of suitable gnatcatcher habitat of substantial size – not small, isolated, fragmented patches, and
4. Areas supporting other rare species or rare vegetation communities.

In addition to the gnatcatcher habitat ESHA, the proposed Sunset Ridge Park site supports several wetland seep areas as discussed above. Opponents of the project allege that the proposed park site supports several vernal pools that will be impacted by the project footprint. While the project consultant maintains that these areas are not vernal pools, technical wetland delineations and vernal pool fairy shrimp protocol surveys must be performed in order to accurately identify the status of these areas.

<u>ESHA Determination</u>

I delineated two areas of ESHA within the footprint of the proposed Sunset Ridge Park. These areas consist of habitat that supports the federally threatened California gnatcatcher. One area, "ESHA West", is west of the proposed entrance road. The other area, "ESHA East", is east of the proposed entrance road (Figure 12).

I reviewed all the vegetation and ESHA mapping that has been performed on the Newport Banning Ranch portion of the project site and for the City's property. Four vegetation maps and one ESHA map are available for the southeast corner of Newport Banning Ranch: vegetation maps created by LSA, PCR Services, and Glenn Lukos Associates and a vegetation and ESHA map created as part of the Newport Banning Ranch Technical Appendices[42] by Glenn Lukos Associates. In addition, the City's consultant, BonTerra, mapped vegetation on the City's property.

---

[41] An area is considered "occupied" by gnatcatchers if they have been observed nearby in easy flight distance regardless of whether gnatcatchers have been observed to use a particular plot of ground.

[42] Glenn Lukos Associates, Inc. August 2008. Draft Biological Technical Report for the Newport Banning Ranch.

This document is a part of the "Banning Ranch, Planned Community Development Plan, Technical Appendices Volume II" that was posted on the City of Newport Beach website and downloaded in August 2009; it has since been removed from the City's website. While the report text is marked draft, the exhibits and appendices are not. Given that the vegetation (Exhibit 9) and ESHA (Exhibit 12) exhibits

In 1991 LSA mapped various habitat types including coastal bluff scrub on the southeast corner of Newport Banning Ranch (Figure 13; Figure 1, LSA December 9, 2010 letter). In 1998 PCR Services mapped coastal sage scrub habitat on the southeast corner of Newport Banning Ranch (Figure 14; Exhibit 9, Glenn Lukos Associates, August 26, 2010 memorandum). In 2002 Glenn Lukos Associates mapped "bluff scrub or succulent scrub" in several areas on the southeast corner of Newport Banning Ranch (Figure 15; Exhibit 2, Glenn Lukos Associates, West Newport Oil Property 2002 Gnatcatcher surveys). The 2008 Glenn Lukos Associates vegetation map (Figure 6 and 16; Exhibit 9, Glenn Lukos Associates. August 2008. Draft Biological Technical Report for the Newport Banning Ranch) identifies several native plant communities including maritime succulent scrub, disturbed encelia scrub, disturbed mule-fat scrub, goldenbush scrub, and disturbed goldenbush scrub on the southeast corner of Newport Banning Ranch. The ESHA map (Figure 17; Exhibit 12, Glenn Lukos Associates. August 2008. Draft Biological Technical Report for the Newport Banning Ranch) identifies two areas of ESHA: maritime succulent scrub and disturbed encelia scrub on the southeast corner of Newport Banning Ranch. In 2009 and in greater detail in 2011, BonTerra mapped the vegetation on the City's property as discussed above.

Based on the historical and current vegetation and ESHA maps, the site proposed for Sunset Ridge Park supports a significant cover of coastal scrub vegetation, much of it suitable for California gnatcatchers. There are areas of coastal bluff and maritime succulent scrub that rise to the level of ESHA whether or not they support gnatcatchers due to the rarity of these habitat types. It happens that in the case of the proposed park property, the mapped coastal bluff and maritime succulent scrub habitats are within the boundaries of ESHA West and/or ESHA East (Figure 12) because they also have a history of gnatcatcher use.

ESHA West

Between 1992 and 2009 gnatcatchers have been documented during eight surveys on the western boundary of the proposed Sunset Ridge Park project (Figure 18). In 1992 LSA mapped a gnatcatcher use area and six gnatcatcher observations along the western boundary of the proposed park property (Figures 19a and 19b; Figure 1, December 9, 2010 LSA memorandum and from LSA map submitted by the Newport Banning Ranch Conservancy, respectively). In 1993 LSA mapped a very large gnatcatcher use area that contains a wide swath of vegetation along the western boundary of the proposed park (Figure 20; Figure 2, December 9, 2010 LSA memorandum). In 1994 LSA mapped a large gnatcatcher use area that encompasses a large amount of habitat along the western boundary of the proposed park (Figures 21a and 21b; LSA map submitted by the Newport Banning Ranch Conservancy). In 1996, LSA mapped a gnatcatcher use area about three times the size of the area mapped in 1996 that overlaps all of the 1996 gnatcatcher use area and extends eastward (Figures

---

portray the expert opinion of Glenn Lukos Associates, Inc., at the time they were developed, we believe it is appropriate to consider this information, along with other sources, in our ESHA determination. We note that these data support our ESHA conclusions and we are awaiting the revised analysis, but in the interim, we continue to note the significance of the data presented in draft form.

22a and 22b; Figure 5, December 9, 2010 LSA memorandum). In 1998 PCR Services mapped point observations for two breeding pairs along the western boundary of the proposed park (Figures 23a and 23b; Glenn Lukos Associates map submitted by the Newport Banning Ranch Conservancy).

In 2000 a gnatcatcher use area was mapped that covers a small area adjacent to the western boundary of the proposed park (Figure 24; Gnatcatcher use map I believe was created by PCR that was submitted by the Newport Banning Ranch Conservancy). In 2002 two breeding pairs were mapped in the same general location as the use area that was mapped in 2000 (Figures 25a; Exhibit 3, September 24, 2009 Glenn Lukos Associates memorandum - and 25b; Exhibit 2, October 14, 2002 Glenn Lukos Associates memorandum). The City submitted a letter from Glenn Lukos Associates biologist Tony Bomkamp addressed to Christine Medak on June 14, 2011, that states that the pair of gnatcatchers within the 0.08 acre patch of California sunflower scrub was mapped incorrectly and should have been mapped approximately 200 feet west which would place it in the area I have identified as “ESHA West”. In 2006 and 2007, gnatcatcher observations for breeding pair and an unpaired male sightings, respectively, were mapped by Glenn Lukos Associates along the western boundary of the park in the area mapped as disturbed encelia scrub in the Glenn Lukos Associates 2008 vegetation map and identified as ESHA in the Glenn Lukos Associates 2008 ESHA map (Figures 26 and 27; Exhibit 3, July 19, 2007 Glenn Lukos Associates memo). In 2009 BonTerra mapped a gnatcatcher breeding pair observation on the western side of the proposed park in disturbed goldenbush scrub (Figure 28; Exhibit 3b, July 25, 2009 BonTerra memorandum).

Based on the vegetation and ESHA maps, the vegetation I observed during my site visits, and the gnatcatcher survey data, I have delineated an area I have labeled “ESHA West” (Figure 12) on the western boundary of the proposed park that rises to the level of ESHA because it provides an especially valuable ecosystem service by providing critical habitat that is utilized by the California gnatcatcher for nesting, breeding, foraging and dispersal; the critical habitat is also easily disturbed by human activities as evidenced by bare areas (road), imported fill, and graded areas on the property and therefore meets the definition of ESHA in the Coastal Act.

<u>ESHA East</u>

A second area of ESHA, “ESHA East”, occurs east of the ESHA West, on the other side of an access road that serves oil operations on Newport Banning Ranch. Between 1992 and 2009, gnatcatchers have been documented during six surveys in this area (Figure 18). The ESHA East includes a bluff with slopes that support coastal sage, coastal bluff, and maritime succulent scrub habitat. In 1993 LSA mapped a very large gnatcatcher use area that includes the entire bluff area (Figure 20; Figure 2, December 9, 2010 LSA memorandum). In 1996, LSA mapped another very large gnatcatcher use area that includes most of the bluff area (Figures 18a and 18b; Figure 5, December 9, 2010 LSA memorandum). In 1997 PCR Services mapped a gnatcatcher use area that covers the entire bluff (Figure 29a; PCR use area map submitted by the Newport Banning Ranch Conservancy). In 1997 PCR also mapped point observations for two

breeding pairs; one of the breeding pairs was located on the bluff in maritime succulent scrub while the second pair was located on a slope above PCH in disturbed California sunflower scrub (Figures 29c and 29b; Glenn Lukos Associates map submitted by the Newport Banning Ranch Conservancy). PCR Services conducted another survey in 1998 and mapped an observation of a gnatcatcher pair in maritime succulent scrub on the bluff (Figures 23a and 23b; Glenn Lukos Associates map submitted by the Newport Banning Ranch Conservancy).

In 2000, a gnatcatcher use area was mapped on the bluff (Figure 24; Gnatcatcher use map I believe was created by PCR that was submitted by the Newport Banning Ranch Conservancy). In 2006 Glenn Lukos Associates mapped a gnatcatcher breeding pair observation on the bluff in maritime succulent scrub (Figure 26; Exhibit 3 July 26 2006 Glenn Lukos Associates memorandum). In addition to Newport Banning Ranch's and the City of Newport Beach's biological consultant's surveys, Mr. Hamilton mapped gnatcatcher use areas in 2009 and 2010. He mapped two gnatcatcher pair use areas outside the breeding season on November 4, 2009; one in the disturbed California sunflower scrub above PCH and one to the northeast in mulefat near the proposed parking lot (Figure 30; Figure 8, December 11, 2010 Hamilton Biological letter). Mr. Hamilton also mapped a gnatcatcher male use area during the breeding season above PCH in the disturbed California sunflower scrub on June 3, 2010 (Figure 30; Figure 8, December 11, 2010 Hamilton Biological letter). Mr. Hamilton's 2009 gnatcatcher observations indicate that the area around the disturbed area identified as the southeast polygon in the NOV continues to be utilized by gnatcatchers outside the breeding season. Between 1993 and 2009, seven gnatcatcher use areas and four dot/point gnatcatcher observations were mapped (Figure 18). I believe that had gnatcatcher use areas been mapped for the gnatcatcher observations, they would overlap most of the area I have mapped as ESHA east. I base this on the documented minimum gnatcatcher breeding territory size (2.5 acres)[43,44] (Figure 31).

Based on the vegetation and ESHA maps; the vegetation I observed during my site visits, and the gnatcatcher survey data, I have delineated an area of ESHA that I call "ESHA East" (Figure 12). From the extensive history of gnatcatcher survey data it is clear that the disturbed coastal sage, coastal bluff, and maritime succulent scrub within the area provide an especially valuable ecosystem service by furnishing critical habitat utilized by the California gnatcatcher for nesting, breeding, foraging, and dispersal; the critical habitat is also easily disturbed by human activities, as evidenced by bare areas (road), imported fill, and graded areas, and therefore meets the definition of ESHA in the Coastal Act.

Buffers

There are several areas where the proposed park development, including the entrance road, parking lot, and children's playground, is designed near the west and east

[43] Atwood et al. (1998) op. cit.
[44] Preston et. al. (1998) op. cit.

gnatcatcher habitat ESHA areas. From the time the Commission began recognizing coastal scrub habitat occupied by gnatcatchers as ESHA, several of our past permit actions have required 100 foot buffers between gnatcatcher ESHA and development to adequately protect gnatcatchers and their habitat from human disturbance. The entire site of the proposed Sunset Ridge Park is gnatcatcher critical habitat and therefore protective ESHA buffers are essential. I recommend 100 foot buffers between the parking lot and the children's playground to adequately protect gnatcatchers from human disturbance. I believe however, that a 50 foot minimum buffer between the park entrance road and gnatcatcher ESHA is adequate to protect gnatcatchers for several reasons. The park entrance road is located in a canyon with slopes on either side which enable gnatcatchers to fly over it with ease. Studies have shown that the California gnatcatcher can become accustomed to some disturbance by vehicles. That disturbance is best accommodated in situations where the bird can easily fly over the disturbed area (i.e. narrow roads), and where there is appropriate habitat immediately on either side of the road. Car trip estimates for the park are 173 per day which is a low impact traffic pattern; the use intensity of the road will be comparatively less than with most other types of development (e.g. housing, commercial, etc.). This low level of impact is a key factor in my determination that reducing the buffer from 100 feet to 50 feet along the entrance road is acceptable in this particular case. If the anticipated traffic estimates were larger, or were to increase, I believe that this would constitute a significant impact on the gnatcatcher habitat and a reduction to a 50 foot buffer along the proposed park entrance road would no longer be appropriate. Thus, it is critical that the road remain just that, a park entrance road as planned and nothing more.

Development of the park entrance road will further fragment the two patches of ESHA on the Sunset Ridge Park site. Restoring the existing ESHA to higher quality coastal sage scrub and vegetating the buffers, which currently consist of bare dirt or ruderal habitat, with coastal sage scrub species, provides improved and new suitable gnatcatcher habitat that to some degree offsets any loss in connectivity between the two ESHA areas.

My 50 foot buffer recommendation for the road is contingent on the entirety of all the buffers and the adjoining ESHA being re-vegetated or restored to high quality coastal scrub habitat specifically designed to be attractive to gnatcatchers. This will help minimize habitat fragmentation caused by the development. Small habitat fragments can only support small populations of plants and animals and small populations are more vulnerable to extinction. Minor fluctuations in resources, climate, or other factors that would be trivial in large populations can be catastrophic in small, isolated populations. Habitat fragmentation is an important cause of species extinction[45] and given the importance of the proposed park site to the survival of California gnatcatchers, habitat fragmentation must be avoided to the greatest extent possible.

The park development plans include grading within the buffer along the road which is an activity the Commission typically does not allow. The only use the Commission typically

[45] Rosenzweig, M. L. 1995. Species Diversity in Space and Time. Cambridge University Press, Cambridge.

allows in buffers is restoration. However, in this instance, the buffer area along the road is either bare dirt or highly impacted ruderal vegetation. Therefore, I feel that grading is acceptable provided the grading does not occur within 20 feet of the ESHA and provided that after grading is finished the buffer is restored to high quality coastal sage scrub habitat. To mitigate potential negative impacts on gnatcatchers grading must occur outside gnatcatcher breeding season and construction noise must be minimized to the greatest extent possible. During construction, gnatcatcher habitat must be shielded from sight and sound by 8-foot high, solid 1-inch thick barriers. A biological monitor must be on site daily during construction to insure that the construction activities are having no negative impact on gnatcatchers. Immediately following grading the buffer must be restored to coastal sage scrub suitable for gnatcatchers. Planting high quality coastal sage scrub in the buffers will be a significant benefit to gnatcatchers and other species and will increase the effectiveness of the buffers.

Burrowing Owls

BonTerra conducted protocol surveys for burrowing owls and California gnatcatchers and determined that the only sensitive species that occurs on the project site is the gnatcatcher. Burrowing Owls (*Athene cunicularia hypugaea*) are a California Species of Special Concern that are rare in Orange County due to loss of suitable grasslands to development, especially near the coast. The Commission considers habitat that supports burrowing owls ESHA. In January 2008, Glenn Lukos Associates conducted winter-season surveys for burrowing owls at Newport Banning Ranch and found two in the ranch's southern grasslands and a third individual 212 feet to the west (Figure 32; Exhibit 7 in the 2008 draft biological report prepared by Glenn Lukos Associates for NBR), outside the Sunset Ridge Park project site, but in habitat similar to that in the western portion of the park project site. BonTerra downplays the site's potential value to the species:

> *Limited suitable habitat and burrow sites for this species are present on the Project site. Focused surveys for the burrowing owl were conducted in winter 2008/2009 and in spring/summer 2009; the burrowing owl was not observed. Therefore, burrowing owl is not expected to occur on the Project site due to lack of detection during focused surveys. However, there is potential for the burrowing owl to occasionally occur on the Project site as a migrant or rare winter visitor.*

I disagree and find that the project site's grasslands comprise ideal habitat for burrowing owls. To ensure that the proposed project does not impact burrowing owls I recommend that an additional set of protocol burrowing owl surveys be performed before development in the area is given further consideration.

Coastal Sage Scrub Habitat Creation and Restoration

The Commission's findings of approval of the LUP amendment (NPB-MAJ-1-06 part b, July 2006) state that "the siting and design of a park development on the proposed City

property, particularly an active park, must take into account on-site natural resources and avoid substantial landform alteration…" The findings also note that

> *…the site currently exists as undisturbed open space and may contain potential wildlife habitat. The subject site is located directly adjacent to Banning Ranch, a 505-acre undeveloped area known to support a number of sensitive habitat types, including coastal bluff scrub. There is a potential biological connection between the two sites that will need to be addressed when specific development is contemplated at the Caltrans West property…*

The Commission further noted that "the developable area of the site may be restricted by the existence of habitat and associated setbacks/buffers…"

Given the importance of the property to the survival of the federally threatened California gnatcatcher (*Polioptila californica californica*) I recommend that all suitable areas of the property not proposed for formal park development and that are not currently non-native grassland (except for the area adjacent to the "ESHA East") be restored to high quality coastal sage scrub habitat suitable for gnatcatchers. The entire site has been identified by the USFWS as critical gnatcatcher habitat and is also within the boundaries of a CDFG NCCP which recognizes the importance of the site for gnatcatchers. The site is the only immediately coastal critical California gnatcatcher habitat in Orange County. Three breeding pairs are known to use the property proposed for the park. The minimum breeding territory for gnatcatchers is 2.5 acres and when habitat is less than premium breeding territories necessarily increase. In addition, non-breeding season territories are much larger; by as much as 80 percent. Furthermore, we have only one year of formal gnatcatcher surveys for the City's property and Robb Hamilton, a biologist who holds a permit to survey for gnatcatchers, has documented gnatcatchers in several areas of the site of the proposed park on several occasions (Figure 30) and Christine Medak, USFWS biologist and Andrew Willis, CCC Enforcement Analyst have observed gnatcatchers on the site on several occasions (Appendix 2).

In order to ensure that three gnatcatcher pairs are able to persist on the site I recommend that the site be designed to support a minimum of 7.5 acres of high quality coastal sage scrub. This can be accomplished by creating or restoring to high quality coastal sage scrub habitat in all suitable areas of the property not proposed for formal park development and that are not currently non-native grassland, as stated above. In addition, high quality coastal sage scrub creation and/or restoration must occur in the ESHA areas, ESHA buffer areas, and all suitable areas adjacent to the ESHA. The created and restored coastal sage scrub areas will provide habitat for California gnatcatchers and other species. A habitat maintenance and management plan designed to ensure that the coastal sage scrub habitat remains healthy and robust in perpetuity should be developed.

Non-Native and Invasive Species

Throughout the range of gnatcatchers in southern California, not only are coastal scrub communities being lost to development at an alarming rate, they are also being type converted to non-native grassland and other ornamental or ruderal habitats[46,47]. A combination of factors is thought to be behind this conversion including competitive displacement by European annual grasses, increased fire frequency, nitrogen deposition due to air pollution, high silt, and high pH[48]. Loss and type conversion of coastal sage scrub habitats in southern California is another reason that improving and restoring all the appropriate areas on the proposed Sunset Ridge Park site that are not slated for formal development is essential.

In addition to loss and type conversion of coastal sage scrub habitats, invasive animals are also a threat to California gnatcatchers. Invasive ants such as the Argentine ant (*Linepithema humile*) can be abundant in landscaped areas and can move up to 1400 feet toward native habitat from an urban or urban/rural boundary[49]. Irrigation encourages invasive ants which prefer wetter soil conditions. Argentine ants are documented predators on gnatcatcher nestlings and their presence can also alter the native arthropod community by reducing their diversity and abundance[50]. A number of measures should be taken to prevent or limit invasive ants including using low-water use turf and/or artificial turf on all playing fields and playground areas, maintaining drainage best management practices, maintaining a clean, trash free park, and planting high quality coastal sage.

Cowbird Parasitism

Brown Headed cowbirds are brood parasites; that is they lay their eggs in the nests of other birds. Cowbird chicks usually hatch one or two days before the eggs of the host bird and grow rapidly, giving them a competitive head start. Rapid growth allows the cowbird chick to out-compete the host's chicks for food and space in the nest so that

[46] Allen, E.B., S.A. Eliason, V.J. Marquez, G.P. Schultz, N.K. Storms, C.D. Stylinski, T.A. Zink, and M.F. Allen. 2000. What are the limits to restoration of coastal sage scrub in southern California? In: Keeley, J.E., M. Baer-Keeley, and C.J. Fotheringham (Eds.). 2nd Interface Between Ecology and Land Development in California. U.S. Geological Survey Open File Report 00-62.

[47] Allen, E.B. 2004. Restoration of Artemisia Shrublands Invaded by Exotic Annual Bromus: A comparison between southern California and the Intermountain region. In: Hild, A.L., N.L. Shaw, S.E. Meyer, D.T. Booth, and E.D. McArthur (Comps.), Seed and Soil Dynamics in Shrubland Ecosystems: Proceedings: 2002 August 12-16; Laramie, Wyoming. Proceedings RMRS-P-31. Ogden, U.T. U.S. Department of Agriculture, Forest Service, Rocky Mountain Research Station.

[48] Talluto, M.V. and K.N. Suding. 2008. Historical change in coastal sage scrub in southern California, USA, in relation to fire frequency and air pollution. Landscape Ecology, Vol. 23: 803-815.

[49] Suarez, A.V., D.T. Bolger and T.J. Case. 1998. Effects of fragmentation and invasion on native ant communities in coastal southern California. Ecology, Vol. 79: 2041-2056

[50] Bolger, D.T., A.V. Suarez, K.R. Crooks, S.A. Morrison and T.J. Case. 2000. Arthropods in Urban Habitat Fragments in Southern California: Area, Age, and Edge Effects. Ecological Applications, Vol. 10(4): 1230-1248.

host chicks usually perish. In areas where cowbirds have invaded California gnatcatcher breeding territories, gnatcatcher fitness has decreased[51].
Brood parasitism of gnatcatcher nests by cowbirds is a problem encountered in urban and urban/rural settings. Fast food restaurants, equestrian and livestock facilities, and large expanses of turf grass associated with developments, schools, and parks all provide foraging opportunities for cowbirds. The turf covered ball fields proposed for Sunset Ridge Park adjacent to residential and commercial development including fast food restaurants is a perfect set-up for a cowbird invasion. I recommend that park monitoring plans include cowbird monitoring. If cowbirds are found on the park I recommend immediate implementation of a cowbird trapping program.

Predation

The most common cause of gnatcatcher nest failure is predation which accounts for up to 66 percent of nest failures in some areas[52,53]. Predation is more prevalent where native habitat edges up against urban or urban/rural development. Numerous nest predators such as raccoons, rats, and skunks thrive along the edges of development where trash and debris are often accessible. These animals along with domestic pets may opportunistically prey on gnatcatchers in adjacent habitat. In addition, nest-predator species such as corvids and raptors do well in urban and urban/rural areas.

One way to minimize gnatcatcher predation is to encourage coyote foraging on the property. Coyotes are known to reduce gnatcatcher predator populations and to decrease the intensity of gnatcatcher predation[54]. Property fencing must include adequate coyote access. If coyote friendly fencing is not used the City will have to implement a predator monitoring and exclusion program.

In summary, areas of coastal scrub occupied by California gnatcatchers perform an important ecosystem function, are increasingly rare, and are easily disturbed and therefore meet the definition of ESHA under the Coastal Act and the City of Newport LUP. Coastal Bluff Scrub and Maritime Succulent Scrub rise to the level of ESHA, whether occupied by gnatcatchers or not, because they are identified as rare plant communities by CDFG. The “ESHA West” and “ESHA East” areas on the proposed Sunset Ridge Park site meet the definition of ESHA because they support areas of rare habitat (coastal bluff scrub and maritime succulent scrub) and habitat important to the federally threatened California gnatcatcher, have a history of gnatcatcher use, and are

[51] Smith, J.M.N., T.L. Cook, S.I. Rothstein, S.K. Robinson, and S.G. Sealy. 2000. Ecology and management of cowbirds and their hosts. University of Texas Press; Austin, Texas.
[52] Braden, G., R. McKernan, and S. Powell. 1997a. Association of within-territory vegetation characteristics and fitness components of California gnatcatchers. The Auk, Vol. 114: 601-609.
[53] Grishaver, M., P. Mock and K. Preston. 1998. Breeding behavior of the California gnatcatcher in southwestern San Diego County, California. Western Birds, Vol. 29: 299-322.
[54] Crooks, K.R. and M.E. Soulé. 1999. Mesopredator release and avifaunal extinctions in a fragmented system. Nature, Vol. 400: 563-566.

easily disturbed. As I state above, provided the City improves and restores the ESHA areas, buffers, and other suitable areas not slated for formal park development with high quality coastal sage scrub in perpetuity, I believe 50-foot buffers are protective of the gnatcatchers and their habitat. In addition, if the City incorporates the coastal sage scrub improvement and restoration that I recommend here and takes measures to prevent non-native and invasive species invasion, cowbird parasitism, and predation, I believe that development of Sunset Ridge Park will not significantly impact California gnatcatchers and has the potential to improve the success of gnatcatchers on this site.

This ESHA analysis applies only to the area proposed for development as part of the proposed Sunset Ridge Park and immediately adjacent areas. It specifically does not apply to the larger area of Newport Banning Ranch. A similar analysis for the latter area would include consideration of the presence of wetlands, rare species and habitats, dispersal opportunities, and potential for habitat fragmentation.

Jonna Engel

From: Christine_Medak@fws.gov
Sent: Tuesday, September 13, 2011 1:41 PM
To: Jonna Engel
Cc: 'Basye GL (George) at Aera'; Sinacori, Mike; Michael Mohler
Subject: Review of vernal pools on Sunset Ridge Project Site

Jonna,

Per your request, we have reviewed the vernal pool information on Sunset Ridge Project Site, which we received from Terry Welsh (Banning Ranch Conservancy) on June 30, 2011. The information (a powerpoint presentation titled Complete Banning Ranch Mesa Vernal Pools/Wetlands First Edition 6-27-11) includes the identification of 4 potential vernal pools within the grading area for the project (VP 34, 35, 36, and 39). The four ponded areas were identified by photos taken between February 2009 and March 2011.
All four areas are located within a drainage (as opposed to a mesa top).
VP 34, 35, and 36 are within a drainage that flows in a southerly direction (towards the Coast Hwy) and VP 39 is in a drainage that flows westward to meet up with the primary drainage running through the Banning Ranch property. The reason this is significant is that typically vernal pools do not form in a drainage because the water runs downstream (as opposed to ponding). Because the water is running downstream, it will not typically pond long enough to support vernal pool species. Ephemeral drainage areas will more often support riparian vegetation or transitional scrub vegetation (e.g., mulefat, elderberry...) if mowing does not occur. A significant exception is when the drainage is artificially blocked (e.g., to form a stock pond). The drainage below VP 39 has been blocked by roadway fill to the west, which may allow this area to pond longer than expected. VP 39 also appears to have the classic bathtub ring look of a vernal pool (e.g., rings of different vegetation types extending outward around the pool).

Several pools on Banning Ranch are occupied by the federally endangered San Diego fairy shrimp. San Diego fairy shrimp cysts (eggs) may persist in the soil for several years until conditions are favorable for successful reproduction. Cysts from this species can be picked up by animals and distributed throughout the site, however, not all areas where the cysts are deposited will be suitable to support the life cycle of San Diego fairy shrimp. Critical habitat for the San Diego fairy shrimp was designated on December 12, 2007 (72 FR 70648), and includes a portion of Banning Ranch, but not the Sunset Park project site. The Primary Constituent Elements (PCEs) of critical habitat provide a good summary of the physical and biological features essential to the conservation of the species. The PCEs for San Diego fairy shrimp are:

1. Vernal pools with shallow to moderate depths (2 inches to 12 inches) that hold water for sufficient lengths of time (7 to 60 days) necessary for incubation, maturation, and reproduction of the San Diego fairy shrimp, in all but the driest years.

2. Topographic features characterized by mounds and swales and depressions within a matrix of surrounding uplands that result in complexes of continuously, or intermittently, flowing surface water in the swales connecting the pools described in PCE 1, providing for dispersal and promoting hydroperiods of adequate length in the pools (i.e., the vernal pool watershed).

3. Flat to gently sloping topography and any soil type with a clay component and/or an impermeable surface or subsurface layer known to support vernal pool habitat (including Carlsbad, Chesterton, Diablo, Huerhuero, Linne, Olivenhain, Placentia, Redding, and Stockpen soils).

Conclusion:
After reviewing the available information we conclude that all four areas (VP 34, 35, 36, and 39) could potentially support San Diego fairy shrimp if ponding sufficient to support the species happens at a time when cysts are present. Extensive vernal pool habitat once occurred on the coastal plain of Los Angeles and Orange counties (Mattoni and Longcore 1997) and soils over the majority of Banning Ranch are likely suitable. However, the

probability that ponding will be adequate to support the species is low in VP 34, 35, and 36 because the "pools" are located in a drainage and hydrological processes (including erosion and water flow) are not currently impeded by substantial alterations in the natural topography. In the absence of maintenance these ponds are unlikely to persist or to support the species over time. Vernal pool 39 has a higher probability of supporting the species because fill deposited in the drainage is likely contributing to longer periods of ponding. The rings of vegetation around the pool are another indication that ponding may occur at a freqency and for a length of time sufficient to support San Diego fairy shrimp. In the absence of maintenance we expect VP 39 will continue to pond (and pond for longer periods over time as silts collect in basin), unless the roadway fill is removed. To ensure the proposed project does not result in unintended impacts to listed species, we recommend protocol surveys for San Diego fairy shrimp are conducted in VP 39 prior to filling the pool.

Should you have any questions regarding this message please feel free to call me.

Christine L. Medak
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, CA 92011
(760) 431-9440 ext. 298
http://www.fws.gov/carlsbad/

Mattoni, R. and T. R. Longcore. 1997. Down memory lane: the Los Angeles coastal prairie, a vanished community. Crossosoma 23(2):71-102.

To "Tony Bomkamp" <tbomkamp@wetlandpermitting.com>

06/15/2011 01:34 PM

cc "'Michael Mohler'" <mohler@brooks-street.com>,"'Basye GL \(George\) at Aera'"<GLBasye@aeraenergy.com>

Subject Banning Ranch Site Visit

Thank-you for taking the time to walk me through Banning Ranch to see the extent of mowing on the property. The following is a summary of my observations on the site, recommendations for avoiding impacts to gnatcatchers, and suggested revisions to your vegetation mapping to reflect conditions on the site

The first area we stopped at (east of the apartment housing, north of territory #2)**[LOCATION A ON EXHIBIT 1]** was an area not documented as supporting a gnatcatcher
territory; however, a family group was foraging in the depression, mapped as disturbed scrub on your vegetation map. Prior to conducting any mowing through this canyon, additional monitoring for the gnatcatcher should be conducted in this location to ensure the mowing is not impacting habitat supporting gnatcatcher foraging.

Next, we took a close look at mowed vegetation in the vicinity of territories #2 **[LOCATION B ON EXHIBIT 2]** and #4. It appears a portion of territory #2 that was mowed at the top of the bluff was mapped as disturbed scrub on your vegetation map but is actually primarily iceplant and non-native grasses. Vegetation mapping should be changed to reflect the actual vegetation community in this area. The mowing that occurred near territory #4 is consistent with previous mowing. The mowed areas appeared to consist of non-native grasses and other weeds. Therefore, it does not appear that mowing activities impacted habitats for the gnatcatcher in territories #2 or #4.

The third area we stopped at was located under a power line (north of territory #5, east of territory #10), in an area not previously supporting a gnatcatcher pair. This area consisted predominantly of encelia scrub that was mowed but was growing back. This area was previously mapped as CSS by PCR in 1997. Your vegetation map should be changed to reflect the predominantly native scrub vegetation located in this area.

Finally, we stopped at the vernal pools occupied by SDFS (pools 1, 2, and 3). The smallest pool was mowed, consistent to prior mowing patterns. The other two pools were previously flagged to prevent oil operators from entering the pools. The flagging is almost all gone and pool #2 to appears to extend outside the limits of old flagging now. All three pools should be flagged, with a buffer to minimize the potential for disturbance. We should also discuss options to initiate

Appendix 2

restoration of the pools. Some manual vegetation removal within the pools may contribute to increasing the quality of habitat in the pools for SDFS.

I look forward to continuing our discussions of a potential consulation on oil operations and restoration on the project site.

Christine L. Medak
Fish and Wildlife Biologist
U.S. Fish and Wildlife Service
6010 Hidden Valley Road
Carlsbad, CA 92011
(760) 431-9440 ext. 298
http://www.fws.gov/carlsbad/

From: Christine_Medak@fws.gov [mailto:Christine_Medak@fws.gov]
Sent: Monday, July 11, 2011 4:13 PM
To: Jonna Engel
Subject: Fw: Banning Ranch Site Visit

Jonna,

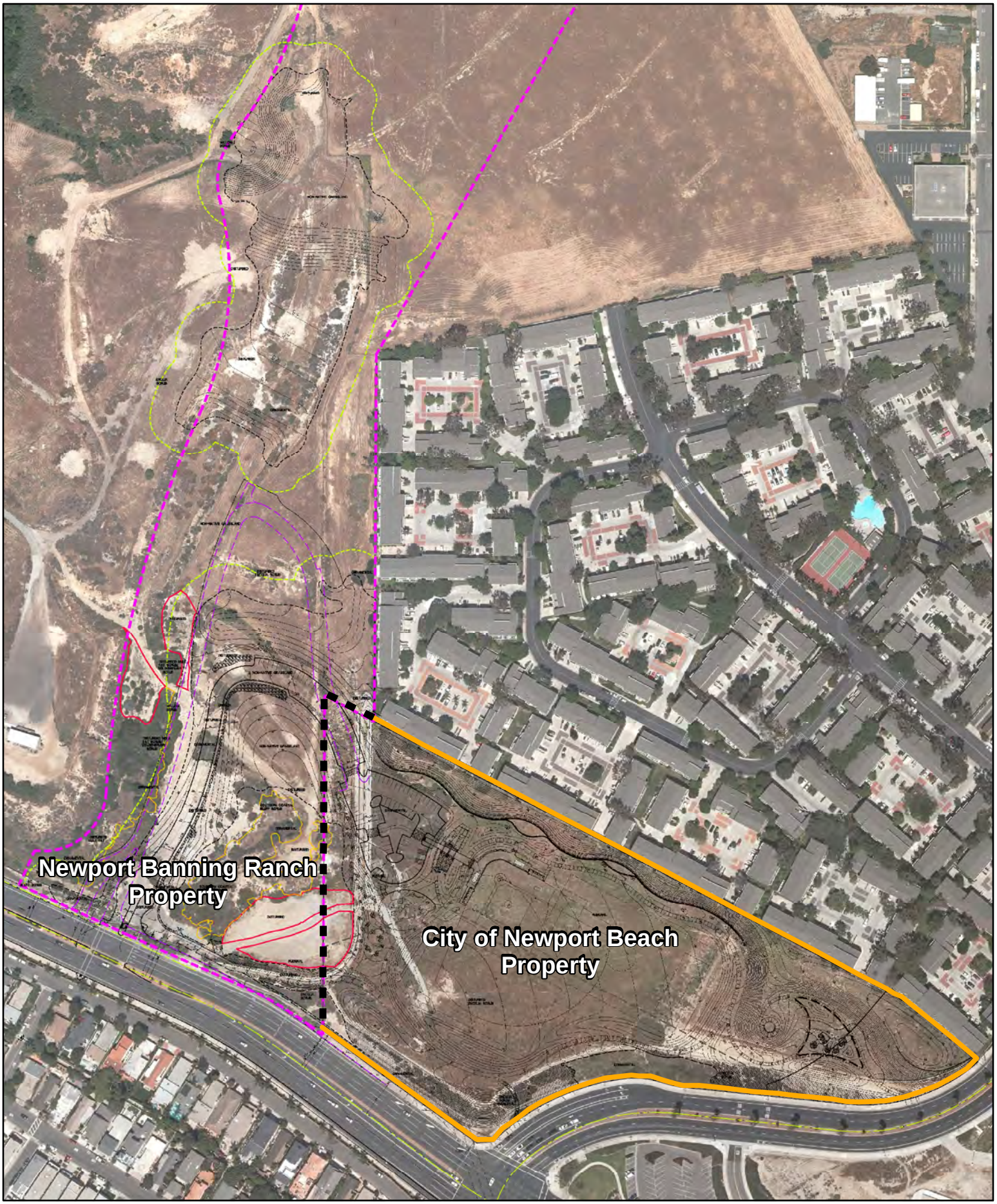
These are the recommendations I provided to Tony following our site Visit on June 14. The following week, I again visited the site with Mike Mohler, George, Mike Sincacore, Ann Johnston and another biologist from BonTerra(don't remember his name). While reviewing the potential revised alignment of the park entryway we again encountered gnatcatchers east of the apartment complex and north of territory 2 in a small patch of CSS and willow scrub vegetation. **[LOCATION A ON EXHIBIT 1]** It appeared that a male was defending a territory in this location and was not just foraging in the vicinity. My understanding was that Mike Mohler was planning to have 2 independent biologists survey the area to determine how it was being used by the gnatcatchers.

Hope this helps.

Appendix 2

Appendix 2: Exhibit 1

Appendix 2: Exhibit 2



CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

All Locations Approximate.
For Illustrative Purposes Only.
Source: BonTerra Consulting, NAIP 2007.

N

Figure 1: Site of proposed Sunset Ridge Park. Includes property owned by the City of Newport Beach and Newport Banning Ranch.

DSM 9/11

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

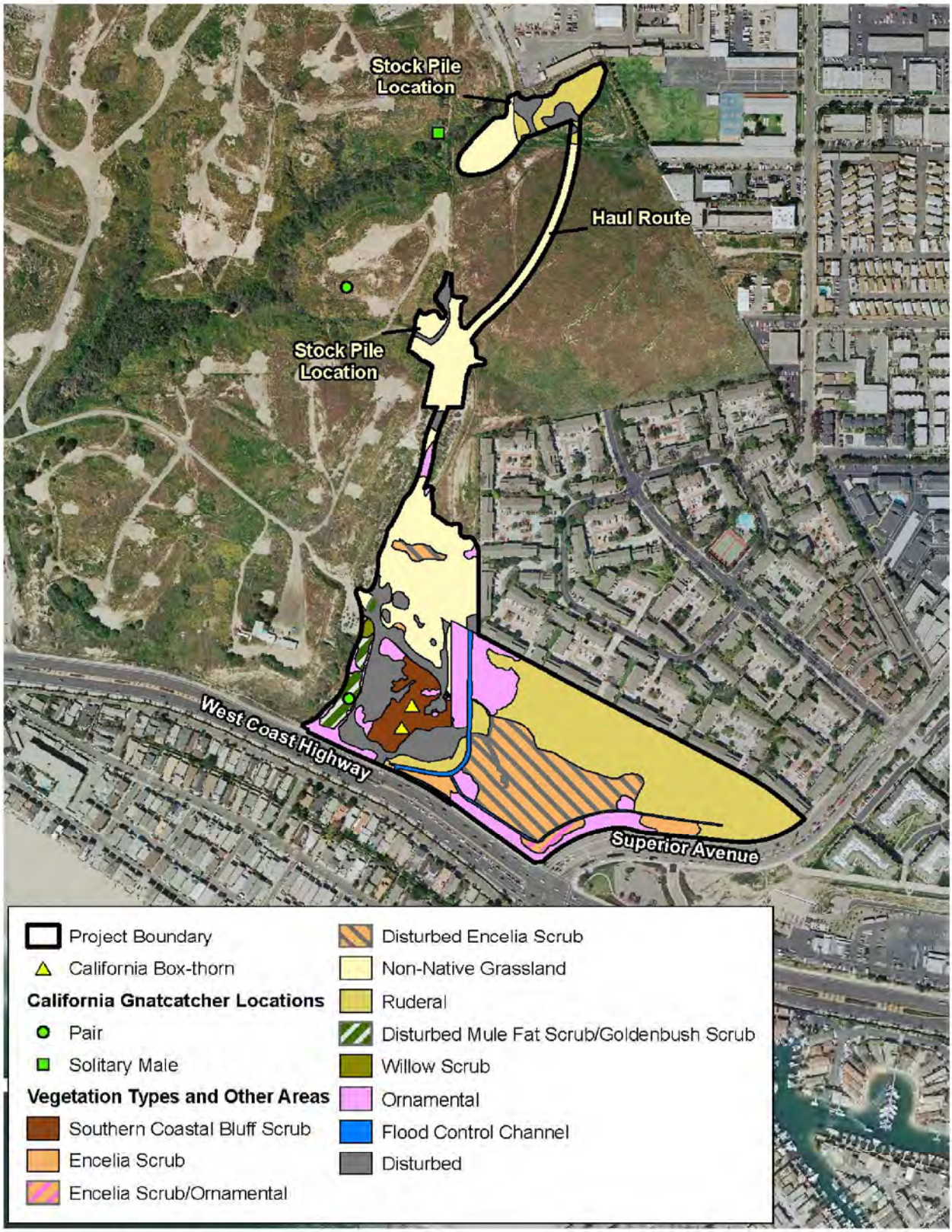
Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Source: AirPhotoUSA 2007.

N

5-10-168, Exhibit 12
35 of 72

Figure 2

DSM 9/11



Special Status Biological Resources — Exhibit 4.6-2

Sunset Ridge Park EIR

N W E S

500 250 0 500 Feet

BonTerra CONSULTING

(REV: JFG 03-08-10)R:/Projects/Newport/J016/Graphics/EIR/ex4.6-2_Special_Status.pdf

CALIFORNIA COASTAL COMMISSION

Technical Services Division - GIS Unit

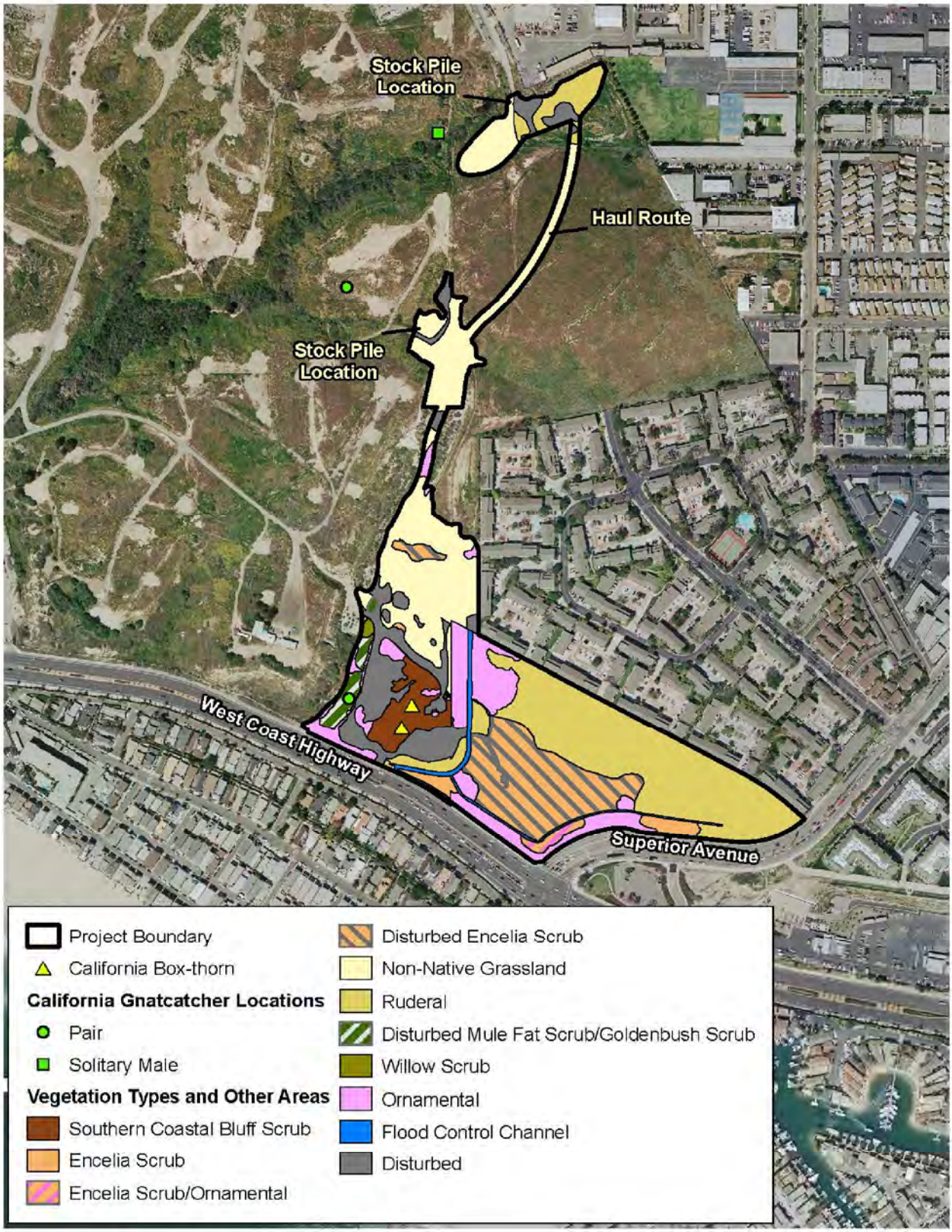
All Locations Approximate.
For Illustrative Purposes Only.
Source: BonTerra Consulting.

N

5-10-168, Exhibit 12
36 of 72

Figure 3

DSM 9/11



Special Status Biological Resources — Exhibit 4.6-2

Sunset Ridge Park EIR

N W E S

500 250 0 500 Feet

BonTerra CONSULTING

(REV: JFG 03-08-10)R:/Projects/Newport/J016/Graphics/EIR/ex4.6-2_Special_Status.pdf

CALIFORNIA COASTAL COMMISSION

Technical Services Division - GIS Unit

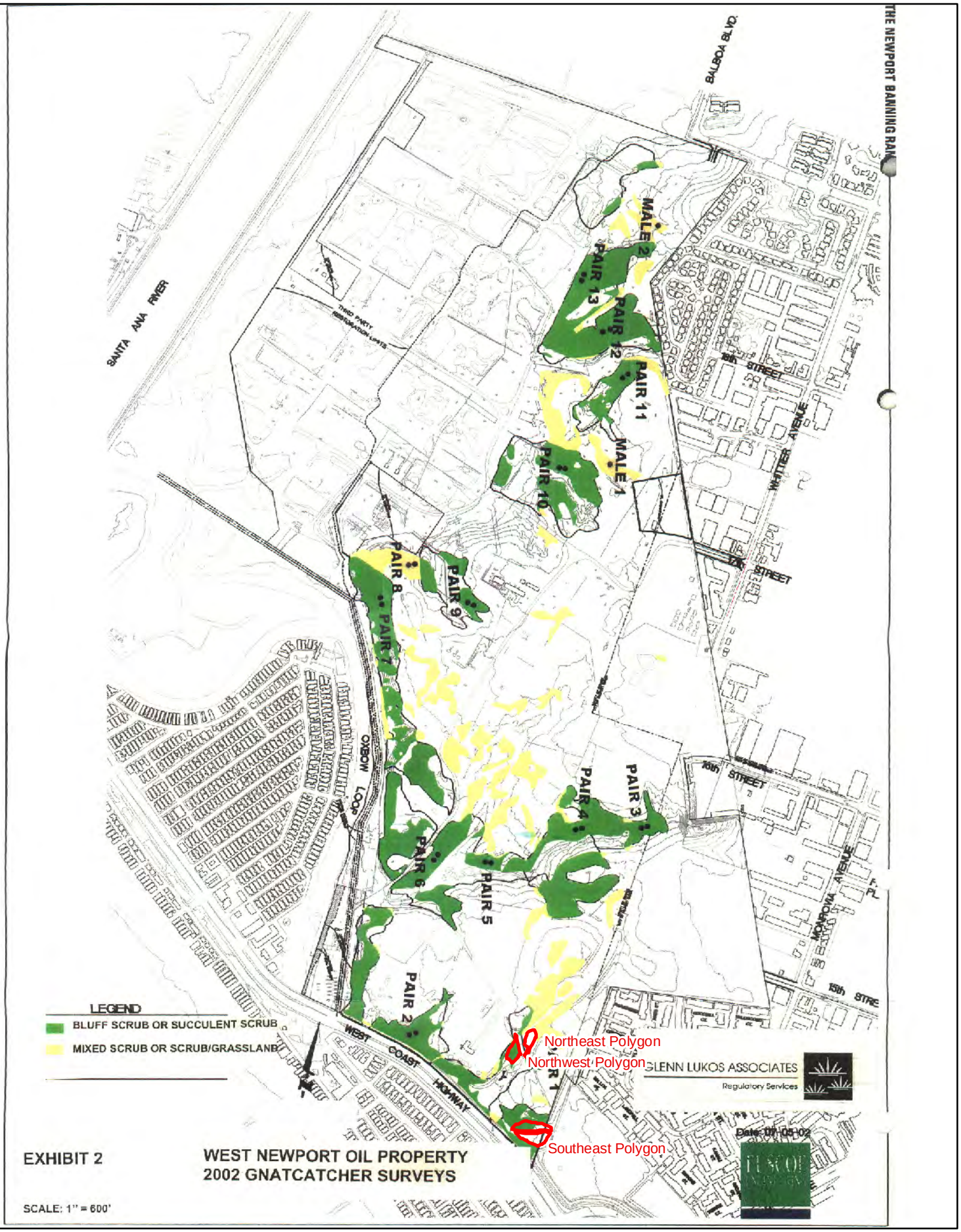
All Locations Approximate.
For Illustrative Purposes Only.
Source: BonTerra Consulting.

N

5-10-168, Exhibit 12
37 of 72

Figure 4

DSM 9/11



CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.

N

Figure 5

DSM 9/11

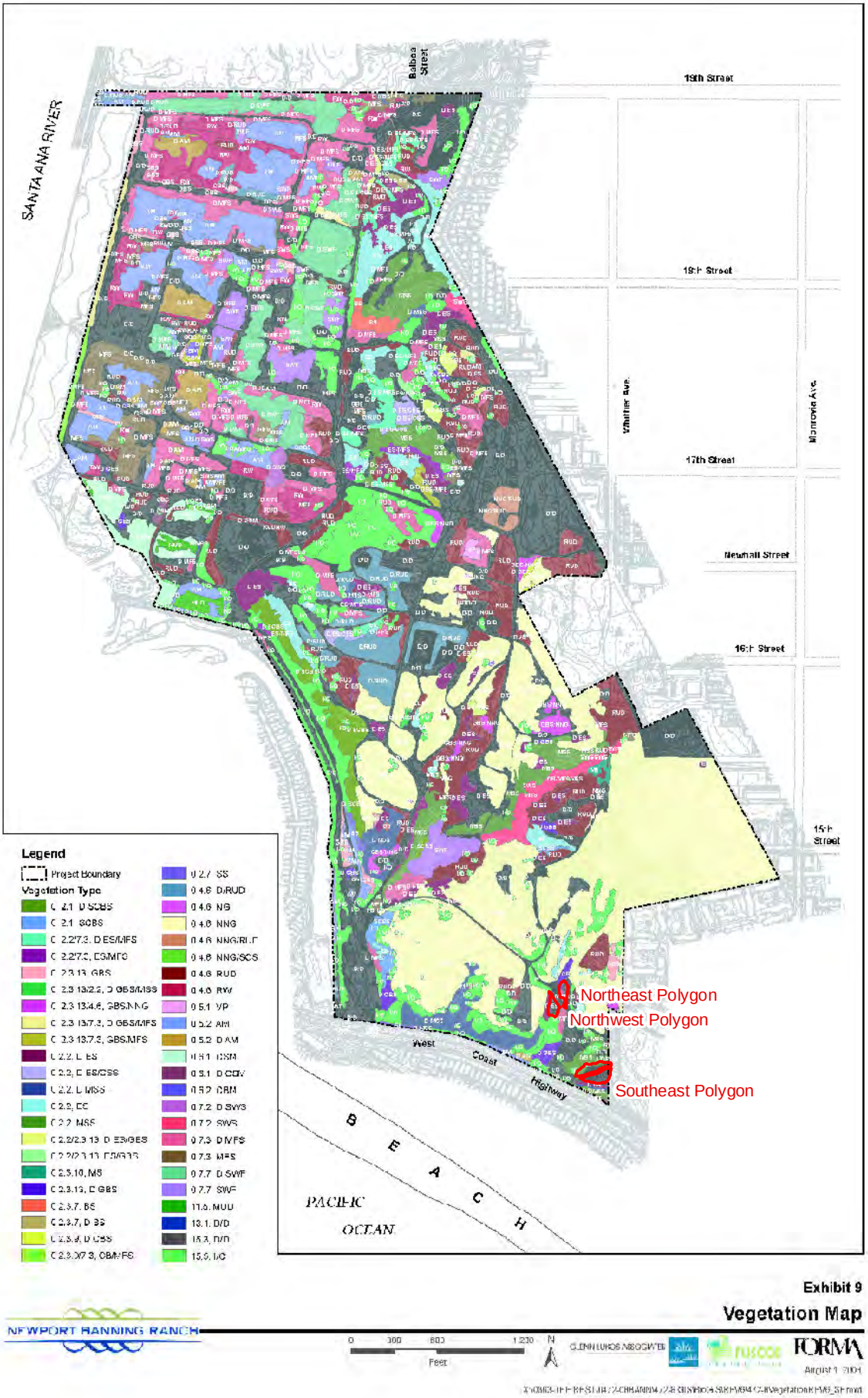


Exhibit 9

Vegetation Map

NEWPORT BANNING RANCH

0 300 600 1,200 N

Feet

GLENN LUKOS ASSOCIATES

FUSCOE ENGINEERING

FORMA

August 1, 2004

X:\0003-1FF BPS\1.18 / 2-CBB ARDM 2 / 2.8 GIS\Projects\SUBEMBM 2-8\Vegetation\REVIS_SP.mxd

CALIFORNIA COASTAL COMMISSION

Technical Services Division - GIS Unit

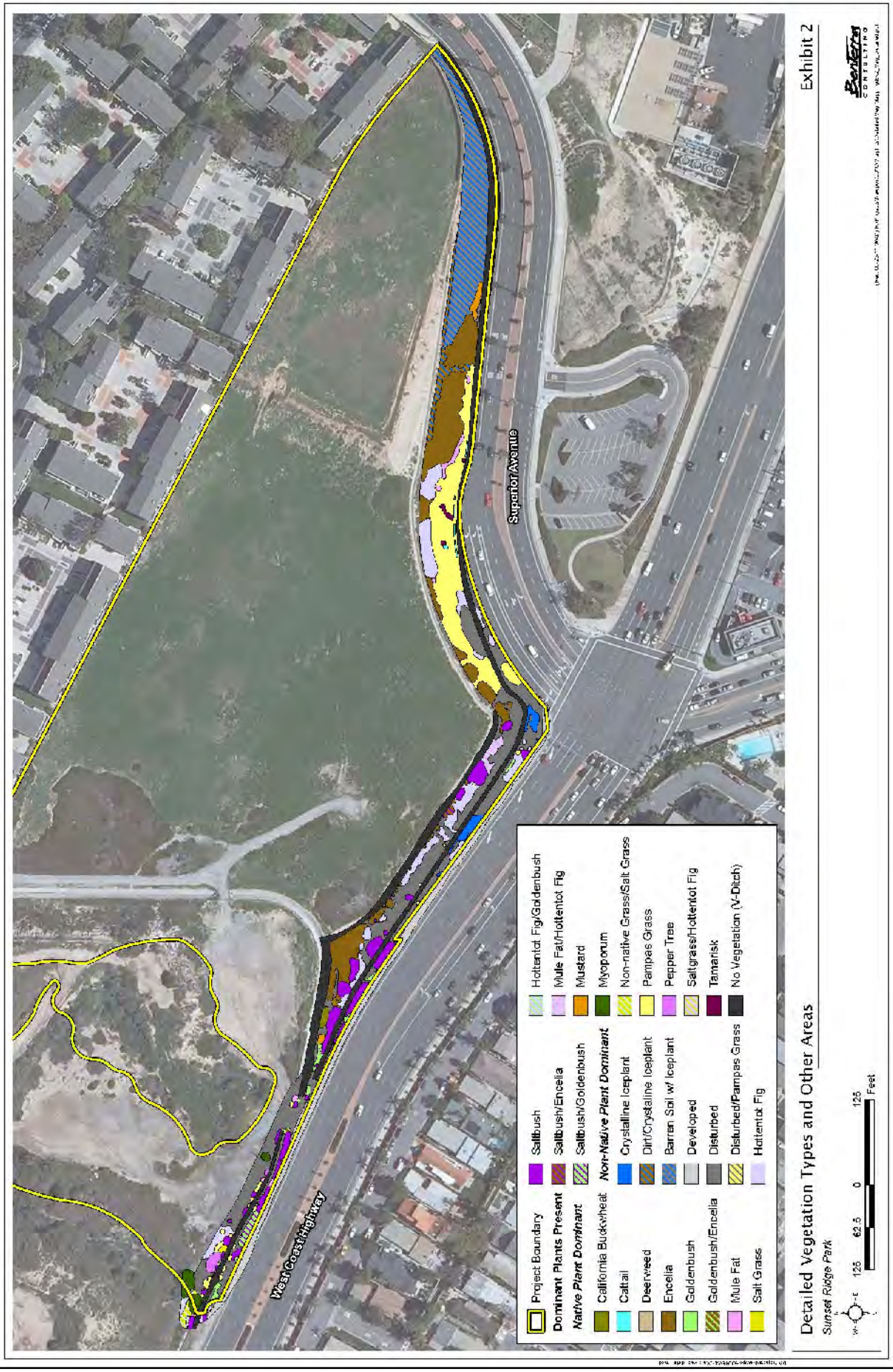
Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.

N

5-10-168, Exhibit 12
39 of 72

Figure 6

DSM 9/11

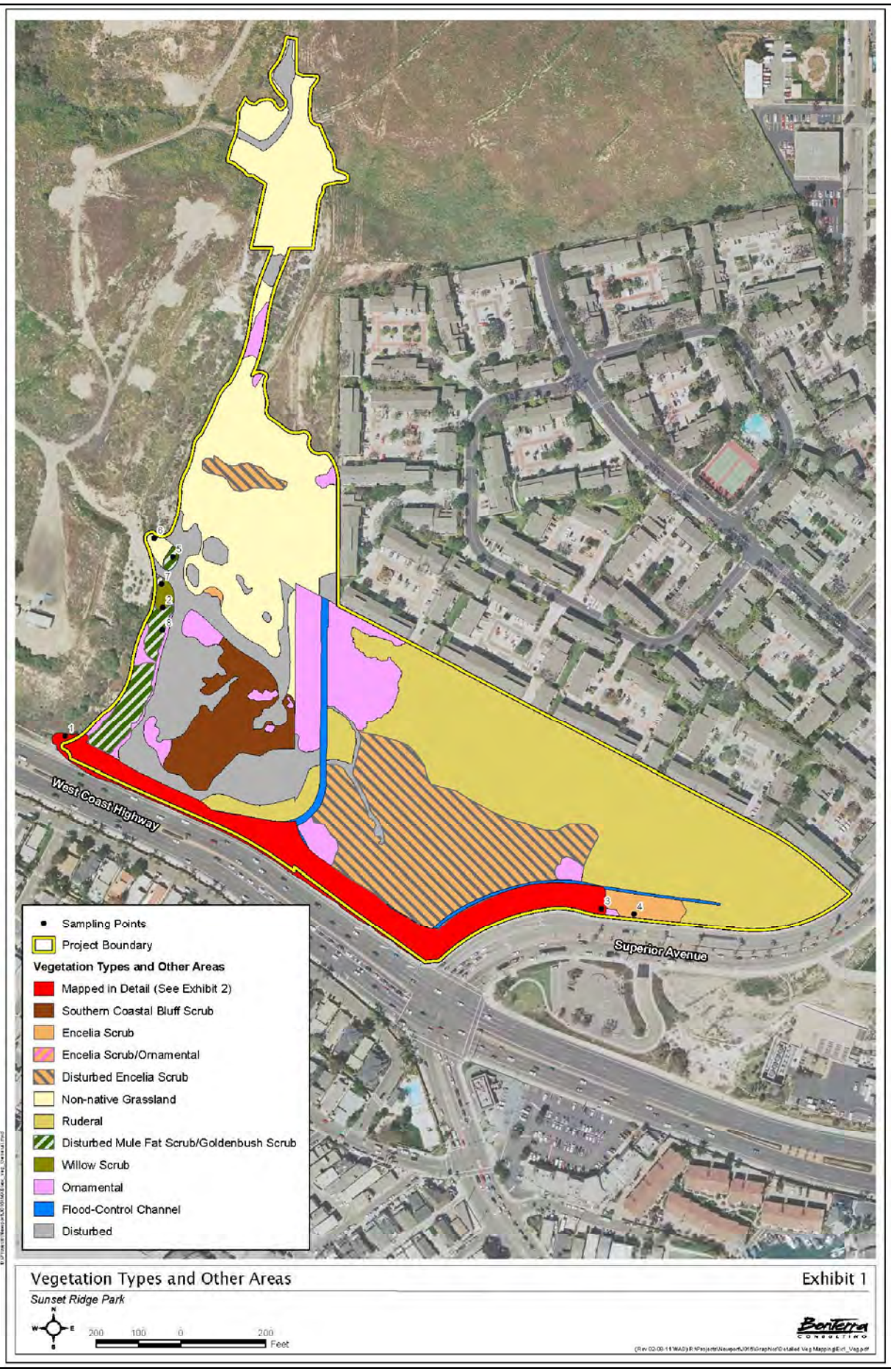


All Locations Approximate.
For Illustrative Purposes Only.
Source: BonTerra Consulting.

N

5-10-168, Exhibit 12
40 of 72

Figure 7



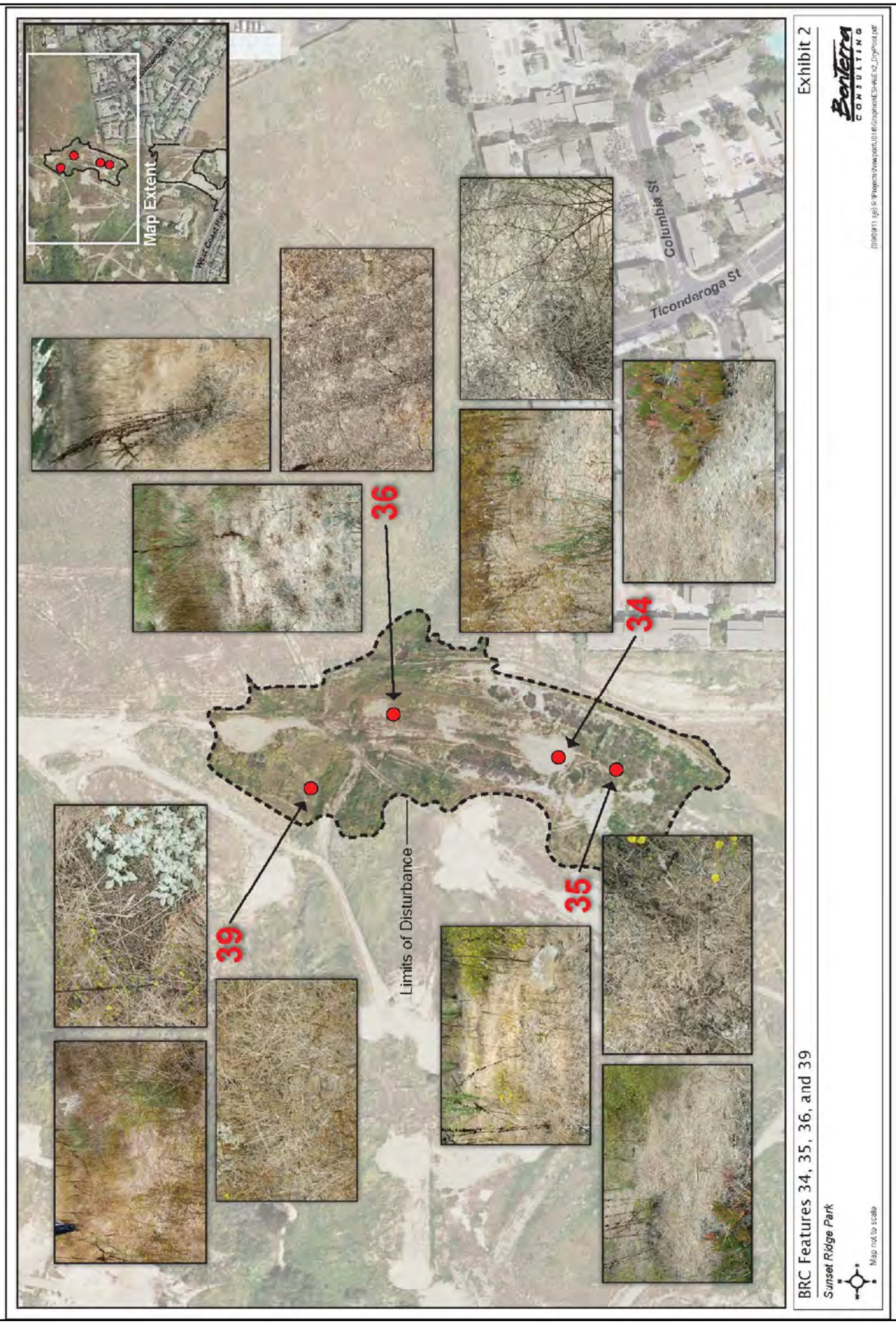
CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

All Locations Approximate.
For Illustrative Purposes Only.
Source: BonTerra Consulting.

N

Figure 8

DSM 9/11



CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

All Locations Approximate.
For Illustrative Purposes Only.
Source: BonTerra Consulting.

N

Figure 9

DSM 9/11

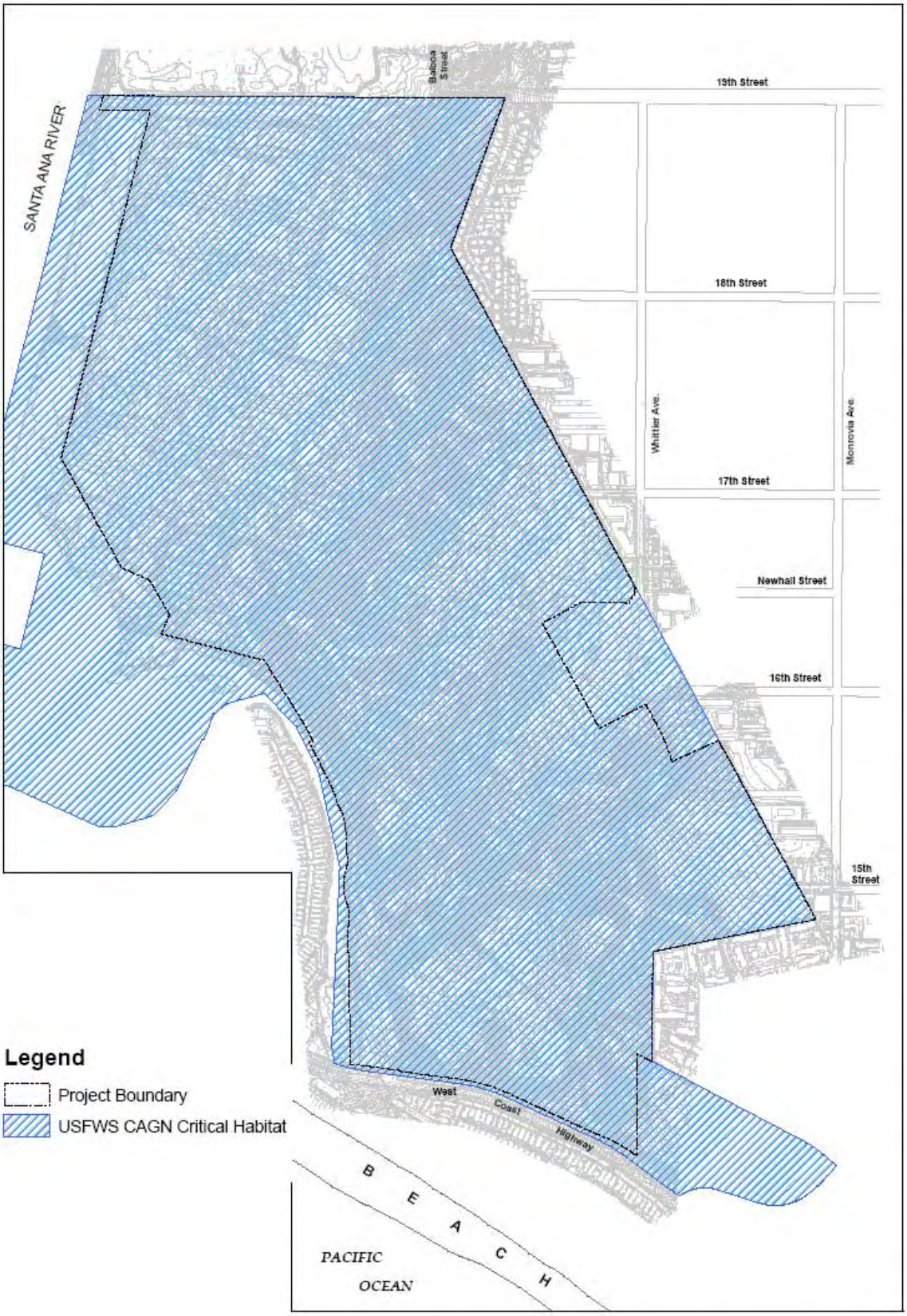


Exhibit 13

California Gnatcatcher Critical Habitat Unit Map

NEWPORT BANNING RANCH

0 300 600 1,200 Feet

N

FUSCOE

FORMA

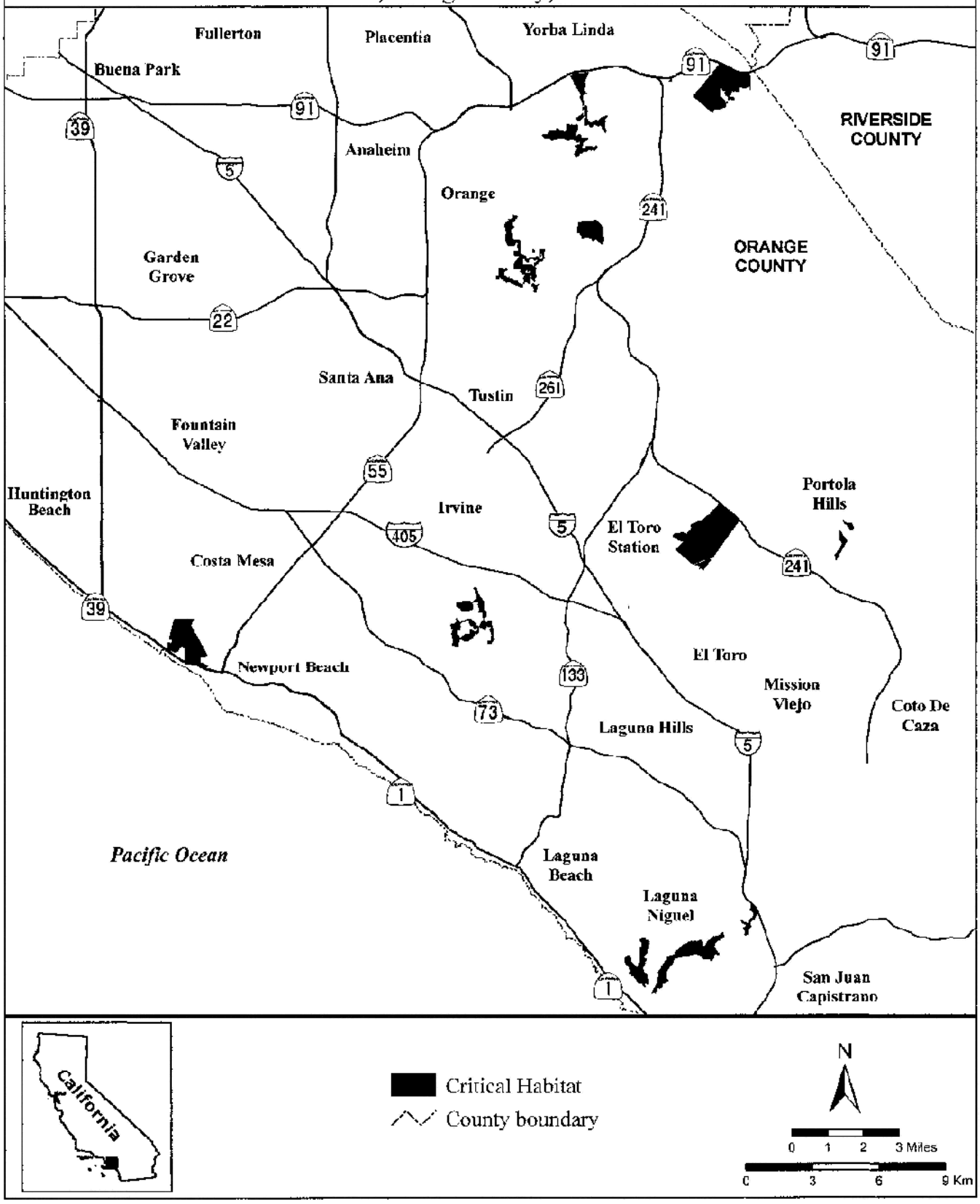
March 25, 2008

X:\0363-THE REST\0472-08BANN\472-6.GIS\BioGIS\BIRD\472-8CAGNDec2007_CriticalHabitat_SF.mxd

All Locations Approximate.
For Illustrative Purposes Only.
Source: Glenn Lukos Associates.

Figure 10

Map 7
Critical Habitat for Coastal California Gnatcatcher (*Polioptila californica californica*), Unit 7, Orange County, California



CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

All Locations Approximate.
For Illustrative Purposes Only.
Source: BonTerra Consulting, NAIP 2007.

N

5-10-168, Exhibit 12
45 of 72

Figure 12

DSM 9/11

Habitat from LSA (c. 1991)

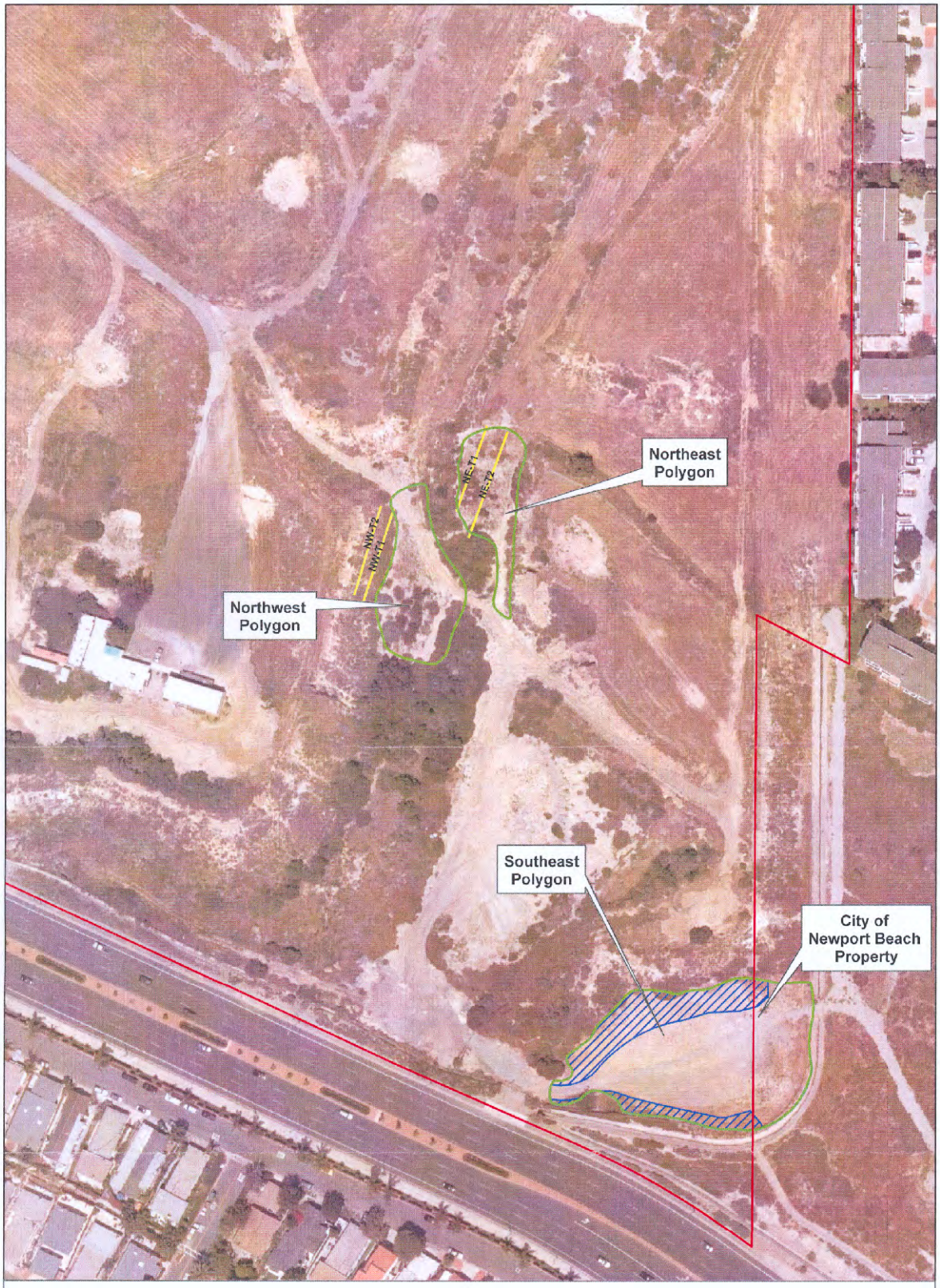
- Annual Grassland (AG)
- Coastal Bluff Scrub (CBS)
- Mixed AG/CBS
- Disturbed Coastal Bluff Scrub (CBSD)
- Disturbed (DIST)
- Non-native Woodland (NNW)
- Palustrine, Scrub, Deciduous Baccharis (mulefat scrub) (PSEB)
- Ruderal Scrub (RS)

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Sources: LSA, 1991.

Figure 13

DSM 9/11



Legend

- Property Location
- Transect Location
- Subject Polygons
- PCR Coastal Scrub Within Subject Polygons (1998)

N

0 50 100
Feet
1 inch = 100 feet

NEWPORT BANNING RANCH

Transect Location Map

GLENN LUKOS ASSOCIATES

Exhibit 9

X:\0363-THE REST\2472-098ANN\472-8 GIS\NoticeofViolationGIS\472-8NOV_ExhibitB.mxd

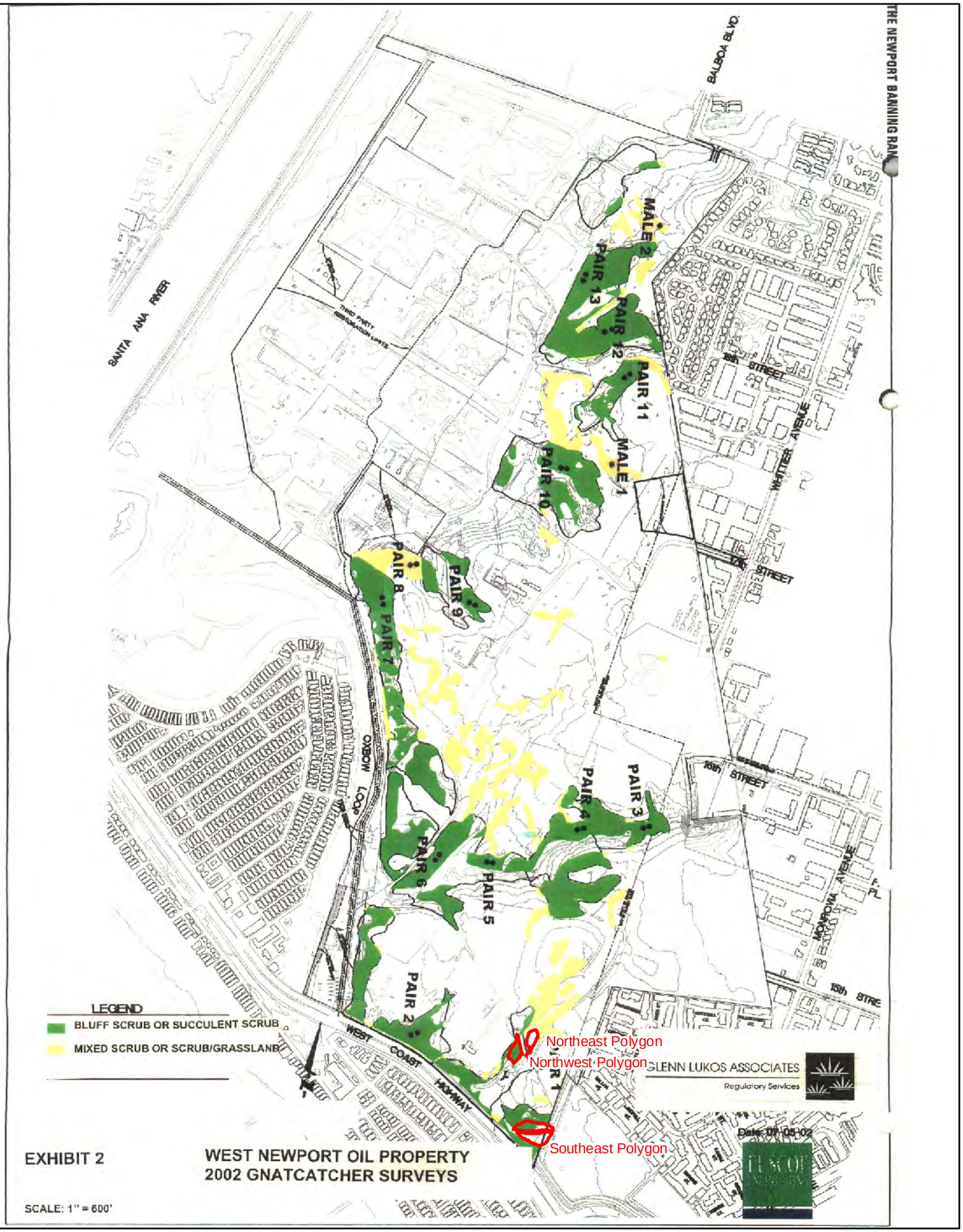
CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.

N

Figure 14

DSM 9/11



CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

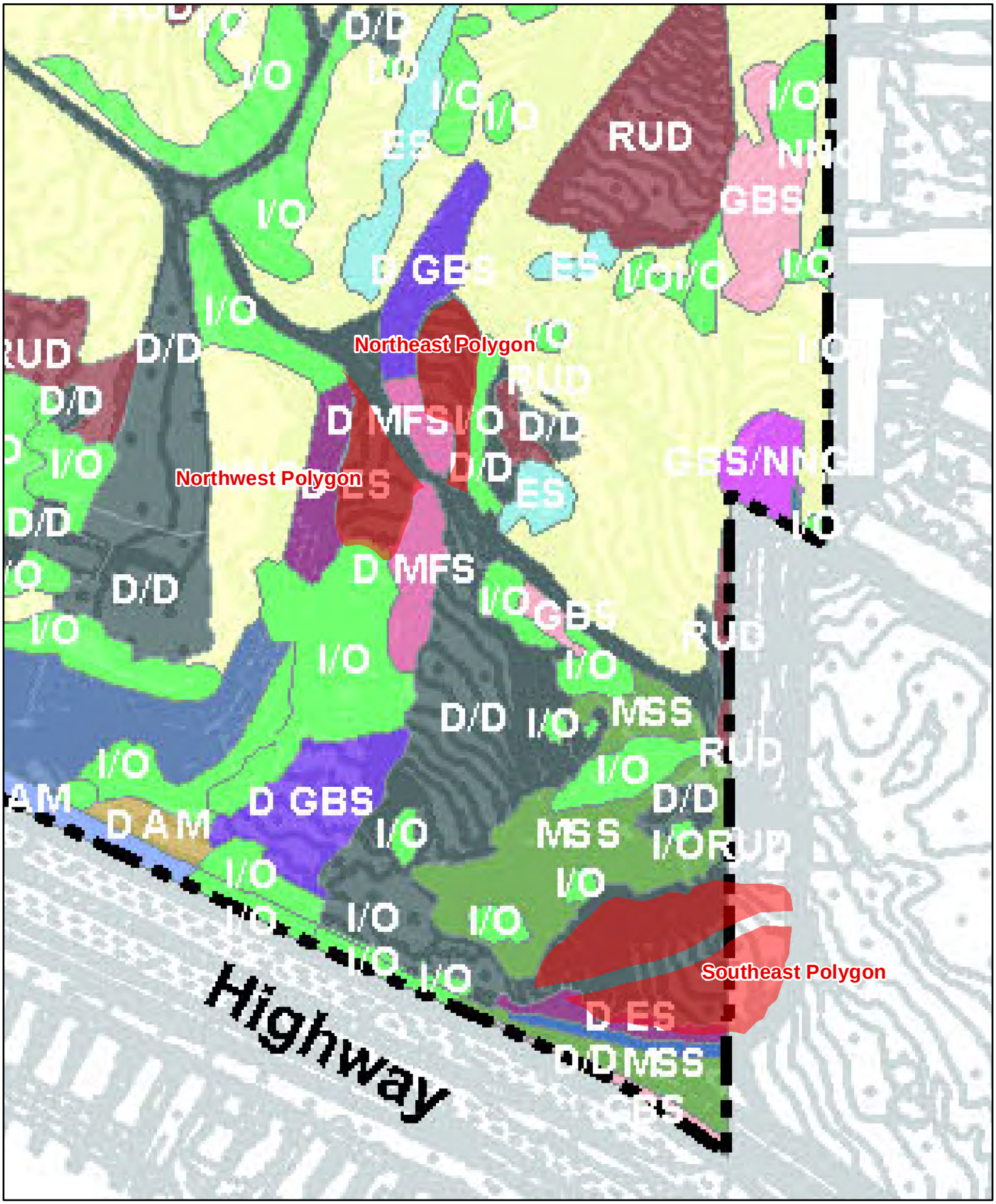
Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.

N

5-10-168, Exhibit 12
48 of 72

Figure 15

DSM 9/11



CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Source: Glenn Lukos Associates.

N

5-10-168, Exhibit 12
49 of 72

Figure 16

DSM 9/11

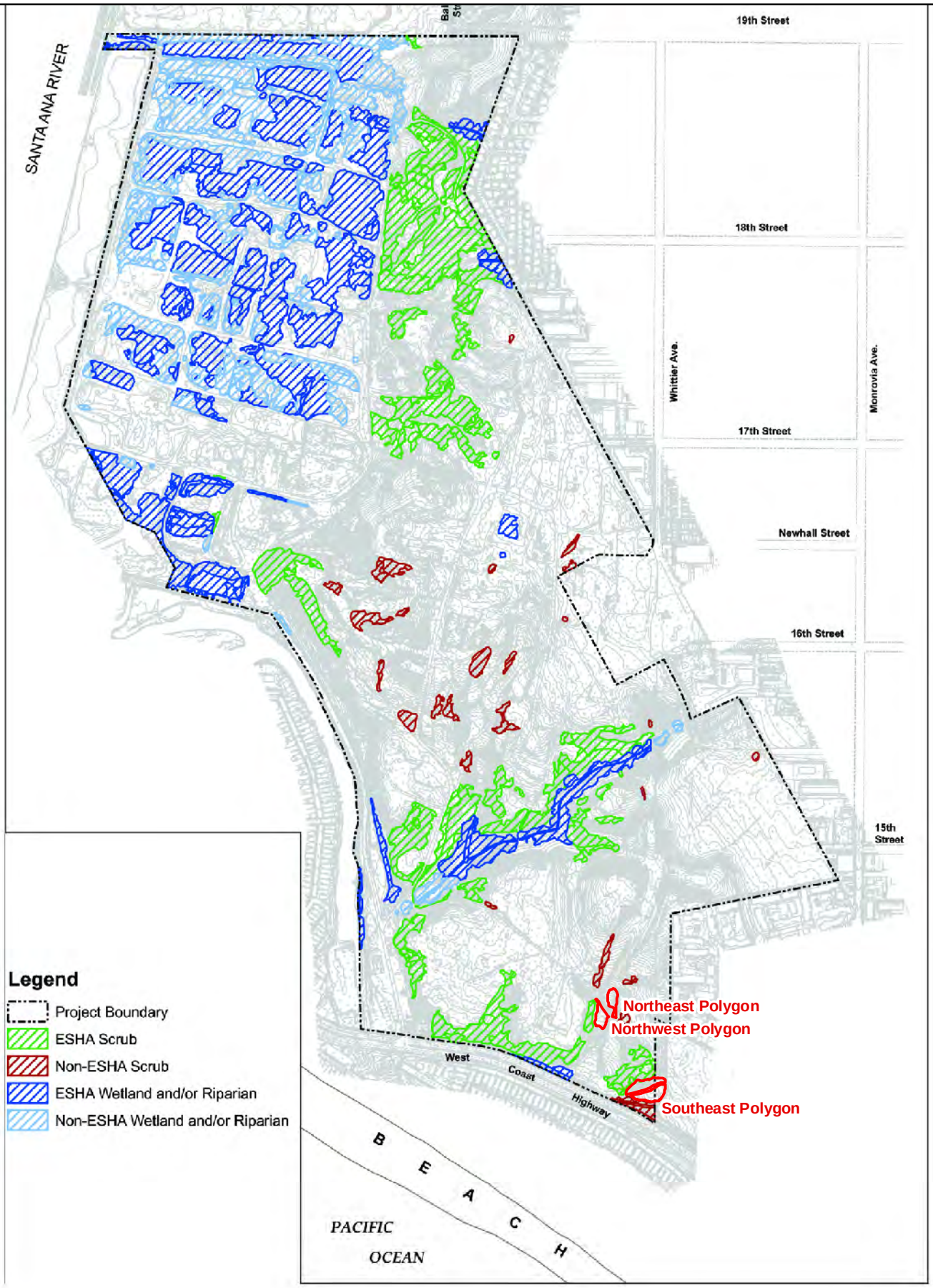


Exhibit 12

Environmentally Sensitive Habitat (ESHA) Map

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.

N

Figure 17

DSM 9/11

Gnatcatcher Occurances 1992 - 2009

- Pair Observed
- Single Observation of Unpaired Male
- Multiple Observations of Unpaired Male
- Estimated CAGN territories

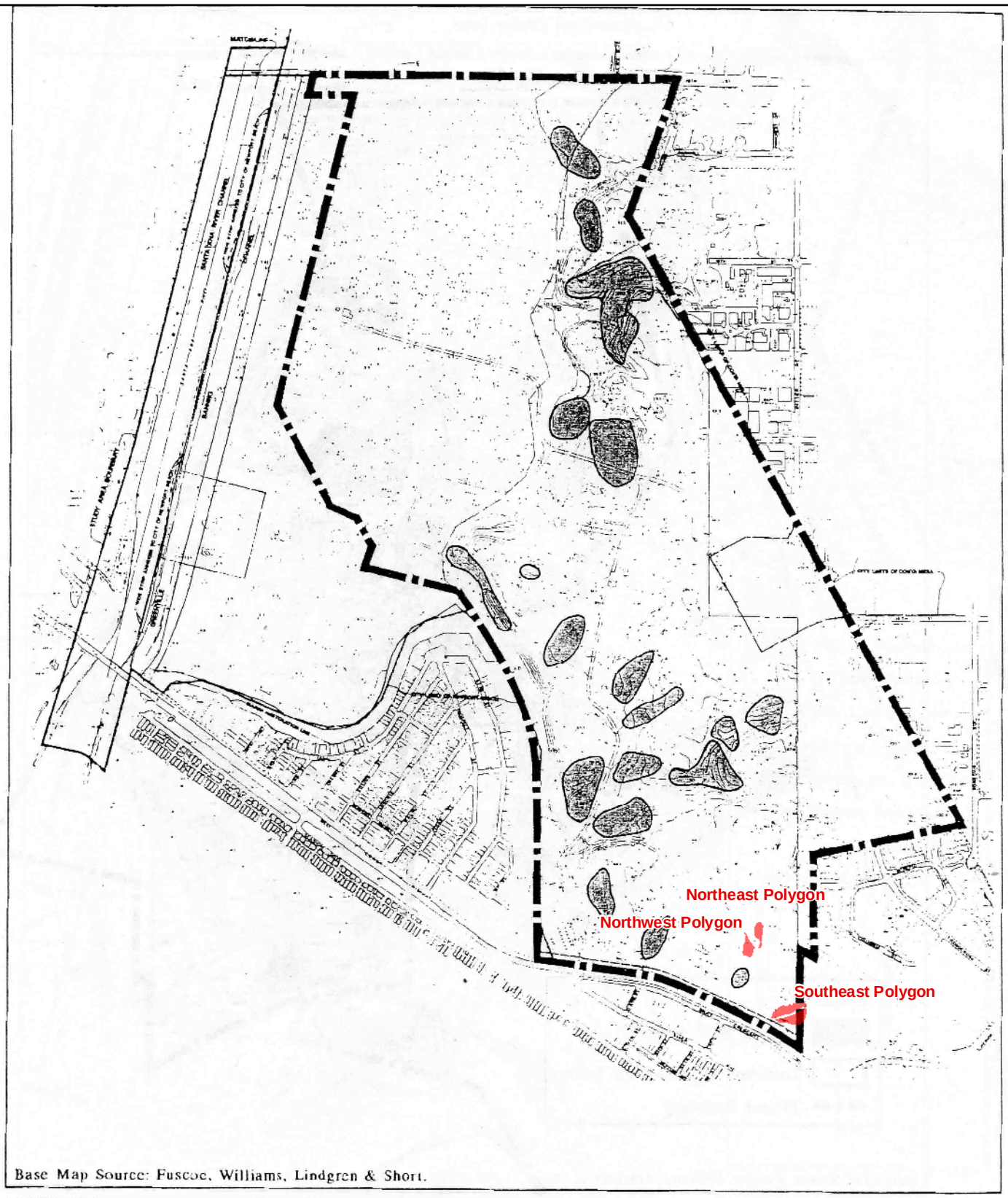
N

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Sources: GLA, LSA.

Figure 18

DSM 9/11



Base Map Source: Fuscoe, Williams, Lindgren & Short.

2/19/93(WNO201)

N

LSA

Scale in Feet

0 500 1000

California Gnatcatcher Territories - Spring 1992

CALIFORNIA COASTAL COMMISSION

Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Source: LSA 1992.

N

Figure 19a

DSM 9/11

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Sources: LSA, 1992.

N

Figure 19b

DSM 9/11

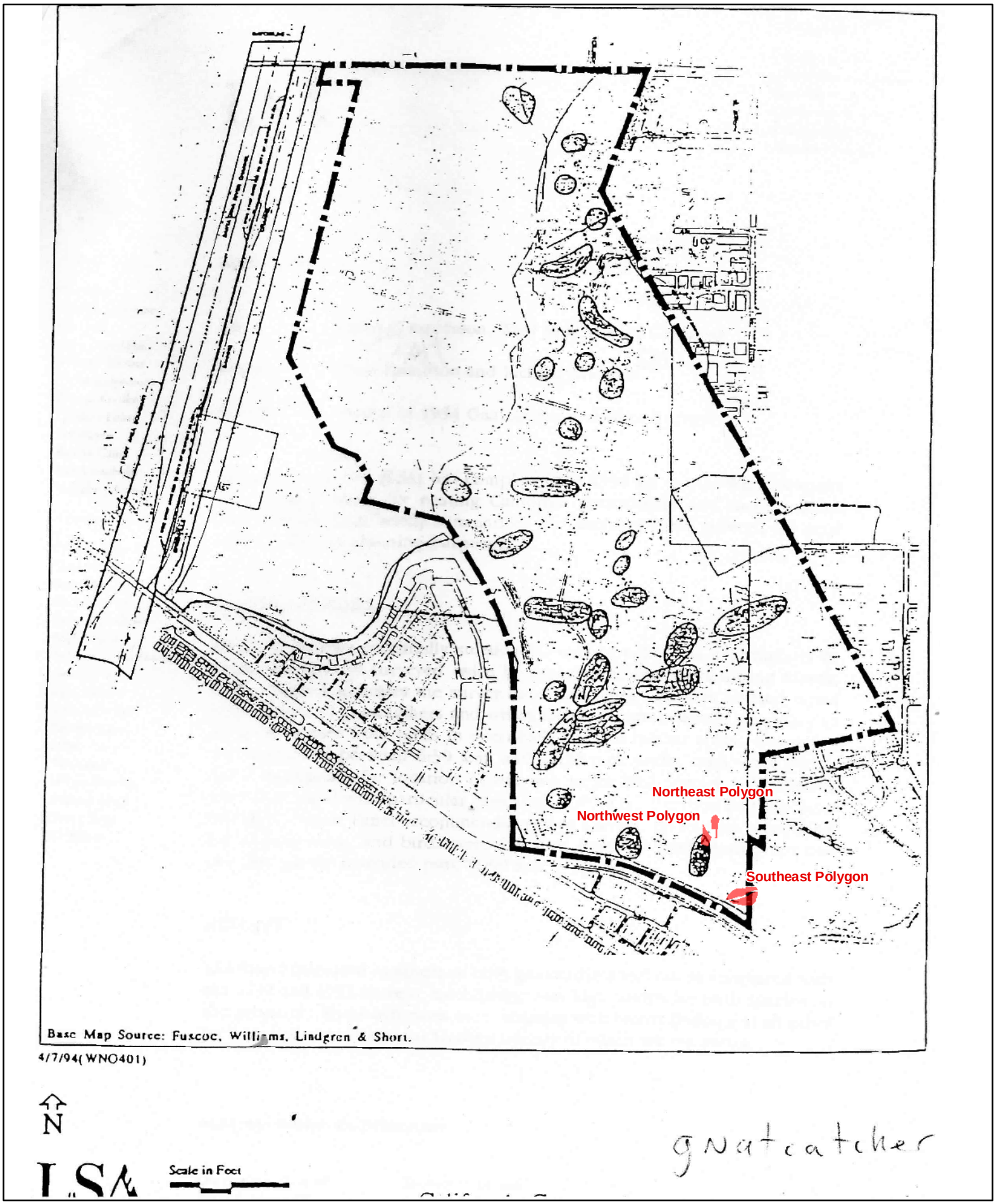
CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Sources: LSA, 1993.

N

Figure 20

DSM 9/11



CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

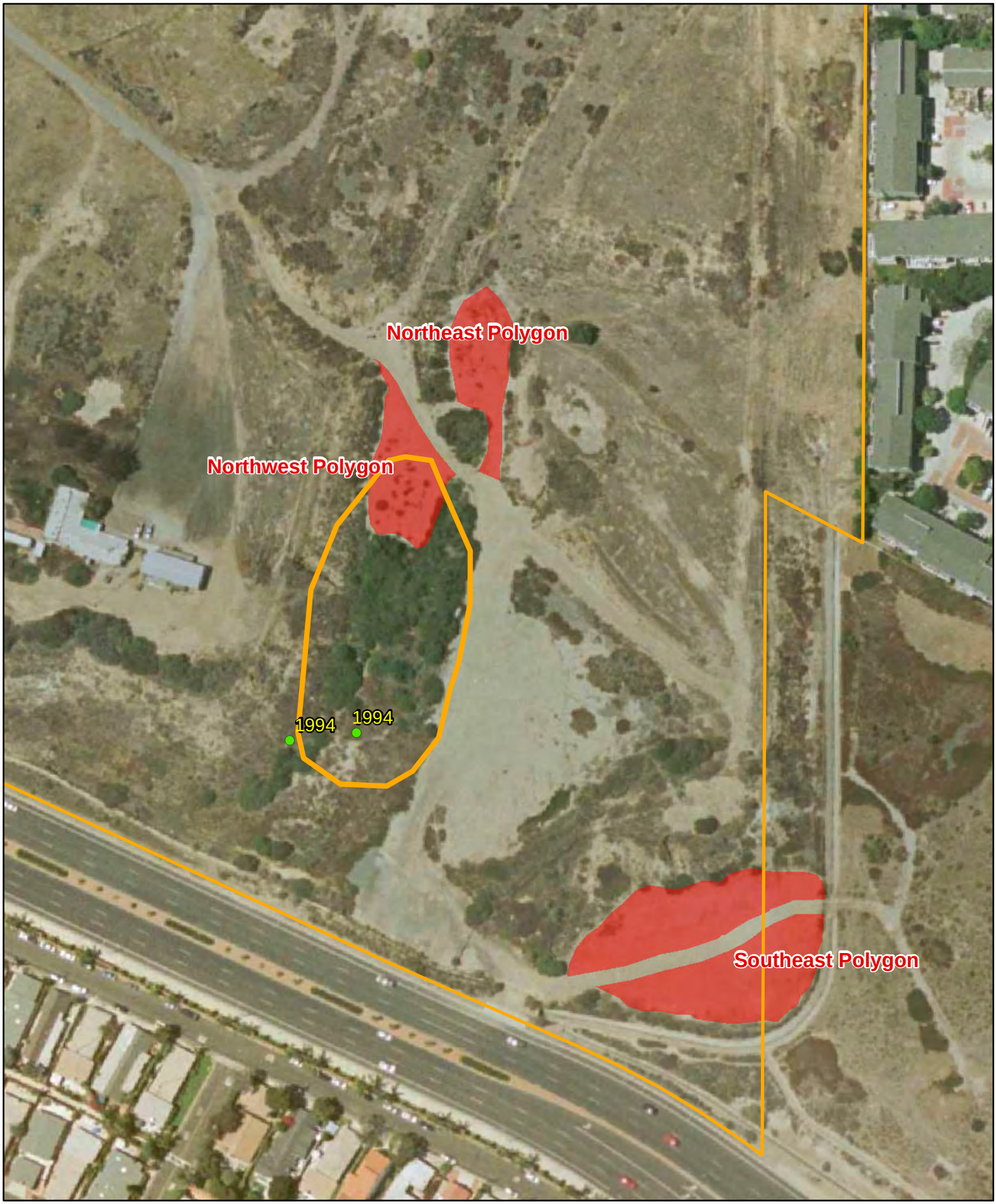
Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Source: LSA 1994.

N

5-10-168, Exhibit 12
55 of 72

Figure 21a

DSM 9/11



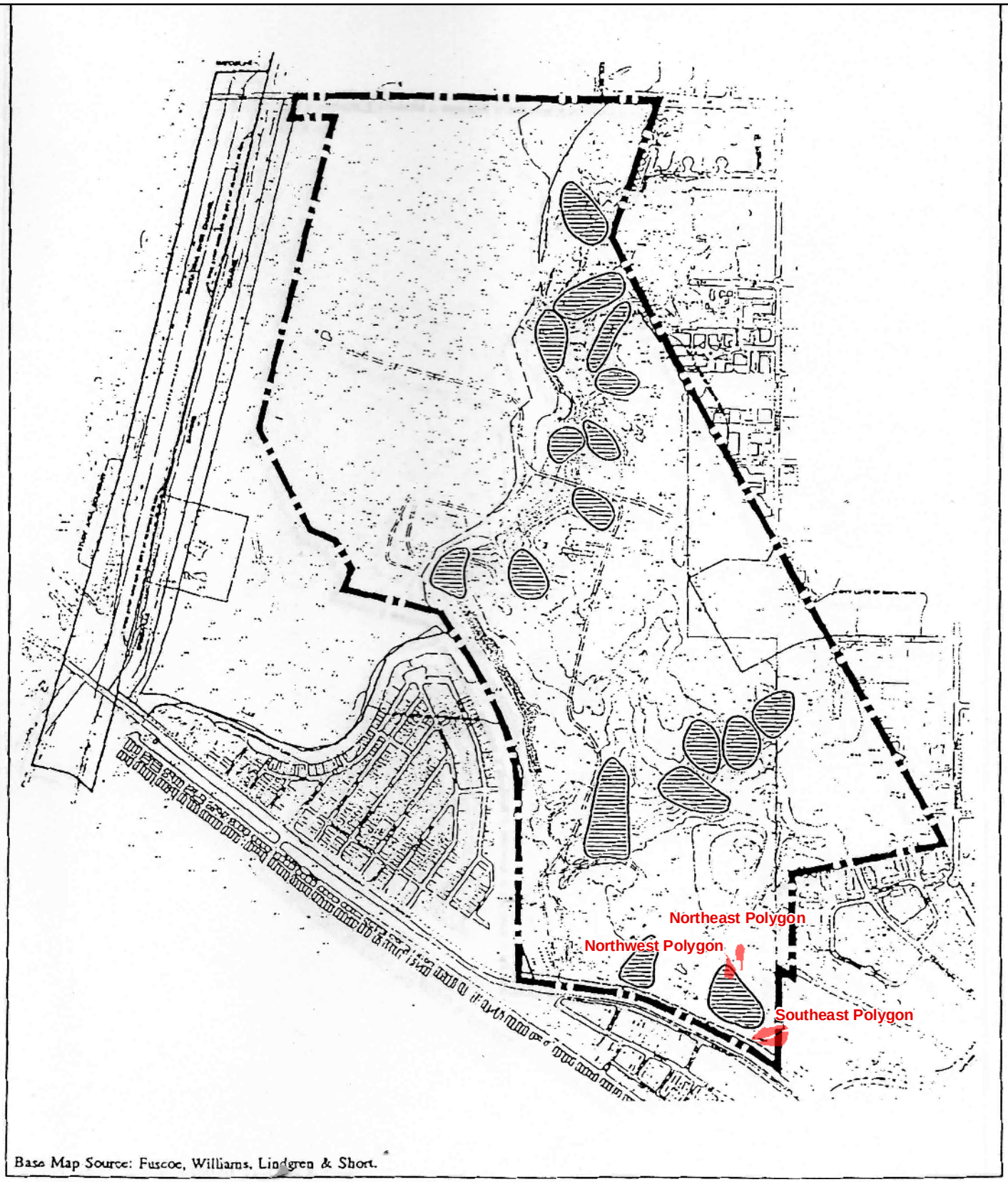
CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Sources: LSA, 1994.

N

Figure 21b

DSM 9/11



Base Map Source: Fuscoe, Williams, Lindgren & Short.

4/15/96(WNO201)

Figure 1

N

LSA

Scale in Feet

Spring 1996

gnatcatche

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Source: LSA 1996.

N

5-10-168, Exhibit 12
57 of 72

Figure 22a

DSM 9/11

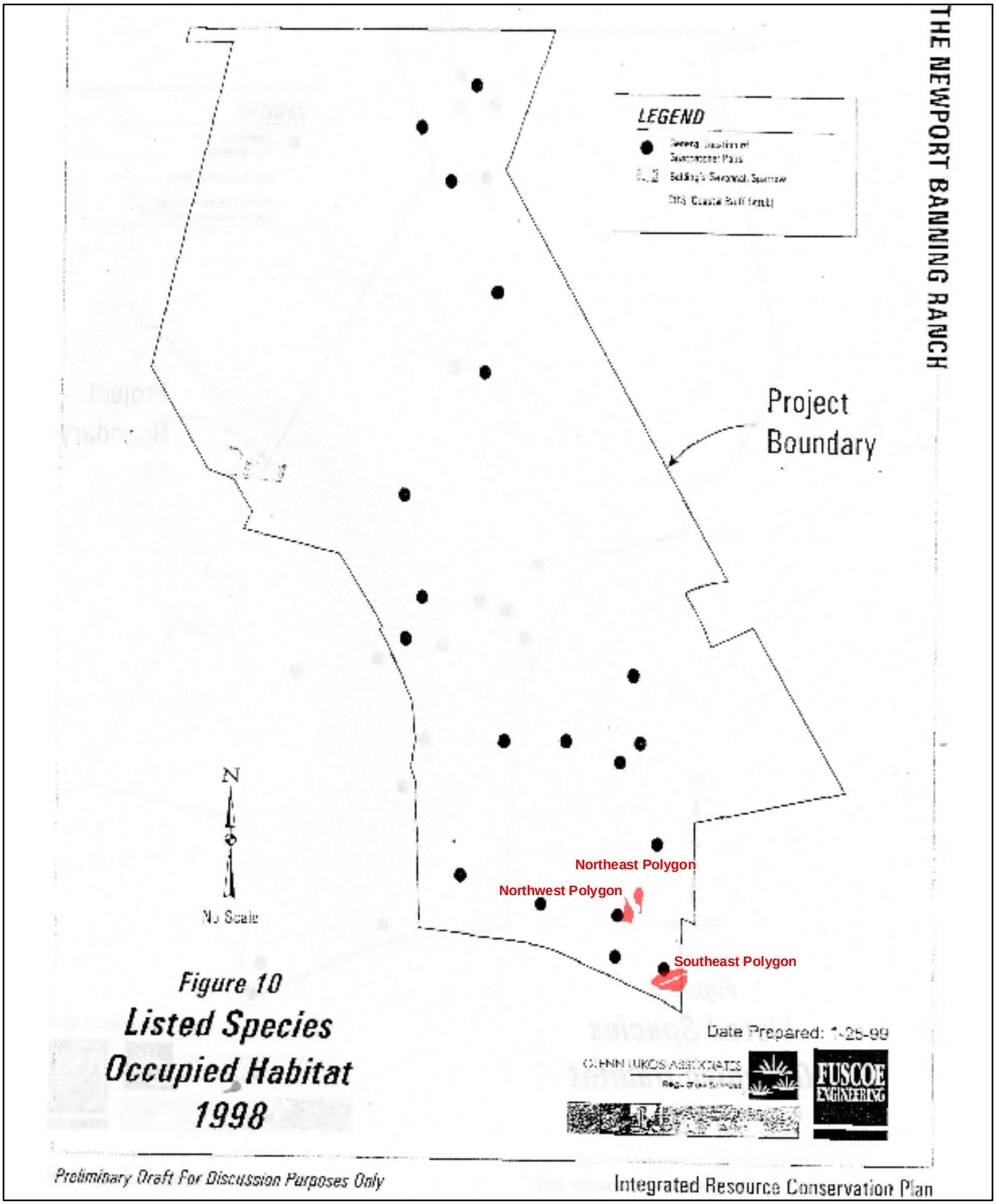
CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Sources: LSA, 1996.

N

Figure 22b

DSM 9/11



CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Source: GLA 1998.

N

Figure 32a

DSM 9/11

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Sources: GLA, 1998.

N

5-10-168, Exhibit 12
60 of 72

Figure 23b

DSM 9/11

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.

N

5-10-168, Exhibit 12
61 of 72

Figure 24

DSM 9/11

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

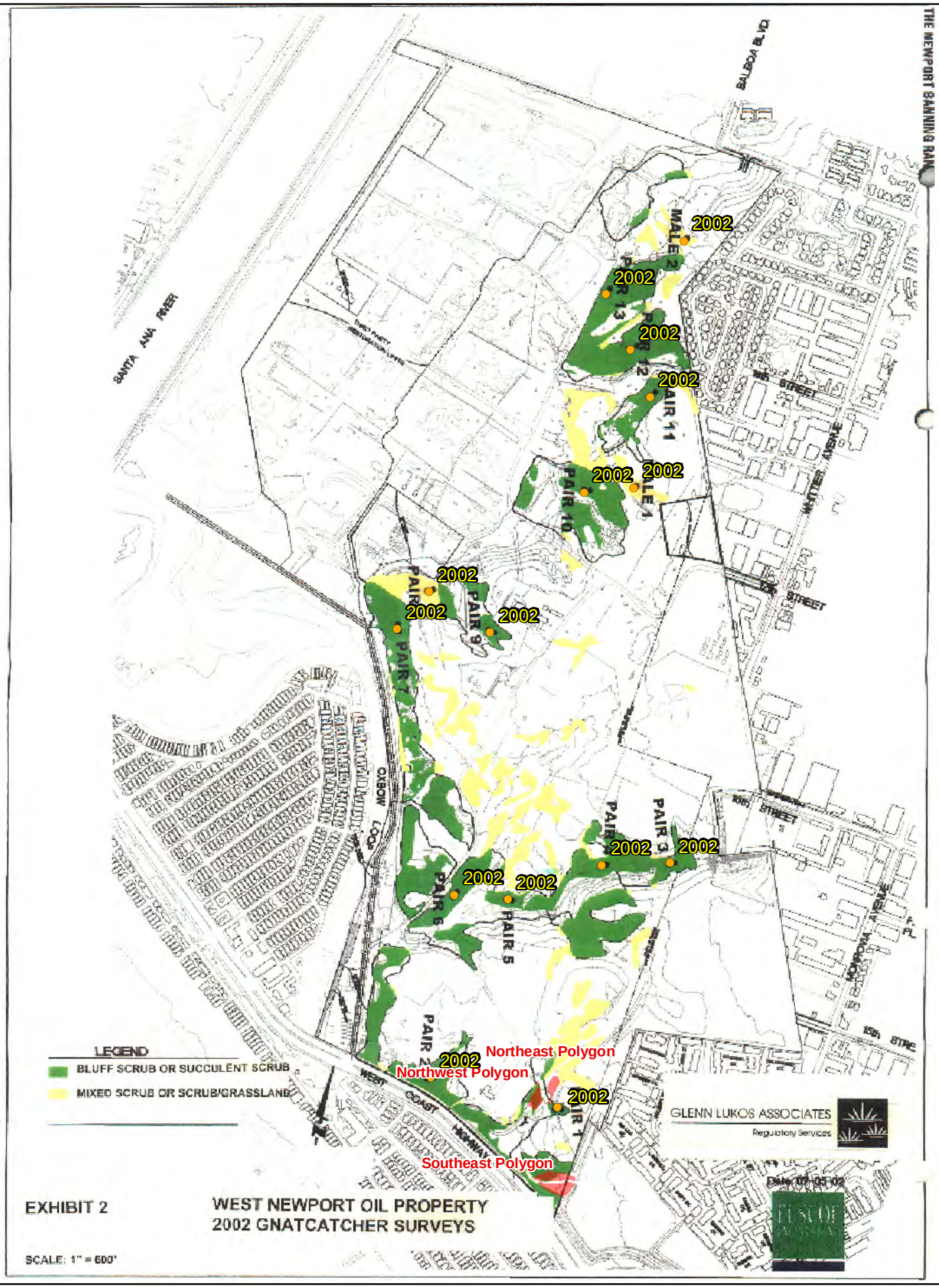
Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Sources: GLA, 2002.

N

5-10-168, Exhibit 12
62 of 72

Figure 25a

DSM 9/11



CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Source: GLA 2002.

N

Figure 25b

DSM 1/11

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Sources: GLA, 2006.

N

Gnatcatcher Occurances 2006

Pair
Single

Figure 26

DSM 9/11

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Sources: GLA, 2007.

N

5-10-168, Exhibit 12
65 of 72

Figure 27

DSM 9/11

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Sources: Bon Terra, 2009.

N

5-10-168, Exhibit 12
66 of 72

Figure 28

DSM 9/11

Figure 3
Newport Banning Ranch - California Gnatcatcher Sightings and Territories

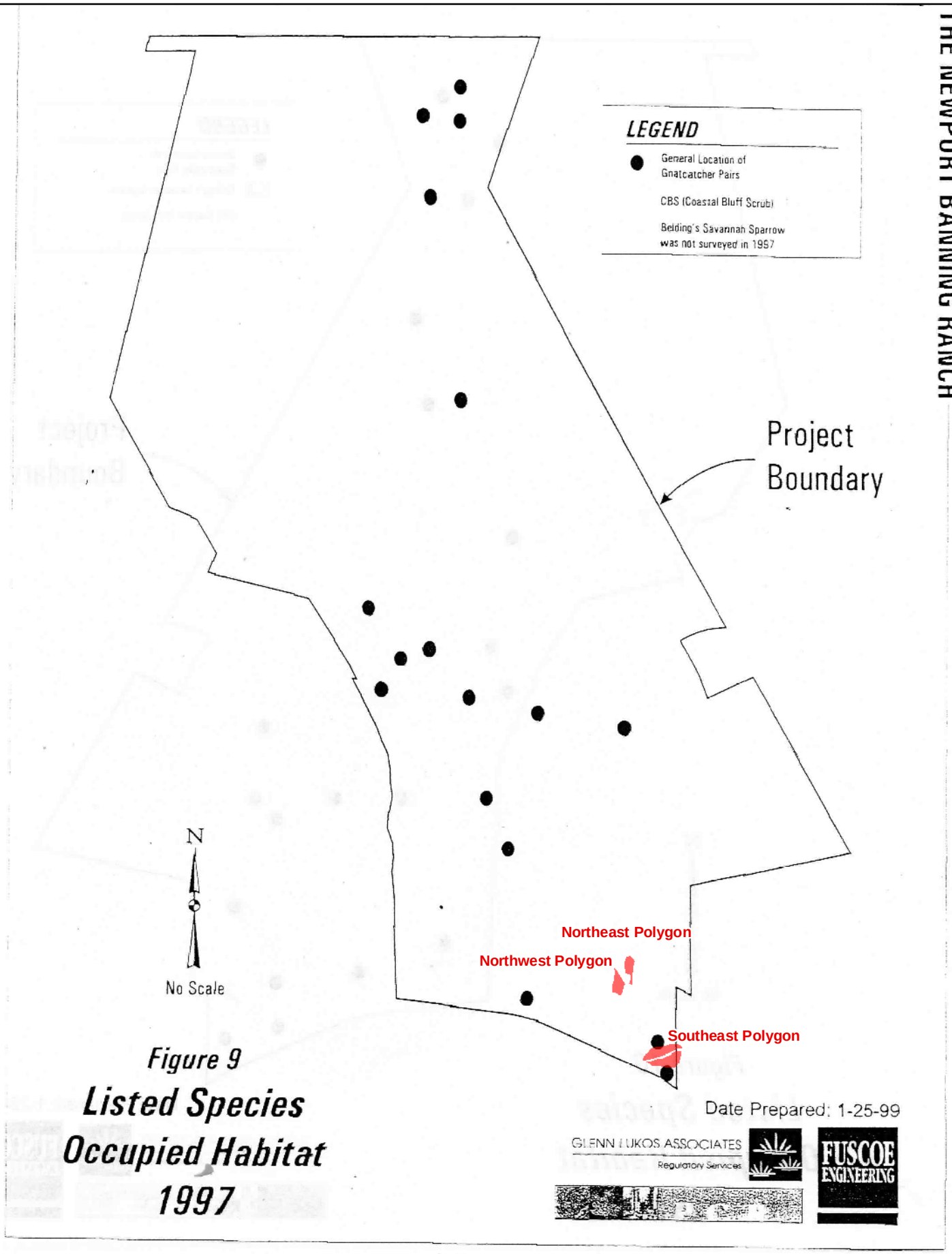
CAGN #
1 - 277
2 - 278
3 - 279
4 - 280
9 - 285
10 - 286
11 - 287
12 - 288
13 - 289
14 - 293
15 - 290

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Source: PCR 1997.

N

Figure 29a

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit
DSM 9/11



Preliminary Draft For Discussion Purposes Only

Integrated Resource Conservation Plan

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Source: GLA 1997.

N

Figure 29b

DSM 9/11

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Sources: GLA, 1997.

N

Figure 29c

DSM 9/11

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Source: Robb Hamilton 2010.

N

Figure 30

DSM 9/11

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.

N

5-10-168, Exhibit 12
71 of 72

Figure 31

DSM 9/11

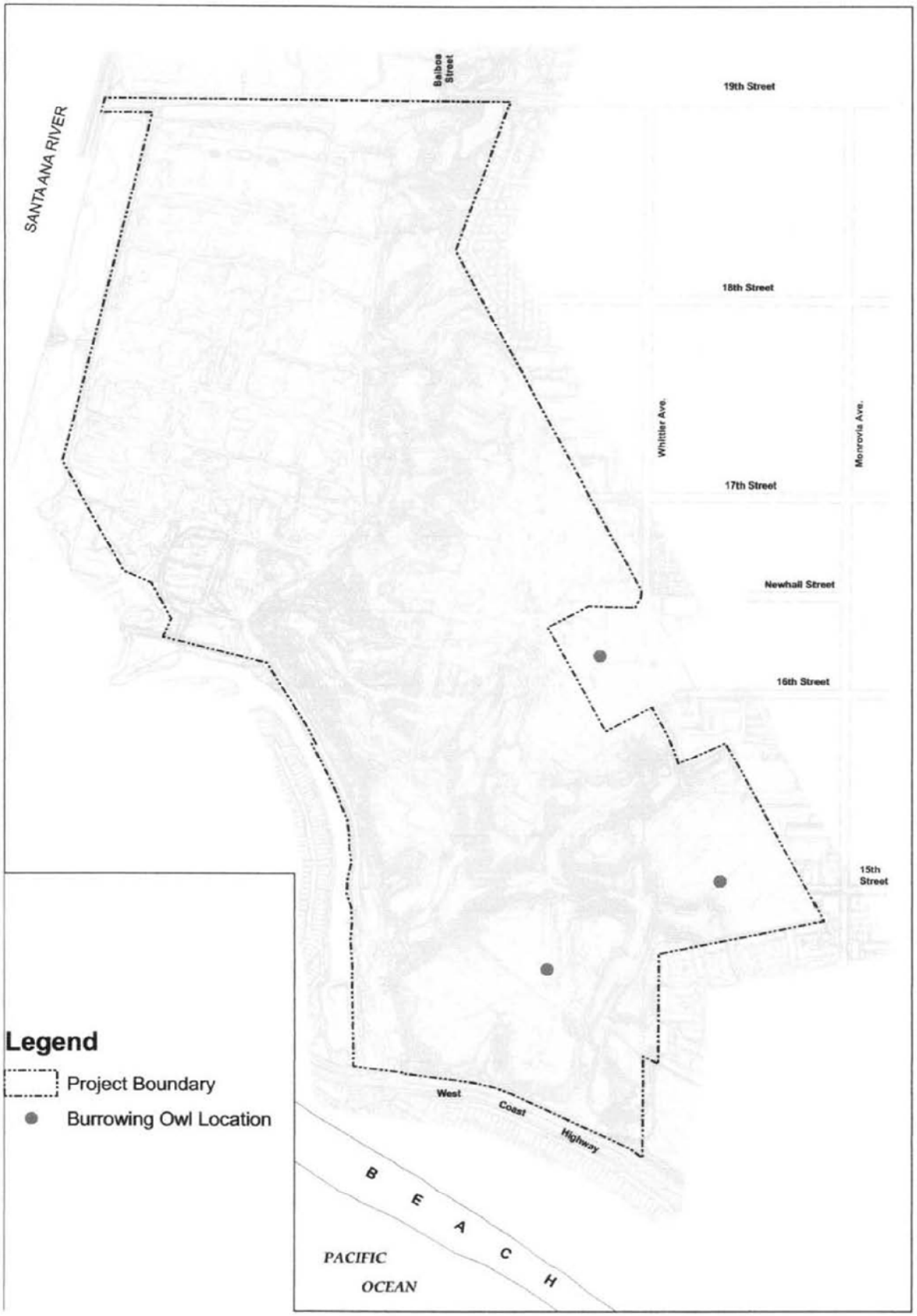


Exhibit 7

2008 Wintering Burrowing Owl Location Map

NEWPORT BANNING RANCH

0 300 600 1,200 Feet

N

GLENN LUKOS ASSOCIATES

FORMA

March 25, 2008

CALIFORNIA COASTAL COMMISSION

Technical Services Division - GIS Unit

All Locations Approximate.
For Illustrative Purposes Only.
Source: Glenn Lukos Associates.

N

5-10-168, Exhibit 12
72 of 72

Figure 32

DSM 9/11