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Filed:	12/16/12
180th Day:	6/13/12
Staff:	J. Del Arroz-LB
Staff Report:	6/1/12
Hearing Date:	6/13/12

STAFF REPORT: REGULAR CALENDAR

Application No.: **5-11-302**

Applicant: **City of Newport Beach**

Agent: Don Schmitz + Associates

Location: Northwest Corner of the Intersection of Pacific Coast Highway and Superior Ave, Newport Beach, Orange County (APN 424-041-08, -10, -11, -13 and 424-042-03)

Project Description: Construction of an active recreational park of approximately 13.7 acres. The park would include a baseball diamond/soccer fields, pedestrian paths, viewpoint, children's playground, restroom, and landscaping. Grading consists of approximately 57,223 cubic yards of cut, and 36,559 cubic yards of fill. The proposed development would be located on a vacant 13.7 acre parcel owned by the City of Newport Beach (formerly owned by Caltrans).

Staff Recommendation: Denial

SUMMARY OF STAFF RECOMMENDATION:

The proposed project is the creation of an active recreational park and the second coastal development permit application that the Commission has reviewed for the subject site. The previous coastal development permit application, 5-10-168, proposed an active recreational park located on the parcel that is the subject of the current application, and on an easement area on the adjacent Newport Banning Ranch property. The previous application proposed a two lane access road leading from West Coast Highway on the Newport Banning Ranch property to the subject site.

Major concerns raised at the hearing regarding the project included the impact of the proposed access road on the adjacent Newport Banning Ranch property, impacts to ESHA and wetlands, and whether the project was the least environmentally damaging alternative. The application was withdrawn by the applicant prior to Commission action at the November 2011 hearing,

The currently proposed project, CDP Application No. 5-11-302, has revised the park plan to eliminate the two lane park access road present in CDP application 5-10-168, and utilize an existing parking lot located on Superior Avenue for public parking and an existing gravel road for access to the site by maintenance vehicles and potentially shuttles. The proposed project includes development on Newport Banning Ranch consisting of deposition of gravel on the existing access road and a low treated wood curb to separate the existing road from the adjacent habitat area. However, the project no longer includes significant new development on the Newport Banning Ranch property such as construction of an access road or grading.

Construction of the proposed park would rely on the elimination of a 3.3 acre patch of Disturbed Encelia Scrub. The Disturbed Encelia Scrub is located on the southern half of the property and has been subject to disturbance including pre-Coastal Act grading and mowing of vegetation by Caltrans since the 1960s and mowing of vegetation by the City of Newport Beach since 2007. The City states that such mowing on the site predates the Coastal Act and does not require a coastal development permit.

Staff has reviewed numerous photographs and documentation for disturbance on the site, the habitat requirements of the federally threatened California gnatcatcher, and the biology of California Encelia. Based on this information staff finds that the Disturbed Encelia Scrub provides valuable ecological services for the California gnatcatcher during the period of time that the vegetation is present, including foraging and potentially nesting habitat. Therefore, although the site has been subject to disturbance, staff finds that the vegetation constitutes 'Major Vegetation' due to its special ecological role in supporting the federally threatened California gnatcatcher. Section 30106 of the Coastal Act defines 'development', in part, as '…removal or harvesting of major vegetation…'. Thus, the mowing of the Disturbed Encelia Scrub requires a coastal development permit and is subject to the requirements of the Coastal Act. In this case, no coastal development permit has been granted for the mowing of the Disturbed Encelia Scrub.

The site has been subject to clearance of major vegetation without a permit and therefore the site has been subject to unpermitted development. In a memo dated September 22, 2011, the Commission's ecologist Dr. Jonna Engel determined that "…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 site must therefore be viewed as though the unpermitted clearing did not occur, i.e. a mature stand of Encelia Scrub which would qualify as ESHA. The proposed project would rely on the elimination of ESHA for the construction of active sports fields, a non-resource dependent use, and therefore will be entirely degraded by the proposed development and the eventual human activities on the subject site. The proposed project is therefore inconsistent with Coastal Act Section 30240 and must be denied.

Commission staff recommends **denial** of coastal development permit application 5-11-302.

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I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-11-302 for the development proposed by the applicant.*

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby denies a Coastal Development Permit for the proposed development on the ground that the development will not conform with the policies of Chapter 3 of the Coastal Act and will prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS:

A. PROJECT LOCATION & DESCRIPTION

1. Project Vicinity

The project site is located at the western end of Newport Beach, at the intersection of Pacific Coast Highway and Superior Avenue. The project site is composed of a 13.7 acre parcel northwest of Superior Avenue owned by the City of Newport Beach (this area will be referenced as the Park Site), and a 1.5 acre City owned public parking lot (this area will be referenced as the Parking Lot) located on the southeastern side of Superior Avenue.

Developed areas ring the Park Site on three sides. Residential uses are located adjacent to the Park Site to the northeast at the Newport Crest housing development, and across the highway to the southwest at the existing developed single family residential neighborhood. Hoag Hospital is located to the east of the Park Site and the Parking Lot. Adjacent to the Park Site on the west is the Newport Banning Ranch property which is located in unincorporated Orange County and within the

sphere of influence of the City of Newport Beach. Newport Banning Ranch is designated in the City's certified Land Use Plan as an area of deferred certification. Further to the west, beyond Newport Banning Ranch, is the Semeniouk Slough.

2. Project Description:

The proposed project is the creation of an active recreational park. A baseball diamond that overlaps in area with two soccer fields would be created on the center of the Park Site. A children's playground and grass warm up field is proposed to the west of the ball fields. A 1300 sq. ft. restroom/storage facility with a maximum height of 20 feet is proposed between the grass warm up field and the ball fields. Passive elements include pedestrian paths around the perimeter of the park, and a view station, shade structure, and butterfly garden proposed for the north eastern section of the site. At the northern boundary of the project site, the City proposes to install a 4 to 10 foot high retaining wall and landscaped berm to serve as a barrier between the park and the adjacent residential use (Exhibit 2).

The project includes installation of landscaping, which would consist of predominantly native landscaping with some non-native drought tolerant non-invasive species (Exhibit 2). Grass lawn would be installed at the center of the Park Site for the proposed active sports fields. The park would not include any lighting of sports fields, and, as proposed, would be open from 8 AM until dusk each day. Grading required for contouring of slopes on the site will result in 57,223 cubic yards of cut, 36,559 cubic yards of fill on the site, and 20,664 cubic yards of export to a fill site located outside of the Coastal Zone.

The applicant proposes to relocate and reconstruct the existing concrete drainage channel located along Pacific Coast Highway and a portion of Superior Avenue. These areas drain into an existing box culvert which drains to Semeniouk Slough. An existing drainage ditch located near the western boundary of the subject site is proposed to be removed and replaced with an underground drainage culvert and an above ground infiltration swale.

City maintenance vehicles and shuttles would access the site through the existing unimproved access road which bisects the Southeast Polygon, on the west portion of the subject site. The existing unimproved access road would be improved through the addition of gravel and a low treated wood curb to separate the existing road from the adjacent habitat area. The City proposes to utilize the existing chainlink fence with locked gate located adjacent to Pacific Coast Highway to restrict vehicular access to the site. The access road leads to a gravel turnaround located approximately 120 feet east of the western boundary of the park, and from the turnaround a decomposed granite road leads to the north to access an existing manhole located just to the north of the subject site.

The previous application for an active recreational park at the site, coastal development permit Application 5-10-168, included a proposal for a two lane access road sited mostly on the adjacent property owned by Newport Banning Ranch to a proposed parking lot on the Park Site, consistent with the terms of an easement agreement between Newport Banning Ranch and the City. This access road has been eliminated from the revised project proposal. Instead, the City proposes to use the existing 64 space parking lot located on the eastern side of Superior Avenue. The parking lot at

Superior Avenue was established by coastal development permit No. 5-88-255 and subsequent amendments to mitigate for the loss of street parking resulting from the expansion of Pacific Coast Highway from 4 to 6 lanes. The parking lot is currently used by the public, including use as beach parking to access the beach located approximately 950 feet to the southwest of the lot. The lot is underutilized for the majority of the year, but does receive heavy usage during some holidays and weekends in the peak summer period. The City plans to manage scheduling of games to ensure that adequate parking is provided for games, and to ensure that parking for the proposed active recreational park does not conflict with the parking needs of other uses in the area, such as parking for beach access.

3. History & Current Planning

Caltrans graded the 13.7 acre Park Site heavily at some point prior to the Coastal Act, resulting in significant alterations to the topography of the site. The topography of the Park site historically consisted of a mesa which extended continuously across the site. However, excavation and use of the site as a source of soil for other Caltrans projects has significantly modified the Park Site, resulting in the two artificial terraces present on the east and west portions of the site present today. The majority of the subject site now lies at a lowered elevation of approximately 44 feet, with the remnant portions of the mesa on the north eastern corner of the Park Site and the eastern portion of the Park Site at the historical elevation of 76 feet above sea level.

The Environmental Impact Report (EIR) for the project states that the Park Site has been mowed historically and continues to be mowed frequently and routinely for fuel modification and weed abatement purposes. The clearance of vegetation on the site will be covered in Section C, Historical and Existing Vegetation Patterns, below.

The subject site was acquired by Caltrans in the 1960s in anticipation of an expansion of Coast Highway, which did not occur. The City of Newport Beach approved a number of general plan amendments between 1988 and 1994, which would allow a park use, multi-family residential, and single family residential use on the site. In 1998, the City adopted a general plan amendment which designated the Park Site for use as a neighborhood and view park. In 2001, Senate Bill 124 directed Caltrans to transfer the property to the City, and in 2006 the City purchased the 13.7 acre parcel. Terms of the sale included a restriction to those uses on the subject site allowed under the Open Space – Active zoning designation (a designation which has since been eliminated in the 2010 zoning update approved by the City), and a requirement for a scenic easement along a 4.5 acre portion of the Park Site adjacent to Coast Highway which prohibits permanent structures or pavement.

The Draft Environmental Impact Report for development of commercial and residential uses on the adjacent property known as Newport Banning Ranch was released on September 9, 2011, and the Response to Comments made on the EIR was released on March 16, 2012. The preferred alternative identified by the EIR includes 1,375 residential dwelling units, 60,000 sq. ft. of neighborhood commercial space, 282 acres of open space, and 34 acres of parks. Future development of the Newport Banning Ranch property would require local approvals, certification of a Local Coastal Program (if the local jurisdiction is to have permit authority), and would require a coastal development permit.

4. Past Commission Action

a. Violation and Enforcement

The Project Site includes an area where some of the Coastal Act violations that were the subject of Commission Cease and Desist Order CCC-11-CD-03 and Restoration Order CCC-11-RO-02 ("Enforcement Orders") occurred in 2004. The violation consisted of unpermitted development including removal of major vegetation comprising native plant communities and habitat for the federally threatened coastal California gnatcatcher; placement of solid material, including placement of numerous significant stacks of pipe conduits, vehicles, mechanized equipment, and construction materials; and grading. The violations occurred in three distinct areas identified and subsequently referred to as 'polygons,' located on the subject site and the adjacent Newport Banning Ranch property. The Northeast and Northwest polygons are located approximately 300 feet to the west of the subject site, on the Newport Banning Ranch property. The Southeast Polygon is located at the western portion of the subject site, and is located on both the City of Newport Beach and Newport Banning Ranch property(See Exhibit 2), On April 14, 2011, after reaching agreement with the violators on the terms of the Enforcement Orders, the Commission issued them as "Consent Orders," requiring payment of monetary penalties for violation of the Coastal Act, and requiring removal of unpermitted development, restoration with coastal sage scrub for use of the California gnatcatcher, and mitigation offsetting the temporal loss of habitat and loss of habitat fitness that resulted from the violation. The Commission found that the Southeast and Northwest polygons were considered to be ESHA at the time the development took place, and required the two polygons to be restored to support the California gnatcatcher. In the Enforcement Orders, the Commission stated that a separate "analysis will be done by the Coastal Commission for any future coastal development permit or other proceeding before the Coastal Commission on the subject properties." The analysis for whether the Southeast polygon is ESHA can be found below in Section E, Environmentally Sensitive Habitat Areas.

b. LUP Amendment NPB-MAJ-1-06

The City of Newport Beach Land Use Plan Amendment 1-06, part B was approved by the Commission on July 12, 2006 and changed the land use designation on the Park Site from Planned Community (a residential land use) to Open Space. LUP Amendment NPB-MAJ-1-06 Part B states in part:

> *No biological survey was conducted during the City's consideration of the land use change, nor was a discussion of potential habitat provided.… 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... Section 4.1.1 contains policies to identify and protect ESHA through avoidance and proper siting. The Commission notes that the developable area of the site may be restricted by the existence of habitat and associated setbacks/buffers….*
>
> *The proposed land use change will ensure the preservation of the site for an open space use that will allow for some form of public viewing toward the coast. In that respect, the*

proposed amendment is consistent with Section 30251 of the Coastal Act. However, the City's intent to develop the site as an active park may necessitate a substantial amount of grading to create large level areas for playing fields. The Commission notes that the extent of grading may need to be limited to avoid substantial landform alteration.

The Commission found that potential issues associated with development of an active park on the site include impacts to biological resources and the potential for substantial landform alteration, and that any future development should address these potential impacts.

c. Coastal Development Permit Application 5-10-168

On November 2, 2011 the Commission held a hearing on CDP Application 5-10-168, in which the City proposed an active recreational park on the subject site and an access road and habitat restoration areas on the adjacent property owned by Newport Banning Ranch. Major concerns raised at the hearing regarding the project included the impact of the proposed access road on the adjacent Newport Banning Ranch property, impacts to ESHA and wetlands, and whether the project was the least environmentally damaging alternative. The application was withdrawn by the applicant at the hearing, prior to Commission action.

B. OTHER AGENCY APPROVALS

In the preparation of these Findings, the Commission staff consulted with the US Fish and Wildlife Service's Carlsbad office. The US Fish and Wildlife Service has reviewed the proposed project and has determined that the project would not result in harm or take of the California gnatcatcher (Exhibit 9, page 3). The FWS letter included recommended mitigation measures, including the removal of invasive species, and alteration of the proposed landscaping plan.

C. HISTORICAL AND EXISTING VEGETATION PATTERNS

1. Description of Disturbed Encelia Scrub

a. Introduction

The EIR for the project describes the vegetation on the Park Site as consisting of: Ornamental, Encelia Scrub, Encelia Scrub/Ornamental, Disturbed Encelia Scrub and Ruderal vegetation (Exhibit 7, Figure 8). The Park Site has been subject to recurrent clearance of vegetation, which has not received a coastal development permit. The clearance has included mowing of a 3.3 acre area located in the center of the Park Site, which is mapped in the EIR as Disturbed Encelia Scrub. The City has taken the position that the clearing of vegetation on the Park Site which has occurred has not required a coastal development permit because the activity has taken place since before the effective date of the Coastal Act. Encelia scrub is a type of coastal sage scrub community that serves as habitat for the federally threatened California gnatcatcher, which, as discussed below, is known to occur on the Park Site and on the adjacent Newport Banning Ranch property. Clearance of vegetation known to serve as habitat and provide important ecological functions for a listed species would qualify as Major Vegetation and could also qualify as ESHA. Therefore, at issue is

the question of whether the Disturbed Encelia Scrub serves as important ecological habitat for the California gnatcatcher.

If clearance of the Disturbed Encelia Scrub did not qualify as clearance of major vegetation, the clearance would not qualify as development under the Coastal Act, and the Commission must evaluate the impacts of the proposed development on the site in its current condition. However, if the vegetation does qualify as major vegetation, the clearance of the Disturbed Encelia Scrub which has occurred over the Park Site's history should be treated as unpermitted development, and the Park Site should be treated as if the unpermitted development did not occur; that is as if a mature stand of encelia scrub that would potentially qualify as ESHA existed on the site. Therefore, it is necessary to assess historic clearance of the Disturbed Encelia on the Park Site and whether the clearing required a coastal development permit. The following paragraphs will state what is known regarding the Disturbed Encelia Scrub. Analysis of the information and a conclusion regarding whether the vegetation constitutes major vegetation can be found in Section D, Determination of Major Vegetation.

b. Clearance of Vegetation

The City states that regular, ongoing maintenance and weed abatement has occurred annually on the Park Site by Caltrans since prior to the enactment of Proposition 20 and the Coastal Act, and continued when the City purchased the Park Site in 2006. Specifically, the City states that Caltrans undertook weed abatement on the Park Site by disking until 2001, when Caltrans began mowing the Park Site for weed abatement instead of disking. In support of the claim, the City has submitted aerial photography, signed letters from City staff, and copies of complaints regarding high vegetation on the Park Site. Commission staff has contacted Caltrans for more specific information regarding the purpose and extent of clearing activities which were carried out on the Park Site; however, to date, Caltrans has not submitted such information.

The available aerial photography which has been reviewed by staff includes photos of the Park Site from Caltrans archives submitted by the applicant, photographs from the California Coastal Record project, and aerial photography from Google Earth. For the years where Caltrans appears to have cleared vegetation on the site, staff used satellite imagery and aerial photography showing the site's condition on one day, each image taken on various dates of the year, in the following years: 1965, 1968, 1972, 1973, 1974, 1975, 1977, 1979, 1982, 1983, 1986, 1987, 1989, 1991, 1993, 1994, 1995, 2002, 2003, 2004, 2005, and 2006.

After CalTrans transferred the Park Site to the City, the City has stated that mowing of the Park Site and related maintenance was done at least once each year, and typically twice, since April 2007. The available aerial photography of the Park Site which has been reviewed by staff include photos from the California Coastal Record project and Google Earth. Aerial photography for this period is available for the years of 2007, 2008, 2009, 2010, 2011.

In general, each photograph shows evidence that the Park Site has been subject to mowing within the recent past. The record of aerial photographs includes periods where photographs are not available, including a seven-year period between 1995 and 2002; however, photographs before and after this seven-year period depict evidence of recent mowing. There are two aerial photographs within this record which show green vegetation on the Park Site with increased heights and which

suggest that vegetation on the Park Site may reach a high level (dated April 14, 1993, and March 27, 2005). However, the photographs are taken directly above the vegetation and the type or height of the vegetation cannot be determined.

Documentation regarding the history of mowing on the Park Site consists of two letters from fire officials and Newport Beach, a copy of complaint reports regarding weeds on the property, and documentation for work orders for clearance of vegetation. The City has submitted two letters from a retired fire inspector, Russell Cheek, and Fire Marshal Steve Bunting, both alleging that Caltrans and the City have abated weeds on the property from 1979 to present. The letters claim that "since the early 70s", Caltrans "was very good about 'disking' the property at the beginning of fire season each year and never had to be asked." and that the City's Fire Department has "physical record of abatement at the site dat[ing] back to 1997." However, the City has not submitted this "physical record of abatement" to the Commission nor explained what it may contain. Although the City states that the mowing occurred because of weed abatement activities, the submitted materials do not indicate that the City declared either a public nuisance to abate a fire hazard on the Park Site or a designation of the Park Site as a high fire hazard zone. Additionally, the mowing activities extended beyond 100 feet from a structure, the area typically subject to fuel modification activities. Further the cleared vegetation, California encelia, is listed on the City of Newport Beach Fire Department's website as a fire-retardant species, which also states that "[f]ire restistant plants can act as a *firebreak and protect your home."* (emphasis added). The Disturbed Encelia Scrub is composed primarily of California encelia. Thus even if flammable species were present, the California encelia would act to suppress the spread of the fire. In sum, while the submitted letters may be adequate to show the City's claimed justification for clearing the Disturbed Encelia Scrub area of the Park Site over time, they are not sufficient to support the City's claim that the mowing activities have historically occurred on an annual basis.

The City submitted two "Newport Beach Fire and Marine Department Complaint Report[s]". In 1997, the complainant, "Georgia," complained that the Park Site was "overgrown, dead brush and weeds." In 1999, the complainant, Vivian Cellni, complained that "the lot is a fire hazard - high weeds present." These complainants are likely not qualified to determine whether or not their observations of the overgrown weeds and brush were healthy stands of vegetation, but the complaints are suggestive that vegetation on the Park Site has reached large heights over the period in which Caltrans mowed the site.

Records consisting of work orders and invoices were submitted by the City for clearance of vegetation on the Park Site by Southland Vegetation Maintenance during City ownership of the Park Site between 2007 and 2011. The invoices show that the City cleared the Disturbed Encelia Scrub on the Park Site between once and twice a year, and that in later years the vegetation clearance included the use of herbicides.

Photographs taken of the Park Site from ground level were received from various sources. Some of the photos were those taken by Rob Hamilton of Hamilton Biological, in an email dated March 23, 2010, and letters dated December 10, 2009, May 25, 2010, and December 11, 2010. Photos dated February 6, 2012 showing clearance by the City of vegetation at the Park Site were presented to the Commission by the Banning Ranch Conservancy at the Commission's February meeting in Santa Cruz. Other undated photographs of growth of California encelia on the Park Site were shown at the

Commission's October 6, 2011 meeting in Huntington Beach. The ground level photos of the Park Site which have been reviewed by staff show that the area of Disturbed Encelia Scrub and the patch of Encelia Scrub along Superior Avenue can grow to a height of 2-3 feet within a growing season, and that the vegetation is composed of Encelia Scrub, some native species such as deerweed, and non-native species. Thus, the available photographs shows that California encelia can reach dense shrub coverage levels, but is sparsely covered after mowing events.

From the available evidence, there may have been a year-long period between mowings during Caltrans ownership, though this is not conclusive since there are gaps in evidence to support a finding that the mowing occurred every year during its ownership. Although the vegetation does grow to a height of a few feet during the winter growing season, the vegetation is brought back to ground level, with the root system remaining intact, when mowing later occurs. For the time in which the City has owned and maintained the property, it appears that the City mowed the Park Site annually or twice per year. Thus, the available evidence suggests that mowing events have occurred on the Park Site since before passage of the Coastal Act but there is insufficient evidence to conclude that the mowing events regularly occurred on an annual or semi-annual basis since before passage of the Coastal Act.

c. Description of Vegetation in EIR

The EIR for the project was prepared by the City of Newport Beach and Bon Terra Consulting. The EIR maps an area of Ruderal vegetation which is located primarily along the northeastern boundary of the Park Site, and extends, on average, approximately 270 feet from the northeastern boundary of the Park Site. The EIR maps an area of Encelia Scrub about 200 feet long and 60 feet wide along Superior Avenue, and another area of Encelia Scrub of triangular shape located at the western boundary of the Park Site. An area mapped as Encelia Scrub / Ornamental is located on the Park Site just up slope from the intersection of Pacific Coast Highway and Superior Avenue. Ornamental vegetation is located along the majority of the Park Site's slopes that are adjacent to Coast Highway and Superior Avenue and is also located at the northwest corner of the Park Site.

The EIR describes a 3.3 acre area in the center of the project site as Disturbed Encelia Scrub. The EIR states that the vegetation within the area of Disturbed Encelia Scrub is "dominated by bush sunflower [*Encelia californica*] and deerweed (*Lotus scoparius*). The understory consists of non-native grasses and forbs, including black mustard (*Brassica nigra*), foxtail chess (*Bromus madritensis* ssp. *rubens)*, Russian thistle (*Salsola tragus*), and tocalote (*Centaurea melitensis*). Shrub cover of this area is approximately 50 to 60 percent overall." The EIR concludes that the Disturbed Encelia scrub is not special status due to regular mowing for fuel modification and weed abatement purposes, high percentages of non-native weeds, fragmentation from high value areas, presence of trash, proximity to high foot/bicycle, and vehicle traffic. The EIR states that the area is not expected to support gnatcatchers during the nesting season.

d. Assessment by Commission Staff

Gnatcatchers typically occur in or near coastal sage scrub, which is composed of relatively low-growing, dry-season deciduous and succulent plants. California sunflower, or California Encelia, (*Encelia californica)* is one of the dominant native scrub species found in the coastal sage scrub communities on the Park Site and Newport Banning Ranch property. California Encelia is a fast

growing species, with growth rates that vary between 1 to 4 feet during the growing season[1,2]. 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. Gnatcatchers may also use chaparral, grassland, and riparian plant communities where they occur adjacent to or intermixed with coastal sage scrub, especially during the non-breeding season (Campbell *et al.* 1998), but are usually closely tied to coastal sage scrub for reproduction (Atwood 1993).

California gnatcatcher breeding season territories range in size from less than 2.5 acres to 25 acres[3,4], with a mean territory size generally greater for inland populations than coastal populations[5]. During the non-breeding season, gnatcatchers have been observed to expand their use area to an area approximately 78 percent larger than their breeding territory (Preston *et al*. 1998). Preston *et al.* (1998) postulated that gnatcatchers expand their use area outside of the breeding season to pursue supplemental foraging resources in non-scrub habitats, including weedy areas (e.g., non-native grasslands). The Disturbed Encelia Scrub area, at 3.3 acres in size, meets the minimum size of a breeding territory for the gnatcatcher.

According to the record of vegetation maintenance, brush/non-native flush cutting and herbicide application occurred in January of 2009. About three months later, a protocol gnatcatcher survey was conducted between April 1st and May 15th, 2009 by Bon Terra, that identified one gnatcatcher pair on the adjacent Newport Banning Ranch property, but did not identify any gnatcatchers within the area of Disturbed Encelia Scrub or on the rest of the Park Site. Since there is photographic evidence showing significant growth of California encelia on the Park Site, it is unclear whether BonTerra conducted the protocol gnatcatcher survey after a mowing event on the site or when there was significant growth on the Park Site. If the conditions were the former, the survey likely did not reflect the gnatcatcher's actual use of the area of Disturbed Encelia Scrub throughout the year. Protocol surveys that have been conducted since 1992 on the Newport Banning Ranch site show that gnatcatcher nesting territory locations shift from year to year. Given the close proximity of the Disturbed Encelia Scrub to mapped gnatcatcher territories on Newport Banning Ranch, the growth rate of California encelia, and the fact that we have only one protocol survey for the subject site, it is likely that the recorded data does not capture actual use of the site by gnatcatchers and it is likely gnatcatchers utilize the Disturbed Encelia Scrub between mowings for the following reasons.

The Disturbed Encelia Scrub is located directly adjacent to identified gnatcatcher nesting territory. Multiple protocol gnatcatcher surveys (1992 to 2009) have occurred on the adjacent Newport Banning Ranch property. Exhibit 7 to the staff report, the biological memorandum by Dr. Jonna Engel includes Figure 18, a compilation of the available data regarding gnatcatcher presence on the adjacent property. The 3.3 acre Disturbed Encelia Scrub area on the Park Site is 80 feet east of an area of Encelia Scrub located partially on and partially adjacent to the Park Site, and about 160 feet

[1] Pers. Com. J. Evens, Senior Botanist, CNPS. Jan 19, 2012.
[2] Landis, B. Aug. 2011. Native Plants for School and Urban Gardens. CNPS
[3] 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.
[4] 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.
[5] Ibid.

east of an area on Newport Banning Ranch identified by the applicant as Southern Coastal Bluff Scrub where gnatcatchers have been mapped in protocol surveys. The area is also directly adjacent to areas near Pacific Coast Highway where foraging gnatcatchers have been observed outside of the breeding season by Robb Hamilton of Hamilton Biological.

In addition to mowing disturbance and level of invasion by non-native species, the EIR cites trash and noise disturbance from the adjacent road as factors for why the Disturbed Encelia Scrub is not special status. However, immediately adjacent to the Disturbed Encelia Scrub is an area with a long history of documented gnatcatcher use, so it is not likely that trash and noise on the subject site play a significant role in whether the Disturbed Encelia Scrub is utilized by gnatcatchers.

The mowing that has occurred on the site prevents the Disturbed Encelia Scrub from establishing into a mature coastal sage scrub community. However, photographs of the Disturbed Encelia Scrub show that encelia can reach heights of two to three feet over one growing season. According to the EIR the shrub cover of the 'Disturbed Encelia Scrub' area is 50 to 60 percent. This percent cover is well within the range of cover documented to support gnatcatcher foraging and potentially activities. Nesting territories typically have between 20 to 60 percent shrub cover and an average shrub height of 2.3 ft; average nest height is 2.7 feet above the ground with a range of 30-292cm [6,7]. There are accounts in scientific literature of gnatcatchers successfully nesting at first-year post burn sites and foraging in rapidly re-growing burn sites(Beyers and Wirtz 1997). Beyers and Wirtz's research focused on gnatcatcher utilization in areas immediately post wildfire rather than the effects of mowing; however fire and mowing both result in the removal of the majority of vegetation.

Although the City's EIR states that the Disturbed Encelia Scrub is regularly mowed and has a high percentage of non-native weeds and therefore is not valuable habitat, the Commission's staff ecologist, Dr. Jonna Engel, disagrees. The Commission's staff ecologist has evaluated the area of Disturbed Encelia Scrub, and has determined that the Disturbed Encelia Scrub would qualify as ESHA if the area was not mowed. From the Biological Memorandum:

> *I … 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.*
>
> *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*

[6] Bontrager 1991, Mock and Bolger 1992, Grishaver et al. 1998.

[7] 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.

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.

In summary, the Disturbed Encelia Scrub on the Park Site is immediately adjacent to an area with a long history of supporting nesting gnatcatchers and is one of the three main sage scrub types (along with California sage and California buckwheat) preferred by gnatcatchers[8]. If not for the clearance of the Disturbed Encelia Scrub, this scrub community would develop into a stand dominated by California encelia and suitable for gnatcatcher for foraging and nesting. Therefore, as noted in Dr. Engel's Biological Memorandum, if the Park Site was not mowed, the Disturbed Encelia Scrub would qualify as ESHA.

e. Adjacent property

The adjacent property to the Park Site is known as Newport Banning Ranch which covers 401 acres and supports a variety of habitat types, including different varieties of coastal sage scrub, grassland and ruderal habitat, vernal pools, marshes, and riparian scrub. The Draft Environmental Impact Report (DEIR) for Newport Banning Ranch identifies the following sensitive species that are mapped on the site in 2009 and 2010: burrowing owl, the California gnatcatcher, cactus wren, least Bell's vireo, San Diego fairy shrimp, and southern tarplant. The Newport Banning Ranch property is subject to periodic mowing activities. The DEIR states that such activities are required for oilfield maintenance and fuel modification. The Commission will be analyzing the mowing activities on Newport Banning Ranch in review of any development on the site.

2. Existing Environmental Designations

a. Critical Habitat

The USFWS designated all of the Park Site and all of Newport Banning Ranch as critical habitat for California gnatcatchers in 2000 (Exhibit 7, Figure 10). 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.

In designating the Park Site and Newport Banning Ranch 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

[8] 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.

gnatcatcher." This block of land is the only immediately coastal land mapped as critical gnatcatcher habitat in Unit 7 in Orange County (Exhibit 7, Figure 11). 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."

b. Past Considerations of ESHA on the Park Site

As noted above in Section A, Part 3, Past Commission Action, the Commission issued Consent Order CCC-11-CD-03 and Restoration Order CCC-11-RO-02 on April 14, 2011 for unpermitted development on a portion of the Park Site and on the property owned by Newport Banning Ranch. The violation occurred on three 'polygons,' located on the subject site and the adjacent Newport Banning Ranch property. The Northeast and Northwest polygons are located approximately 300 feet to the west of the subject site, on the Newport Banning Ranch property. The Southeast Polygon is located at the western portion of the subject site, and is located on both the City of Newport Beach and Newport Banning Ranch property (See Exhibit 2). As part of the Consent and Restoration Orders, the Commission found that the Southeast and Northwest polygons were considered to be ESHA at the time the development took place, and required the two polygons to be restored to support the California gnatcatcher. In the Enforcement Orders, the Commission stated that a separate "analysis will be done by the Coastal Commission for any future coastal development permit or other proceeding before the Coastal Commission on the subject properties." This analysis can be found in Section E, Environmentally Sensitive Habitat Areas, below.

c. Review by the Fish and Wildlife Service

The City of Newport Beach has requested technical review of the proposed project from the Fish and Wildlife Service(FWS). FWS has written a letter dated April 27, 2012 which reviewed whether the project would result in harm to or take of the California gnatcatcher (Exhibit 9, Page 3).

The FWS found that the project would not result in harm to the gnatcatcher. Although impacts to 3.95 acres of foraging and sheltering habitat are proposed, the project would result in creation or restoration of 4.4 acres of gnatcatcher foraging habitat, would include measures to minimize impacts, and would not result in temporary displacement of birds due to habitat availability on the adjacent Newport Banning Ranch property. The FWS further found that operation and maintenance of the park would not result in long term impacts to habitat or gnatcatchers due to measures incorporated into the City's proposal, such as signs, fencing, and non-native plant removal. However, it is important to note that the Fish and Wildlife Service reviews whether projects will result in a reduction in the abundance of a listed species, and allows for mitigation of impacts to sensitive habitats if they determine that a particular project will not jeopardize the persistence of the respective species. This stands in contrast with the requirement for protection of environmentally sensitive habitat where it is located, as mandated by Coastal Act Section 30240 (Bolsa Chica Land Trust v. Superior Court of San Diego (1999)71 Cal.App.4th 493, 507.)

D. DEVELOPMENT

Coastal Act section 30106 states (in relevant part) :

> *"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 other than for agricultural purposes…*

Coastal Act section 30600 states in relevant part:

> *(a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person, as defined in Section 21066, wishing to perform or undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit.*

1. Introduction

As described above, mowing of the Disturbed Encelia Scrub has occurred repeatedly over the site's history without a coastal development permit. During mowing events, the Disturbed Encelia Scrub is mowed to within a few inches of ground level. In the interim period between clearings, the vegetation can reach heights of two to three feet.

Coastal Act Section 30600 states that development within the Coastal Zone requires a coastal development permit. Coastal Act Section 30106 states that development includes the removal of major vegetation. Therefore, whether the clearance of vegetation on the Park Site requires a permit depends on whether the vegetation which is being cleared qualifies as major vegetation. The term major vegetation is not defined in the Coastal Act or the Commission's Code of Administrative Regulations. In general, the Commission has typically interpreted major vegetation to consist of vegetation which is ecologically significant. A more in-depth discussion of the criteria for major vegetation is found in the Attorney General's Office Opinion No. SO 77/39.

2. Attorney General's Opinion

The Attorney General's Office issued Opinion No. SO 77/39 on April 6, 1978 in response to a question from Executive Director Joseph Bodovitz regarding the interpretation of Coastal Act Section 30106 and how it applied to various agricultural activities(Exhibit 8). In answering the question, the Opinion includes an analysis of the meaning of the term 'major vegetation.'

The opinion concludes that the term 'major' in 'major vegetation' refers to the size and importance of the vegetation. A determination of major vegetation can rely on a vegetation's size, importance, uniqueness, its relation to the environment in which it is located, or a combination of those factors. Some examples of factors that could be considered include: the absolute size of a particular

specimen, the relative size of a specimen in relation to the average of the species, the total size or extent of a number of specimens of a particular variety growing together regardless of the size of the individual specimen, the uniqueness of a particular specimen to a certain area, and whether the vegetation was a necessary part of a scenic landscape or a wildlife habitat or in some other way part of an integrated environment that depended on its presence to preserve other coastal resources. Finally, the Opinion states that in close cases, the definition of major vegetation should be interpreted broadly to ensure the habitat protection goals of the Coastal Act are carried out.

3. Analysis of Factors: Size and Importance/Uniqueness

a) Size

The first criteria listed by the Attorney General's Opinion is the size of the vegetation. As described above in Section C, the Disturbed Encelia Scrub is subject to recurrent mowing activities and appears to grow to maximum heights of two to three feet between mowings. A height of two to three feet for each plant is not a particularly notable size when compared to coastal sage scrub in other areas. Coastal sage scrub in other areas of Orange County that are not subject to clearing support larger, more robust, and older individual shrubs than the plant specimens on this site. However, the extent of the area of the Disturbed Encelia Scrub on the Park Site could potentially be significant. Although the vegetation is subject to regular disturbance, the Disturbed Encelia Scrub is still a continuous patch of relatively pure California encelia which covers 3.3 acres. Much of the area that was historically covered by Coastal Sage Scrub in coastal Orange County has been eliminated by development. The Disturbed Encelia Scrub on the Park Site is one of the very few stands of coastal sage scrub remaining in coastal Orange County of substantial size, and as such, the size of the 3.3 acre patch is significant.

b) Importance / Uniqueness

The Disturbed Encelia Scrub fits the description of "California encelia scrub alliance" (32.050.00) defined by Sawer, Keeler-Wolf, and Evens (2009) in the 2nd Edition of "A Manual of California Vegetation"[9]. The membership rule applied by the 2009 manual for this alliance is dominance or co-dominance of California sunflower with "at least 30% relative cover in the shrub canopy". The EIR states that the vegetation within the area of Disturbed Encelia Scrub is "dominated by bush sunflower [i.e. California encelia, *Encelia Californica]* and deerweed (*Lotus scoparius*). The understory consists of non-native grasses and forbs, including black mustard (*Brassica nigra*), foxtail chess (*Bromus madritensis* ssp. *rubens)*, Russian thistle (*Salsola tragus*), and tocalote (*Centaurea melitensis*). Shrub cover of this area is approximately 50 to 60 percent overall." California encelia scrub alliance has a conservation status rank of G4S3, indicating that it is sensitive and "vulnerable to extirpation or extinction" within the state of California.

The Park Site's Disturbed Encelia Scrub vegetation is dominated by California encelia but also includes both other native species such as deerweed as well as non-native species such as black mustard and thistle as described in the project EIR. The site has been subject to large amounts of disturbance over the years, including a major grading event which removed thousands of cubic

[9] Sayer, J., T.Keeler-Wolf, and J. Evens. 2009. A Manual of California Vegetation, 2nd Edition. California Native Plant Society.

yards of earth from the site. Additionally, the site has been subject to mowing activities which have occurred since prior to the Coastal Act. There is an extensive record of mowing on the site, but it does not include a clear record for every year. From the available evidence, the period between mowings during Caltrans ownership appears to be around once a year. For the time in which the City has maintained the property the period between mowings appears to be between once and twice a year. Mowing of vegetation on the site prevents the development of the variation of species or maturity that is present within what would be considered higher quality California sunflower coastal sage scrub series.

In 2000 the US Fish and Wildlife Service determined that the block of land which includes the Park Site and the adjacent Newport Banning Ranch property constitutes critical habitat for the California gnatcatcher. One protocol gnatcatcher survey was conducted in 2009 on the Park Site. This survey did not result in a sighting of gnatcatchers within the Disturbed Encelia Scrub. However, previous protocol surveys on the Newport Banning Ranch property have identified gnatcatchers within vegetation located 80 and 160 feet from the Disturbed Encelia Scrub. Additionally, non-protocol sightings have identified gnatcatchers utilizing vegetation surrounding the Disturbed Encelia Scrub on the slopes of the Park Site adjacent to West Coast and Superior Avenue. Therefore, the Disturbed Encelia Scrub vegetation on the Park Site is directly adjacent to habitat which is documented to be utilized by the gnatcatcher.

The mowing of vegetation on the site temporarily eliminates the ability of the vegetation to serve as gnatcatcher habitat during the time in which the vegetation is mowed to ground level. However, the scientific literature and photographic record suggests that between mowings the vegetation can grow to a point where it provides valuable ecological services to the California gnatcatcher in the form of foraging and potential nesting habitat. Individual plants have been observed to reach a size between mowings that is suitable for supporting the insect species gnatcatchers forage on and that meets the average size that gnatcatchers use for nesting. The extent of the vegetation (3.3 acres) exceeds the minimum breeding territory size requirement for gnatcatchers (2.5 acres). The Commission's staff ecologist has determined that if the disturbance of the vegetation were to cease, the vegetation would be used by the federally threatened California gnatcatcher as foraging and potential nesting habitat. Therefore, although there has been a large degree of disturbance to the site, the Disturbed Encelia Scrub vegetation on the Park Site plays a significant ecological role in the surrounding area in that it serves as habitat for a federally listed species.

4. Conclusion

Regarding the factor of vegetation size, the size of individual plants in the Disturbed Encelia Scrub area is not significant, as the individual plants are prevented from reaching full stature and robustness and the plant community is prevented from attaining the level of species diversity that would exist in a mature stand of coastal sage scrub. However, the extent of vegetation is significant in that the Disturbed Encelia Scrub covers an area of significant size. While mowing of vegetation temporarily eliminates the habitat value of the Disturbed Encelia Scrub , the Disturbed Encelia Scrub still provides an important ecological role in the time in which it is present.

The site has been subject to large amounts of disturbance, including grading of thousands of cubic yards of export material from the site, and a history of recurrent mowing activities. Although neither Caltrans nor the City of Newport Beach requested a determination from staff, it is likely that, prior to the designation of the gnatcatcher as a species threatened by extinction, Commission staff would have determined that no CDP would be required for the clearance of vegetation due to the disturbed nature of the site. However, the gnatcatcher is now a listed species and more is now known regarding its habitat requirements. The available information shows that the vegetation on the site meets its habitat requirements. Although no gnatcatcher has been sighted within the vegetation, it is reasonable to infer that the gnatcatcher utilizes the Disturbed Encelia Scrub due to protocol surveys and non-protocol sightings which have identified gnatcatchers in directly adjacent habitat, and photographic evidence which shows that the vegetation meets the species' habitat requirements. Finally, pursuant to the AG Opinion, in close cases the definition of major vegetation should be interpreted broadly to ensure the habitat protection goals of the Coastal Act are carried out. Therefore, the habitat plays a significant ecological role in its support of a federally listed species even with the degree of disturbance that has occurred on the site. The area of Disturbed Encelia Scrub rises to the level of Major Vegetation due to its significant ecological role, and pursuant to Coastal Act Section 30600, the removal of the Disturbed Encelia Scrub requires a coastal development permit.

The Commission has not authorized a coastal development permit for the clearance of major vegetation on the Park Site and the clearance of vegetation on the site which has occurred has been unpermitted. When considering new development on the site, the site should be viewed as though the unpermitted development did not occur. As further explained in Section E, below, pursuant to the biological memo from Dr. Jonna Engel, the Disturbed Encelia Scrub constitutes ESHA.

5. No Vested Rights Claim Application From the City

No coastal development permit has been issued for the removal of vegetation on the project site. As noted above, it is the City's position that they are exempt from permit requirements because they are continuing the maintenance activities which have occurred on the site since the early 1970s. In other words, the City has suggested that they have a 'vested right' to the regular clearing of vegetation on the site, and that the regular mowing activities, do therefore, not require a Coastal Development Permit.

Coastal Act Section 30106 defines the definition of development to include the removal of major vegetation and Coastal Act Section 30600 states that development within the Coastal Zone requires a Coastal Development Permit.

One exception to the general requirement that one obtain a coastal development permit before undertaking development within the coastal zone is that if one has obtained a 'vested right' to undertake the development prior to enactment of Proposition 20 or the Coastal Act, a permit is not required. Under Proposition 20, if property is within 1000 yards landward of the mean high tideline, then that property is subject to the permit requirements of Proposition 20 (former Pub. Res. Code, Section 27104). The entire site is within 1000 yards of the mean high tide line and was therefore subject to Proposition 20's permitting requirements.

Coastal Act Section 30608 exempts development subject to vested rights from permit requirements. In addition, the California Coastal Zone Conservation Act of 1972 (aka Proposition 20, "the Coastal Initiative") had its own vested rights provision, former PRC section 27404, which stated, in relevant part:

If, prior to November 8, 1972, any city or county has issued a building permit, no person who has obtained a vested right thereunder shall be required to secure a permit from the regional commission; providing that no substantial changes may be made in any such development, except in accordance with the provisions of this division. Any such person shall be deemed to have such vested rights if prior to November 8, 1972, he has in good faith and in reliance upon the building permit diligently commenced construction and performed substantial work on the development and incurred substantial liabilities for work and materials necessary therefor.

The procedural framework for Commission consideration of a claim of vested rights is found in Sections 13200 through 13208 of Title 14 of the California Code of Regulations. These regulations require that the individual(s) or organization(s) asserting the vested right, make a formal 'claim' with the Commission, that staff prepare a written recommendation for the Commission and that the Commission determine, after a public hearing, whether to acknowledge the claim.

Although Section 30608 provides an exemption from the permit requirements of the Coastal Act if one has obtained a vested right in a development, neither the Coastal Act nor the Commission's regulations articulate any standard for determining whether a person has obtained such a right. Thus, to determine whether the Coastal Act's vested rights exemption applies, the Commission relies on the criteria for acquisition of vested rights as developed in the case law applying the Coastal Act's vested right provision, as well as in common law vested rights jurisprudence. The burden of proof is on the claimant to substantiate the claim of vested right. (14 CCR § 13200).

Based on these cases, the standard of review for determining the validity of a claim of vested rights is summarized as follows:
1. The claimed development must have received all applicable governmental approvals needed to undertake the development prior to January 1, 1977. Typically this would be a building permit or other legal authorization, and
2. The claimant must have performed substantial work and incurred substantial liabilities in good faith reliance on the governmental approvals. The Commission must weigh the injury to the regulated party from the regulation against the environmental impacts of the project and ask whether such injustice would result from denial of the vested rights claim as to justify the impacts of the activity upon Coastal Act policies. (See, Raley v. California Tahoe Regional Planning Agency (1977) 68 Cal.App.3d 965, 975-76).

If the Commission finds that a claimant has a vested right for a specific development, that claimant is exempt from CDP requirements to complete that specific development only. Any substantial changes to the development after November 8, 1972 will require a CDP. If the Commission finds that a claimant does not have a vested right for the particular development, then the development is subject to Coastal Development Permit requirements pursuant to the Coastal Act.

For the present matter, the City of Newport Beach has not submitted a vested rights application. Additionally, prior to the City's ownership, Caltrans never applied for a vested rights determination from the Commission. The Commission has not approved any vested rights claims or Coastal Development Permits for mowing at the subject site. Further, the Commission expresses no opinion regarding whether the City would be able to establish a vested right for periodic mowing if it had submitted a claim.

E. ENVIRONMENTALLY SENSITIVE HABITAT AREAS

Coastal Act Section 30107.5 states:

> *"Environmentally sensitive area" means 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.*

Coastal Act Section 30240 states:

> *(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.*

The City's certified Land Use Plan Section 4.1.1 includes the following policies regarding Environmentally Sensitive Habitat Areas (in relevant part):

> *Another important habitat within the City of Newport Beach is coastal sage scrub (CSS). Although CSS has suffered enormous losses in California (estimates are as high as 85%), there are still thousands of acres in existence and this community type is no longer listed as rare by CDFG. Nevertheless, where CSS 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. CSS is important transitional or edge habitat adjacent to saltmarsh, providing important functions such as supporting pollinators for wetland plants and essential habitat for edge-dependent animals like several species of butterflies that nectar on upland plants but whose caterpillars require wetland vegetation. CSS also provides essential nesting and foraging habitat for the coastal California gnatcatcher, a rare species designated threatened under the Federal Endangered Species Act.*
>
> ***4.1.1-1.*** *Define 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 as an environmentally sensitive habitat area (ESHA). Using a site-specific survey and analysis by a qualified biologist, evaluate the following attributes when determining whether a habitat area meets the definition of an ESHA:*

A. The presence of natural communities that have been identified as rare by the California Department of Fish and Game.
B. The recorded or potential presence of plant or animal species designated as rare, threatened, or endangered under State or Federal law.
C. The presence or potential presence of plant or animal species that are not listed under State or Federal law, but for which there is other compelling evidence of rarity, such as designation as a 1B or 2 species by the California Native Plant Society.
…
E. The degree of habitat integrity and connectivity to other natural areas. Attributes to be evaluated when determining a habitat's integrity/connectivity include the habitat's patch size and connectivity, dominance by invasive/non-native species, the level of disturbance, the proximity to development, and the level of fragmentation and isolation. Existing developed areas and existing fuel modification areas required by the City of Newport Beach Fire Department or the Orange County Fire Authority for existing, legal structures do not meet the definition of ESHA.

4.1.1-4. *Protect ESHAs against any significant disruption of habitat values.*

4.1.1-6. *Require development in areas adjacent to environmentally sensitive habitat areas to be sited and designed to prevent impacts that would significantly degrade those areas, and to be compatible with the continuance of those habitat areas.*

4.1.1-7. *Limit uses within ESHAs to only those uses that are dependent on such resources.*

4.1.1-9. *Where feasible, confine development adjacent to ESHAs to low impact land uses, such as open space and passive recreation.*

4.1.1-10. *Require buffer areas of sufficient size to ensure the biological integrity and preservation of the habitat they are designed to protect. Terrestrial ESHA shall have a minimum buffer width of 50 feet wherever possible. Smaller ESHA buffers may be allowed only where it can be demonstrated that 1) a 50-foot wide buffer is not possible due to site-specific constraints, and 2) the proposed narrower buffer would be amply protective of the biological integrity of the ESHA given the site-specific characteristics of the resource and of the type and intensity of disturbance.*

4.1.1-11. *Provide buffer areas around ESHAs and maintain with exclusively native vegetation to serve as transitional habitat and provide distance and physical barriers to human and domestic pet intrusion.*

4.1.1-12. *Require the use of native vegetation and prohibit invasive plant species within ESHAs and ESHA buffer areas.*

4.1.1-15. *Apply the following mitigation ratios for allowable impacts to upland vegetation: 2:1 for coastal sage scrub; 3:1 for coastal sage scrub that is occupied by California gnatcatchers or significant populations of other rare species; 3:1 for rare community types such as southern maritime chaparral, maritime succulent scrub; native grassland and1:1 for southern mixed chaparral. The ratios represent the acreage of the area to be restored/created to the acreage impacted.*

4.1.1-17. *In conjunction with new development, require that all preserved ESHA, buffers, and all mitigation areas, onsite and offsite, be conserved/dedicated (e.g. open space direct dedication, offer to dedicate (OTD), conservation easement, deed restriction) in such a manner as to ensure that the*

land is conserved in perpetuity. A management plan and funding shall be required to ensure appropriate management of the habitat area in perpetuity.

4.2.2-3. *Require buffer areas around wetlands of a sufficient size to ensure the biological integrity and preservation of the wetland that they are designed to protect. Wetlands shall have a minimum buffer width of 100 feet wherever possible. Smaller wetland buffers may be allowed only where it can be demonstrated that 1) a 100-foot wide buffer is not possible due to site-specific constraints, and 2) the proposed narrower buffer would be amply protective of the biological integrity of the wetland given the site-specific characteristics of the resource and of the type and intensity of disturbance.*

Environmentally Sensitive Habitat Areas (ESHA) are areas 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. Coastal Act Section 30240 states that ESHA shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

The City's certified Land Use Plan also contains policies regarding protection of ESHA. These include limitation of areas adjacent to ESHA to low impact land uses(Policy 4.1.1-9), requirements for buffers vegetated with native vegetation (Policies 4.1.1-10, 4.1.1-11), a ratio of 2:1 mitigation for impacts to non-ESHA upland vegetation (Policy 4.1.1-15), and conservation in perpetuity of ESHA and ESHA buffers (Policy 4.1.1-17).

1. Coastal Sage Scrub

Coastal sage scrub (CSS) is a general vegetation type characterized by special adaptations to fire and low soil moisture. In addition to twenty or so species of perennial shrubs, such as California sage brush, CSS is home to several hundred species of forbs and herbs, such as the California poppy. For convenience in mapping and management, CSS periodically has been divided into many types and sub-types, such as "southern coastal bluff scrub" and "Diegan sage scrub," based on geographic location, physical habitat, and species composition.

It is important to recognize that coastal sage scrub, as a habitat type, can qualify as ESHA regardless of the presence of California gnatcatchers. Indeed, if the gnatcatcher became extinct, CSS could still be ESHA. Section 30107.5 of the Coastal Act states, "Environmentally sensitive area' means 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." CSS is easily degraded and in fact has been destroyed by development over large areas of the state. About 2.5% of California's land area was once occupied by CSS. In 1981, it was estimated that 85% to 90% of the habitat type had been destroyed state-wide and, in 1991, it was estimated that San Diego, Orange, and Riverside counties had lost 66% of their CSS. Current losses in these counties are higher and losses in the coastal zone have undoubtedly been much higher. Compared to its natural distribution and abundance, CSS is in decline and it is in decline because it has been destroyed by human activities.

In the heart of urban environments, CSS may still support many bird species when there is sufficient open space to include coyotes in the system. Specifically, coyotes prey on those predatory animals that prey on bird eggs and young, which enhances the survival rate of bird species in areas when coyotes are present in a biological system. CSS within urban environments can also provide refuges for sensitive bird species, such as the gnatcatcher, that may repopulate larger preserves nearby that may be severely impacted by events such as fires that reduce or destroy that preserve's population (i.e. 'rescue effect'). High quality coastal sage scrub also may be of significant value in heavily urbanized areas by contributing to the local diversity of vegetation, even if it is so isolated as to lose much of its wildlife value. In addition, some categories of coastal sage scrub, such as southern coastal bluff scrub, are so rare that they may be inherently deserving of protection wherever they are found.

It is evident that coastal sage scrub is a habitat that could qualify for the designation as ESHA under the Coastal Act, regardless of the on-site presence of the California gnatcatcher or any other particular species. However, that fact does not imply that every particular stand of vegetation designated as "coastal sage scrub" is ESHA. Section 30240 of the Coastal Act protects ESHA from any significant disruption of habitat values and confers considerable protection to adjacent areas. Given the far reaching implications of designating an area as ESHA, it is incumbent upon the Commission to use this designation with regard to a general category of habitat, such as coastal sage scrub, only where the local habitat itself meets the test of being rare or especially valuable because of its special nature or role in an ecosystem. Therefore, a local area could certainly be an ESHA if it provides an important function in a local ecosystem, regardless of its regional significance. In summary, a case-by-case analysis is required.

2. ESHA Determination

The Commission's staff ecologist, Dr. Jonna Engel, visited the Park Site on September 15, 2010, December 15, 2010, and June 7, 2011. The Commission's staff ecologist has written a Biological Memorandum for the previous Sunset Ridge Park Project(CDP 5-10-168). The staff ecologist has reviewed the current, revised Sunset Ridge Park project (CDP 5-11-302) and has found that although portions of the project have changed, the Biological Memorandum is still appropriate to describe the habitat on the Park Site.

The Commission's ecologist has visited the site, reviewed vegetation data for the site, and reviewed protocol gnatcatcher surveys between 1992 and 2009, and nonprotocol observations by Hamilton Biological. The Memorandum (Exhibit 7) states that the site contains ESHA:

> *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.*

The Commission's staff ecologist prepared the above memo for coastal development permit No. 5-10-168. However, the Commission's staff ecologist has reviewed the materials for the currently proposed project and finds that the Biological Memorandum which was previously prepared is suitable to address the areas of ESHA for the currently proposed project. The Commission's staff ecologist has determined that the area designated as ESHA on Figure 12 of Exhibit 7 qualifies as ESHA. The Commission finds that the area of ESHA rises to the level of ESHA because it provides an especially valuable ecosystem service by providing critical habitat that may be utilized by the California gnatcatcher, a federally threatened species and California Species of Special Concern, 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 Section 30107.5 of the Coastal Act.

The Commission's staff ecologist has also determined that the Disturbed Encelia Scrub qualifies as ESHA. From the Biological Memorandum (Exhibit 7):

> *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. 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.*

> *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 Commission's staff ecologist has found that, in the absence of disturbance, the area of Disturbed Encelia Scrub would become a dense stand of relatively pure California encelia that would be suitable for gnatcatcher foraging and potentially nesting and would qualify as ESHA. As described in Section D, above, the Disturbed Encelia Scrub qualifies as major vegetation. Therefore, the clearance of the Disturbed Encelia Scrub which has occurred on the Park Site should be viewed as unpermitted development. When the Commission considers evidence of resources existing on a proposed project site where unpermitted development has taken place, it evaluates the extent of the resources on a subject site as though the unpermitted development had not occurred. (*See, e.g., LT-WR v. Coastal Commission* (2007) 152 Cal.App.4th 770, 796-797.) In this case, the proposed project would rely on the unpermitted mowing of the Disturbed Encelia Scrub. Therefore, the site should be treated as though the mowing did not occur, i.e. the Disturbed Encelia Scrub should be treated as though it is a mature stand of Encelia Scrub.

The federally listed California gnatcatcher has been mapped within close vicinity to the Disturbed Encelia Scrub. A mature stand of Encelia Scrub would be utilized by the gnatcatcher for foraging and potentially nesting. The vegetation, at 3.3 acres, is within the range of minimum breeding territory sizes for the gnatcatcher. The vegetation is easily degraded by human activity and development, as is seen by the areas of cleared vegetation on the Park Site and on adjacent areas. Therefore, the Disturbed Encelia Scrub serves as a habitat for a federally listed species and plays a special role in the ecosystem which could easily be degraded by human activity. Therefore, the Disturbed Encelia Scrub qualifies as ESHA.

As noted above, the Commission's staff ecologist has found that in the absence of mowing of vegetation, the Disturbed Encelia Scrub would provide foraging and potentially nesting habitat for the California gnatcatcher and would qualify as ESHA.

The proposed project would result in the elimination of the mowed Encelia Scrub on the site, and its replacement with a sports field, sidewalk, and ornamental vegetation, which are not resource dependent uses.

As proposed, the project would result in the complete elimination of the Disturbed Encelia Scrub and its replacement with the southern soccer field, a portion of the baseball field, children's playground, concrete sidewalks, manufactured slopes, and native and non-native landscaping. Therefore, development of the Park Site would result in development within ESHA. The proposed development is not a resource dependent use. The proposed project is therefore inconsistent with Coastal Act Section 30240 regarding preservation of environmentally sensitive habitat areas and the project must be denied.

3. Potential Impacts from Development Adjacent to ESHA

In Sections E.1 through E.2 above, the Commission has explained the rationale for concluding that ESHA is present on the subject site in the areas labeled ESHA East and ESHA West, and that the area labeled as Disturbed Encelia Scrub is also ESHA. Aside from the fact that the proposed project would directly impact the Disturbed Encelia Scrub, there are other issues related to protecting the other ESHA areas located on site and adjacent to the site. These issues are described below.

a. Maintenance Access Road

An existing maintenance access road is located partly off and partly on the Park Site. The road runs from approximately 260 feet west of the subject site, through the Southeast Notice of Violation polygon, and onto the subject site. This access road is currently used by the City to access the Park Site for maintenance of the site. The Commission found in Consent order CCC-11-CD-03 and Restoration order CCC-11-RO-02 that the existing maintenance road has historically existed on the site, that the areas located immediately to the north and south of the access road are considered to be ESHA, and required the vegetation to be restored to support the California Coastal Gnatcatcher.

Coastal Act Section 30240 requires that development in areas adjacent to ESHA shall be sited and designed to prevent impacts which would significantly degrade ESHA, and shall be compatible with the continuance of ESHA. The proposed project would result in replacement of gravel on the road and the continued use of the access road to allow City maintenance vehicles, emergency vehicles, and shuttles for disabled members of the public to access the site. 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. As proposed, usage of the road for the park would continue to be infrequent and would therefore not pose impacts to adjacent habitat.

However, future increases in the frequency of use of the access road could result in additional noise or disturbance impacts which could be inconsistent with the continuance of the adjacent ESHA areas. Maintenance of a low level of use of the access road is necessary in order to ensure in order to find that usage of the access road is consistent with Coastal Act Section 30240. If conditioned to ensure that the usage of the access road would not result in a level of use which would impact the adjacent ESHA, such usage would be consistent with Coastal Act Section 30240 regarding development in areas adjacent to ESHA.

b. Intensity of Use

The project would result in a significant change in the type of vegetation and the level of human activity on the site. If not properly mitigated, these changes have the potential to cause significant impacts to adjacent ESHA. The most common cause of gnatcatcher nest failure is predation which accounts for up to 66 percent of nest failures in some areas. Predation is more prevalent where native habitat edges up against urban or urban/rural development. Development of an active sports field will attract species associated with urban development to the project site, such as crows, cowbirds, raccoons, rats, and skunks. Additionally, development on the site will lead to an increase in the levels of trash (i.e. plastic, paper, and food debris) on the site. Numerous nest predators such

as raccoons, rats, and skunks thrive along the edges of development where trash and debris are often accessible. Introduction of these species has the potential to displace native species from the site due to competition with the introduced species and increased risk of predation. 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. However, as proposed, the project includes property fencing along the western edge of the property which may be inadequate to ensure adequate access of large predators such as the coyote to the site.

The proposed construction of a park on the site would result in landscaping requiring increased irrigation which could encourage the spread of invasive species on the site. Irrigation associated with the sports fields and landscaping encourages the replacement of native ants with the Argentine Ant, an invasive species which prefers wetter soil conditions. 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. Argentine ants are both documented predators of gnatcatcher nestlings and a species that results in alterations to the native arthropod community by reducing their diversity and abundance. Alterations in the composition of the native arthropod community may potentially result in a reduction or alteration of the food source of a federally threatened species.

The proposed project would result in alterations to adjacent habitat which would result in impacts to the ability of the adjacent ESHA to support the California gnatcatcher. As proposed, the project would therefore be inconsistent with Coastal Act Section 30240. However, if conditioned to include measures to prevent impacts to adjacent habitat, these impacts may be mitigated. Measures that can be taken to limit the presence of introduced species and nest predators on the site, include the use of 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, a revised fencing plan to allow for adequate access of coyotes to the site, and a monitoring plan to monitor the presence of predators on the site. Additionally, planting high quality coastal sage scrub would expand habitat available to native species to mitigate for any residual effects of the park development on ESHA. If appropriately conditioned, the proposed project would ensure that development of the park will not result in the exclusion of native species from the site or the introduction of species which would have negative effects on adjacent ESHA. However, as described above, the project must be denied because it proposes extensive non-resource dependent development in ESHA.

c. Proposed Landscaping

Landscaping proposed on the site includes a mix of grass turf, species native to southern California, and non-native drought-tolerant, non-invasive species. The proposed landscaping plan includes 5 landscaping palettes: Water Infiltration/Native Buffer, Residential buffer, Streetscape slope, Butterfly garden, and Active area (Exhibit 2). Expanded coastal sage scrub, which is also listed on the landscaping plan, was previously authorized by Consent Order CCC-11-CD-03 and Restoration Order CCC-11-RO-02. All species proposed in the Water Infiltration/Native Buffer palette are native, and a majority of those species are species native to Coastal Sage Scrub. The Residential Buffer and Streetscape Slope palettes proposes mostly native species, with many of the native species being native to coastal sage scrub, and some ornamental species. The Active palette and the Butterfly Garden palette are primarily composed of non-native species, but do include some native

species and some coastal sage scrub species. The proposed landscaping plan would result in a majority of native species and species native to coastal sage scrub along the boundaries of the park. The interior of the park and the butterfly garden would consist primarily of turf and ornamental species, with a few native species.

The proposed landscaping plan does not include the installation of plant species which are invasive; however the plant palette does include plant species which could result in future impacts to ESHA. Specifically, the applicant is proposing the installation of 1) native species hybridized with ornamental species, 2) non-invasive varieties of species which look similar to invasive species, and 3) non-invasive species that have the propensity for dispersal. Native species hybridized with non-native species may result in the spread of non-native genetic material to areas vegetated with native species, resulting in alterations to the genetic diversity of native habitat. Non-invasive varieties of a particular vegetation family that looks similar to invasive varieties could be inadvertently replaced with those invasive varieties at some point in the future, which would result in the spread of invasive species into areas of native vegetation. Non-invasive species which have a propensity for dispersal can result in the spread of those species into areas of native vegetation, resulting in replacement of native vegetation. Therefore, the proposed planting plan could result in non-native species expanding into ESHA and reducing the ability of ESHA to serve as habitat for native species, including the federally threatened California gnatcatcher. The applicant has only provided lists of plant species to be utilized in specified areas; they have not yet specified detailed plant locations. Without adequate planting plans, it cannot be assured that the proposed landscaping plan will be consistent with the continuance of ESHA.

The landscaping plan also indicates large areas on the western and eastern boundaries of the park as Existing, Not To Be Disturbed. These areas are located outside of the grading boundaries for the project, and are not proposed to be altered. The eastern area includes a wetland (see Section H, below), and also includes species designated by the California Invasive Pest Council as Invasive, such as pampas grass (*Cortaderia selloana*), tamarisk (*Tamarix sp*.) and ice plant (*Carpobrotus sp.*). If invasive species on the site are retained, invasive species could spread from their existing locations to other areas on the Park Site, including into ESHA.

Coastal Act Section 30240 requires that development adjacent to ESHA be sited and designed to prevent impacts which would significantly degrade ESHA and that such development be compatible with the continuance of habitat areas. The proposed planting plan would result in reductions in the ability of ESHA to serve as habitat. Therefore the planting plan, as proposed, would be inconsistent with Coastal Act Section 30240. Modifications to the proposed planting plan, including the removal of species that may impact adjacent ESHA, specification of a detailed planting plan (to ensure the arrangement and quantity of native plants is appropriate for continuance of the adjacent habitat), and removal of invasive species would ensure that landscaping on the site does not result in impacts to adjacent ESHA. However, as described above, the project must be denied because it proposes extensive non-resource dependent development in ESHA.

4. Buffers

a. Introduction

To ensure compliance with Section 30240 of the Coastal Act, development (aside from resource dependent uses) must be located outside of all environmentally sensitive habitat areas and must not cause significant disruption of the habitat values within those areas. Further, development adjacent to an ESHA must be sited to prevent impacts to the ESHA that would significantly degrade those areas, in part through the provision of a setback or buffer between the ESHA and the development. Buffer areas are not in themselves a part of the environmentally sensitive habitat area to be protected. A buffer, in the context of the Coastal Commission, is a barrier, "safe zone", or bordering strip of natural habitat or land between ESHA and development or human disturbance. Buffers and development setbacks protect biological productivity by providing the horizontal spatial separation necessary to preserve habitat values and transitional terrestrial habitat area. Spatial separation minimizes the adverse effects of human use and urban development on wildlife habitat value through physical partitioning. Buffers are important for preserving the integrity and natural function of individual species and habitats. The purpose of a buffer is to create a zone where there will be little or no human activity. The purpose of a buffer is to "cushion" species and habitats from disturbance and allow native species to go about their "business as usual". The width of such buffers would vary depending on the type of ESHA and on the type of development, topography of the site, and the sensitivity of the resources to the particular kind of disturbance. Buffers may sometimes allow limited human use such as low-impact recreation and minor development such as trails, fences and similar recreational appurtenances when it will not significantly affect resource values. Buffers may also provide ecological functions essential for species in the ESHA.

The Commission has typically imposed buffers of 50-100 feet for gnatcatcher occupied ESHA (e.g. CDP 5-03-013, MT No. I, LLC, 5-92-188-A4, CPH Resorts). The Commission has typically not allowed significant grading or significant permanent development within buffers in order to prevent temporary and long term impacts to the adjacent ESHA. When required to offset the impacts of adjacent development and increase habitat values, these buffers have also been restored or vegetated with native species.

b. Proposed Buffers

As stated above, the Commission has typically required buffers to gnatcatcher-occupied ESHA with widths between 50 and 100 feet. These buffers have typically excluded both permanent development and temporary impacts such as grading. As proposed, the project includes both permanent impacts and temporary impacts within buffers to ESHA.

The applicant proposes to install a 6 foot high fence near the western boundary of the park, within a few feet of ESHA East, and would continue the use of an existing access road that is located between and adjacent to the SE polygon and an existing concrete drainage channel is located on the slopes of the Park Site adjacent to Coast Highway. Another existing open concrete drainage channel is located near the western boundary of the Park Site. The applicant proposes to remove this existing drainage channel and grade the area to allow for the installation of a vegetated water infiltration swale. Grading is also proposed outside of the areas required for the construction of the swale, to the north and south of the drainage swale. As proposed by the applicant, within 50 feet to ESHA East, landscaping for the project would consist of only native species with a majority of

species native to Coastal Sage Scrub, and between 50 and 100 feet from ESHA East landscaping would consist of native species, species native to Coastal Sage Scrub, ornamental species, and grass turf.

c. Permanent Impacts

The proposed project would, with three exceptions, comply with a buffer of 50 feet between ESHA East and areas of permanent impacts (i.e. permanent structures, paved surfaces, active areas). The three exceptions are: 1) a proposed fence between the active portion of the subject site and the Newport Banning Ranch property, 2) an existing maintenance access road, 3) an existing open concrete drainage ditch. Both the drainage ditch and access road are existing structures that would continue in their existing configuration after construction of the project and which would not pose new impacts.

However, the fence is a new structure proposed in close vicinity to ESHA (approximately 4 feet from ESHA at the closest point). As described above, buffers are areas designed to allow native wildlife to go about business as usual, and to prevent impacts from the adjacent development from causing significant disruption of habitat values. Fences of the proposed type typically require concrete foundations and would require disturbance in close vicinity to ESHA. At the proposed location, the fence would separate the ESHA from the ESHA buffer, presenting an impediment to the ability of native wildlife to cross between the buffer and ESHA. The proposed location of the fence would not serve as a barrier for impacts of the project (i.e. people, sports balls, trash) from reaching the buffers. Therefore, the proposed location of the fence is inconsistent with the purpose of the buffer, and may negatively affect the ability of the buffer to prevent impacts to ESHA. The proposed location of the fence is inconsistent with Coastal Act Section 30240, which requires development adjacent to ESHA to be consistent with the continuance of ESHA areas.

d. Temporary Impacts

Grading proposed for the project would be located within close vicinity of ESHA, at its closest point located approximately 4 feet from ESHA. Due to the potential for temporary impacts associated with grading activities (i.e. noise, dust), and the potential for long term impacts associated with changing grades adjacent to ESHA (i.e. changes in runoff direction), the Commission has typically excluded grading activities from buffer areas. However, where there are unique site specific circumstances which exclude room for a normal buffer width to grading, grading has been allowed within buffers, provided that such grading was limited to the least extent possible and that mitigation measures were taken.

The proposed project includes the elimination of an existing concrete drainage swale which carries runoff from adjacent residential development, and its replacement with an undergrounded drainage pipe, detention system, and a drainage swale vegetated with native species. The existing drainage channel currently outlets to the Semeniouk Slough, an area identified as an Environmentally Sensitive Area in the City's certified Land Use Plan. Construction of the swale would result in detention and infiltration of runoff which would improve water quality in the adjacent slough. Construction of the drainage swale requires grading to create the topography required for swale, and as such some grading is necessary within close vicinity of ESHA. Due to existing elevation levels for the pipe which carries the drainage at the north of the site, and the existing open drainage

channel located on the adjacent Newport Banning Ranch property, the drainage swale and the grading associated with the drainage swale can not be located farther from ESHA.

However, the proposed project also includes grading within 50 feet of ESHA East that is not necessary for the construction of water quality improvements. Specifically, the project includes grading to the north of the swale related to the construction of the grass warmup field and gravel maintenance access road, and grading to the south of the swale related to regarding of the slope adjacent to Coast Highway and a proposed pedestrian walkway. This grading would result in impacts to the adjacent ESHA that could be avoided. Therefore the proposed grading would be inconsistent with Coastal Act Section 30240 requiring protection of ESHA from impacts of adjacent development.

e. Protection of Buffers

Any impacts to the proposed buffers would result in the degradation of the ability of the buffers to mitigate impacts to ESHA. The Commission has typically required buffers to be protected in perpetuity to prevent future development from impacting the ability of the buffer to protect adjacent ESHA. For example, the Marblehead project (CDP 5-03-013) required dedication of an easement for buffers and ESHA to an appropriate entity, and required the buffers and ESHA to be restricted to Open Space. The City's certified Land Use Plan is similar to the Commission's typically applied requirement, and requires ESHA, buffers, and mitigation areas to be conserved or dedicated to ensure long-term protection of the land. The City's certified LUP states:

> ***4.1.1-17.*** *In conjunction with new development, require that all preserved ESHA, buffers, and all mitigation areas, onsite and offsite, be conserved/dedicated (e.g. open space direct dedication, offer to dedicate (OTD), conservation easement, deed restriction) in such a manner as to ensure that the land is conserved in perpetuity. A management plan and funding shall be required to ensure appropriate management of the habitat area in perpetuity.*

As stated above, a buffer width is designed based on the specific circumstances of the habitat which is being protected and the impact of the development. Without adequate protection of buffers, future development may impact the ability of the buffer to protect ESHA from impacts associated with adjacent development. Such impacts would be inconsistent with Coastal Act Section 30240 regarding protection of environmentally sensitive habitat areas.

The Commission has typically required buffers between 50 and 100 feet for gnatcatcher occupied ESHA in order to protect the ESHA from impacts from adjacent development. The proposed project includes only native vegetation within 50 feet of ESHA. However, the proposed project also includes both grading and permanent development within buffers. In areas where these impacts are necessary for improvements to drainage and water quality, such development can be found consistent with Coastal Act Section 30240 because the impacts are limited to the minimum amount necessary and cannot be located any further from ESHA. However, at the northernmost and southernmost areas of the project, the buffers include development such as fencing and grading which is not necessary for water quality improvements and would result in avoidable impacts to ESHA. If conditioned to revise the proposed project to eliminate avoidable temporary impacts to ESHA, and to permanently restrict buffer areas, the project could be found consistent with Coastal

Act Section 30240 regarding protection of ESHA from adjacent development. However, as described above, the project is inconsistent with the resource protection policies of the Coastal Act and must be denied because it proposes extensive non-resource dependent development in ESHA.

F. ALTERNATIVES TO PROPOSED PROJECT

Alternatives must be considered to determine if there are any different projects that would lessen or avoid significant environmental impacts to coastal resources, in this case ESHA. An alternative is a description of another activity or project that responds to the major environmental impacts of the project identified through the Commission's analysis. In this case, as discussed above, the proposed active recreational park would result in significant disruption of habitat values within ESHA and are not uses that are dependent on the resource. Therefore, the proposed project is inconsistent with Section 30240 of the Coastal Act and the applicable ESHA protection policies of the LUP, used by the Commission as guidance.

The EIR for the project includes an analysis of alternatives to the project which was originally proposed. The EIR considered alternative park designs consisting of an access road from Superior Avenue, a no project alternative, an alternative site for the park located on Newport Banning Ranch, a passive park alternative, and an alternative park design to reduce grading amounts. The City also submitted an alternatives analysis for the subject CDP application 5-11-302 which considered an access road from Superior Avenue and an access road from West Coast Highway directly onto the Park Site. Finally, the Banning Ranch Conservancy has submitted an alternative design with a reduced number and alternative location for the access road.

As proposed, the active recreational park with access road is not the least environmentally damaging alternative. Alternatives do exist that would lessen or avoid significant impacts to coastal resources. Among those possible alternative developments include the following (though this list is not intended to be, nor is it, comprehensive of the possible alternatives):

a. Passive Park

One of the alternatives identified by the EIR for the project is a Passive park on the site. The City's EIR states that construction of a passive park would have impacts similar to those associated with the proposed development, but would not achieve the project goals of construction of an active recreational park. The passive park would only include passive uses, such as landscaping, pedestrian paths, restroom facilities, and picnic areas, and would not include active uses such as ball fields. A passive park would result in reduced impacts to ESHA as a passive park would not require clearance of ESHA on the site. Rather, a passive park could result in an improvement to ESHA through additional resources such as additional forage and nesting areas for the California gnatcatcher. Some passive park uses are resource dependent uses and therefore, some development, such as trails or interpretive signs, could be constructed within ESHA located on the site.

b. Reduced Number of Sports Fields

The Banning Ranch Conservancy has submitted a drawing (Exhibit 5, page 52) which suggests that a park with a reduced number of active sports fields would not require elimination of ESHA. The letter states that it there is sufficient room on the Park Site to allow for one to two soccer fields without resulting in direct impacts to the Disturbed Encelia Scrub on the site. The letter includes a depiction of the area required for two soccer fields, to the north of the Disturbed Encelia Scrub, and indicates that such area would be sufficient to include at least one sports field to the north of the Disturbed Encelia Scrub.

However, the letter does not include an analysis of whether the alternative would be consistent with grading or engineering requirements. The grading plan for the currently proposed project shows that there is currently between 6 feet of cut to 6 feet of fill proposed in the area to the north of the Disturbed Encelia Scrub, 6 to 30 feet of cut to transition from the lower center portion of the project to the higher eastern portion, and 6 to 27 feet of fill to create the residential buffer area located at the northern boundary of the site. The low amounts of grading for the northern portion of the currently proposed project indicates that there may be sufficient room to accommodate grading and other engineering constraints necessary to create one to two ball fields. However, further study would be required to ensure that this alternative is consistent with required grading and engineering practices. This alternative would allow for minimal room for development associated with sports fields, such as sidewalks and ornamental landscaping. The reduced number of fields alternative would result in the preservation of the Disturbed Encelia Scrub, but would also provide only minimal buffers between sports fields and the ESHA.

c. Alternative Site

The EIR identified an alternative site located to the north of the subject site and the Newport Crest residential development, on the Newport Banning Ranch property. The placement of an active recreational park at an alternative location would preserve vegetation located on the subject site. Development in an alternative location may result in improvements to public access and public recreation in the alternative location, but would not result in improvements to public access and recreation in the subject site. Feasibility of the alternative site would depend on the City's ability to purchase the area from the property owner, and on the habitat resources located in that area. The City's EIR states that the development of a park in the chosen alternative location would result in fewer environmental impacts. However, Newport Banning Ranch also includes significant ecological resources, and any proposal for development of an active recreational park would require additional review of ecological resources to ensure consistency with the Coastal Act.

d. No Project Alternative

The no project alternative would not result in development on the subject site. The no project alternative would not result in impacts to ESHA on or adjacent to the site. However, the no project alternative, would also not result in improvements to public access, scenic views, recreation, and water quality, and would not result in the installation of additional native species or the removal of invasive species.

G. VISUAL RESOURCES

Section 30251 of the Coastal Act states, in relevant part:

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

Land Use Plan policy 4.4.1-1 states:

> *Protect and, where feasible, enhance the scenic and visual qualities of the coastal zone, including public views to and along the ocean, bay, and harbor and to coastal bluffs and other scenic coastal areas.*

The proposed project would result in 57,223 cubic yards of cut, 36,559 cubic yards of fill, and 20,664 cubic yards of soil exported off-site. A grading map can be found at Exhibit 3. Cut on the Park Site would primarily result from the creation of a pedestrian ramp adjacent to West Coast Highway and to create a more shallow slope between the higher northeastern portion and the lower middle portion of the property. Fill on the Park Site would be placed at the northern edge of the property to create a level grass warmup field at the northwest, and to create a retaining wall and raised buffer between the project site and the condominium project to the north.

While the project would result in a large amount of grading, the grading would not significantly impact the visual and scenic qualities of the site. The proposed project would result in the creation of a park that would offer additional opportunities for visitors to view scenic views of the ocean. Therefore, the project can be found consistent with Coastal Act Section 30251 and Land Use Policy 4.4.1-1. However, as described above, the project must be denied due to conflicts with other resource protection policies in the Coastal Act.

H. MARINE RESOURCES

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

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

Section 30233 of the Coastal Act states, in relevant part:

> *(a) The diking, filling or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:*
>
> > *(l) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.*
> > *(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.*
> > *(3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.*
> > *(4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.*
> > *(5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
> > *(6) Restoration purposes.*
> > *(7) Nature study, aquaculture, or similar resource dependent activities.*
>
> *(c) In addition to the other provisions of this section, diking, filling, or dredging in existing estuaries and wetlands shall maintain or enhance the functional capacity of the wetland or estuary. Any alteration of coastal wetlands identified by the Department of Fish and Game, including, but not limited to, the 19 coastal wetlands identified in its report entitled, "Acquisition Priorities for the Coastal Wetlands of California", shall be limited to very minor incidental public facilities, restorative measures, nature study, commercial fishing facilities in Bodega Bay, and development in already developed parts of south San Diego Bay, if otherwise in accordance with this division.*

1. Wetlands and Wetland Buffers

A wetland is located on the slope of the Park Site adjacent to Superior Avenue. The biological memorandum prepared by Dr. Engel regarding the project states:

> *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 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[10]. 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[11]. 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[12], 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.*

The Commission has typically required buffers of at least 100 feet for development adjacent to wetlands. The proposed project would not meet the Commission's typically applied buffer

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

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

[12] 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".

requirement of 100 feet. The wetland located along Superior Avenue would be located approximately 40 feet from the edge of grading. The applicant has submitted a letter dated October 18, 2011 from the applicant's geotechnical engineer, Leighton Consulting, stating that observed water flow to the Superior Avenue wetland will not be disrupted as a result of the proposed project. Additionally, the applicant has agreed to remove invasive Pampas Grass from the Superior Avenue wetland. Based on the available documentation indicating that the wetland is degraded, and that grading associated with the project will not impact the Superior Avenue wetland, a reduction in buffers from 100 feet may be appropriate. If appropriately conditioned to ensure that the proposed project did not result in adverse impacts to the wetland at Superior Avenue, the proposed development adjacent to the Superior Avenue wetland may be consistent with the wetland protection policies of the Coastal Act. However, as described above, the project must be denied due to conflicts with other resource protection policies in the Coastal Act.

2. Water Quality

Runoff from the proposed project would be routed to existing drainage channels and a new water infiltration area, a concrete box culvert, and ultimately flow to Semeniouk Slough. Semeniouk Slough is designated as an Environmentally Sensitive Area in the City's certified Land Use Plan. The proposed project would result in the addition of new impermeable surfaces on the site, consisting of the proposed restroom facility, tot lot, and sidewalks. The addition of new impermeable surfaces may result in a potential increase in polluted runoff to nearby coastal waters due to the resultant decrease in stormwater infiltration. Pollutants commonly found in runoff associated with the proposed use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals; dirt and vegetation; litter; fertilizers, herbicides, and pesticides. These pollutants would have deleterious effects on the Semeniouk Slough. The proposed project would include water quality measures to mitigate for the addition of impermeable surfaces on the site. According to the EIR for the project, the proposed water quality measures would address both flow and treatment of runoff through the use of vegetated swales, interceptor drains, flow basins, detention systems, gravel subdrains, and an underground filter facility. However, it is unclear from the submitted information whether the proposed measures would ensure an adequate treatment of runoff. If the water quality measures proposed were sized to ensure that runoff from the site would be adequately treated prior to discharge into the Semeniouk Slough, the project would not result in degradation of water quality in the adjacent Semeniouk Slough. However, as described above, the project must be denied due to conflicts with other resource protection policies in the Coastal Act.

I. PUBLIC ACCESS / RECREATION

Section 30210 of the Coastal Act states:

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

Coastal Act Section 30213 states (in relevant part):

> *Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided.*

Coastal Act Section 30223 states:

> *Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.*

Coastal Act Section 30210 requires the provision of maximum access and recreational opportunities, Coastal Act Section 30213 states that lower cost visitor and recreational facilities shall be protected and provided, and Coastal Act Section 30223 requires the provision of coastal recreational uses on upland areas where feasible.

The proposed park would include both passive and active elements, including sports fields, children's playground, walking paths, picnic spots, and view garden. These elements would result in additional low-cost recreational opportunities for visitors and residents. The sports fields are proposed to be primarily used for youth sports leagues, which would primarily benefit residents from the surrounding areas; however the passive elements on the park could be utilized by both residents and visitors to the area.

The proposed park would be open during daylight hours from 8 AM until dusk each day. No lighting is proposed on the site, and the proposed project would not allow for use of the sports fields at night. Low-intensity lighting along pathways may be appropriate for the site and could extend the public's ability to access the site, provided the lighting would not result in impacts to habitat areas on the site.

The proposed park project relies on the usage of an existing 64 space public parking lot located on the northeast corner of the intersection of Superior Avenue and West Coast Highway. The parking lot at Superior Avenue was established by coastal development permit No. 5-88-255 and subsequent amendments to mitigate for the loss of street parking resulting from the expansion of Pacific Coast Highway from 4 to 6 lanes. The parking lot is currently used by the public, including use as beach parking to access the beach located approximately 950 feet to the southwest of the lot. The lot is underutilized for the majority of the year, but does receive heavy usage during some holidays and weekends in the peak summer period (as do all parking areas near the beaches). The City plans to manage scheduling of games to ensure that adequate parking is provided for games, and to ensure

that parking for the proposed active recreational park does not conflict with the parking needs of other uses in the area, such as parking for beach access. If conditioned to ensure that operation of the Park Site does not result in impacts to the public parking supply in the area, the proposed project could be found to be consistent with Coastal Act Sections 30210, 30213, and 30223. However, as described above, the project must be denied due to conflicts with other resource protection policies in the Coastal Act.

J. GEOLOGY / HAZARDS

Coastal Act Section 30253 states in part:

> *New development shall:*
>
> *(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
>
> *(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.*

The proposed project would result in the creation of engineered slopes, a restroom / storage building, and open space. The proposed project , preliminary grading plan, and the cut and fill slopes proposed have been reviewed by Leighton Consulting Inc., which states that the proposed project would be considered feasible from a geotechnical standpoint. The applicant's geotechnical report states that the North Branch Splay fault, which is part of the active Newport-Inglewood - Rose Canyon Fault Zone, is located beneath the subject site. However, the splay fault located on the site would not qualify as an active fault according to the criteria set by the State of California (i.e., showing evidence of movement during the Holocene, the past ~11,700 years). Additionally, the proposed restroom/storage facility would be located approximately 200 feet to the northeast of the fault. Therefore, there are no active or inactive faults which would impact structures on the site. To assure geologic stability, any project on the site should be reviewed for consistency with the report prepared by the applicant's geotechnical engineer, and a geotechnical engineer should review final plans for a project on the site. Therefore, if conditioned, the proposed project could be found to be consistent with Coastal Act Section 30253 regarding minimization of geologic hazards. However, as described above, the project must be denied due to conflicts with other resource protection policies in the Coastal Act.

K. UNPERMITTED DEVELOPMENT

Development has occurred on the Park Site without the required coastal development permit, including, but not limited to, mowing and discing of major vegetation consisting of Disturbed Encelia Scrub. Were it not for this unpermitted development, the area of Disturbed Encelia Scrub on the Park Site would be a nearly pure stand of Encelia Scrub that would constitute ESHA, as described in this staff report and Dr. Engel's Biological Memorandum. Unpermitted development

cannot be used as a basis to justify development in areas where, were it not for the unpermitted development, such development would not be allowed. Thus, consideration of appropriate development must consider site conditions as if the unpermitted development had not occurred. Therefore, the area of Disturbed Encelia Scrub is considered ESHA. The project proposes non-resource dependent development that would eliminate ESHA, and, thus, is not consistent with Section 30240 of the Coastal Act.

Commission staff will evaluate further actions to address this issue. Although unpermitted development has taken place on the Park Site, consideration of this application by the Commission has been based solely upon the Chapter Three policies of the Coastal Act. Review of this permit application does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the Park Site without a coastal development permit.

L. LOCAL COASTAL PROGRAM (LCP)

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program that conforms with the Chapter 3 policies of the Coastal Act.

The City of Newport Beach Land Use Plan (LUP) was certified on May 19, 1982. At the October 2005 Coastal Commission Hearing, the certified LUP was updated. In addition, the certified LUP was updated at the October 2009 Coastal Commission Hearing. The City's certified Land Use Plan did not designate a Land Use for Newport Banning Ranch, but instead listed it as an Area of Deferred Certification. Since the City only has an LUP, the policies of the LUP are used only as guidance. The following Newport Beach LUP policies: 4.1.1-1 through 4.2.2-3, and the other resource protection policies of the LUP, relate to development at the subject site.

The preceding sections provide findings that the proposed project will not be in conformity with the provisions of Chapter 3. The proposed development will create adverse impacts and is found to be inconsistent with the applicable policies contained in Chapter 3. There are equivalent policies in the City's certified land use plan with which the proposed development would be inconsistent. Therefore, the Commission finds that approval of the proposed development would prejudice the City of Newport Beach's ability to prepare a Local Coastal Program for this area consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

M. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of coastal development permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures

available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The City of Newport Beach is considered the Lead Agency for the purposes of CEQA, and has issued an Environmental Impact Report for the project. Significant environmental impacts were identified for the construction of the project. The mitigation measures imposed for the project includes mitigation in the areas of Land Use, Aesthetics, Transportation and Circulation, Air Quality and Climate Change, Noise, Geology and Soils, Hazards and Hazardous Materials, Hydrology and Water Quality, Public Services and Utilities,

Significant effects which were found to not be sufficiently mitigated include air quality and noise impacts that are inconsistent with the Coastal Act, which indicates that there are significant negative impacts which result from the project which can not be completely mitigated.

While the City of Newport Beach found that the development, with mitigation measures, could be found consistent with CEQA, the Commission, pursuant to its certified regulatory program under CEQA, the Coastal Act, has found the proposed development would have adverse environmental impacts. There are feasible alternatives or mitigation measures available, such as alternative park designs. Therefore, the proposed project is not consistent with the policies of the Coastal Act because there are feasible alternatives, which would lessen significant adverse impacts, which the activity would have on the environment. Therefore, the project must be denied.

Appendix A. Substantive File Documents

- City of Newport Beach certified Land Use Plan

- Environmental Impact Report for Sunset Ridge Park

- Attorney General Opinion No. SO 77/39

- City of Newport Beach Fire Resistive Plant List

- US Fish and Wildlife Service Gnatcatcher Critical Habitat designation 3/30/1993

- US Fish and Wildlife Service Gnatcatcher Critical Habitat designation 10/24/2000

- US Fish and Wildlife Service Gnatcatcher Critical Habitat designation 4/24/2003

- US Fish and Wildlife Service Gnatcatcher Critical Habitat designation 12/19/2007

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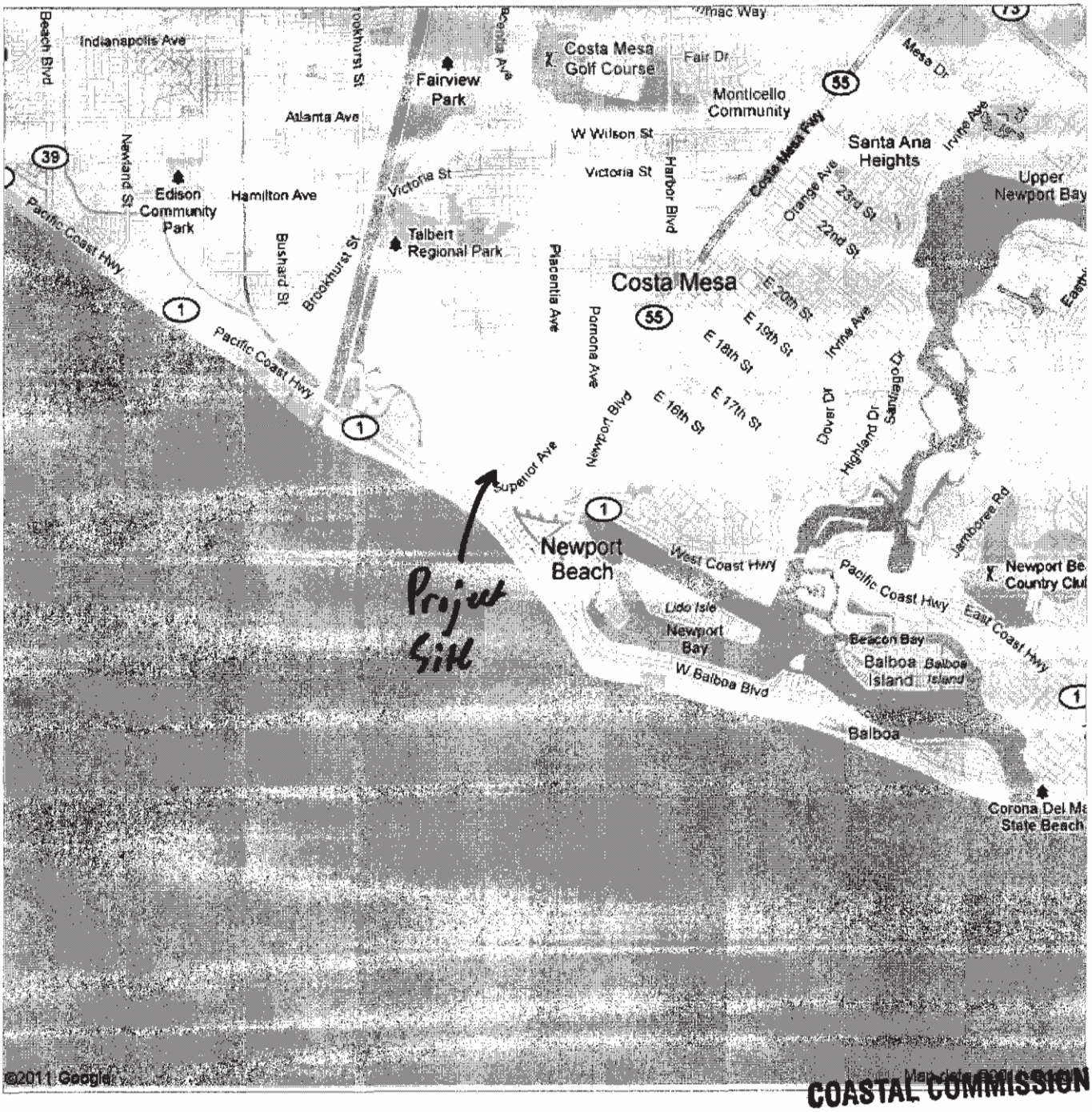
Google maps



COASTAL COMMISSION

EXHIBIT # 1
PAGE 1 OF

LEGEND

- Expanded CSS - Native
  Acreage: .16 ac.
- Water Infiltration / Native Buffer Area
  Acreage: .52 ac.
- Residential Buffer
  Acreage: 2.21 ac.
- Active Area - Ornamental Evergreen Grasses
  Acreage: 1.41 ac.
- Turf Area (Including Driveable Grass)
  Acreage: 5.32 ac.
- Butterfly Garden
  Acreage: .10 ac.
- Streetscape Slope
  Acreage: 1.51 ac.
- Existing - Not to Be Disturbed*
  Acreage: .93 ac.
- 16' Wide Maintenance Road
  Acreage: .24 ac. (6" Gravel Base & Thickened Wood Header)
- Hardscape (Including Tot Lot)

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

- NOV Areas
- Bndy. of Potentially Significant Vegetation
- Offset from Boundary of SE NOV and Potentially Significant Vegetation
- Caltrans Scenic Easement
- New Chain Link Fencing
- Site Sections
  Refer to Page 3 for Sections A, B & C

TOTAL PARK ACREAGE
13.70 ac. + 1.50ac. Existing Parking Lot = 15.20 ac.

Planting Diagram

Sunset Ridge Park Planting Concept

3

EPTDESIGN
City of Newport Beach
13 March 2012

Red Denotes Plant Nativity to Southwest California Floristic Province

*Refer to Jepson Manual Higher Plants of California for Floristic Province designations

■ Denotes Plant Nativity to Coastal Sage Scrub Plant Community

EXPANDED CSS

- ■ Amsinckia menziesii var. intermedia.....Fiddleneck
- ■ Artemisia californica.....California Sagebrush
- ■ Atriplex lentiformis.....Big Saltbush
- ■ Baccharis pilularis.....Coyote Brush
- ■ Bromus carinatus.....California Brome Grass
- ■ Encelia californica.....Coast Sunflower
- ■ Eriogonum fasciculatum.....California Buckwheat
- ■ Eriophyllum confertiflorum.....Golden Yarrow
- ■ Isocoma menziesii.....Coastal Goldenbush
- ■ Isomeris arborea.....Bladderpod
- ■ Leymus condensatus.....Giant Wild Rye
- ■ Leymus triticoides.....Creeping Wild Rye
- ■ Lotus scoparus.....Deerweed
- ■ Lupinus succulentus.....Arroyo Lupine
- ■ Melica imperfecta.....California Melic
- ■ Mimulus aurantiacus.....Orange Bush Monkeyflower
- ■ Nassella lepida.....Foothill Needlegrass
- ■ Opunita littoralis.....Coast Prickly Pear
- ■ Opuntia prolifera.....Coastal Cholla
- ■ Phacelia ciciutaria.....Caterpillar Phacelia
- ■ Phacelia minor.....California Bells
- ■ Rhamnus californica.....Coffeeberry
- ■ Rhamnus ilicifolia.....Hollyleaf Redberry
- ■ Rhus integrifolia.....Lemonade Berry
- ■ Salvia mellifera.....Black Sage

WATER INFILTRATION / NATIVE BUFFER AREA

- ■ Baccharis pilularis.....Coyote Brush
- ■ Bromus carinatus.....California Brome
- ■ Elymus glaucus.....Western Rye Grass
- ■ Encelia californica.....Coast Sunflower
- ■ Eriogonum fasciculatum.....Common Buckwheat
- Juncus patens.....Rush
- ■ Leymus condensatus 'Canyon Prince'.....Canyon Prince Wild Rye
- Leymus triticoides.....Creeping Wild Rye
- ■ Lupinus succulentus.....Arroyo Lupine
- Muhlenbergia rigens.....Deergrass
- ■ Nassella lepida.....Foothill Needlegrass
- ■ Nassella pulchra.....Purple Needlegrass
- ■ Opunita littoralis.....Coast Prickly Pear
- ■ Rhamnus californica.....Coffeeberry
- ■ Salvia apiana.....White Sage
- ■ Salvia leucophylla.....Purple Sage
- ■ Salvia mellifera 'Terra Seca'.....Black Sage

RESIDENTIAL BUFFER

- Arctostaphylos 'Pacific Mist'.....Manzanita
- Arctostaphylos u. 'Point Reyes'.....Manzanita
- ■ Baccharis pilularis 'Pigeon Point'.....Dwarf Coyote Brush
- ■ Baccharis pilularis 'Twin Peaks'.....Dwarf Coyote Brush
- Ceanothus g.h.'Carmel Creeper'.....Wild Lilac
- Ceanothus 'Concha'.....Wild Lilac
- ■ Encelia californica.....Coast Sunflower
- Muhlenbergia rigens.....Deergrass
- ■ Nassella lepida.....Foothill Needlegrass
- ■ Opunita littoralis.....Coast Prickly Pear
- ■ Opuntia prolifera.....Coastal Cholla
- ■ Rhamnus californica.....Coffeeberry
- ■ Rhamnus ilicifolia.....Hollyleaf Redberry
- ■ Rhus integrifolia.....Lemonade Berry

STREETSCAPE SLOPE

- ■ Amsinckia menziesii var. intermedia.....Fiddleneck
- Acacia redolens 'Low Boy'.....Prostrate Acacia
- Arctostaphylos 'Pacific Mist'.....Manzanita
- ■ Atriplex lentiformis.....Big Saltbush
- ■ Baccharis pilularis 'Pigeon Point'.....Dwarf Coyote Brush
- ■ Baccharis pilularis 'Twin Peaks'.....Dwarf Coyote Brush
- Ceanothus g.h.'Carmel Creeper'.....Wild Lilac
- Ceanothus 'Joyce Coulter'.....Wild Lilac
- Ceanothus 'Concha'.....Wild Lilac
- ■ Encelia californica.....Coast Sunflower
- ■ Eriogonum fasciculatum.....California Buckwheat
- ■ Eriophyllum confertiflorum.....Golden Yarrow
- ■ Isocoma menziesii.....Coastal Goldenbush
- ■ Isomeris arborea.....Bladderpod
- ■ Leymus condensatus.....Giant Wild Rye
- ■ Lotus scoparus.....Deerweed
- ■ Lupinus succulentus.....Arroyo Lupine
- ■ Melica imperfecta.....California Melic
- ■ Mimulus aurantiacus.....Orange Bush Monkeyflower
- Festuca mairei.....Atlas Fescue
- Muhlenbergia rigens.....Deergrass
- ■ Nassella lepida.....Foothill Needlegrass
- ■ Opunita littoralis.....Coast Prickly Pear
- ■ Opuntia prolifera.....Coastal Cholla
- ■ Rhamnus californica.....Coffeeberry
- ■ Rhamnus ilicifolia.....Hollyleaf Redberry
- ■ Rhus integrifolia.....Lemonade Berry

BUTTERFLY GARDEN

- Achillea clavennae.....Silvery Yarrow
- ■ Achillea millefolium 'Rosea'.....Common Yarrow
- Anigozanthos flavidus.....Kangaroo Paw
- Buddleja davidii.....Buttefly Bush
- Carex pansa.....California Meadow Sedge
- Ceanothus g.h.'Carmel Creeper'.....Wild Lilac
- Ceanothus 'Joyce Coulter'.....Wild Lilac
- Ceanothus 'Concha'.....Wild Lilac
- Echium candicans.....Pride of Madeira
- ■ Encelia californica.....Coast Sunflower
- ■ Eriogonum fasciculatum.....Common Buckwheat
- Festuca o. g. 'Siskiyou Blue'.....Blue Fescue
- Lavandula angustifolia 'Hidcote'.....Lavender
- ■ Lupinus succulentus.....Arroyo Lupine
- ■ Mimulus spp.....Monkey Flower
- ■ Penstemon centranthifolius.....Scarlet Bugler
- Penstemon grinnellii.....Grinnell's Beardtongue
- Romneya coulteri.....Matilija Poppy
- Rosmarinus 'Collingwood Ingram'.....Rosemary
- Salvia greggii.....Autumn Sage
- ■ Salvia leucophylla.....Purple Sage
- ■ Salvia mellifera 'Terra Seca'.....Dwarf Black Sage
- Sedum spathulifolium.....Stonecrop
- Senecio flaccidus var. monoensis.....Mono Groundsel
- Senecio mandraliscae.....Blue Chalk Sticks
- Sisyrinchium bellum.....Blue-Eyed Grass
- Tagetes lemmonii.....Mexican Marigold
- Teucrium chamaedrys.....Creeping Germander
- Trichostema lanatum.....Wooly Blue Curls

ACTIVE AREA

- ■ Artemisia 'Powis Castle'.....Sagebrush
- ■ Baccharis pilularis 'Pigeon Point'.....Dwarf Coyote Brush
- ■ Baccharis pilularis 'Twin Peaks'.....Dwarf Coyote Brush
- Carex divulsa.....Berkeley Sedge
- Carex pansa.....Dune Sedge
- Carex tumulicola.....Foothill Sedge
- Carissa grandiflora 'Green Carpet'.....Natal Plum
- ■ Encelia californica.....Coast Sunflower
- Festuca mairei.....Atlas Fescue
- Festuca o. g. 'Siskiyou Blue'.....Blue Fescue
- ■ Leymus condesatus 'Canyon Prince'.....Giant Wild Rye
- Leymus triticoides.....Creeping Wild Rye
- Muhlenbergia capillaris.....Pink Muhlygrass
- Muhlenbergia rigens.....Deergrass
- ■ Nassella cernua.....Nodding Needlegrass
- ■ Nassella lepida.....Foothill Needlegrass
- ■ Nassella pulchra.....Purple Needlegrass
- Pennisetum alopecuroides 'Little Bunny'.....Fountain Grass
- Rhapheolepis indica 'Clara'.....Inda Hawthorn
- Rosmarinus officinalis 'Huntington Carpet'.....Rosemary
- Rosmarinus officinalis 'Tuscan Blue'.....Rosemary
- Salvia 'Allen Chickering'.....Allen Chickering Sage
- Salvia greggii.....Autumn Sage
- Wisteria sinensis.....Chinese Wisteria

TREES

- Acacia pendula.....Weeping Myall - 15' to 25' Height
- Albizia julibrissin.....Silk Tree - 20' to 30' Height
- Arbutus 'Marina'.....Hybrid Strawberry Tree - 20' to 30' Height
- Bauhinia x blakeana.....Hong Kong Orchid Tree - 20' to 25' Height
- Ceanothus 'Ray Hartman'.....Ray Hartman Ceanothus - 15' to 20' Height
- ■ Heteromeles arbutifolia.....Toyon -15' to 20' Height
- Lyonothamus floribundus spp. floribundus.....Santa Catalina Ironwood - 20' to 30' Height
- Parkinsonia 'Desert Museum'.....Mexican Palo Verde - 20' to 30' Height
- Pinus torreyana.....Torrey Pine - 30' to 50' Height
- Platanus racemosa.....California Sycamore - 40' to 60' Height
- ■ Prunus ilicifolia spp. ilicifolia.....Hollyleaf Cherry - 20' to 30' Height
- ■ Quercus agrifolia.....Coast Live Oak - 30' to 50' Height
- ■ Rhus integriflia.....Lemonade Berry - 15' to 25' Height
- Rhus lancea.....African Sumac -15' to 25' Height
- ■ Rhus ovata.....Sugar Bush - 20' to 30' Height
- ■ Sambucus mexicana.....Blue Elderberry -15' to 25' Height

KEY MAP

Coastal Commission
Permit No 5-11-302
Exhibit 2 pg 1 of 2

EPTDESIGN

Comprehensive Tree, Shrub, Grass and Groundcover Planting List

Sunset Ridge Park Planting Concept

EARTHWORK		
COLOR	CUT(−) / FILL(+)	AREA (SF)
	−30' to −12'	33,168
	−12' to −6'	49,773
	−6' to 0'	226,778
	0' to +6'	153,391
	+6' to +12'	60,196
	+12' to +27'	10,055

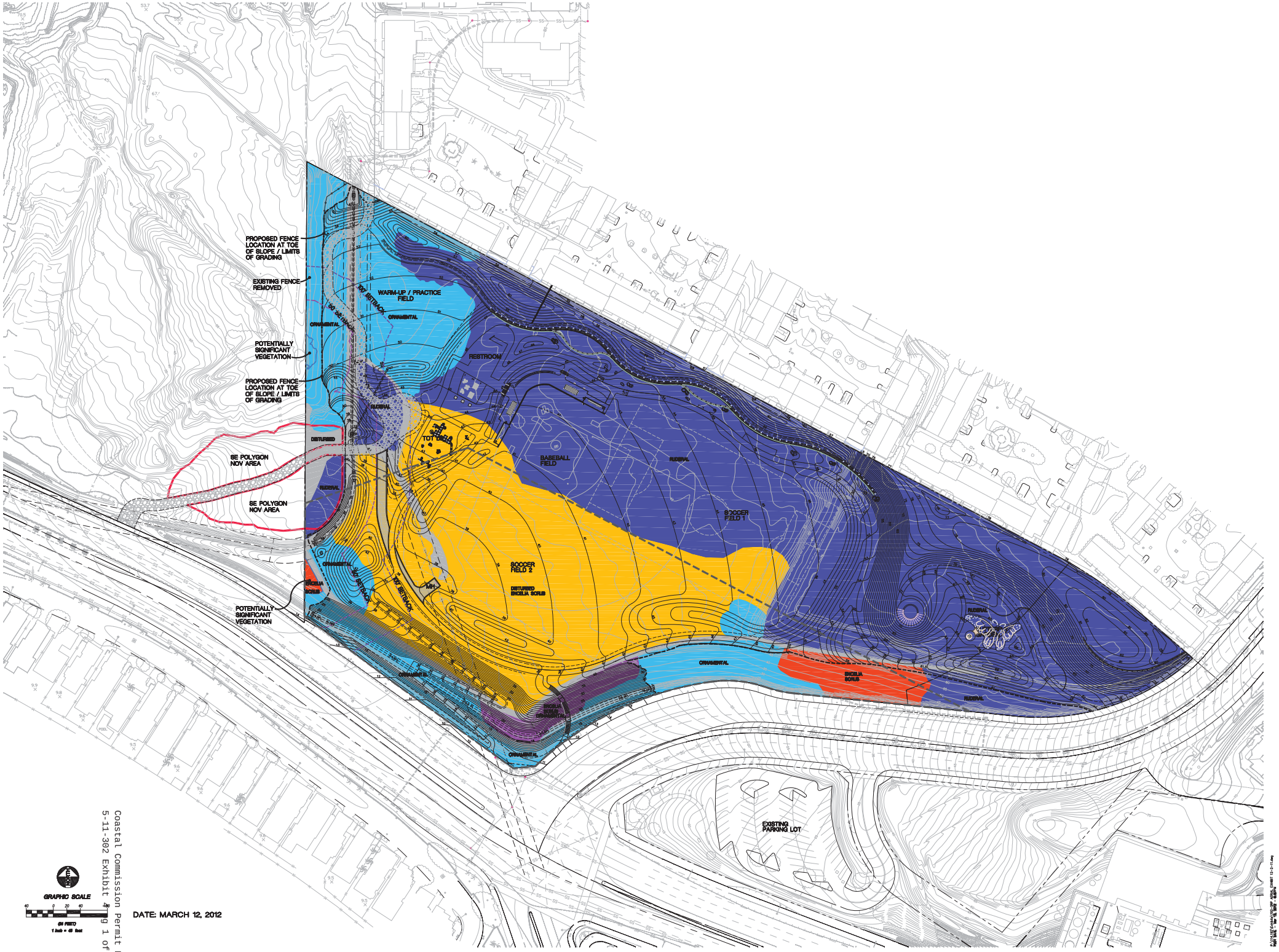
PARK SITE EARTHWORK QUANTITY	
CUT	57,223 CY
FILL	36,559 CY
EXPORT	20,664 CY

*EXPANSION INDEX = 0

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

DECEMBER 15, 2011



GRAPHIC SCALE

40 0 20 40

(IN FEET)

1 inch = 40 feet

DATE: MARCH 12, 2012

Coastal Commission Permit No 5-11-302 Exhibit 4 Pg 1 of 1

From: Georgette M. Quinn
Costa Mesa, CA 92627

Concerning: Sunset Ridge Park Project

To: The Coastal Commission Staff and all who are taking considerations on public opinion for the Sunset Ridge Park Project as we see this as a precursor to the Banning Ranch Project and beyond!

Do we have to citify the whole county? Leave us some breathing and quiet room!

'It would be appreciated if you would include this information in any staff report to the Commission'.

We believe there has been excessive mowing has been an ongoing issue on Sunset Ridge Park. The City continues to mow all of Sunset Ridge though the fire safety guidelines call for mowing within 100' structures. The reason for this is obvious: to destroy the natural, sensitive, and endangered habitat in terms of plants, animals, and birds. I would like to bring to your attention the fact that excessive and unnecessary mowing continues to be a problem on Sunset Ridge'.

'Having observed the Sunset Ridge area closely for a number of years, I would like to tell you about the wealth of habitat that exists there and destruction that has occurred from the excessive mowing done by the City of Newport Beach'.

'I/we object to the needless destruction of habitat and the ruination of my/our quality of life given there is no fire threat'. 'The City is going far beyond the prescribed fuel modification in an effort to destroy environmentally sensitive habitat, and potentially sensitive habitat for threatened and endangered species'.

Isn't a Coastal Development Permit needed to conduct moving like this? Do you have one? Can we see it?

Is there some sort of enforcement action against the City of Newport Beach that can take place to protect this sensitive habitat from being destroyed again in the future? 'If so, I would sincerely appreciate your assistance in initiating an enforcement action against the City of Newport Beach'.

'One can only conclude that this mowing is a deliberate and systematic effort to eliminate the habitat for the gnatcatcher (and other wildlife such as raptors) living on Sunset Ridge'.

As nature keeps being divided up into the smallest possible units for our economic purposes, it's no surprise that key predators and sensitive species occasionally suffer unexplained drops in numbers and vitality. We have not left enough slack in nature's systems by giving it space to flex and change without breaking.

Do you have children, grandchildren who will be happy to see this generation leave something for them and beyond?

Please stop the madness! Please leave the peace and quiet, stop trying to build to all!

Georgette M. Quinn

COASTAL COMMISSION

EXHIBIT # 5
PAGE 1 OF 54

Del Arroz, John@Coastal

From: Barbara Wood [barbj@sbcglobal.net]
Sent: Wednesday, May 30, 2012 12:25 PM
To: Del Arroz, John@Coastal
Subject: Sunset Ridge development

Dear Mr. Delarroz,

I am writing to you to ask you support the Coastal Commission demand that the city of Newport Beach protect the environment of the Sunset Ridge area by reducing the frequency and amount of moving the natural plants growth. It is a beneficial to the residents of the area and California that we maintain the natural beauty of this part of one of the last open spaces and protected areas in the state. I oppose the development of the area by Newport Beach which appears to want the increased tax base in the land's becoming a sports park with roads through sensitive parts of the Banning Ranch land and the later commercial development of the Ranch. My home is on the border of the Banning Ranch and I am concerned about the changes Newport Beach plans to make in the use of the land.

Thank you for considering my concerns.

Barbara J. Wood
1684 Whittier Ave.
Costa Mesa, CA 92627

Del Arroz, John@Coastal

From: Gary Garber [garbergary@yahoo.com]
Sent: Wednesday, May 30, 2012 11:59 AM
To: Del Arroz, John@Coastal
Subject: Sunset Ridge Park, Newport Beach CA

We would be appreciated if you would include this information in any staff report to the Commission'.

- Excessive mowing has been an ongoing issue on Sunset Ridge Park.
- The City continues to mow all of Sunset Ridge though the fire safety guidelines call for mowing within 100' structures. The reason for this is obvious: **to destroy the natural, sensitive, and endangered habitat in terms of plants, animals, and birds.**
- We would like to bring to your attention the fact that excessive and unnecessary mowing continues to be a problem on Sunset Ridge'.
- 'Having observed the Sunset Ridge area closely for over 15 years, I would like to tell you about the wealth of habitat that exists there and destruction that has occurred from the excessive mowing done by the City of Newport Beach'. **This excessive mowing started after the City purchased the land from the State of California.**
- We object to the needless destruction of habitat and the ruination of our quality of life given there is no major fire threat'
- 'The City is going far beyond the prescribed fuel modification in an effort to destroy environmentally sensitive habitat, and potentially sensitive habitat for threatened and endangered species'.
- Isn't a Coastal Development Permit needed to conduct moving like this?
- Is there some sort of enforcement action against the City of Newport Beach that can take place to protect this sensitive habitat from being destroyed again in the future?
- 'If so, we would sincerely appreciate your assistance in initiating an enforcement action against the City of Newport Beach'.
- 'One can only conclude that this mowing is a deliberate and systematic **effort to eliminate the habitat for the gnatcatcher (and other wildlife such as raptors) living on Sunset Ridge**'.
- As nature keeps being divided up into the smallest possible units for our economic purposes, it's no surprise that key predators and sensitive species occasionally suffer unexplained drops in numbers and vitality. We have not left enough slack in nature's systems by giving it space to flex and change without breaking.

We appreciate you service to the Costal Commission and hope you take are concerns under consideration and once again include this information in any staff reports to the Commission.

Gary A. & Kondace Garber
8 Landfall Court, Newport Beach, CA

COASTAL COMMISSION

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Del Arroz, John@Coastal

From: Sandra McCaffrey [sl.mccaffrey@gmail.com]

Sent: Wednesday, May 30, 2012 10:21 AM

To: Del Arroz, John@Coastal; Dixon, John@Coastal; Sarb, Sherilyn@Coastal; Engel, Jonna@Coastal; Veesart, Pat@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Schwing, Karl@Coastal; lhaage@coastal.ca.gov; Lester, Charles@Coastal; medjkraus@yahoo.com

Subject: Banning Ranch

Dear Sir or Madam,

As a resident of Newport Crest and living on the perimeter of the development I have watched with horror as the beautiful land continues to be destroyed. There has been ongoing and excessive mowing on Sunset Ridge Park. I have tried to document many days showing tractors stirring up so much dust that my doors and windows must remain tightly closed. I have witnessed Snowy Egrets almost get mowed down by these tractors as well. The City continues to mow this area though the fire safety guidelines are specific and say only within a 100 ft distance of structures. Mowing has been up and down in the gully and in areas hundreds of feet from any structures. I have also documented this in photos. It is very clear the point of this obsessive mowing is to disturb and destroy the sensitive and endangered habitat in terms of plants, animals and birds, etc. It was my understanding they were to stop all mowing and yet they appear absolutely relentless with their mowing. I've watched moving start as early as 7:30 AM and go on for hours and hours as a tractor does circle eights in the same spot.

Having grow up in the area and observed the Sunset Ridge for a number of years I would like to tell you about the wealth of the habitat that exists there and destruction that has occurred from the excessive mowing done by the City of Newport. It is unconscionable the needless destruction of habitat and the ruination of the quality of life under the guise of a fire threat, given there is no fire threat. The City is going far beyond the prescribed fuel modification in an effort to destroy environmentally sensitive habitat, and potentially sensitive habitat for threatened and endangered species. Isn't the purpose of the Coastal Development Permit needed to authorize conduct like this?

Is there any form of enforcement or action against the City of Newport Beach that can take place to protect this sensitive habitat from being completely destroyed in the future? Is so, I would sincerely appreciate your assistance in initiating an enforcement action against the City of Newport Beach. It is painfully clear the mowing is a deliberate and systematic attempt to eliminate the habitat for the gnat catcher, and other wildlife such as raptors, living on the Sunset Ridge land.

As nature keeps being divided up in to the smallest possible units for our economic purposes, it is no surprise the key predators and sensitive species occasionally suffer unexplained drops in numbers and vitality. We have not left enough slack in nature's system by giving space to flex and change without breaking. Please help because greed is a powerful machine to stop.

Sincerely,

Sandra Andrews-McCaffrey

Del Arroz, John@Coastal

From: Ed Taylor [edbobtaylor@gmail.com]

Sent: Wednesday, May 30, 2012 9:35 AM

To: Del Arroz, John@Coastal; Dixon, John@Coastal; Sarb, Sherilyn@Coastal; Engel, Jonna@Coastal; Veesart, Pat@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Schwing, Karl@Coastal; Haage, Lisa@Coastal; Lester, Charles@Coastal

Subject: City of Newport Beach Coastal Development Application (CDP) for the Sunset Ridge Park

I am writing to oppose the approval of the City of Newport Beach's Coastal Development Application (CDP) for the Sunset Ridge Park. As a resident of the neighboring city of Huntington Beach, I am opposed to the development of the Banning Ranch property because of the damage it will do to the local environment, the increase in traffic and noise, and the overall degradation of life in Huntington Beach and Costa Mesa, as well as Newport Beach.

I live on the other side of the Santa Ana River. Having observed the Sunset Ridge area closely for a number of years, I would like to tell you about the wealth of habitat that exists there and destruction that has occurred from the excessive mowing done by the City of Newport Beach at Sunset Ridge Park. The City continues to mow all of Sunset Ridge though the fire safety guidelines call for mowing within 100' structures. The reason for this is obvious: to destroy the natural, sensitive, and endangered habitat in terms of plants, animals, and birds. One can only conclude that this mowing is a deliberate and systematic effort to eliminate the habitat for the gnatcatcher (and other wildlife such as raptors) living on Sunset Ridge, in preparation for the ultimate development of housing on the Banning Ranch property.

I object to the needless destruction of habitat and the ruination of my quality of life given there is no fire threat. Is there some sort of enforcement action against the City of Newport Beach that can take place to protect this sensitive habitat from being destroyed again in the future? If so, I would sincerely appreciate your assistance in initiating an enforcement action against the City of Newport Beach.

It would be appreciated if you would include this information in any staff report to the Commission.

Thank you for your consideration.

Ed Taylor

COASTAL COMMISSION

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Del Arroz, John@Coastal

From: George Demos [gdemos@cforesources.net]

Sent: Wednesday, May 30, 2012 8:34 AM

To: Del Arroz, John@Coastal; Dixon, John@Coastal; Sarb, Sherilyn@Coastal; Engel, Jonna@Coastal; Veesart, Pat@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Schwing, Karl@Coastal; Haage, Lisa@Coastal; Lester, Charles@Coastal

Subject: Unnecessary Mowing on Sunset Ridge

Dear Coastal Commission Staff:

IT WOULD BE APPRECIATED IF YOU WOULD INCLUDE THIS INFORMATION IN ANY STAFF REPORT TO THE COMMISSION.

Having the benefit of being able to clearly see activity upon Sunset Ridge from my residence in Newport Crest, I am amazed that the City continues excessive mowing of this area that is outside the 100' proximity of structures. In fact, as recently as three weeks ago I personally called the California Department of Fish and Game to voice my concerns after being awakened in the early morning hours by a mowing tractor. I believe this to be an ongoing and continuing problem on Sunset Ridge. I object to the needless destruction of habitat and the ruination of my quality of life given there is no fire threat.

So why would the City of Newport continue to incur the costs of excessive mowing on Sunset Ridge? One can conclude that this mowing is a deliberate and systematic effort to eliminate the habitat for the gnatcatcher and raptors living on Sunset Ridge. I am sure that some sort of approval or permit would have to involved for anyone to destroy such sensitive areas. If none has been obtained by the City, isn't there an enforcement action that can be taken against the City of Newport Beach to keep this intentional disregard for sensitive habitat from happening again and again and again? If such an action can be taken, I would appreciate initiation of an action by the Coastal Commission.

As more habitat is wasted and further divided, natures ability to sustain key predators and sensitive species will continue to suffer unexplained drops in both numbers and vitality. At what point do we say "enough with the intentional disregard for the safekeeping of this limited and fragile ecosystem"? If not now, when?

George J. Demos
Newport Crest Resident
949-270-6017

Del Arroz, John@Coastal

From: jimmata@earthlink.net

Sent: Tuesday, May 29, 2012 9:32 PM

To: Del Arroz, John@Coastal; Dixon, John@Coastal; Sarb, Sherilyn@Coastal; Engel, Jonna@Coastal; Veesart, Pat@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Schwing, Karl@Coastal; Haage, Lisa@Coastal; Lester, Charles@Coastal

Subject: Concerns regarding Sunset Ridge Park.

It would be appreciated if you would include this information in any staff report to the Commission.

Excessive mowing has been an ongoing issue on Sunset Ridge Park. The City continues to mow all of Sunset Ridge though the fire safety guidelines call for mowing within 100' structures. The reason for this is obvious: to destroy the natural, sensitive, and endangered habitat in terms of plants, animals, and birds.

As a member of the Irvine Ranch Conservancy, and having observed the Sunset Ridge area closely for a number of years, I would like to tell you about the wealth of habitat that exists there and destruction that has occurred from the excessive mowing done by the City of Newport Beach. I object to the needless destruction of habitat and the ruination of my quality of life given there is no fire threat.

The City is going far beyond the prescribed fuel modification in an effort to destroy environmentally sensitive habitat, and potentially sensitive habitat for threatened and endangered species. Isn't a Coastal Development Permit needed to conduct moving like this? If so, I would sincerely appreciate your assistance in initiating an enforcement action against the City of Newport Beach.

Thank you.

Sincerely,
Jim Mata

Del Arroz, John@Coastal

From: hgnadel@aol.com

Sent: Tuesday, May 29, 2012 8:58 PM

To: delarroz@coastal.ca.gov; Dixon, John@Coastal; Sarb, Sherilyn@Coastal; Engel, Jonna@Coastal; Veesart, Pat@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Schwing, Karl@Coastal; Haage, Lisa@Coastal; Lester, Charles@Coastal

Subject: The Dreadful Mowing in Sunset Ridge and Banning Ranch.

Dear California Coastal Commission Staff Members,

Below is a summary of the reasons why I wish to complain about the excessive mowing of Sunset Ridge by the City of Newport Beach and the excessive mowing of Banning Ranch by the developers.

- Excessive mowing has been an ongoing issue on Sunset Ridge Park and Banning Ranch.
- The City continues to mow all of Sunset Ridge though the fire safety guidelines call for mowing within 100' structures. The reason for this is obvious: to destroy the natural, sensitive, and endangered habitat in terms of plants, animals, and birds. The developers have depleted Banning Ranch of all life sustaining vegetation. They maintain their deadly eradication DAILY!
- I would like to bring to your attention the fact that excessive and unnecessary mowing continues to be a problem on Sunset Ridge and Banning Ranch.
- 'Having observed the Sunset Ridge and Banning Ranch areas closely for a number of years, I would like to tell you about the wealth of habitat that exists there and destruction that has occurred from the excessive mowing done by the City of Newport Beach', and the developers who are dying to build environmentally disastrous buildings, malls, hotels and other money hungry projects, while shamelessly profiting from the death of the rare and precious animal and plant life.
- 'I/we object to the needless destruction of habitat and the ruination of my/our quality of life given there is no fire threat'
- 'The City, as far as Sunset Ridge is concerned and the developers, when it comes to Banning Ranch, are going far beyond the prescribed fuel modification in an effort to destroy environmentally sensitive habitats, and potentially sensitive habifat for threatened and endangered species'.
- Isn't a Coastal Development Permit needed to conduct moving like this?
- Is there some sort of enforcement action against the City of Newport Beach and the developers who own Banning Ranch: (Mike Mohler, project manager), Newport Banning Ranch LLC
  that can take place to protect this sensitive habitat from being destroyed again in the future?
- 'If so, I would sincerely appreciate your assistance in initiating an enforcement action against the City of Newpott Beach', and Newport Banning Ranch LLC.
- 'One can only conclude that this mowing is a deliberate and systematic effort to eliminate the habitat for the gnatcatcher (and other wildlifa such as raptors) living on Sunset Ridge, and Banning Ranch.
- As nature keeps being divided up into the smallest possible units for our [illegible] purposes, it's no surprise that key predators and sensitive species occasionally suffer unexplained drops in numbers and vitality. We have not left enough slack in

nature's systems by giving it space to flex and change without breaking.

Sunset Ridge and Banning Ranch have been depleted daily of their natural habitats. The plant life is being extracted and killed constantly. Animals and birds are being robbed of essential, life sustaining vegetation. I live in Newport Crest, ans I have seen the number of rodents, squirrels, rabbits etc.. As well as different species of birds, including rare colorful birds, slowly disappear within the past few years --ever since the wild mowing and doom of destruction started.

The more the area is being mowed, the least animal life is able to sustain itself. Where are the squirrels, the rabbits and the birds, who were happily living here?
The consequences are far reaching. As residents of Newport Crest, by Banning Ranch, we now have daily visits of hungry, desperate coyotes. We don't only see these predators, wander aimlessly in Sunset Ridge and Banning Ranch looking for rodents, and the small animals, which were taken out of the food chain because of the excessive mowing. The coyotes are there every night --right in our back yards. They careen around our mailboxes, sick, hungry, and forgotten. They wander and look. They seek food any way shape of form, they can. Their emaciated presence is felt and seen daily, here in Newport Crest.

I have to take my dogs, small breeds, and I have them on short leashes. I feel their lives threatened at every corner. I feel that we are being observed all the time and we get startled by fluttering in the bushes, and paw steps coming our way, constantly.

I am scared for my dogs.

Cats and dogs get eaten all the time, and sometimes in bright day light.

I am scared and angry. I will sue both the City of Newport Beach and Newport Banning Ranch LLC for what they are doing to the extremely sensitive and beyond endangered habitats in Sunset Ridge and Banning Ranch.

Do you have young children? Do you have pets? Are you going to let the predators threaten our families?

Thank you so much for your help!

HG Nadel: 310 346 9119
www.eternalyoungadultnovel.com
www.kidsactingschool.com
http://www.facebook.com/hgnadel
http://www.facebook.com/EternalBook
http://www.facebook.com/kidsactingschool
https://twitter.com/#!/HGNadel

Del Arroz, John@Coastal

From: Joan Coogan [jc3814@gmail.com]
Sent: Tuesday, May 29, 2012 5:11 PM
To: Del Arroz, John@Coastal
Subject: excessive mowing on Sunset Ridge Park

I feel that there is excessive and unnecessary mowing at Sunset Ridge. A wealth of habitat exists there, and destruction has occured to it due to close mowing done by the City of Newport Beach. .

I understand that there is no magnitude of fire threat to call for this excessive mowing. One might conclude that this close mowing is a deliberate and systematic effort to eliminate the habitat for the gnatcatcher, raptors, and other wildlife living on Sunset Ridge.

We need open space to catch a breath, as does wildlife. We don't need to pack in more people and traffic.

Joan S. Coogan
jc3814@gmail.com
3814 Channel Place,I
Newport Beach, CA 92663

COASTAL COMMISSION

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Del Arroz, John@Coastal

From: docjanedrew@gmail.com on behalf of Jane Drew [janedrew@roadrunner.com]
Sent: Tuesday, May 29, 2012 3:42 PM
To: Del Arroz, John@Coastal

Hello John,

Would you please include my remarks in any staff report to the Coastal Commission. I "Thank you" in advance.

Everyday I walk near the proposed sunset Ridge Park and I'm saddened to see a magnificent big open space with little vegetation. I remember how the field used to have three foot high plants and lots of birds and little critters. Now the City if Newport Beach is doing excessive mowing even though the fire safety guidelines only call for mowing within 100 feet of structures. I believe the reason for this is to destroy the natural, sensitive, and endangered habitat in terms of plants, animals, and birds so officials feel justified to use the land for other uses.

I have lived in Newport Crest for 15 years. I have beautiful photos (see below) of how Sunset Ridge looked before the excessive and unnecessary mowing. I object to the needless destruction of habitat and the ruination of my quality of life given there is no fire threat. The City is going far beyond the prescribed fuel modification in an effort to destroy environmentally sensitive habitat, and potentially sensitive habitat for threatened and endangered species.

Here are the photos from two years ago before the mowing:
https://picasaweb.google.com/116766813522415924962/SunsetRidgeFields2010?authkey=GvIsRgCKuDgLek1J772wE

I understand that a Coastal Development Permit is needed to conduct mowing like this. Is there some sort of enforcement action against the City of Newport Beach that can take place to protect this sensitive habitat from being destroyed again in the future? If so, I would sincerely appreciate your assistance in initiating an enforcement action against the City of Newport Beach'.

I have a hunch this mowing is a deliberate and systematic effort to eliminate the habitat for the gnat catcher and other wildlife such as raptors living on Sunset Ridge. We need to have more open spaces so we don't do irreparable harm to Nature. I believe we have an opportunity to give birds and other species the room they need at Sunset Ridge Park.

This is very important to me and my neighbors.

Dr. Jane Drew

--

COASTAL COMMISSION

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Jane Myers Drew, Ph.D.
janedrew@roadrunner.com
949-645-5907
www.janedrew.com

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EXHIBIT
PAGE
5-1

Del Arroz, John@Coastal

From: Natalie Fogarty [nataliefogarty2000@yahoo.com]
Sent: Tuesday, May 29, 2012 3:25 PM
To: Del Arroz, John@Coastal
Cc: Dixon, John@Coastal
Subject: Mowing on Sunset Ridge Park

Mr. DelArroz and Mr. Dixon,
I would like to address this to all the coastal commission members. The excessive mowing continues at Sunset Ridge. This goes far beyond the requirements for fire safety. The obvious intent is to destroying habitat for many existing species including the gnatcatcher. If there is any enforcement action that can be taken to prevent this excessive mowing, I urge you to take action on this issue. Thank you for your time, Natalie Fogarty

Del Arroz, John@Coastal

From: Lester, Charles@Coastal
Sent: Tuesday, May 29, 2012 3:08 PM
To: Del Arroz, John@Coastal
Subject: FW: Agenda topic: Sunset Ridge Park Newport Beach

Charles Lester
Executive Director
California Coastal Commission
www.coastal.ca.gov
45 Fremont Street, Suite 2000
San Francisco, CA 94105
415-904-5202

From: Dave Sutherland [mailto:davesutherland4@gmail.com]
Sent: Tuesday, May 29, 2012 1:14 PM
To: Lester, Charles@Coastal
Cc: Henry, Teresa@Coastal
Subject: Agenda topic: Sunset Ridge Park Newport Beach

Dear Coastal Commission Staff Member,
I live directly over looking the area being proposed by the City for the Sunset Ridge Park and have been whitness to the deliberate destruction of the habitate surrounding this location. In years past, the area would be mowed once a year in summer to provide a fire break for our homes. Over the past few years, this annual event became a regular occurance with nothing to do with fire supression. It appears to be a deliberate attempt to destroy the habitate. It has change the wildlife from the original natural inhabitants to basically pests, rabbits have been replaced with ground squarrels that can climb the wall and invade our gardens. This is just one of many aspects of the excessive mowing. Another is the creation of a dust bowl that blows dirt into our homes and covers our decks. Is there something that can be done to eliminate this continued degradation our this special habitate, is there anyway to have the City of Newport Beach respect the wonders that this habitate provides and stop the mowing?
Sincerely,
Dave Sutherland
12 Summerwind

Del Arroz, John@Coastal

From: Blush1996@aol.com

Sent: Tuesday, May 29, 2012 12:03 PM

To: Del Arroz, John@Coastal

Cc: Dixon, John@Coastal; Sarb, Sherilyn@Coastal; Engel, Jonna@Coastal; Veesart, Pat@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Schwing, Karl@Coastal; Haage, Lisa@Coastal; Lester, Charles@Coastal; mcosylion@newportbeachca.gov

Subject: Mowing on Sunset Ridge Park and Banning Ranch in Newport Beach

May 29, 2012

Mr. John DelArroz
California Coastal Commission Staff
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Dear Mr. DelArroz:

I'm writing to address an ongoing problem with the constant mowing of Sunset Ridge Park, as well as the upland mesas and other areas of Banning Ranch. Those of us who live on the perimeter of this area and can witness the mowing have been told that it's being done for fire prevention. However, it's my understanding, based on fire safety guidelines, that mowing for fire prevention is only necessary within 100 feet of structures in order to create a buffer zone. The mowing I've witnessed is done several times a year, frequently in advance of site tours by the Coastal Commission or other agencies and it occurs well outside of any 100-foot buffer zone.

In the past, I've submitted pictures to the Coastal Commission of the Banning Ranch upland mesas being mowed for as long as four to five hours at a time, down to the dirt and creating clouds of dust, possibly contaminated. I also have pictures of Sunset Ridge Park being mowed and hand-cleared of scrub and brush. The most recent mowing occurred this month over a two-day period on May 17th and 18th. All of this activity was well outside of anything that could be described as a 100-foot buffer zone.

With regard to Sunset Ridge Park, it is of great concern that the City of Newport Beach continues what is clearly unnecessary and excessive mowing of the entire area. Since fire-prevention doesn't appear to be the true motive and since mowing routinely occurs in advance of site visits and also in advance of Gnatcatcher nesting season, as happened over a three-day period in February of this year, it appears that the purpose of the mowing is to reduce habitat necessary to the establishment of mating and nesting Gnatcatchers and the other rare and endangered wildlife.

Sunset Ridge Park and Banning Ranch are not the blighted areas that the owners of the properties profess them to be. There is a wealth of potential ESHA that if allowed to grow and develop naturally would provide abundant habitat for the rare and endangered species that are attempting to establish

themselves, but that will never be possible as long as the habitat is being destroyed by unnecessary mowing. This same mowing creates air and noise pollution that would frighten and drive away the wildlife, even if the habitat they need wasn't being systematically removed.

The mowing also creates an environment that isn't safe for hundreds of residents and school children, who live and/or attend school on the perimeter of the area, and who are forced to endure hours of tractor-mower noise and clouds of possibly contaminated dust blowing over Newport Crest and other surrounding communities in West Newport Beach and Costa Mesa.

I realize that your area of jurisdiction is the coastal habitat and wildlife, so I'm also copying the City of Newport Beach Code Enforcement Agency on this letter to report the human health and nuisance issues. Meanwhile, though, could you please advise as to whether a Coastal Development Permit is required for this kind of mowing, especially when the critical habitat necessary to sustain the delicate ecosystem that now exists on Sunset Ridge and Banning Ranch is under constant threat. Also, if the mowing is unpermitted, can the Coastal Commission bring an enforcement action against the owners who are responsible—in this case, the City of Newport Beach and Newport Banning Ranch LLC—in order to stop this kind of destruction in the future?

I applaud the work of the Coastal Commission in preserving the beauty and integrity of California's coastlines and especially for your recognition of the value of protecting irreplaceable open space against the relentless pressure of development. Your attention to this matter is greatly appreciated, and in closing, I would like to request that you include this information in your staff report to the Commission.

Thank you,

Suzanne Forster
8 Summerwind Court
Newport Beach, CA 99663
(949) 929-8806

cc: John Dixon jdixon@coastal.ca.gov
Sharlyn Sarb ssarb@coastal.ca.gov
Jonna Engles jengel@coastal.ca.gov
Paul Veesart pveesart@coastal.ca.gov
Andrew Willis: awillis@coastal.ca.gov
Teresa Henry thenry@coastal.ca.gov
Karl Schwing kschwing@coastal.ca.gov
Lisa Haage lhaage@coastal.ca.gov
Charles Lester clester@coastal.ca.gov
Matt Cosylion, Newport Beach Code Enforcement, Area 1
mcosylion@newportbeachca.gov

Del Arroz, John@Coastal

From: James Heumann [jamesheumann@hotmail.com]

Sent: Tuesday, May 29, 2012 6:14 AM

To: Del Arroz, John@Coastal; Dixon, John@Coastal; Sarb, Sherilyn@Coastal; Engel, Jonna@Coastal; Veesart, Pat@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Schwing, Karl@Coastal; Haage, Lisa@Coastal; Lester, Charles@Coastal

Subject: Sunset Ridge Park

Thanks for your attention to the Sunset Ridge Project and I fully hope all aspects of the mowing that occurs there in the area are included in any staff to the Commission.

The issue of mowing that has been mentioned is a great concern when trying to work with developers and planners. I truly wish their efforts were in good faith, yet when the mowing is pervasive and excessive, one has the sneaking feeling in the back of their mind that the mowing, even if precedent exists for mowing excessively (>100 ft clearance), is not in good faith. I truly want them to have a park, but not to allow for precedent for further destruction of the environment. We know this is one of the last remaining open spots of land, we need to be wise with it and set an example for inner cities to look at and ask "why don't we have more open space and parks?"

Regards,
James Heumann

From: Concerned_Residents_of_Newport_B@mail.vresp.com
To: jamesheumann@hotmail.com
Subject: Coastal Commission Needs to Hear From You Today!
Date: Mon, 28 May 2012 21:24:03 +0000

Concerned Resider

of newport be

As you may know, the California Coastal Commission (CCC) meets on Wednesday, June 13, 9:00 a.m. to discuss the City of Newport Beach Coastal Development Application (CDP) for the Sunset Ridge Park project. The meeting will be held at the Huntington Beach City Hall, 2000 Main Street, Huntington Beach.

This project is related to and a precursor for the upcoming Banning Ranch project. This will undoubtedly be the final hearing on the Sunset Ridge Park project. It is important that we establish to the Commission the importance of saving valuable habitat on Sunset Ridge to set the precedent for the adjacent Banning Ranch. In other words, if the City is allowed to continue its excessive mowing on Sunset Ridge, then what hope is there for Banning Ranch?

This is our time to flood the CCC staff with our letters regarding our concerns and alarm at this unnecessary mowing on Sunset Ridge that simply doesn't stop. Emails need to be sent to the Coastal Commission staff NOW so your concerns arrive in time for Coastal Commission staff to factor your comments into their report for the Commissioners. Time is of the essence! And, you don't have to live on the perimeter of Sunset Ridge Park to email your letter. The Coastal Commission staff needs to hear from NEW people! You can do this!

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See below for some starter message points to assist with your personalized message. Coastal Commission staff contact information is also provided below.

- **Make sure you include this statement in your email:** 'It would be appreciated if you would include this information in any staff report to the Commission'.
- Excessive mowing has been an ongoing issue on Sunset Ridge Park.
- The City continues to mow all of Sunset Ridge though the fire safety guidelines call for mowing within 100' structures. The reason for this is obvious: to destroy the natural, sensitive, and endangered habitat in terms of plants, animals, and birds.
- I would like to bring to your attention the fact that excessive and unnecessary mowing continues to be a problem on Sunset Ridge'.
- 'Having observed the Sunset Ridge area closely for a number of years, I would like to tell you about the wealth of habitat that exists there and destruction that has occurred from the excessive mowing done by the City of Newport Beach'.
- 'I/we object to the needless destruction of habitat and the ruination of my/our quality of life given there is no fire threat'
- 'The City is going far beyond the prescribed fuel modification in an effort to destroy environmentally sensitive habitat, and potentially sensitive habitat for threatened and endangered species'.
- Isn't a Coastal Development Permit needed to conduct moving like this?
- Is there some sort of enforcement action against the City of Newport Beach that can take place to protect this sensitive habitat from being destroyed again in the future?
- 'If so, I would sincerely appreciate your assistance in initiating an enforcement action against the City of Newport Beach'.
- 'One can only conclude that this mowing is a deliberate and systematic effort to eliminate the habitat for the gnatcatcher (and other wildlife such as raptors) living on Sunset Ridge'.
- As nature keeps being divided up into the smallest possible units for our economic purposes, it's no surprise that key predators and sensitive species occasionally suffer unexplained drops in numbers and vitality. We have not left enough slack in nature's systems by giving it space to flex and change without breaking.

Email your letter to: Coastal Commission Staff Members listed below.

- John DelArroz: jdelarroz@coastal.ca.gov
- John Dixon jdixon@coastal.ca.gov
- Sharlyn Sarb ssarb@coastal.ca.gov
- Jonna Engles jengel@coastal.ca.gov
- Paul Veesart pveesart@coastal.ca.gov
- Andrew Willis: awillis@coastal.ca.gov
- Teresa Henry thenry@coastal.ca.gov
- Karl Schwing kschwing@coastal.ca.gov
- Lisa Haage lhaage@coastal.ca.gov
- Charles Lester clester@coastal.ca.gov

NOTE: If you are including photographs with your letter (which is great if you have photos!), you must **also send a hardcopy of the letter with your photos via USPS** to the contact and address below. **DO NOT EMAIL PHOTOS TO THE CCC STAFF.** This is because the file size of photos is too large to send to the CCC staff email inboxes. It's best if photos that you mail via USPS are 8 ½ x 11 in size.

Mail to:
Mr. John DelArroz
Staff Member, California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

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We can upload your photos to a special CCC website to accompany your email if you wish. Include Dorothy Kraus on the email message to CCC staff then send photos to Dorothy on a separate email so she'll know to upload to the CCC website. Dorothy's email is medjkraus@yahoo.com.

We need to be heard! Please get your letters off to the Coastal Commission today!

Monitor the Coastal Commission website for the June 13 agenda and the staff report on the Sunset Ridge Park project: http://www.coastal.ca.gov/mtgcurr.html.

See you on June 13!

Thank you and wishing all of you a nice Memorial Day!

Dorothy Kraus
medjkraus@yahoo.com

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Del Arroz, John@Coastal

From: nochevaga@aol.com

Sent: Tuesday, May 29, 2012 9:34 AM

To: Del Arroz, John@Coastal; Dixon, John@Coastal; Sarb, Sherilyn@Coastal; Engel, Jonna@Coastal; Veesart, Pat@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Schwing, Karl@Coastal; Haage, Lisa@Coastal; Lester, Charles@Coastal

Subject: Sunset Ridge Park, please READ

Coastal Commission Staff Members:

It would be appreciated if you would include this information in any staff report to the Commission:

- Excessive mowing has been an ongoing issue on Sunset Ridge Park.
- The City continues to mow all of Sunset Ridge though the fire safety guidelines call for mowing within 100' structures. The reason for this is obvious: to destroy the natural, sensitive, and endangered habitat in terms of plants, animals, and birds.
- I would like to bring to your attention the fact that excessive and unnecessary mowing continues to be a problem on Sunset Ridge'.
- 'Having observed the Sunset Ridge area closely for a number of years, I would like to tell you about the wealth of habitat that exists there and destruction that has occurred from the excessive mowing done by the City of Newport Beach'.
- 'I/we object to the needless destruction of habitat and the ruination of my/our quality of life given there is no fire threat'
- 'The City is going far beyond the prescribed fuel modification in an effort to destroy environmentally sensitive habitat, and potentially sensitive habitat for threatened and endangered species'.
- Isn't a Coastal Development Permit needed to conduct moving like this?
- Is there some sort of enforcement action against the City of Newport Beach that can take place to protect this sensitive habitat from being deetroyed again in the future?
- 'If so, I would sincerely appreciate your assistance in initiating an enforcement action against the City of Newport Beach'.
- 'One can only conclude that this mowing is a deliberate and systematic effort to eliminate the habitat for the gnatcatcher (and other wildlife such as raptors) living on Sunset Ridge'.
- As nature keeps being divided up into the smallest possible units for our economic purposes, it's no surprise that key predators and sensitive species occasionally suffer unexplained drops in numbers and vitality. We have not left enough slack in nature's systems by giving it space to flex and change without breaking.

I'm a concern local resident and the protection of our local environment is crucial for the healthy development of our local communities.

Thank you for your attention.

Adriana Batista

Newport Beach Resident

949-903-6694

Del Arroz, John@Coastal

From: MICHELLE SIMPSON [michellesimpson5@att.net]

Sent: Tuesday, May 29, 2012 7:52 AM

To: Del Arroz, John@Coastal; Dixon, John@Coastal; Sarb, Sherilyn@Coastal; Engel, Jonna@Coastal; Veesart, Pat@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Schwing, Karl@Coastal; Haage, Lisa@Coastal; Lester, Charles@Coastal

Subject: Meeting on June 13-Sunset Ridge

Honorable Commissioners,
I understand that there is an upcoming meeting on June 13th to hear the CDP for the Newport Beach Sunset Ridge Park.

I attended the Commission hearing last last October in Oceanside, Ca where th SR Park application was discussed. I had never been to a Commision meeting and was so impressed by the staff's professionalism and dedication to the protection of the beauty of our coast and the wildlife that is at the mercy of development. I was appalled to hear of the excessive, unpermitted mowing on the Sunset Ridge area and am very aware that even though everyone at the meeting heard that this practice can not be justified by saying it is to prevent fire, (and even if it was they have not applied to the Commision for the permits to do so legally), yet they have contiunued to mow and to destroy habitat and the wildlife that depends upon this place. It is obvious that they are doing this to deliberately try to destroy Gnatcathcher habitat and their critical ecosystem on this property. I also believe that they are also trying to set a precedent for the adjacent Banning Ranch property that they plan to develop.
I would sincerely appreciate your assistance in initiating an enforcement action against the City of Newport Beach to stop this mowing immediately and to mitigateall damaged areas. Isn't there some type of action the Commission can take to immediately stop this destruction of ESHA??
Please do the right thing here as I know you all strive to do and I saw you do last year.

It would be appreciated if you would include this information in any staff report to the Commission.
Sincerely,
Michelle Simpson
resident of Westside Costa Mesa

Del Arroz, John@Coastal

From: Keith & Lesley Bindloss [bindloss@cox.net]
Sent: Monday, May 28, 2012 3:19 PM
To: Del Arroz, John@Coastal
Subject: Sunset Ridge Mowing

Dear Mr DelArroz

I have lived in or around Newport Beach for over 25 years, and I love the diversity this area offers. Not only do we have the beach and shopping malls, but we have wild areas, too. The plants and animals of the Mediterranean community live in only five area in the whole world, and we are lucky enough to be living in one of those areas. As such, we have a huge responsibility to protect the natural habitat for now and for future generations.

It is with shock that I see how much of the Sunset Ridge area is being mowed, and frequently. The City of Newport Beach is going far beyond the prescribed fuel modification in what seems to be an effort to destroy environmentally sensitive habitat, and potentially sensitive habitat for threatened and endangered species. If there is some sort of enforcement action against the City of Newport Beach that can take place to protect this sensitive habitat from being destroyed again in the future, please take action! I hate to see a natural area being interfered with, for no obvious gain. The City continues to mow all of Sunset Ridge though the fire safety guidelines call for mowing only within 100' of structures.

I am very concerned, and I would appreciate it if you would include this information in any staff report to the Commission.

Thank you,

Sincerely,

Lesley Bindloss

Del Arroz, John@Coastal

From: Katie Arthur [kaarthur@ca.rr.com]

Sent: Monday, May 28, 2012 2:54 PM

To: Del Arroz, John@Coastal; Dixon, John@Coastal; Sarb, Sherilyn@Coastal; Engel, Jonna@Coastal; Veesart, Pat@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Schwing, Karl@Coastal; Haage, Lisa@Coastal; Lester, Charles@Coastal

To Whom It May Concern: Please know that we are very opposed to the continued excessive mowing of Sunset Ridge:

- This excessive and unnecessary mowing continues to be a problem on Sunset Ridge
- Having observed the Sunset Ridge area closely for a number of years, I would like to tell you about the wealth of habitat that exists there and destruction that has occurred from the excessive mowing done by the City of Newport Beach
- My husband and I object to the needless destruction of habitat and the ruination of my/our quality of life given there is no fire threat
- The *City is going far beyond the prescribed fuel modification in an effort to destroy environmentally sensitive habitat, and potentially sensitive habitat for threatened and endangered species*
- Isn't a Coastal Development Permit needed to conduct moving like this?
- Is there some sort of enforcement action against the City of Newport Beach that can take place to protect this sensitive habitat from being destroyed again in the future?
- If so, I would sincerely appreciate your assistance in initiating an enforcement action against the City of Newport Beach
- One can only conclude that *this mowing is a deliberate and systematic effort to eliminate the habitat for the gnatcatcher (and other wildlife such as raptors) living on Sunset Ridge*
- As nature keeps being divided up into the smallest possible units for our economic purposes, it's no surprise that key predators and sensitive species occasionally suffer unexplained drops in numbers and vitality. We have not left enough slack in nature's systems by giving it space to flex and change without breaking.

We are counting on *YOU* to help make sure we preserve this space and wealth of habitat in this location.
Sincerely,
Katie Arthur and Herb Netal
400 Cabrillo St., Costa Mesa, CA 92627

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To: California Coastal Commission,
John DelArroz

From: Jennifer Irani
3201 Broad Street. Unit B
Newport Beach, Ca 92663

Re: Sunset Ridge Park – mowing and intent of City of N.B.

Date: May 28, 2012

Dear John DelArroz:

I am a resident of Newport Beach and am very concerned about the developments regarding Sunset Ridge Park. It has been brought to my attention that the city is mowing sensitive areas of the park. They are mowing what is beyond the requirement for fire line safety. It would be appreciated if you would include this information in any staff report to the Commission. While I would like to assume that the City has the best intentions I do not understand why they are mowing more than they usually do. My conclusion is any one of three reasons:

1. The city is not educated on how to care for a sensitive habitat and it not capable of managing it correctly or monitoring its employees that work there.

2. The city is assuming these areas are going to be developed and are removing sensitive habitat on purpose so that it can be clear for development.

3. The city is reacting to the many people in the community that have expressed a desire to preserve this area as open space.

4. The city feels it is doing proper maintenance for fire safety by mowing larger areas and removing habitat and the city is willing to pay for the extra man hours and machine maintenance to do so.

In any case, for whatever reason the City is doing this, it has to be managed properly or stopped until it can be reviewed. We have to be cautious with this last stretch of open space and preserve as much natural habitat as we can for raptors and other wildlife. There is so little left here in Newport Beach.

Thank you.

Best regards,

Jennifer Irani
Newport Beach resident

Del Arroz, John@Coastal

From:	bill bennett [shokobennett@gmail.com]
Sent:	Sunday, May 27, 2012 6:18 AM
To:	Del Arroz, John@Coastal; Schwing, Karl@Coastal; Sarb, Sherilyn@Coastal; Lester, Charles@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Engel, Jonna@Coastal; Veesart, Pat@Coastal; Haage, Lisa@Coastal; Dixon, John@Coastal
Subject:	Code Enforcement on Sunset Ridgd
Attachments:	Dear CCC staff members.pdf

Please see the attached file containing a letter sent to the Code Enforcement Division of the City of Newport Beach. Please note that subject of the three photos is the large remote bush in the background. It is being systematically denuded. The only purpose for this can be habitat fragmentation.

Please include this document in the staff report regarding Sunset Ridge.

Thank you,
Bill Bennett

Dear CCC staff members,

For your information, please see below the letter I have sent to the City of Newport Beach Code Enforcement Division and the three attached photos. Please include this document and its attendant photos as part of the staff report to the Commission regarding Sunset Ridge.

Thank you,
Bill Bennett
10 Odyssey Court
Newport Beach

cc: California Coastal Commission Members

To: Mr. Matt Cosylyon
Senior Code Enforcement Officer
City of Newport Beach

Dear Mr Cosylyon,

I am writing to you out of concern over the manner in which relevant codes are enforced regarding mowing on the Sunset Ridge property.

Over the last couple of years, the Fire Department has insisted that it has always been necessary to mow the entire property as a measure of fire protection and that the City and the previous owner, California Department of Transportation, have been doing so for many years and it is permitted and required under current City codes.

This issue was specifically addressed at a meeting of the California Coastal Commission on November 2 of last year. I will quote here the relevant Commission staff report summary from that meeting:

> "In sum, staff finds that (1) the subject site supports the existence of major vegetation during the growing season, (2) the City has not submitted substantial evidence to indicate that the subject site does not support the existence of major vegetation, (3) the City has not submitted documentation that shows that it has followed proper nuisance declaration and abatement procedures for weed abatement on the subject property and (4) even if the City properly declared a nuisance on the subject property, the City's alleged weed abatement nuisance activities are not narrowly or carefully tailored to abate the alleged nuisance. Thus, based on evidence currently available to staff, it appears that the City's mowing activities constitute unpermitted development."

In fact, at that very same meeting Coastal Commissioner Steve Blank addressed this issue when speaking to a representative of the City. He said, "[When] total removal is impractical due to size or environmental factors, [an] approved fuel break shall be established". He emphasized that the Coastal Commission feels that there are environmental factors involved and the City has always had the discretion to modify it mowing pattern.

Yet, as seen in the three attached photos taken in February of this year, the City continues to ignore environmental and Coastal Commission concerns. These photos show the before and after condition of the property when the City contracts for "weed abatement" under its current plan. The fact that the City would send a workman to thin, by hand, this remote brush on Sunset Ridge has nothing to do with fuel modification and everything to do with habitat fragmentation.

My question to you is, what is the City doing to comply with Commissioner Blank's request for discretion and the establishment of an approved fuel break and what is the City doing to resolve the issue of unpermitted development as stated in the Commission staff report?

Thank you in advance for your time and attention to this matter.

Yours,

Bill Bennett
10 Odyssey Court
Newport Beach, CA 949 642 8616 shokobennett@gmail.com

May 26, 2012

Mr. John DelArroz
Staff Member, California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Subject: Sunset Ridge Park

Dear Mr. DelArroz,

I live in Newport Crest which is immediately adjacent to Sunset Ridge. I would like to bring to your attention the growth of Encelia that is taking place on Sunset Ridge where the development of the proposed Sunset Ridge Park is planned. Please see enclosed pictures which were taken today. It's my understanding that Encelia is known habitat for the endangered Gnatcatcher.

I have also enclosed pictures of the same area mowed by the City of Newport Beach on February 6, 2012. As you can see in the February 6th photos, the City mowed well in excess of the 100' fire buffer. In just over three months, the Encelia is thriving again!

I also wanted to share with you the conversation that I had with Mike Sinacori, City of Newport Beach staff member, on February 6, 2012, the day of the mowing. Having just finished taking pictures of the mowing, Mr. Sinacori drove into Newport Crest and I stopped him and asked what the rationale was for mowing beyond the 100' fire safety buffer. He said they (I assumed he meant the City of Newport Beach) wanted to get a head start on the mowing. When I asked why, he answered to control the nesting. When I asked about what nesting, he stated the gnatcatcher nesting. I asked him what about the 100' fire safety buffer for fire abatement and he remarked that the conservancy (I assume he meant the Banning Ranch Conservancy) thinks mowing should be within 100' but the City doesn't do that.

Based on this discussion, I am very concerned that fire safety is not the reason for the moving and that one can only conclude that this mowing is a deliberate and systematic effort to eliminate the habitat for the gnatcatcher (and other wildlife such as raptors) living on Sunset Ridge. I am also concerned that the City is going to mow beyond the 100' fire buffer again and destroy all this new Encelia that is sprouting up.

Isn't a Coastal Development Permit needed to conduct moving like this? Is there some sort of enforcement action against the City of Newport Beach that can take place to protect this sensitive habitat from being destroyed again in the future? If so, I would sincerely appreciate your assistance in initiating an enforcement action against the City of Newport Beach.

I would also appreciate if you would include this information in any staff report to the Commission.

Feel free to contact me for any clarification and thank you for your attention to this matter.

Yours truly,

Dorothy Kraus

Dorothy Kraus
10 Wild Court
Newport Beach 92663
949-337-6651
medjkraus@yahoo.com

cc:

Coastal Commissioners
John Dixon
John Delarroz
Jonna Engels
Lisa Haage
Teresa Henry
Charles Lester
Sharlyn Sarb
Karl Schwing
Andrew Willis
Paul Veesart

Enclosures

05.25.2012 14:33

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Del Arroz, John@Coastal

From: Terry Welsh [terrymwelsh@hotmail.com]

Sent: Friday, May 18, 2012 9:24 AM

To: Del Arroz, John@Coastal; Schwing, Karl@Coastal; Sarb, Sherilyn@Coastal; Lester, Charles@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Engel, Jonna@Coastal; Veesart, Pat@Coastal; Haage, Lisa@Coastal; Dixon, John@Coastal

Subject: Sunset Ridge

Attachments: Mowing on Sunset Ridge.pdf

Please read, and make part of the staff report for Sunset Ridge Park, the attached report on the City of Newport Beach's mowing of Encelia scrub.

Thank you,

Terry Welsh

Mowing of Encelia scrub on Sunset Ridge

Mowing occurring in March, 2012

Newport Beach claims that it must mow all of Sunset Ridge, even the areas of Encelia scrub, for fire safety. In fact, the real reason Newport Beach mows all of Sunset Ridge (beyond the 100 foot "fire break" described in the City's Fire Code), is to prevent the areas of Enelia scrub from becoming well-established and becoming nesting areas for the California Gnatcatcher.

In other areas of Newport Beach where residences are next to potentially flammable vegetation, a 100 foot "fire break" (as recommended in the City's Fire Code) is used.

Area of Newport Beach (not Sunset Ridge) with 100 foot "fire break"

The irony is that *Encelia californica,* which is mowed up to 570 feet away from nearby residences on Sunset Ridge, is on the City's list of Fire Resistive Plants.

Immediately south of Newport Beach is Laguna Beach, a community which has had terrible experiences with wildfires. These days, Laguna Beach strictly enforces clearing of 100 feet of vegetation, as this is the required adequate and safe "fire break".

100 foot "fire break" in Laguna Beach

Newport Beach purchased Sunset Ridge from Caltrans in 2006. In the early years, Newport Beach appeared to recognize and enforce a 100 foot "fire break" on Sunset Ridge as at least two of the work contracts from this period (between the City and the contracted mower) clearly describe limiting the mowing to 100 feet.

Photo from 2007 demonstrating mowing of 100 foot "fire break"

However, since then, the mowing has involved all of Sunset Ridge, including the areas of Encelia scrub.

A 2009 payment authorization to the contracted mower clearly describes the mowing for "Park Development Clearing" rather than "Fire Safety"

PAYMENT AUTHORIZATION

CITY OF NEWPORT BEACH

COPY

Demand of: Southland Landscape

Address: P.O. Box 11437
Costa Mesa, Ca. 92627

Date: 07/02/2009

Dept. General Services

Amount: $9,440.00

Item of Expenditure	Invoice No.	Budget No.	Amount
Park development clearing at Sunset Ridge Park	GS10087	7412-C5100515	$9,440.00
TOTAL			$9,440.00

Comments/Special Instructions: FY 08/09

Work performed as per Mike Sinacori's request.

Department Approval: _____ **Date:** _____

Fiscal Svcs Manager Approval: _____ **Date:** _____

Admin Svc Director Approval: _____ **Date:** _____

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Also, an email from early 2010, obtained by the Freedom of Information Act, suggests some uncertainly persisted between the City and the contracted mower about how much to mow. It is clear the City's intention is to mow all of Sunset Ridge

The email refers to the Coastal Commission, but no further details are given.

From: Gamble, Ron
To: Bunting, Steve
Sent: Tue Jun 29 17:33:32 2010
Subject: RE: Annual Weed abatement; Sunset Ridge View Park

Steve, Mike Sinacori called me about 20 minutes ago and was concerned about the abatement listed below. He said that Barron told him you instructed to cut from the residences wall to 100ft out. Mike believed that the whole field was being cut to the fences but not the slope because of erosion. He says something about the Coastal Commission and wanted me to email you tonight so that I can give him an answer tomorrow. When I was out there with you, I was under the impression that the whole field was being cut to the culvert and before the slopes and all the way to the wall. Ron

In conclusion, the evidence suggests the Encelia scrub on Sunset Ridge is not mowed for fire safety, but rather the Encelia scrub is mowed to facilitate the construction of portions of Sunset Ridge Park.

Terry Welsh

Banning Ranch Conservancy

Del Arroz, John@Coastal

From: Terry Welsh [terrymwelsh@hotmail.com]

Sent: Thursday, May 17, 2012 10:55 PM

To: Del Arroz, John@Coastal; Schwing, Karl@Coastal; Lester, Charles@Coastal; Sarb, Sherilyn@Coastal; Henry, Teresa@Coastal

Subject: FW: Sunset Ridge Park alternative

Attachments: Alternative Sunset Ridge Park.pdf

Please make this alternative design for Sunset Ridge Park part of the staff report.

Thank you,

Terry Welsh

From: terrymwelsh@hotmail.com
To: dkiff@newportbeachca.gov; dwebb@city.newport-beach.ca.us; gardnerncy@aol.com; jdelarroz@coastal.ca.gov; kschwing@coastal.ca.gov; ssarb@coastal.ca.gov; thenry@coastal.ca.gov; clester@coastal.ca.gov; jengel@coastal.ca.gov; christine_medak@fws.gov; jdixon@coastal.ca.gov
Subject: Sunset Ridge Park alternative
Date: Fri, 11 May 2012 09:09:47 -0700

Attached is a description of an alternative design for Sunset Ridge Park and an explaination why it would benefit the City and still provide for two soccer fields and one baseball field.

Terry Welsh
Banning Ranch Conservancy

Five reasons why the City of Newport Beach would benefit by protecting the Encelia scrub on Sunset Ridge and adjusting the future Sunset Ridge Park accordingly:

1. Encelia scrub is a preferred habitat for the Federally-listed California Gnatcatcher, a threatened species.

The entire Sunset Ridge is critical habitat for the Federally-listed California Gnatcatcher. Encelia grows on the southern half of Sunset Ridge. Encelia is a predominant component of coastal sage scrub (CSS). CSS has been determined by the US Fish and Wildlife Service (USFWS) to be essential for population growth and normal behavior of the California Gnatcatcher, and CSS is considered to be a Primary Constituent Element (PCE) essential for the conservation of the species.

2. The Coastal Land Use Plan (CLUP) for the City of Newport Beach affords special protection to CSS.

The City of Newport Beach does not have a certified Local Coastal Plan, but the City of Newport Beach does have a certified CLUP. The City of Newport Beach's CLUP states:

"...where CSS 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 (emphasis added), it meets the definition of ESHA because of its especially valuable role in the ecosystem."

As the Newport Beach CLUP considers CSS to be Environmentally Sensitive Habitat Area (ESHA) *if it has the potential to support the California Gnatcatcher*, such areas are protected from most development by the California Coastal Act.

"30240. (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."

3. Fire safety will be maintained for the surrounding residences by protecting the areas of Enceila scrub.

Section 4903.2 of the City's Fire Code requires clearing of *"All shrubs and bushes located within 100 feet (30.48 m) of any portion of a building...."*

The areas of Encelia scrub on Sunset Ridge are well outside the necessary 100 foot "fire break" (required by the City of Newport Beach's Fire Code) surrounding the adjacent residences (Newport Crest complex).

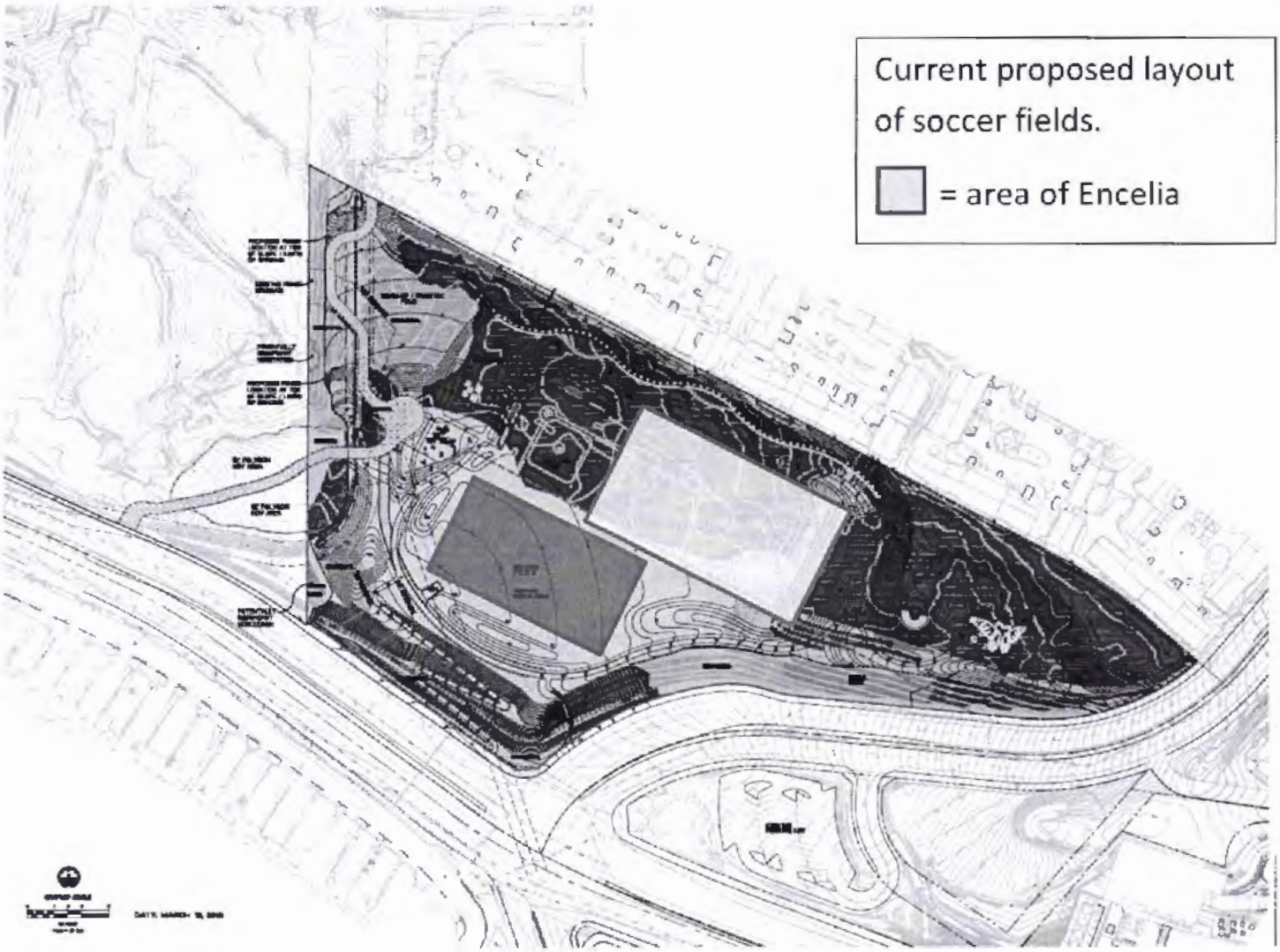
Even if the Encelia were within the 100 foot "fire break", the City of Newport Beach's Fire Code specifically excludes fire-resistive plants from obligatory clearing.

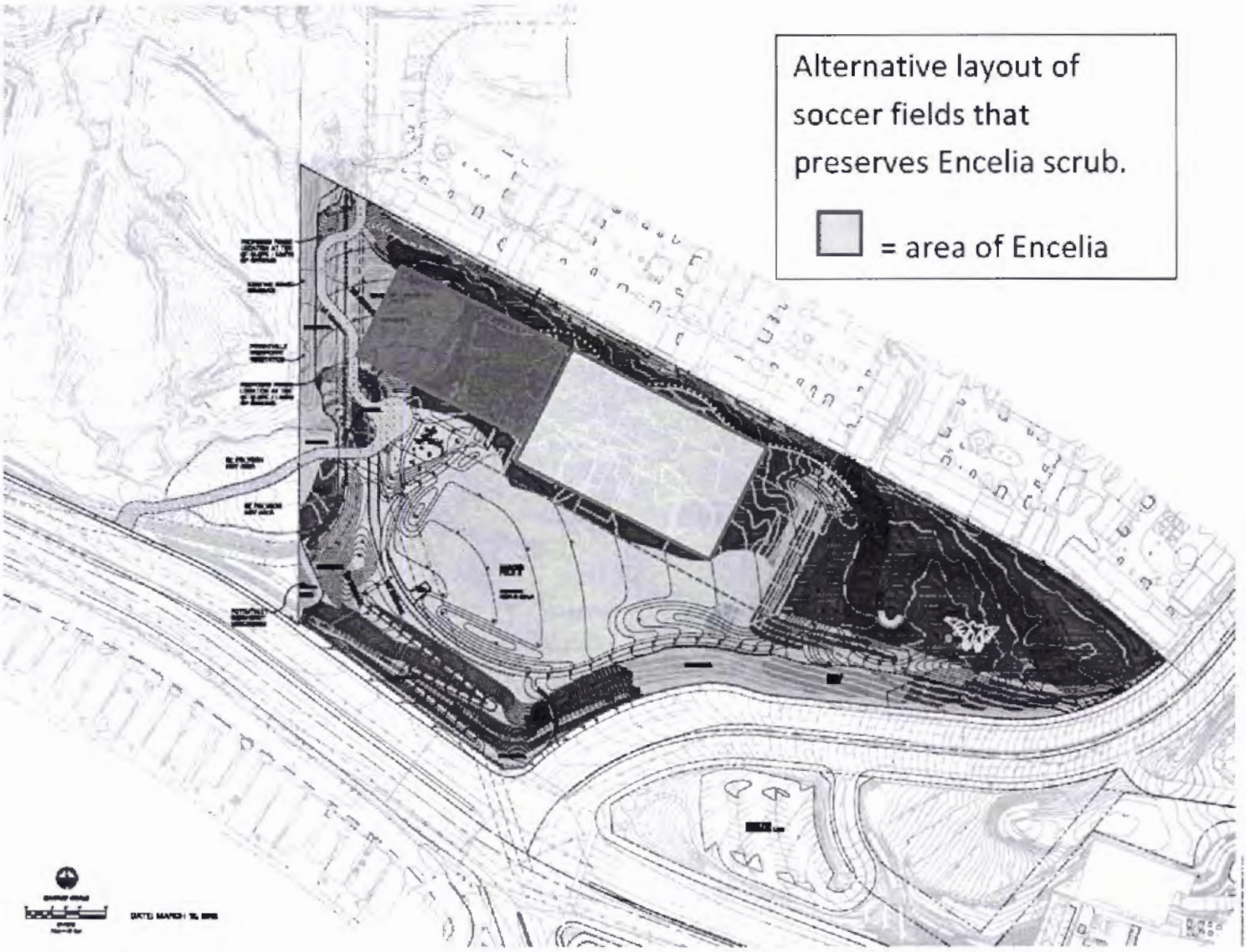
"All shrubs and bushes that are listed on the fire resistive plant list need not be separated if properly maintained as determined by the fire code official."

Encelia is listed on the City's Fire Resistive Plant List.

4. The City of Newport Beach can still have an active sports component on Sunset Ridge Park, while protecting the areas of Encelia scrub.

There is clearly sufficient room on Sunset Ridge to construct at least one soccer field, if not two soccer fields, and still avoid the areas of Encelia scrub.





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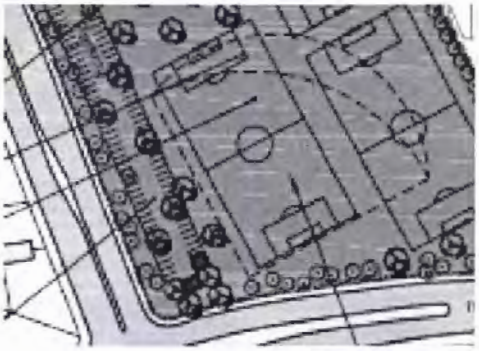
5. The City can still have two soccer fields and one baseball field.

By utilizing other nearby areas, such as portions of Banning Ranch near 17th Street (less than one mile away), the City can construct the sports fields that might be displaced by preserving Sunset Ridge's Encelia scrub (i.e. the baseball field and possibly one soccer field). The City's General Plan allows for an active sports component on Banning Ranch ***whether Banning Ranch is preserved or developed.*** As far back as 2007, former Newport Beach mayor/councilperson Don Webb has asked the Banning Ranch Conservancy about the possibility of sports fields on a future preserved Banning Ranch. The Banning Ranch Conservancy has always responded favorably.

Should preservation efforts fail and Banning Ranch be developed, ***the development plan calls for an active park with both a soccer and baseball component.***



Proposed Banning Ranch development includes a baseball and soccer component (from draft EIR).

The City will be able to make up for the loss of the baseball field (and possibly soccer field) on Sunset Ridge by building them on Banning Ranch, ***<u>whether Banning Ranch is preserved or developed</u>***.

In summary, modifying the layout of the soccer fields to avoid the Encelia scrub, and relocating the baseball field to Banning Ranch, is a "win-win" solution that is good for the City of Newport Beach, as well as consistent with both the Newport Beach CLUP <u>and</u> the Coastal Act.

Terry Welsh
President, Banning Ranch Conservancy

Del Arroz, John@Coastal

From: Mary Chabre [mchabre@adelphia.net]
Sent: Tuesday, May 29, 2012 11:14 AM
To: Del Arroz, John@Coastal
Subject: Newport Beach application --- Sunset Park

Gentlemen,

Please confirm the City of Newport Beach Sunset Park application. I have lived on the Balboa Peninsula for 25 years and during that time the locale community has been underserved with recreational parks for youth activities.
Thank you for your positive vote.

Gus Chabre
1130 E. Balboa Blvd.
Balboa, CA 92661

COASTAL COMMISSION

EXHIBIT # 6
PAGE 1 OF 1

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*).

Encelia Scrub

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).

Disturbed Mulefat/Goldenbush Scrub

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).

Non-native Grasslands

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.

ESHA Determination

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.

Appendix 1

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
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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,

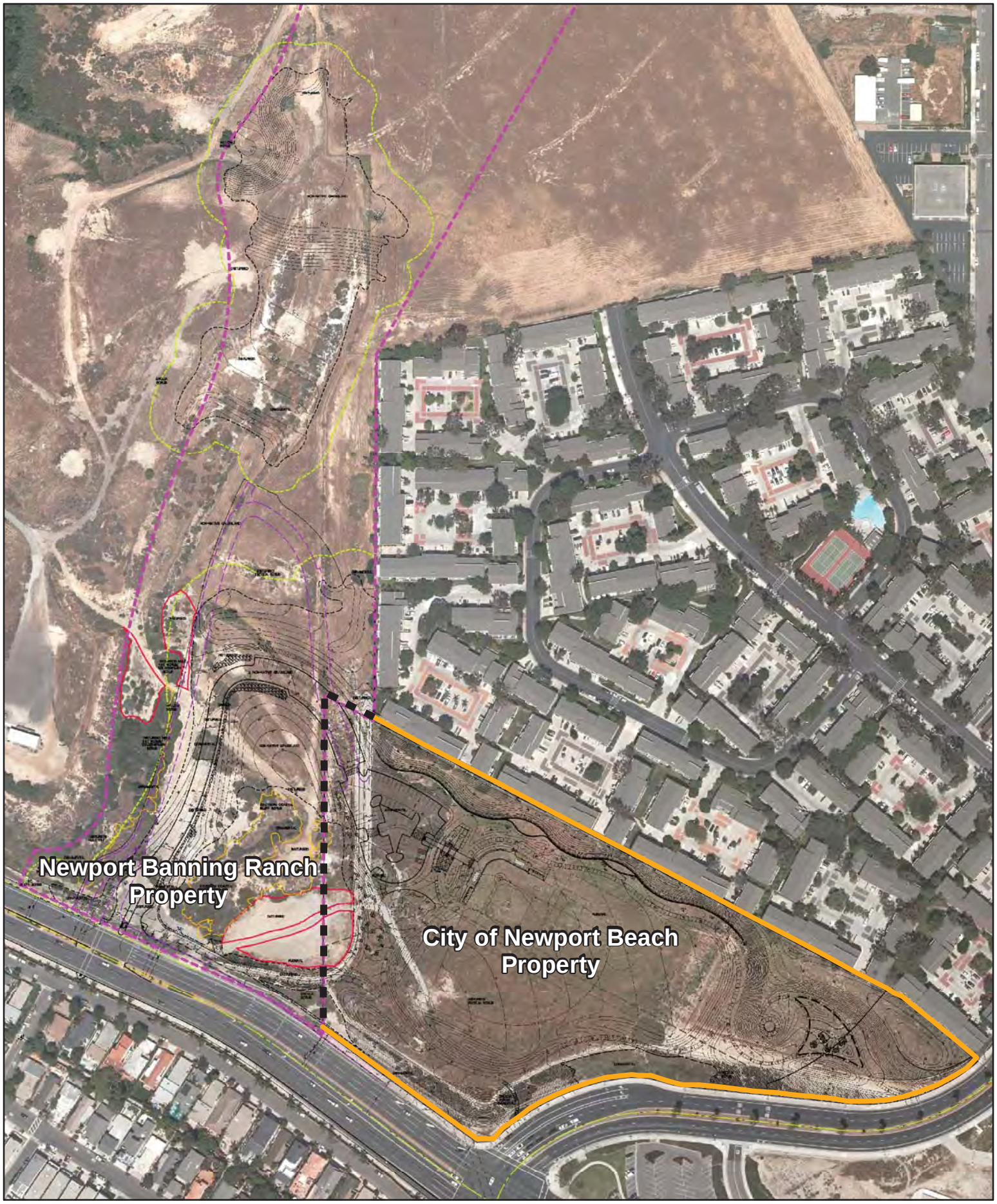
These are the recommendations I provided to Tony following our site Visit on June 14. The following week, I again visited the site with Mike Mohler, George, Mike Sincacore, Ann Johnston and another biologist from BonTerra(don't remember his name). While reviewing the potential revised alignment of the 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.

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

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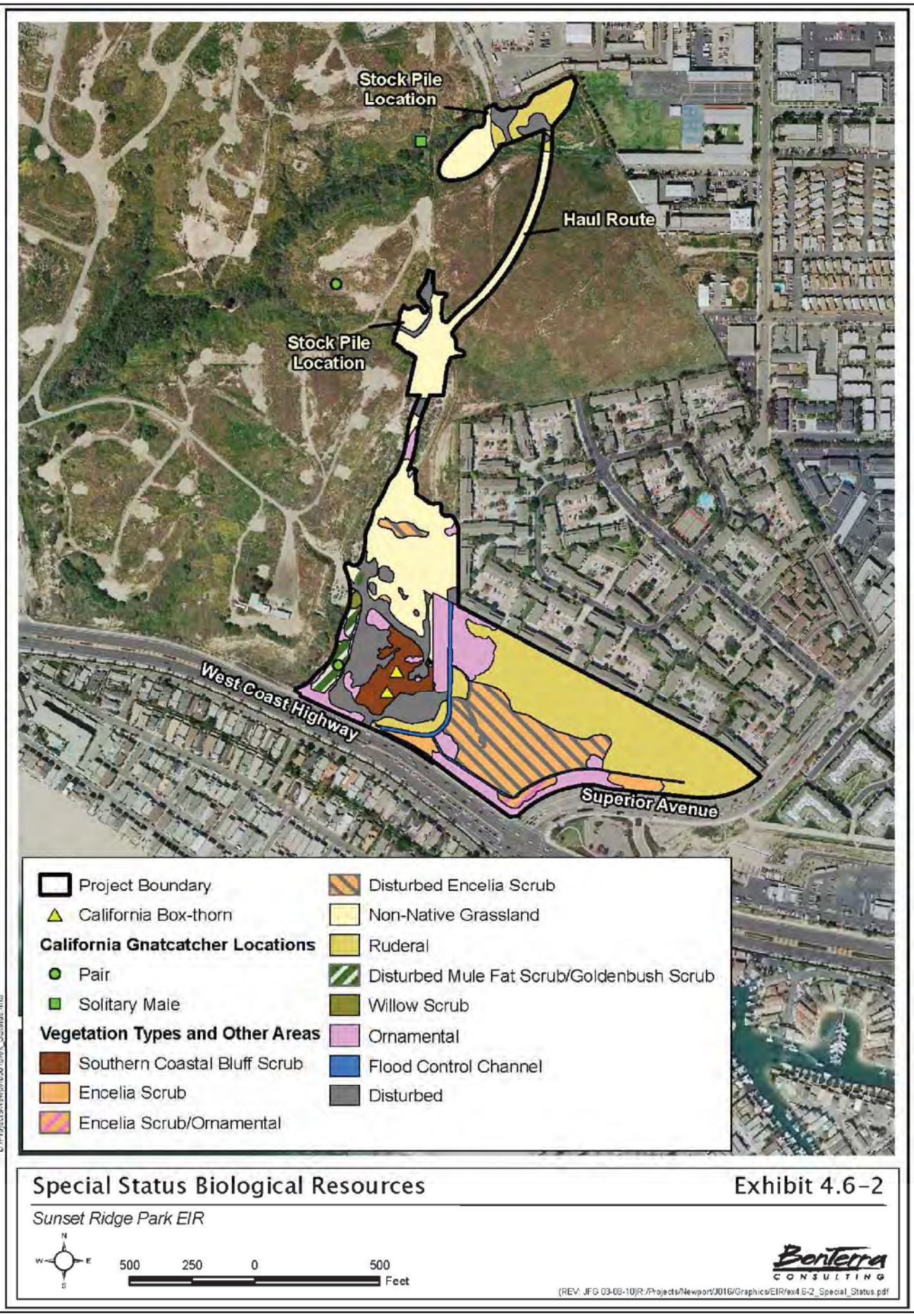
Figure 2

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/J0016/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.

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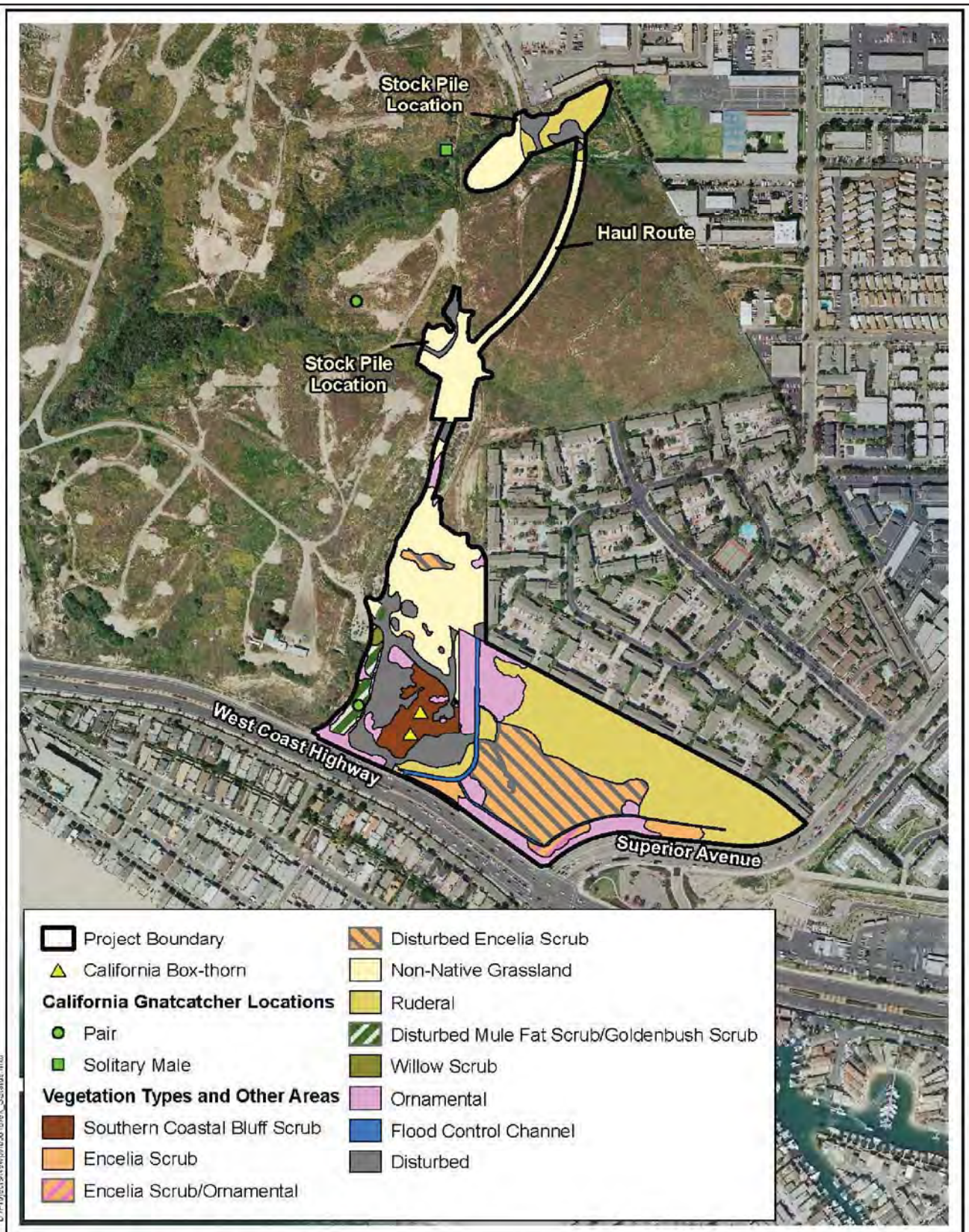
Figure 3

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/J0016/Graphics/EIR/ex4.6-2_Special_Status.pdf

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All Locations Approximate.
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Source: BonTerra Consulting.

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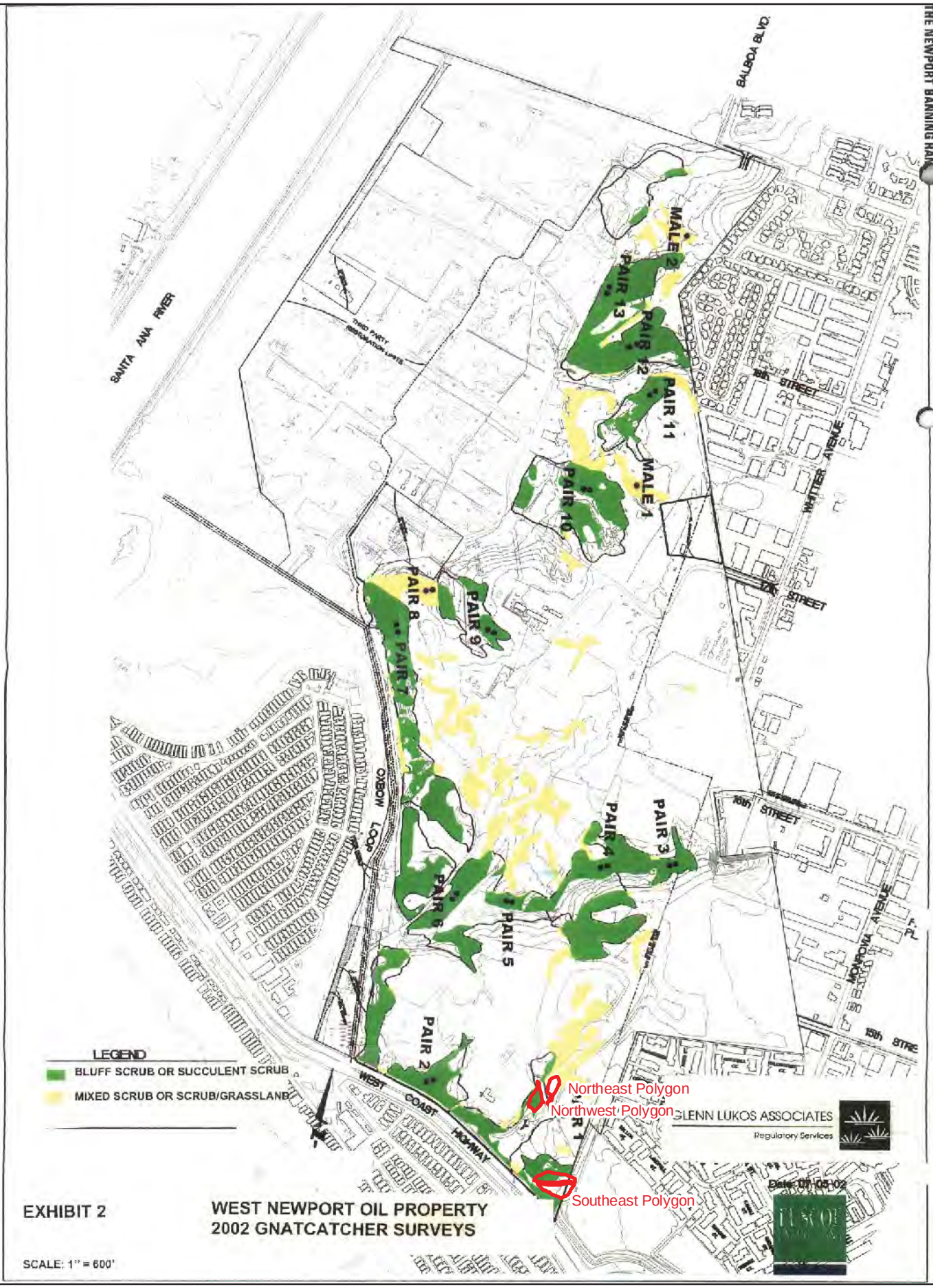
Figure 4



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Not To Scale.
All Locations Approximate.
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Figure 5

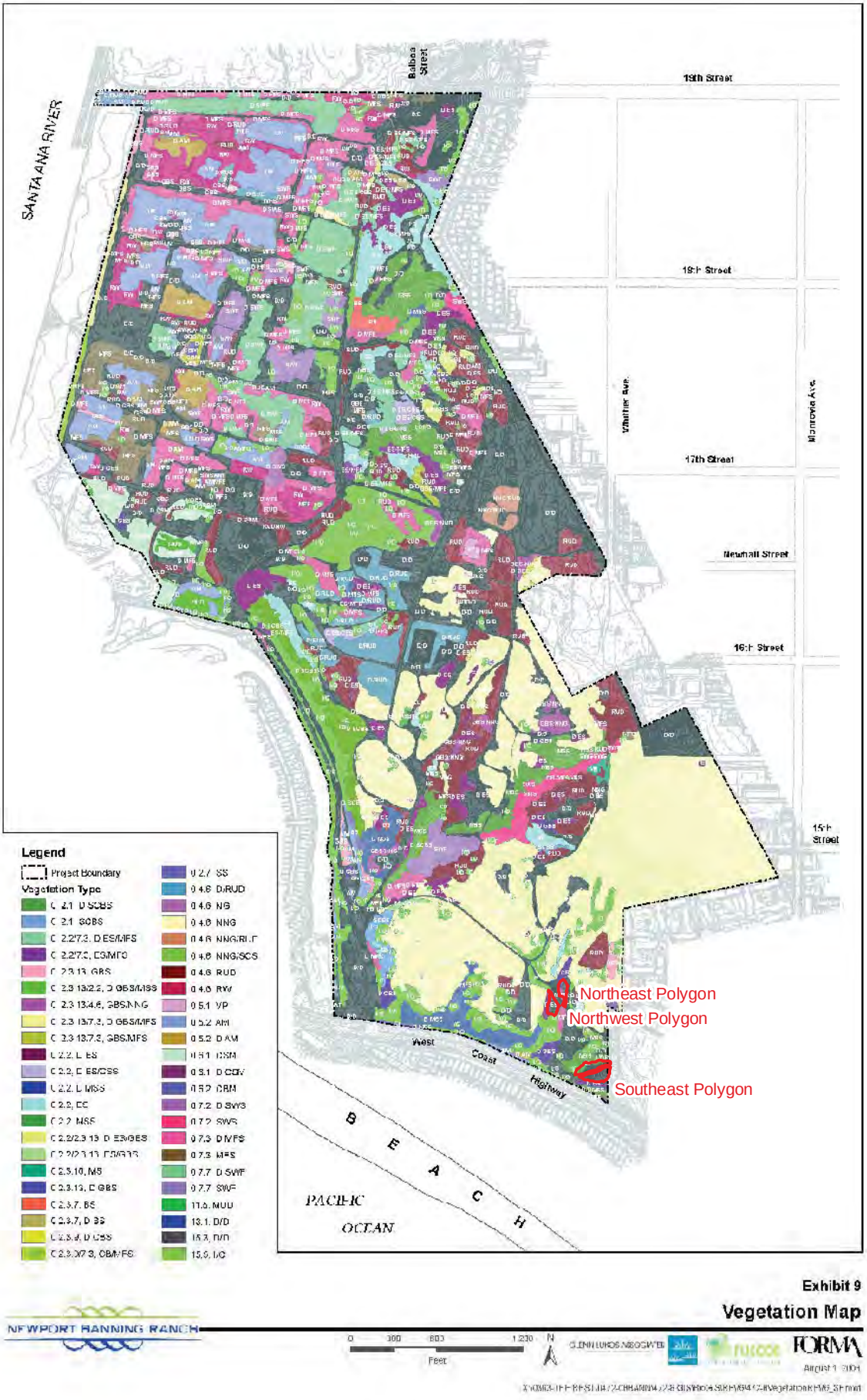

Exhibit 9

Vegetation Map

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

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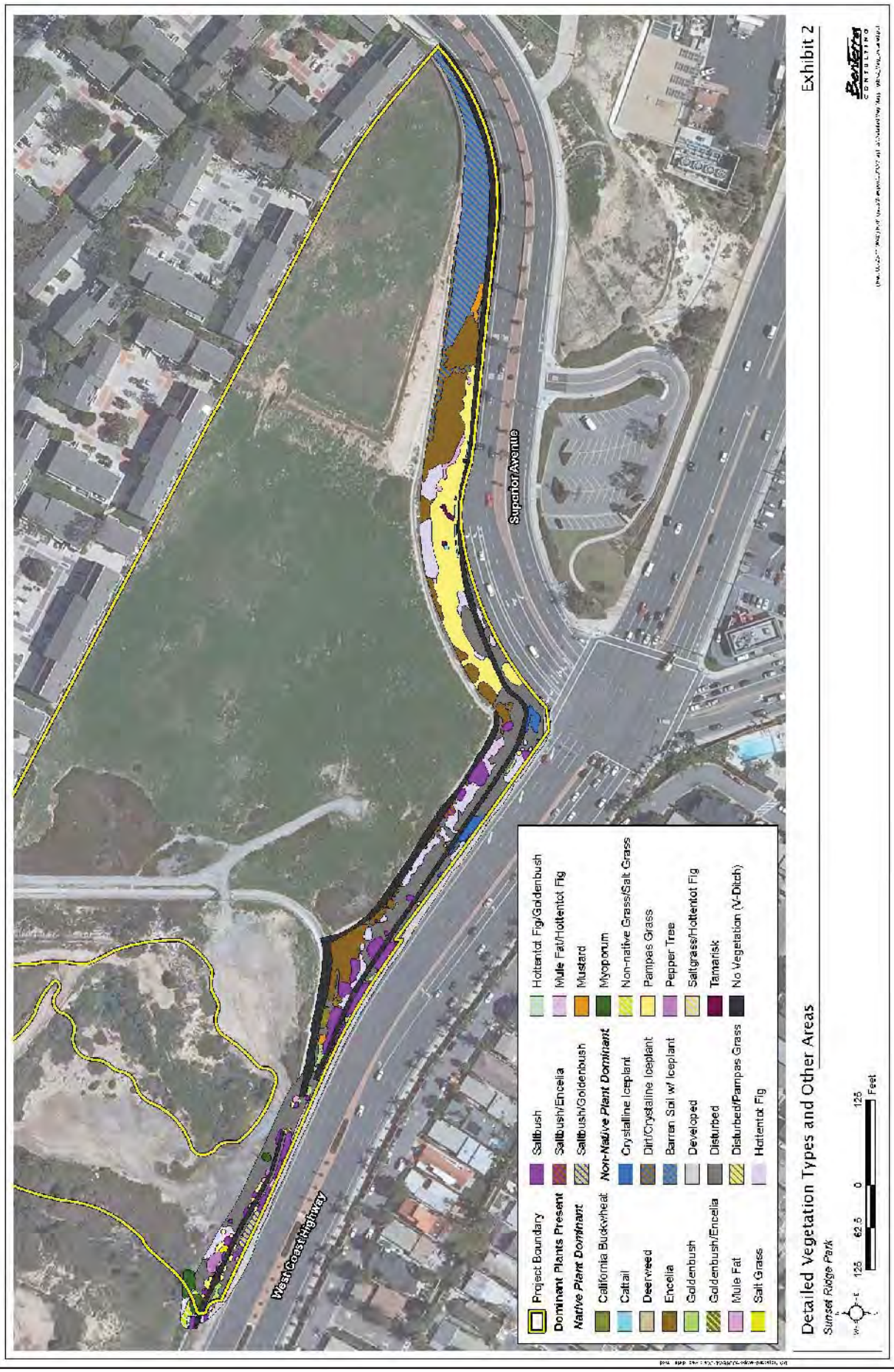
Figure 6

DSM 9/11



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All Locations Approximate.
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Source: BonTerra Consulting.

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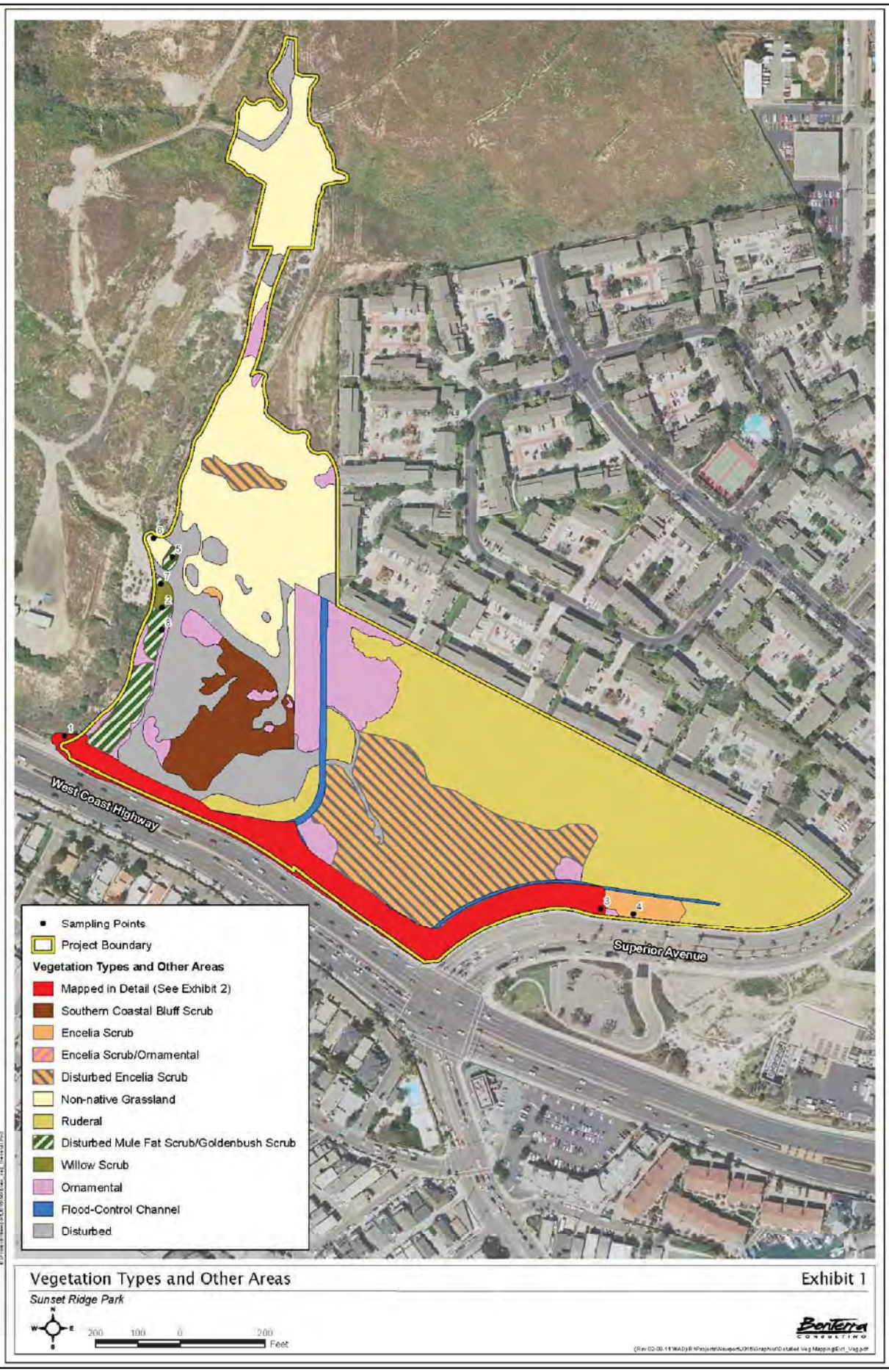
Figure 7



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All Locations Approximate.
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Source: BonTerra Consulting.

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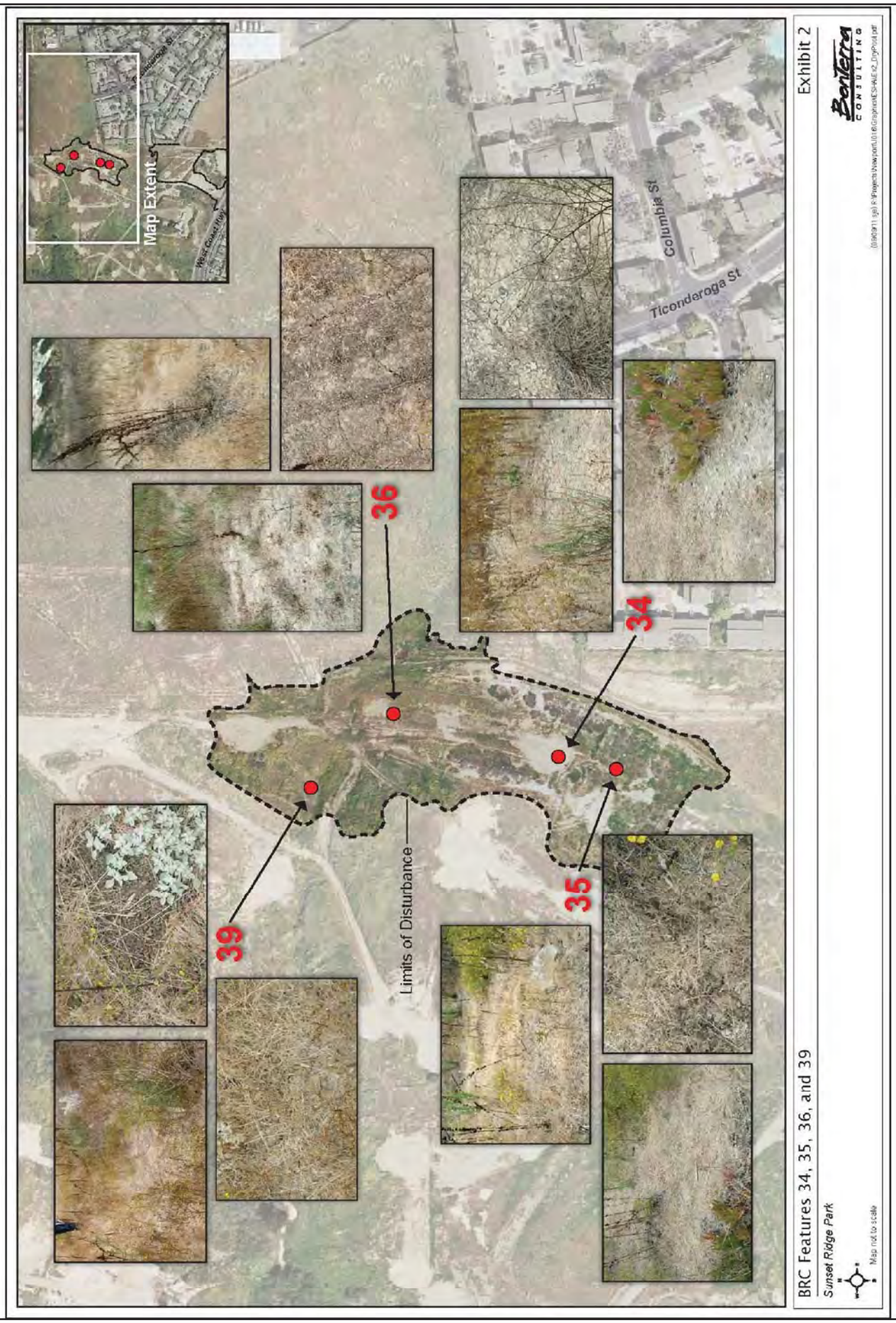
Figure 8



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

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Figure 9

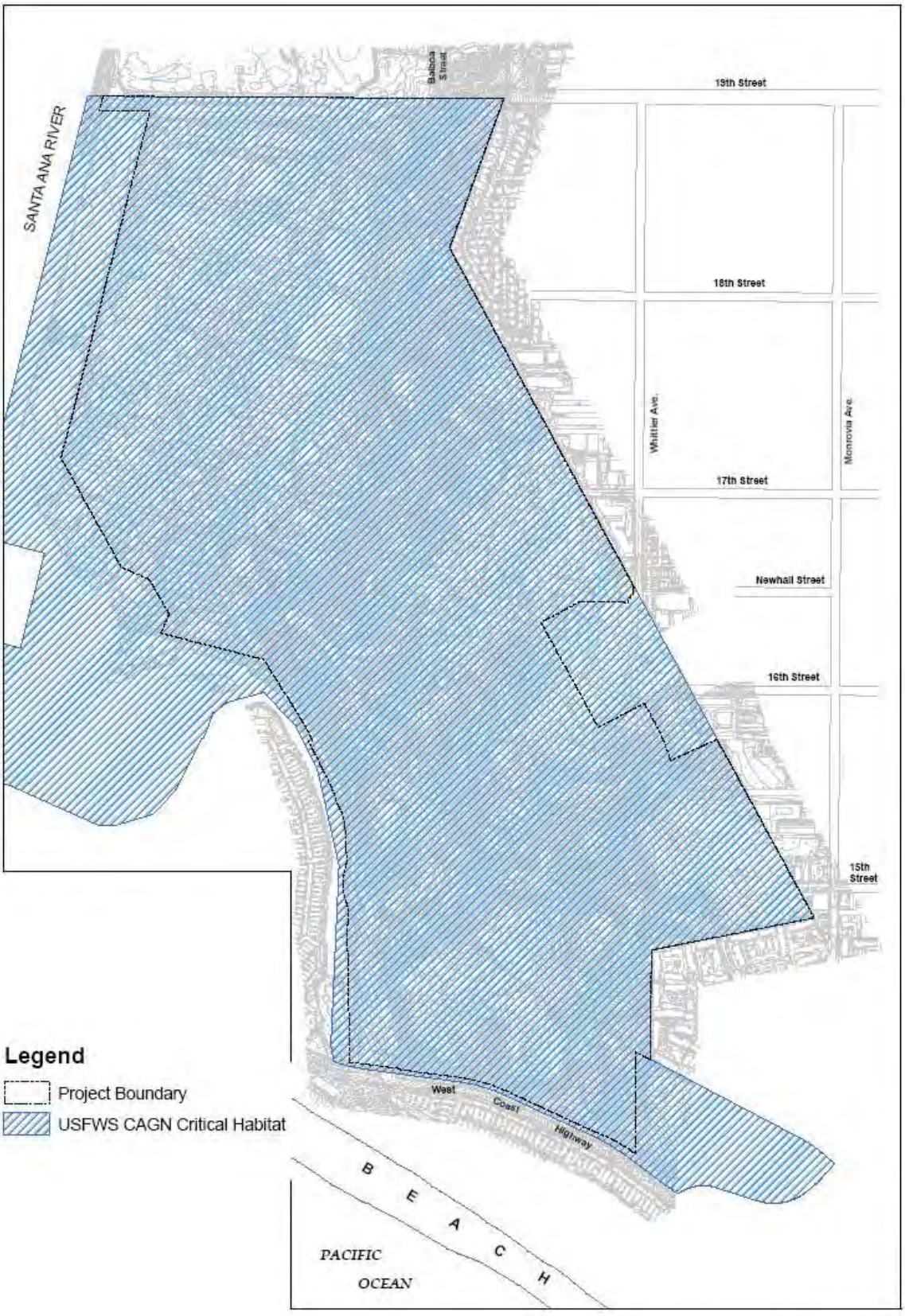

Exhibit 13

California Gnatcatcher Critical Habitat Unit Map

NEWPORT BANNING RANCH

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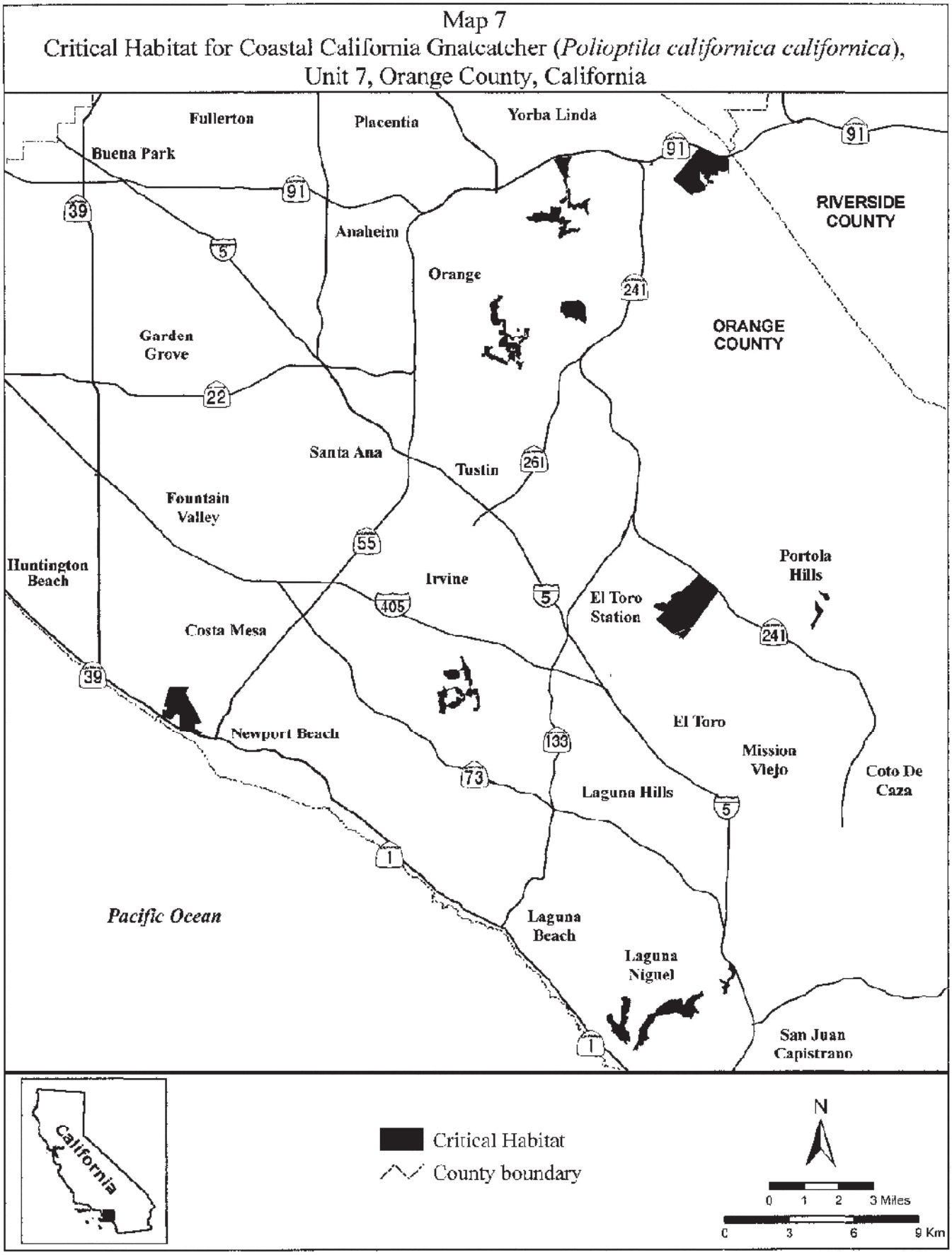
CALIFORNIA COASTAL COMMISSION

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
Fullerton
Placentia
Yorba Linda
Buena Park
Anaheim
Orange
RIVERSIDE COUNTY
ORANGE COUNTY
Garden Grove
Santa Ana
Tustin
Fountain Valley
Huntington Beach
Irvine
Portola Hills
El Toro Station
Costa Mesa
Newport Beach
El Toro
Mission Viejo
Coto De Caza
Laguna Hills
Pacific Ocean
Laguna Beach
Laguna Niguel
San Juan Capistrano
91
39
5
22
55
405
241
261
133
73
1
California
Critical Habitat
County boundary
N
0 1 2 3 Miles
0 3 6 9 Km

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

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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, Evergreen, Baccharis (mulefat scrub) (PSEB)
- Ruderal Scrub (RS)

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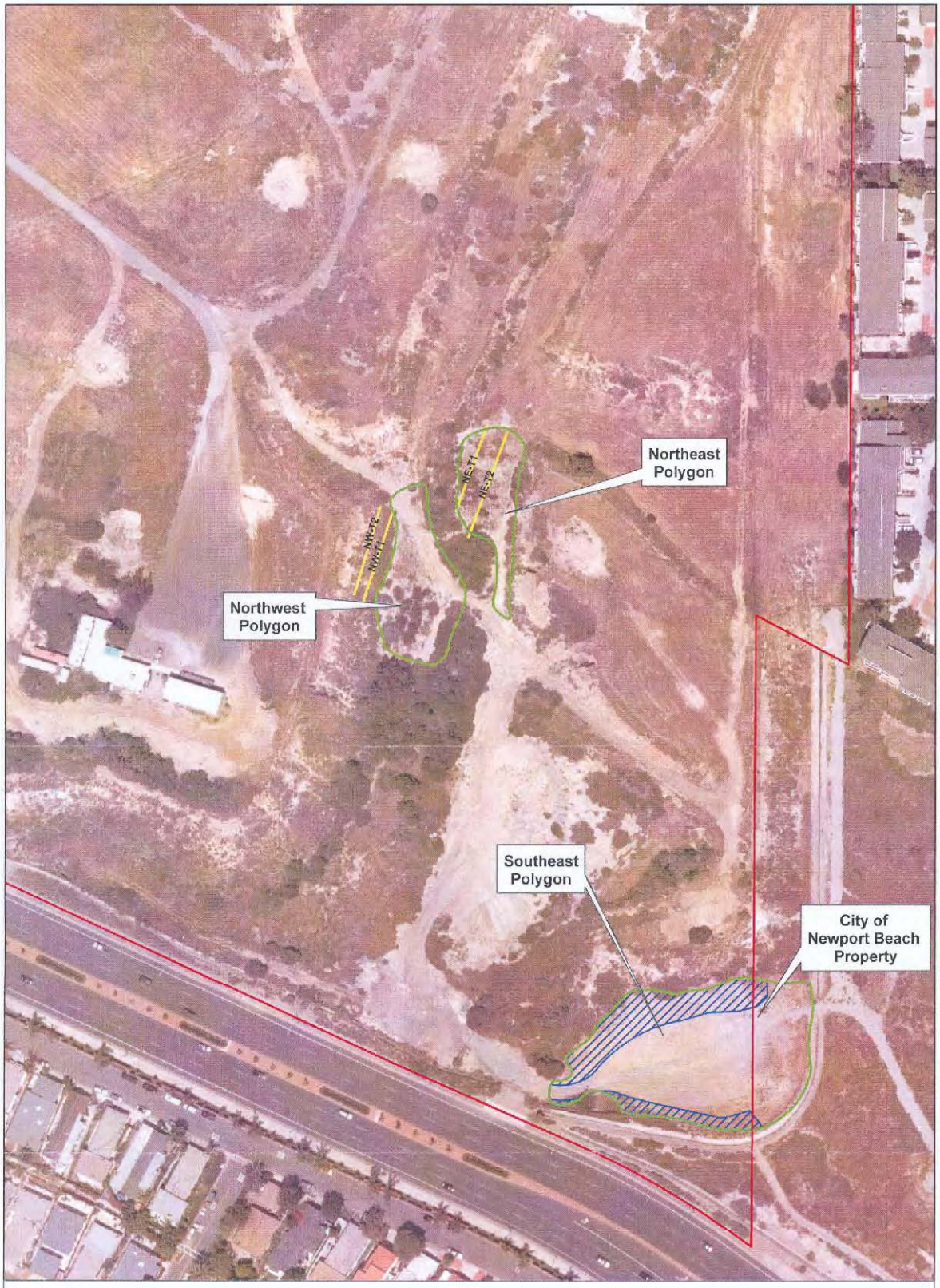
Technical Services Division - GIS Unit

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

Figure 13

DSM 9/11



CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

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

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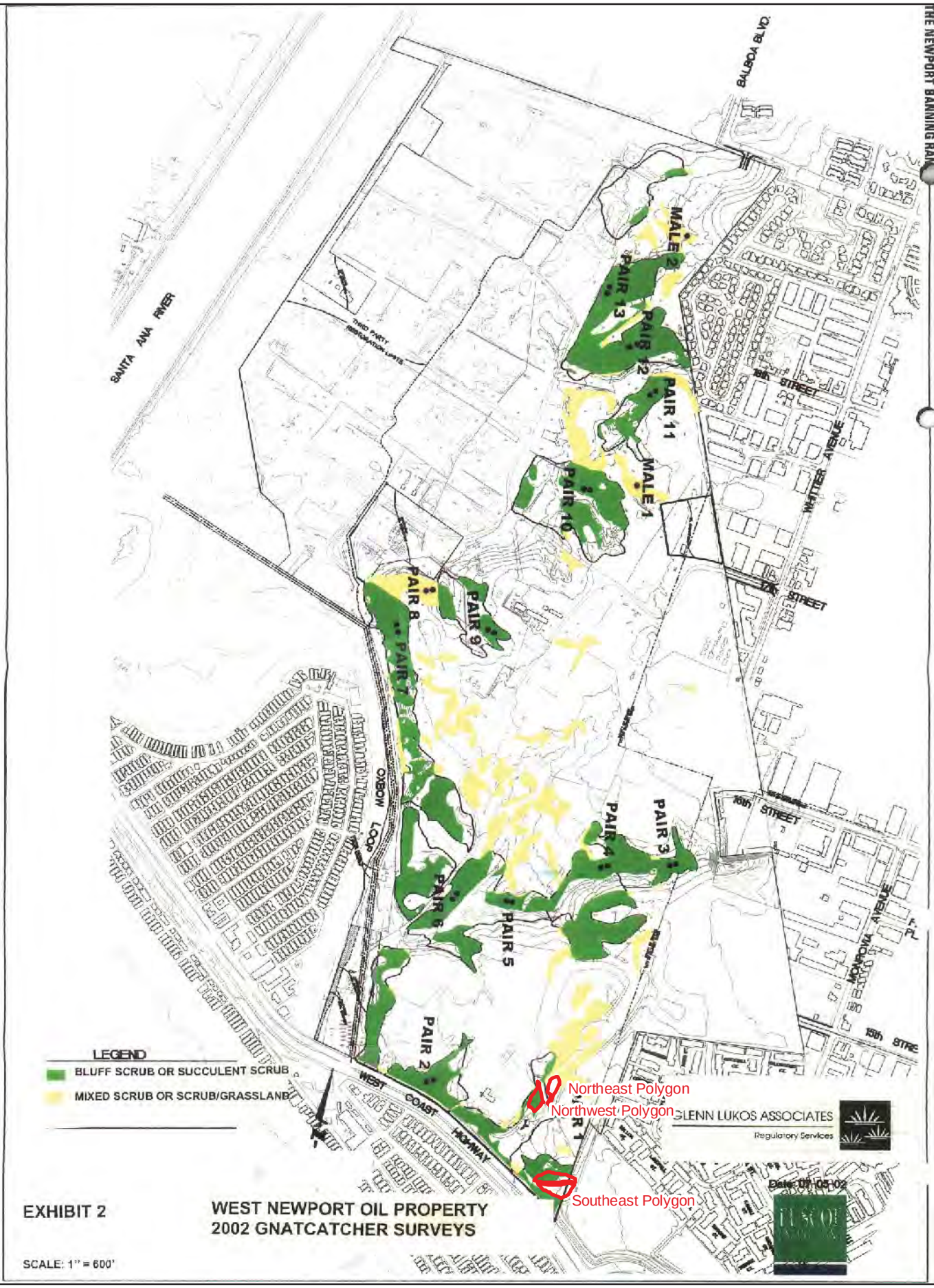
Figure 14

DSM 9/11



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Technical Services Division - GIS Unit

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

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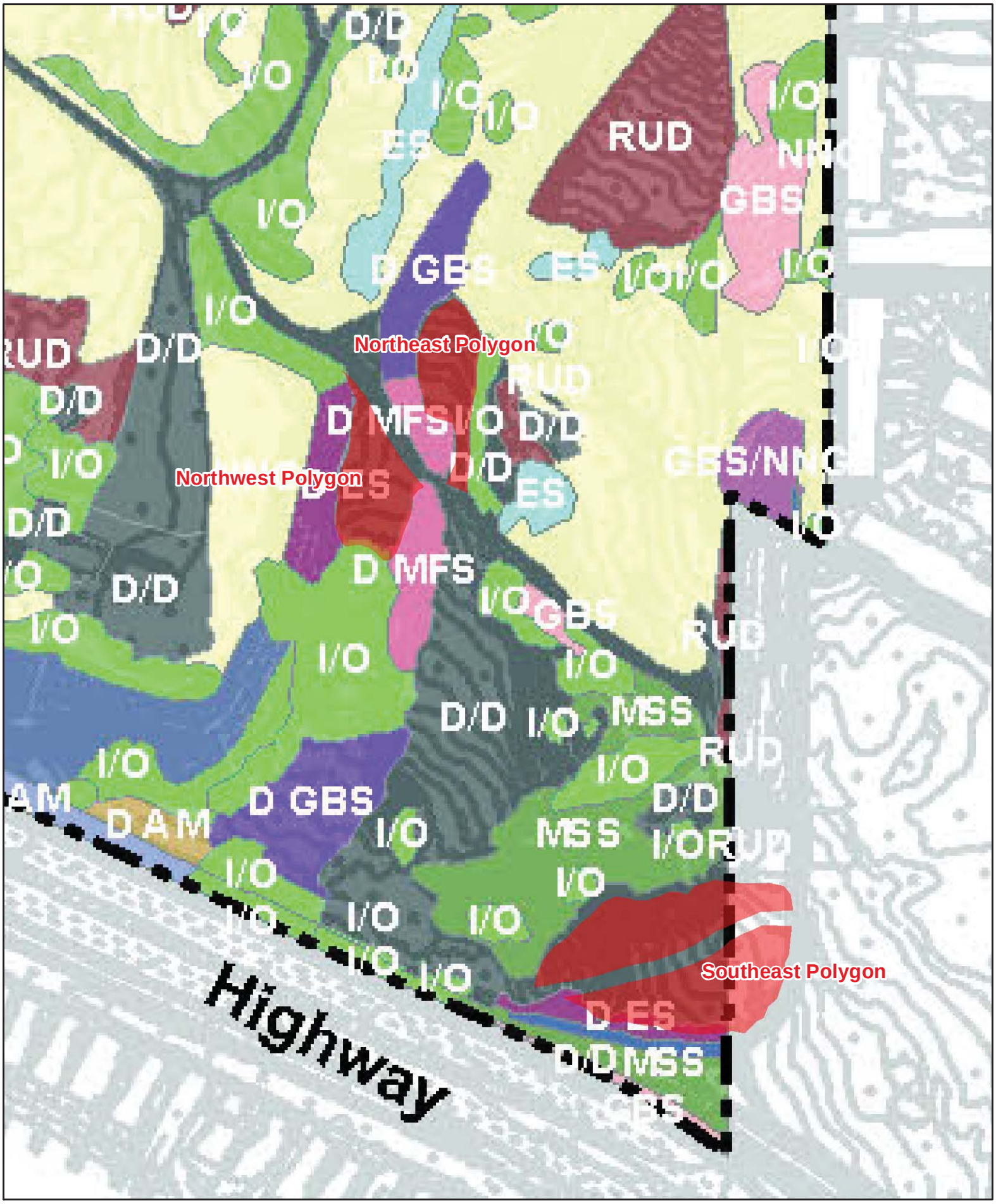
Figure 15



CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

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

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Figure 16
5-11-302 Exhibit 7 Page 49 of 72

DSM 9/11

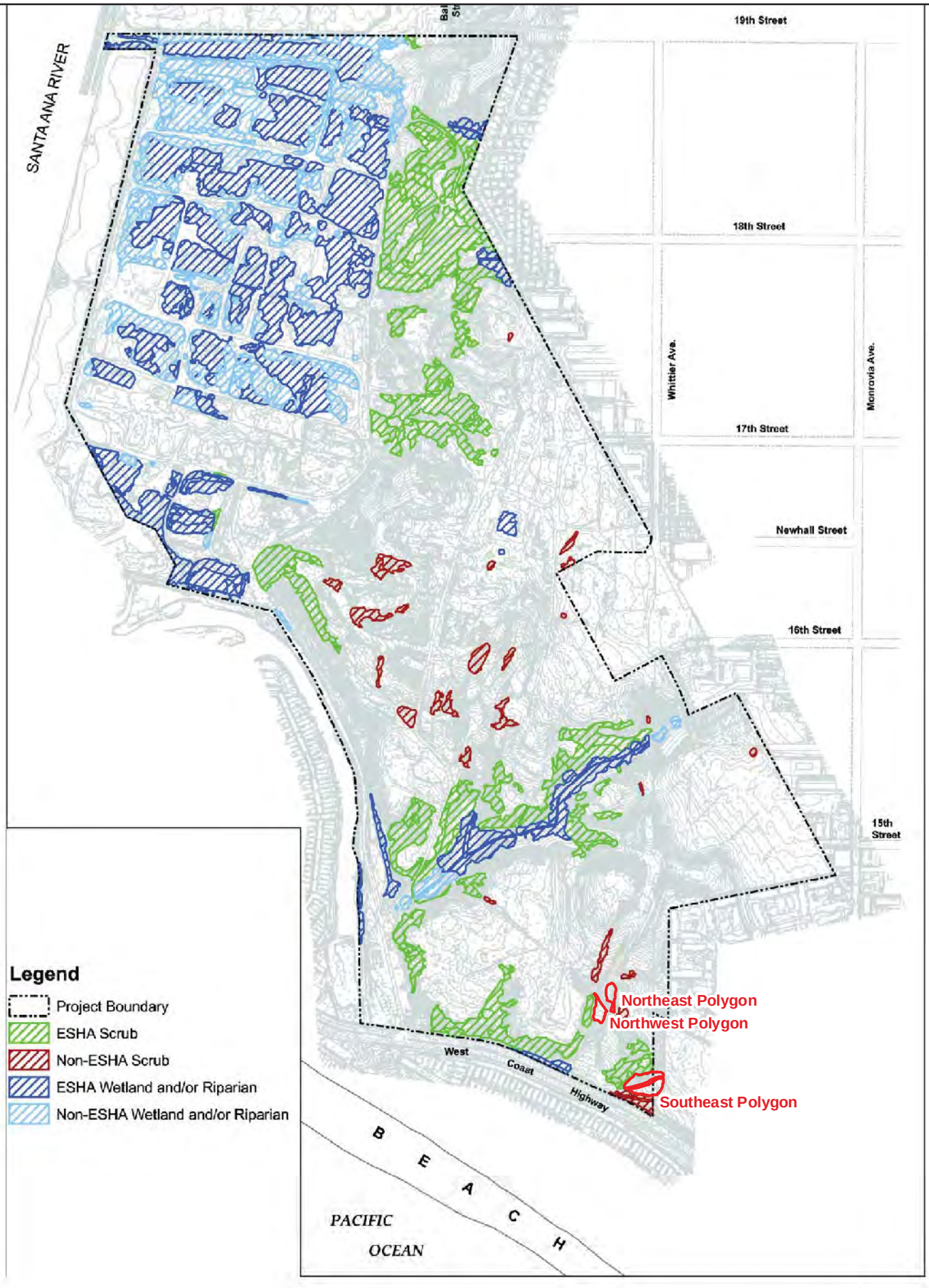


Exhibit 12

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

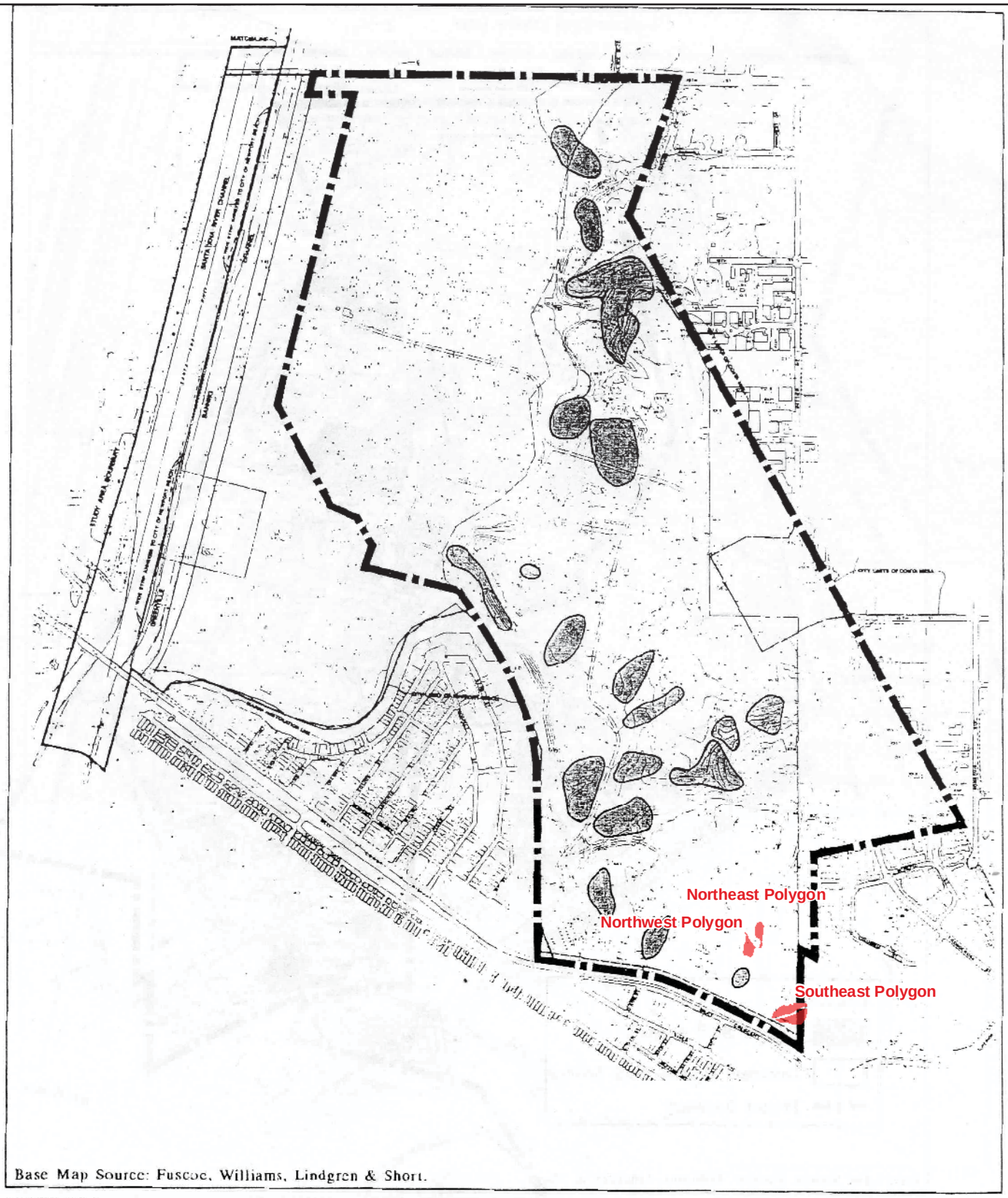
DSM 9/11

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

5-11-302 Exhibit 7 Page 52 of 72

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
5-11-302 Exhibit 7 Page 53 of 72

DSM 9/11

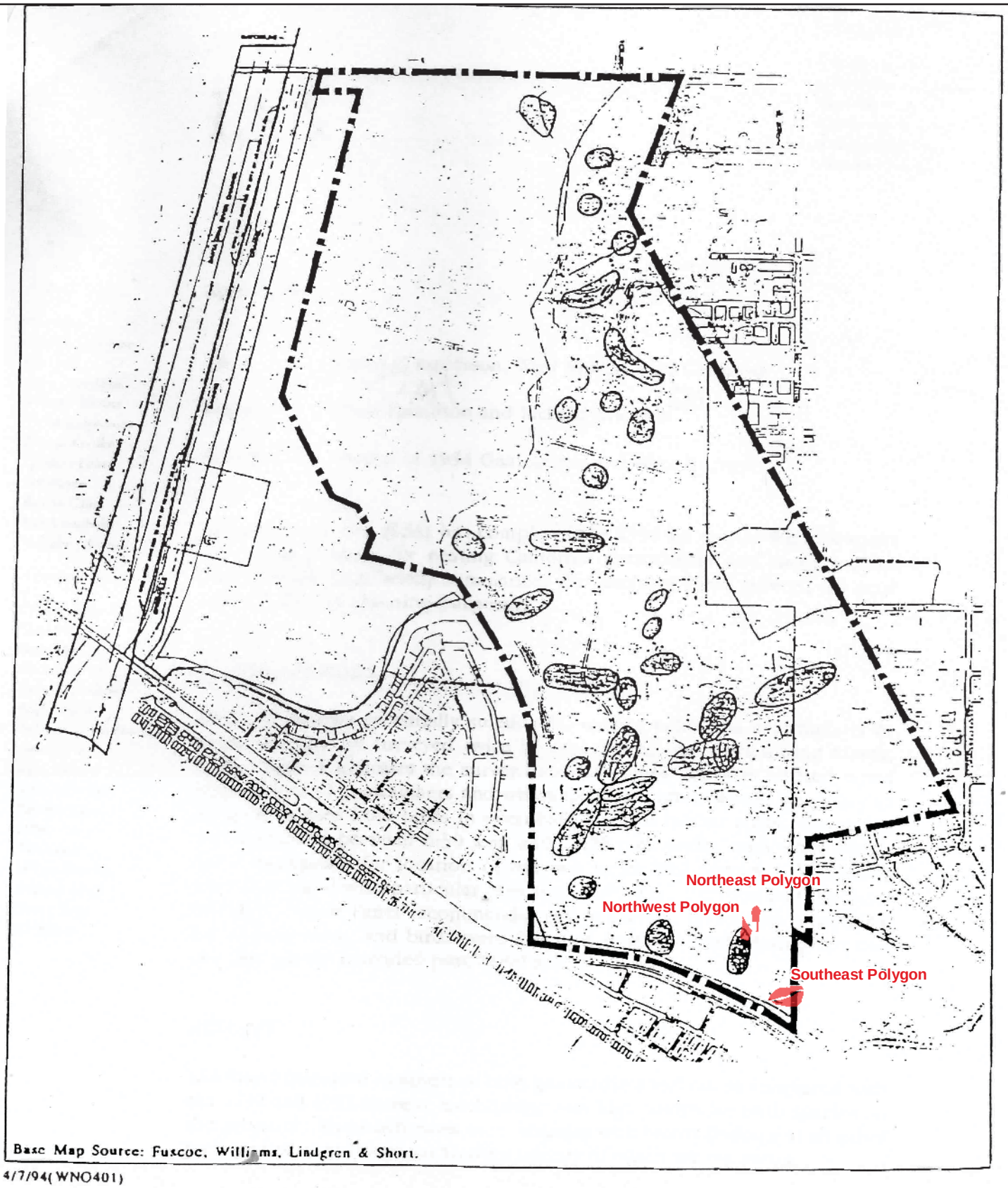
CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

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

N

Figure 20
5-11-302 Exhibit 7 Page 54 of 72

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

Figure 21a
5-11-302 Exhibit 7 Page 55 of 72
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
5-11-302 Exhibit 7 Page 56 of 72

DSM 9/11

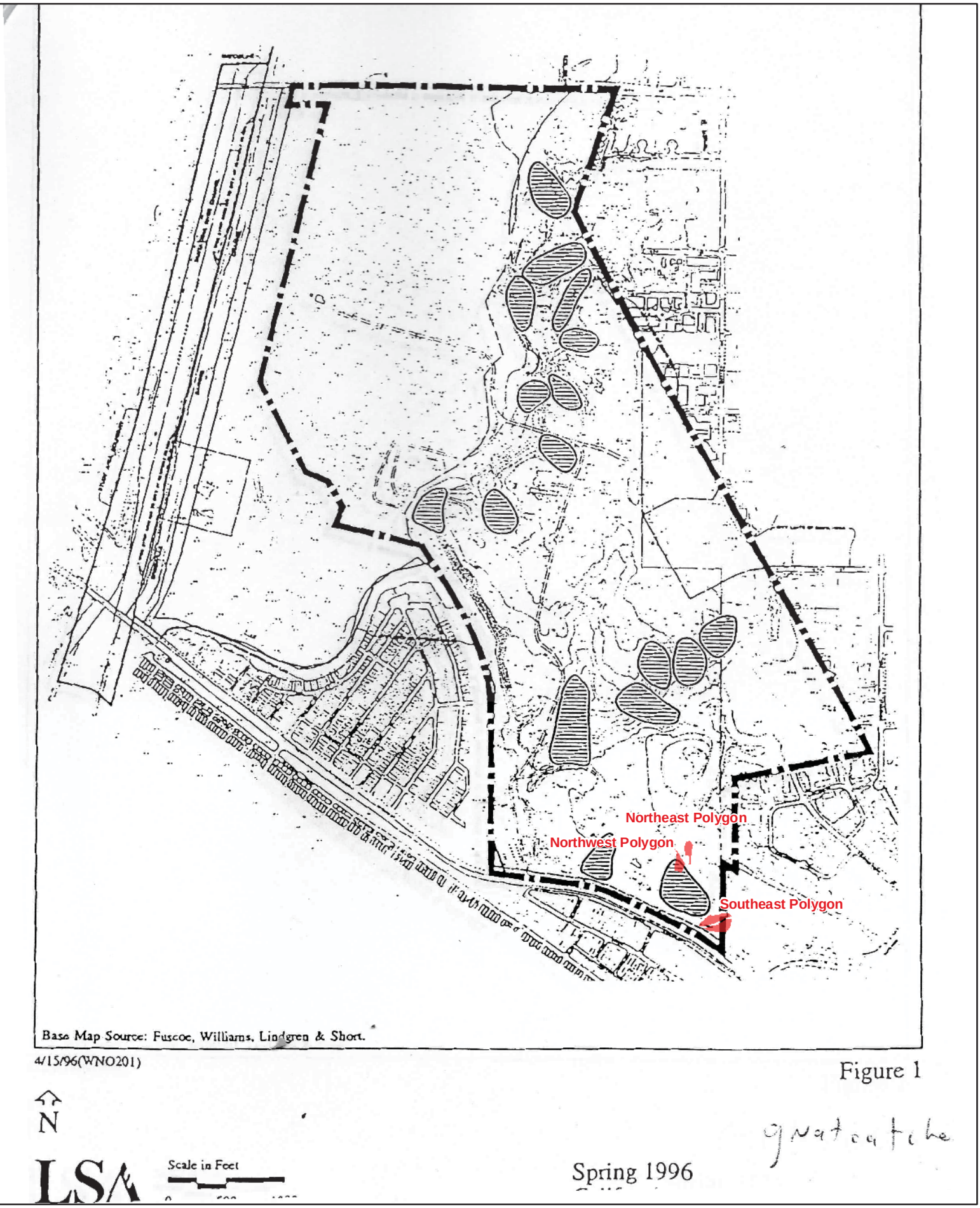


Figure 1

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

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

N

Figure 22a
5-11-302 Exhibit 7 Page 57 of 72
DSM 9/11

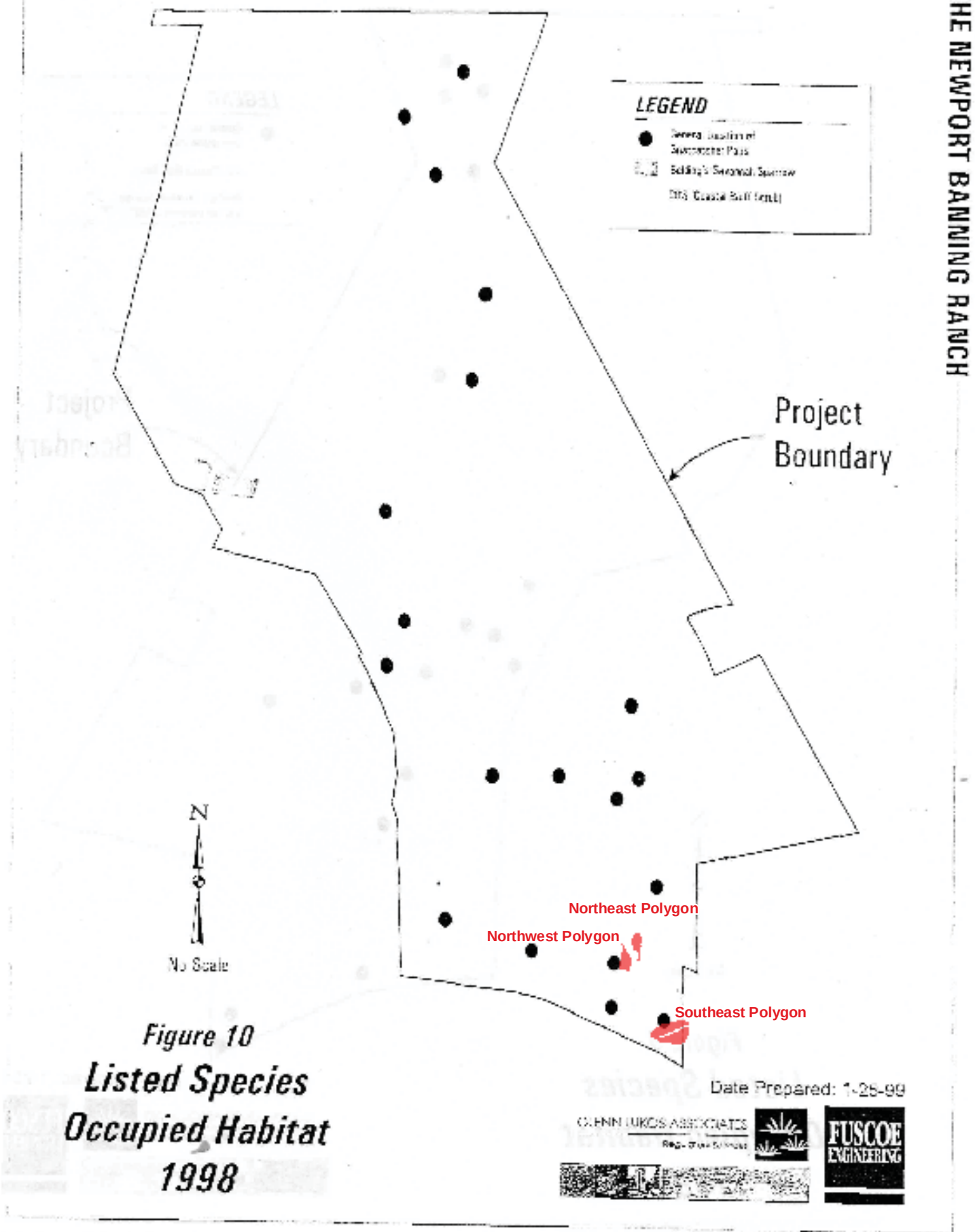
CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

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

N

Figure 22b
5-11-302 Exhibit 7 Page 58 of 72

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 23a
5-11-302 Exhibit 7 Page 59 of 72
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

Figure 23b
5-11-302 Exhibit 7 Page 60 of 72

DSM 9/11

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

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

N

Figure 24

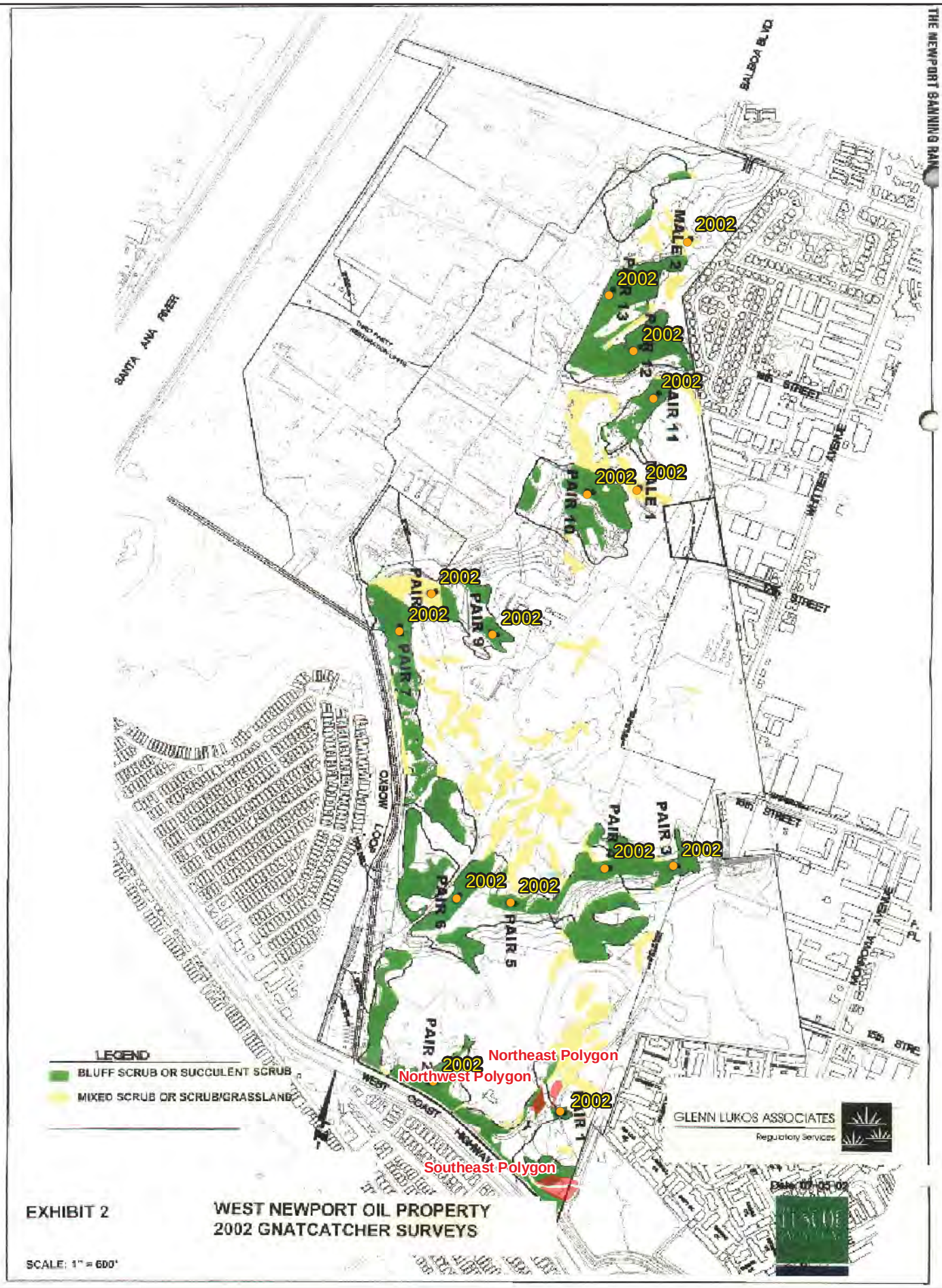
CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

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

N

Figure 25a
5-11-302 Exhibit 7 Page 62 of 72

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
5-11-302 Exhibit 7 Page 63 of 72
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

Figure 27
5-11-302 Exhibit 7 Page 65 of 72

DSM 9/11

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

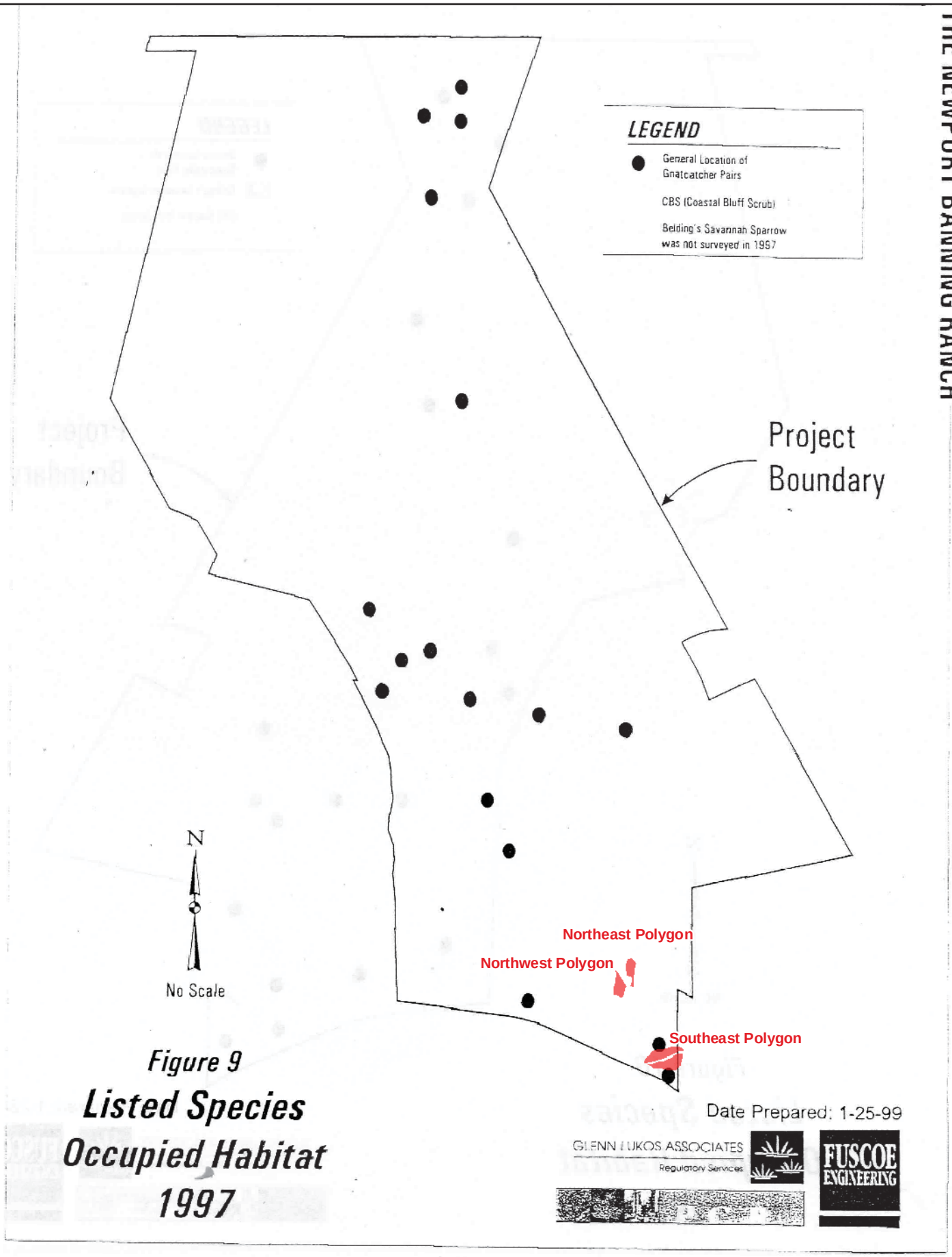
Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.
Sources: Bon Terra, 2009.

N

Figure 28
5-11-302 Exhibit 7 Page 66 of 72

DSM 9/11

Figure 3
Newport Banning Ranch -
California Gnatcatcher Sightings
and Territories



CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

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

N

Figure 29b
5-11-302 Exhibit 7 Page 68 of 72
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
5-11-302 Exhibit 7 Page 69 of 72

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
5-11-302 Exhibit 7 Page 70 of 72

DSM 9/11

CALIFORNIA COASTAL COMMISSION
Technical Services Division - GIS Unit

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

N

Figure 31
5-11-302 Exhibit 7 Page 71 of 72

DSM 9/11

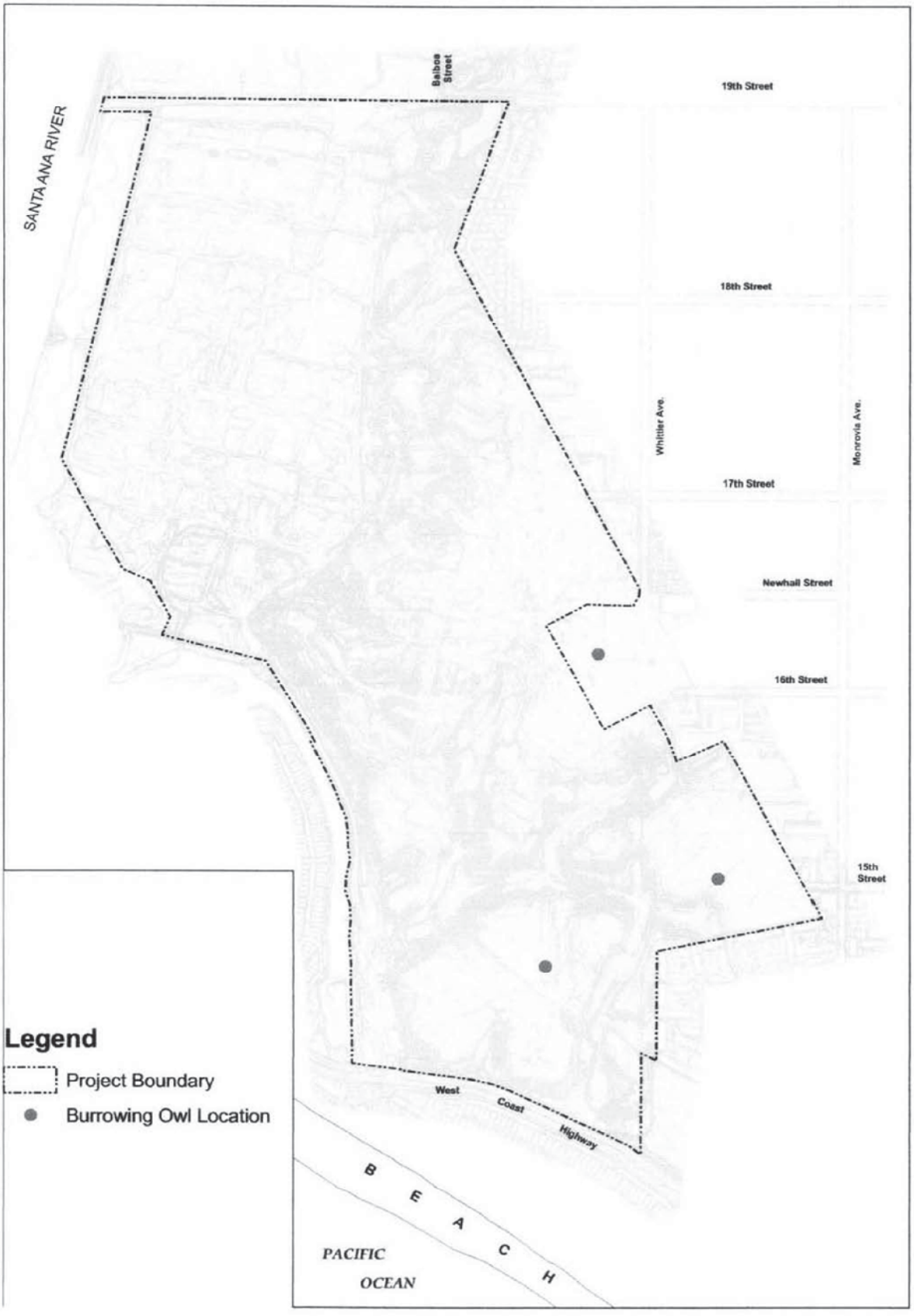


Exhibit 7

2008 Wintering Burrowing Owl Location Map

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

N

Figure 32

DSM 9/11

ATTORNEY GENERAL

RECEIVED APR 21 1978

RECEIVED
APR 10 1978
CALIFORNIA
COASTAL COMMISSION

OFFICE OF THE ATTORNEY GENERAL

Department of Justice

555 CAPITOL MALL, SUITE 350
SACRAMENTO 95814
(916) 445-9555

April 6, 1978

Mr. Michael L. Fischer
Executive Director
California Coastal Commission
631 Howard Street
San Francisco, California 94105

Dear Mr. Fischer:

Re: Opinion No. SO 77/39 I.L.

Your predecessor, Joseph E. Bodovitz, as Executive Director of the California Coastal Commission, requested our advice concerning the meaning of that part of Public Resources Code section 30106 1/ which defines "development" to include "the removal or harvesting of major vegetation other than for agricultural purposes. . . ." You have also asked that we consider the applicability of this statutory language to eight fact situations and determine whether any or all of them involve a "development" and thus require a permit under the 1976 California Coastal Act.

We conclude that whether any particular vegetation is "major" depends on its size, extent, variety, uniqueness, and relation to the environment in which it is located. If vegetation is major, its removal or harvesting constitutes a "development" and requires a coastal permit unless done in furtherance of an "agricultural purpose."

Referring to the factual situations forwarded, the following could be included in removal or harvesting of major vegetation "for agricultural purposes": conversion of

---

1. All statutory references are to the Public Resources Codes unless otherwise indicated.

COASTAL COMMISSION

EXHIBIT # 8
PAGE 1 OF 12

acreage to fruit trees; conversion of approximately 30 acres of walnut trees for cattle grazing and row crops; thinning of native vegetation and orchard trees to promote air circulation and convert acreage to row crops; replacement of mature lemon trees with younger lemon stock; thinning of an avocado orchard to allow more vigorous growth and production on the part of the remaining trees; and conversion of areas of native vegetation to lemons or avocado trees. Where removal or harvesting of major vegetation is "for agricultural purposes" it is not a "development" within the meaning of section 30106. Whether the particular removal or harvesting in each case is for this purpose, however, will in each instance be a question of fact.

ANALYSIS

The Legislature has enacted a clause in section 30106 of the 1976 Coastal Act that defines "development" to include "the removal or harvesting of major vegetation other than for agricultural purposes. . ." The Legislature has not, however, defined the term "major vegetation" nor has it specified what constitutes "removal or harvesting . . . for agricultural purposes." We must therefore employ the rules of statutory construction to ascertain the meaning of this language.

In analyzing any statutory language, we begin with the fundamental rule that a court should determine the intent of the Legislature so as to effectuate the purpose of the law. In doing so, the court turns first to the words themselves, giving effect to statutes according to the usual, ordinary import of the language employed in framing them. When used in a statute, words must be construed in context, keeping in mind the nature and purpose of the statute where they appear. The various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole. (Moyer v. Workmen's Comp. Appeals Bd. (1973) 10 Cal.3d 222, 230.) Individual provisions of conservation and environmental protection measures, such as the Coastal Act, must be interpreted broadly so as to ensure that the objective of the statute is attained, but the result must not be unreasonable. (Friends of Mammoth v. Board of Supervisors (1972) 8 Cal.3d 247, 259-61.) Legislative history can also be used as an aid in determining intent. (See Moyer v. Workmen's Comp. Appeals Bd., supra, at p. 231.)

In applying these rules of construction to the clause in question, we must first look at the whole of section 30106, the immediate statutory context in which the language is found. Section 30106 provides:

> "'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, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).
>
> "As used in this section, 'structure' includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line." (Emphasis added.)

Even a cursory reading of this section indicates that it contains language other than that in question which would define certain agricultural activities as "developments." For instance, the building of a barn, silo, or windmill would be ". . . on land . . . the erection of any . . . structure" or "construction . . . of any structure." That some agricultural activities are defined as developments and require a coastal permit is significant because it indicates that the Legislature did not intend to exempt all activities

with agricultural purposes from the scrutiny of the permit process.

The clause in question took its present form following a Senate Committee amendment to SB 1579 on April 29, 1976. The first version of the Beilenson Bill SB 1579 (the forerunner of the Smith Bill SB 1277 that became the 1976 Coastal Act) had contained almost the identical language as the enacted section 30106 except for the clause in question, which then read "the removal or harvesting of major vegetation." On April 21, 1976, the California Farm Bureau Federation criticized section 30106, as it then existed, in a written statement to the Senate Natural Resources and Wildlife Committee:

> "30106 -- Defines 'development' so as to include the moving of any irrigation pipe or watering trough, or taking a wheelbarrow load of gravel out of the creek for making stepping stones for the garden. It is far too broad and encompassing. It even includes any change of crop to one which would not use both the land and water with exactly equal intensity. Major vegetation is not defined. Can crops be harvested without a permit?"

In apparent response to this concern, the Committee succeeded in amending SB 1579 on April 29, 1976, by adding the language below following "removal or harvesting of major vegetation":

> ". . . other than for agricultural purposes or where such harvesting is in accordance with a timber-harvesting plan submitted pursuant to the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with section 4511) of Part 2 of Division 4)."

The term "kelp harvesting" was later inserted following "agricultural purposes." This language, as amended, was enacted into law under SB 1277 except for a minor change in the citation of the Forest Practice Act.

Having the Farm Bureau statement before it, the Committee proposed no changes in any language of section 30106 other than in the clause in question. The Legislature therefore must have realized and intended that any language

of section 30106, other than that in the clause in question, that had previously applied coastal permit scrutiny to certain agricultural purposes would continue to do so.

This is significant because not all removal or harvesting of major vegetation alone accomplishes an agricultural purpose. In many instances, removal or harvesting is only preliminary to an additional activity or activities necessary to accomplish the agricultural purpose. Yet those additional activities may constitute developments under section 30106.

We will thus use a two-part framework for analyzing the clause in question. We will first discuss the meaning of "major vegetation." We will then discuss "removal or harvesting" that is for an "agricultural purpose."

In all our analysis of the undefined language in the clause in question, we shall be guided by legislative intent. We have already seen that this clause was amended apparently in response to Farm Bureau criticism. In doing so, the Legislature may have believed and intended that the amendment disposed of some of the Bureau's concerns. It may have also believed and intended that the existing language of section 30106 did not apply as broadly as the Bureau feared and therefore saw no need to amend all of the language. In sum, the Legislature may have believed and intended that section 30106, as amended, did not define as a "development" the moving a wheelbarrow load of gravel, or the change from one crop to another, or the harvesting of a crop.

That this was the Legislature's belief and intent is buttressed by the statement of State Senator Jerry Smith, the author of SB 1277, in the Senate Journal of August 31, 1976:

> ". . . During the debate on SB 1277, questions were raised relative to the interpretation of several provisions in the bill. Several of these questions have been dealt with in AB 2948. By including this letter in the Senate Journal, it is my purpose to clarify my intent, as the author of SB 1277, with respect to the remaining provisions. I have made these same statements of intent before both the Senate and Assembly Committees. Speaker McCarthy made similar representations, with my

full concurrence, during the debate on this bill before the full Assembly.

". . . . . .

"The use of agricultural lands: SB 1277 does not, is not intended to, and should not be construed to authorize the coastal commission to mandate, prescribe or otherwise regulate agricultural operations or management practices (including, but not limited to: types of crops to be cultivated, harvested or processed; types of animals or poultry to be raised or processed; cropping patterns; irrigation, cultivation or yield techniques). . . ." (Senate Journal 1975-76, Regular Session, Volume 9, pp. 16967-68.)

We have already considered the language of section 30106, the immediate context of the clause in question. The larger context, the 1976 Coastal Act itself, is also instructive on the question of legislative intent. Sections 30241 and 30242 express a policy of hands off at least as to ongoing coastal agricultural activities:

"The maximum amount of prime agricultural land shall be maintained in agricultural production to assure tha protection of the area's agricultural economy. . . ." (Emphasis added.) (§ 30241.)

"All other lands suitable for agricultural use shall not be converted to nonagricultural use unless (1) continued or renewed agricultural use is not feasible. . . ." (Emphasis added.) (§ 30242.)

On the other hand, the Coastal Plan found that:

"Agriculture Can Have Adverse Environmental Effects that Require Control. Agricultural operations may have such adverse effects as . . . removal of large areas of native vegetative cover (common in the development of citrus and avocado orchards), and heavy drafts on surface and groundwater supplies." (Emphasis added.) (California Coastal Plan, p. 55.)

This finding was expressed as policy in section 30231 of the Coastal Act:

> "The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained, and where feasible, restored through . . . preventing depletion of ground water supplies and substantial interference with surface water flow . . . ." (Emphasis added.) (§ 30231.)

To the extent that policies may conflict, the Coastal Act provides further:

> "The Legislature further finds and recognizes that conflicts may occur between one or more policies of this division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources. . . ." (Emphasis added.) (§ 30007.5.)

> "This division shall be liberally construed to accomplish its purposes and objectives." (§ 30009.)

With these provisions in mind, we can recognize and give account to a legislative intent to leave hands off coastal agricultural activity, especially in ongoing agricultural use of land, but also to scrutinize major changes in water consumption associated with agriculture as might result from large-scale removal of native vegetation in the conversion of undeveloped land into agricultural use. To the extent that these intents conflict, we believe they can be resolved by reasonable statutory construction that, on balance, is most protective of significant coastal resources.

1. Major Vegetation

"Vegetation" is a broad and inclusive term. Webster's Collegiate Dictionary defines "vegetation" as "The sum of vegetable life; plants in general. . . ." The real inquiry, therefore, is as to the meaning of "major."

Webster's Seventh New Collegiate Dictionary defines "major" as "adj. . . . 1. greater in dignity, rank, importance, or interest 2. greater in number, quantity, or interest. . . 4. notable or conspicuous in effect or scope. . . ." Funk and Wagnalls Standard Collegiate Dictionary defines "major" as "adj. 1. Greater in quantity, number, or extent. 2. Having primary or greater importance. . . ." Finally, Black's Law Dictionary defines it as "Greater or larger. Zenith Radio Distributing Corporation v. Mateer, 35 N.E.2d 815, 816." It is apparent, therefore, that "major" refers to the importance as well as the size of the vegetation in question.

It is impossible to define "major" so comprehensively and precisely as to resolve all questions in advance. At best, we can list factors and parameters to be considered, noting that size and importance may be either exclusive or supplementary determinants in a particular case. The absolute size of a particular form of vegetation, as a large tree or perhaps any mature tree, could alone render it major. The relative size of a particular specimen in relation to the average size of its variety might make it major on grounds of size and importance (uniqueness). The total size or extent of a number of specimens of a particular variety growing together or found in large numbers in close proximity to each other could constitute major vegetation regardless of the size of each individual specimen.

If a particular specimen or variety of vegetation were deemed important, this could buttress considerations of size and extent or could render the vegetation major even without regard to size and extent. A particular specimen or variety might be unique to a certain area, not found anywhere else. Its location in a particular area might also render it major if, for example, it was necessary part of a scenic landscape or a wildlife habitat or in some other way part of an integrated environment that depended on its presence to preserve other coastal resources.

The question of what is "major" is one of fact in each case. The term "major vegetation" also appeared in section 27103 of the 1972 Coastal Act, and we gave informal advice that eucalyptus trees were obviously included within its meaning. We also informally advised that coastal sage scrub is "major vegetation" in that it is part of a vegetative community which provides habitats for certain plant and

animal species found only in certain coastal areas of Southern California. As to whether something like brush or any native ground cover is major vegetation, one would have to know its size, extent, and uniqueness, if any, and its relation to the environment in which it is located. We conclude, however, that "major vegetation" should be broadly defined in close cases because of the rule that individual provisions of conservation and environmental protection measures must be interpreted broadly so as to ensure attainment of the statute's objective. (Friends of Mammoth v. Board of Supervisors, supra, (1972) 8 Cal.3d 247, 259-61.)

2. Removal or Harvesting for Agricultural Purposes

Only if it is factually determined that the vegetation is "major" do we reach the second question, the meaning of "removal or harvesting . . . for agricultural purposes." Webster's Seventh New Collegiate Dictionary defines "agricultural" as "of, relating to, used in, or concerned with agriculture." It then defines "agriculture" as "the science or art of cultivating the soil, producing crops, and raising livestock." Black's Law Dictionary defines "agriculture" as "The cultivation of soil for food products or any other useful or valuable growth of the field or garden; tillage, husbandry . . . breeding and rearing of stock, dairying . . . . State v. Stewart, 190 P. 129, 131." The clause in question therefore excludes from the definition of "development" and the requirement of a coastal permit any removal or harvesting done for the purpose of cultivating the soil, producing crops, or raising livestock. In each case, this will be a factual question.

We have previously informally advised that removal and harvesting, which alone accomplishes an agricultural purpose or which leads to an agricultural purpose without intervening permit-requiring activities, would not require a permit, while removal or harvesting which is preliminary only, necessitating additional permit-requiring activities to accomplish the particular agricultural purpose, would require a permit. This conclusion was based on the fact that other "development" under section 30601 for agricultural purposes are not excluded and should be considered with major vegetation removal or harvesting for agricultural purposes in order to give effect to the intent of sections 30007.5, 30009 and 30231 and the above-quoted excerpt from

the Coastal Plan, to afford the greatest protection to significant coastal resources, consistent with the Act.

Further study of this matter, however, leads us to a contrary conclusion.

It is true, of course, that some major vegetation removal may, by itself accomplish an agricultural purpose, as, for example, the removal of trees to open areas for grazing of cattle or removal of orchard trees or plants to encourage or permit the growth of adjacent agricultural vegetation. It is also true that some major vegetation removal may contemplate additional activities, either requiring or not requiring a Coastal Permit, such as removal of native vegetation to convert the land to orchard, or other cultivated use. This distinction, however, no longer appears valid.

Section 30106 makes no such distinction. Any conclusion requiring a permit predicated on such a distinction, based on the above policies, would be based on inference as to the legislative intent drawn from these broad policies. On the other hand, the Legislature has expressly stated its intent in section 30106, by specifically providing "development" includes the "removal or harvesting of major vegetation other than for agricultural purposes." In such cases where specific terms of a statute might appear to conflict with general provisions found elsewhere in the statute, the Legislature's specific language is controlling. (Neubald v. Brock (1939) 12 Cal.2d 662, 669.)

The Legislature's apparent intent in excluding such vegetation removal while requiring permits for other defined "development" for agricultural purposes, was to allow the agriculturist to harvest and remove vegetation for agricultural purposes free of the controls under the Act applicable to other "developments", while protecting the other significant coastal resources through the regulatory measures applicable to the agricultural activities requiring permits. Such an interpretation is supported also by Senator Smith's letter, which indicated the intent of the Act was not to regulate agricultural operations or management practices, including "types of crops to be . . . harvested . . . cropping patterns . . . yield techniques." Supra.

In the present case, therefore, section 30106, having excluded removal or harvesting of major vegetation

for agricultural purposes, leaves as a question of fact whether any specific removal or harvesting of major vegetation is for an agricultural purpose, within the meaning of the Act.

This does not, however, suggest that the intervening steps between removal or harvesting and the ultimate agricultural use are not relevant in such a factual determination. The connection between removal or harvesting of the vegetation and the accomplishment of the agricultural purpose may, indeed, be so attenuated or indefinite as to render the removal or harvesting factually not "for an agricultural purpose" within the meaning of the Act. Another factor is whether the contemplated agricultural purpose is actually accomplished within a reasonable time of the harvesting or removal. Where other activities require a coasral permit to accomplish the agricultural purpose, the responsible party would be advised to obtain preliminary issuance of such permits to avoid the risk that subsequent denial of the permit would prevent the realization of the agricultural purpose for which the major vegetation was harvested or removed in the first place.

Whether the vegetation removed in the factual situations presented in fact constitutes "major vegetation" the removal of which would otherwise require a permit would, of course depend upon the number, size, uniqueness and importance of the vegetation and the other factors discussed above.

The purpose stated in each factual situation would appear to be reasonably designed to achieve an agricultural purpose, i.e., cultivation of the soil, producing crops or raising livestock. These purposes are generally accepted agricultural purposes resulting from the removal of vegetation: converting areas containing eucalyptus trees to fruit trees; conversion of mature walnut trees for grazing and row crops; thinning of a lemon orchard and removal of adjacent trees to promote air circulation and free acreage for row crops; replacement of mature lemon trees with young lemon trees; thinning of trees in an avocado orchard to allow more vigorous growth and production on the part of the remaining trees; and conversion of native vegetation to fruit trees.

Whether the particular removal or harvesting of the vegetation in each instance would fall within the exclusion is another matter, however, and would turn on the

facts. For example, an unreasonable time having passed since the removal of the eucalyptus trees in your first example, and no planting of the fruit trees, would tend to show, notwithstanding the "stated intent" of the landowner, that the trees were not in fact removed for the stated purposes. Reasons for the delay in converting the land to fruit trees would be relevant. Whether any activities necessary for the conversion of native vegetation to row crops or other agricultural vegetation have been undertaken and whether required permits for these activities (e.g., irrigation systems, access roads, supporting facilities, etc.) have been applied for or obtained, would also be relevant. Subsequent use of the property after the harvesting or removal of the vegetation would also be pertinent. These and other matters, such as statements of the responsible party and witnesses, would be relevant to show whether the trees were, in fact, removed for the stated agricultural purpose, or were, in fact, removed or harvested for some other purpose.

Very truly yours,

EVELLE J. YOUNGER
Attorney General

R. H. CONNETT
Assistant Attorney General

RHC:ag

May 22, 2012

Via Hand Delivery

John Del Arroz, Coastal Program Analyst
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802

RE: Sunset Ridge Park Project – 4850 West Coast Highway, Newport Beach, CA (City of Newport Beach); **CDP Application No. 5-11-302**

Dear Mr. Del Arroz:

In response to your inquiries posed to Don Schmitz on April 26, 2012, please find the applicants' responses below:

- There is no development proposed in the northwest corner of the City's Park property which would extend off-site onto Newport Banning Ranch's (NBR's) property.
- The City has no plans to make eny modifications to the existing chain link gate which is locked and secured.
- No athletic games on Sunset Ridge Park will be scheduled for July 4th holidays. As with all other public parks and beaches in California, Sunset Ridge Park will be open for visitors to safely enjoy the Independence Day holiday. Just as with other parks and beaches, parking will be on a first come basis.

Pursuant to your subsequent email inquiry regarding the Pacific Pocket Mouse, please see our project Biological Technical Report (prepared by BonTerra Consulting, September 23, 2009), *Appendix E* in Volume II of the Project EIR. BonTerra specifically notes that there are only four locations in Southern California that this species is known to occur: Dana Point Headlands, two near San Mateo Creek in Camp Pendleton, and near the Santa Margarita River. On pages 31 and 49 of the Biological Technical Report, BonTerra Consulting concludes that previous extensive trapping efforts resulted in no detection, that there is limited potentially suitable habitat on site, and that the Pacific pocket mouse is not expected to occur on the Project site.

Also, please find enclosed, a copy of correspondence dated April 27, 2012 from USFWS indicating their determination that "when considering potential impacts to gnatcatcher, [USFWS has] determined that the revised project is in compliance with the [Endangered Species] Act. Moreover, USFWS staff find thet the "revised project will restore more habitat than is impacted."

SCHMITZ & ASSOCIATES, INC.

PROVIDERS OF LAND USE PLANNING
FOR A BETTER COMMUNITY

HEADQUARTERS – MALIBU OFFICE
29350 PACIFIC COAST HWY., SUITE 12
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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

Should you have any further questions, please do not hesitate to contact us.

Best Regards,
SCHMITZ & ASSOCIATES, INC.

Donna Tripp
Regional Manager

CC: Andy Tran, PE, City of Newport Beach

Attachment: US Fish & Wildlife Service correspondence dated April 27, 2012

United States Department of the Interior

FISH AND WILDLIFE SERVICE
Ecological Services
Carlsbad Fish and Wildlife Office
6010 Hidden Valley Road, Suite 101
Carlsbad, California 92011

In Reply Refer To:
FWS-OR-09B0310-12TA0274

APR 27 2012

Mr. Andy Tran, PE
Senior Civil Engineer
City of Newport Beach, Public Works Department
3300 Newport Boulevard
Newport Beach, California 92658-8915

Subject: Request for Technical Assistance for Revised Sunset Ridge Park Project, City of Newport Beach, Orange County, California

Dear Mr. Tran:

We have reviewed the information received on March 21, 2012, regarding the revised Sunset Ridge Park Project in the City of Newport Beach, Orange County, California. This letter is in response to your verbal request on March 20, 2012, for our agency to confirm that the City has addressed compliance with the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), with regard to potential project-related effects to the federally threatened coastal California gnatcatcher (*Polioptila californica californica*, "gnatcatcher"). We reviewed the original project description and addressed potential impacts to the gnatcatcher, federally listed vernal pool species, and burrowing owls (*Athene cunicularia*) in a letter dated October 11, 2011 (FWS-OR-09B0310-12TA0011).

The revised park project is largely contained within the same footprint as the original design and contains the same facilities (i.e., ball fields, a butterfly garden, and playground) (Figure 1). Changes to the project include deletion of the primary access road to the park from Coast Highway and parking lot. An existing parking lot across from Superior Avenue will instead be used to access the park. A new maintenance road will traverse the west side of the park, and a chain link fence will be installed west of the maintenance road for security purposes. No impacts will occur within the adjacent Newport Banning Ranch LLC (Banning Ranch) property. Construction of the recreational park is anticipated to begin in the fall of 2012.

In our previous letter we evaluated the status of the gnatcatcher and its designated critical habitat in the project vicinity and concluded the project was in compliance with the Act. Based on our review of the revised project and the City's continued commitment to implement specific measures to avoid and minimize impacts to gnatcatchers (Enclosure), we do not expect construction or operation of the

revised Sunset Ridge Park Project to "harm" gnatcatchers[1]. In addition, the site will continue to support gnatcatcher habitat and to maintain connectivity with gnatcatchers on the Banning Ranch property. Thus, the ecological role and function of designated critical habitat will not be precluded by the project[2].

Disturbance and Habitat Loss Associated with Project Construction

The revised project results in a decrease in impacts to gnatcatcher foraging and sheltering habitat from 9.35 acres to 3.95 acres and avoids the primary breeding season use areas where gnatcatchers have been observed since 1992[3]. Native habitat creation/restoration has also been reduced from 7.35 acres to 4.40 acres; however, the revised project will restore more habitat than is impacted. Therefore, project impacts to foraging and sheltering habitat that are primarily used outside of the breeding season are temporary. As discussed in our previous letter, sufficient habitat is available adjacent to the project site on the Banning Ranch property to allow gnatcatcher pairs located in the project vicinity to compensate for the temporary loss of habitat through minor adjustments to their non-breeding season use areas. In addition, we do not anticipate the revised project to result in direct harm or disturbance to gnatcatchers during construction activities because no changes are proposed to the construction minimization measures included as part of the project (Enclosure).

Habitat Degradation and Disturbance Associated with Project Operation and Maintenance

We previously evaluated the potential for the park project to disturb gnatcatchers and/or degrade remaining undisturbed habitat due to increased human-generated disturbances associated with operation of the park, including authorized and unauthorized recreational use, waste dumping, night lighting, exotic plant invasion, and an increase in predators. Based on the City's commitment to incorporate significant design features (e.g., signs, fencing, shielded lighting) and management measures (e.g. non-native plant removal) as part of the project, we determined the quality of gnatcatcher habitat areas within the site would be maintained over the long term and support recovery of the species. With the exception of measures associated with the originally proposed access road, all applicable design features and management measures have been included as part of the revised project (Enclosure). Consequently, when considering potential impacts to gnatcatcher, we have determined that the revised project is in compliance with the Act.

---

[1] Section 9 of the Endangered Species Act prohibits the take of endangered and threatened species without special exemption. Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt to engage in any such conduct. Harm is further defined by the Fish and Wildlife Service to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering.

[2] The Endangered Species Act requires consultation with our agency to address potential impacts on critical habitat for projects carried out, funded, or authorize by a Federal agency to ensure that their actions will not destroy or adversely modify critical habitat. A critical habitat designation generally has no effect on situations that do not involve a Federal agency such as this project that involves no Federal funding or permit. Our conclusion in this letter concerning potential effects of the project on critical habitat is provided for information purposes only and does not address a regulatory requirement.

[3] Refer to our October 11, 2011 letter for detailed information regarding status and distribution of the gnatcatcher.

Recommendations

We recommend the City include the following additional measures to further discourage non-natives from encroaching into surrounding native vegetation and to increase the quality and quantity of gnatcatcher habitat on the project site:

- Remove invasive species (e.g., *Cortaderia sp.*, *Carpobrotus edulis*) from areas outside the grading limits (Figure 1, "Existing – Not to Be Disturbed").

- Remove non-native species that are similar in appearance to invasive species (e.g., *Pennisetum sp.*) from the plant planting list to avoid inadvertent replacement with invasive varieties in the future.

- To reduce maintenance costs associated with maintaining gnatcatcher habitat areas, remove non-native species from the planting list that have a propensity for dispersal (e.g., *Acacia sp.*).

In summary, we appreciate the City's efforts to coordinate with our agency to ensure regulatory compliance with the Act and your commitment to implement measures in support of gnatcatcher recovery. Should you have any questions regarding this letter, please contact Fish and Wildlife Biologist Christine Medak of this office at 760-431-9440, extension 298.

Sincerely,

for Karen A. Goebel
Assistant Field Supervisor

cc:
Jonna Engel, California Coastal Commission
Terry Welsh, Banning Ranch Conservancy
Matt Chirdon, California Department of Fish and Game

Enclosure
Sunset Ridge Park Project, City of Newport Beach, California
Project Design and Avoidance Measures

In coordination with the U.S. Fish and Wildlife Service's Carlsbad Fish and Wildlife Office (CFWO), the City of Newport Beach (City) has committed to implement the following design features and avoidance measures as part of the Sunset Ridge Park Project to avoid and minimize impacts to the Federal listed coastal California gnatcatcher ("gnatcatcher").

Project Design (refer to Figure 1):

1. The City will provide foraging habitat for the gnatcatcher within approximately 4.40 acres of landscaped park areas. Revisions to the proposed plant pallet in these areas will be reviewed and approved by the CFWO prior to the initiation of construction.

    a. The 0.16-acre Expanded CSS will include only native plants of the coastal sage scrub vegetation community (e.g., *Encelia californica, Eriogonum fasciculatum, Baccharis pilularis*).

    b. The 1.51-acre Streetscape Slope will be minimally irrigated and consist primarily of native plants of the coastal sage scrub vegetation community (e.g., *Encelia californica, Eriogonum fascicularum, Rhus integrifolia, Isocoma menziesii*).

    c. The 0.52-acre Water Infiltration Area will include only native plants, primarily of the coastal sage scrub vegetation community (e.g., *Encelia californica, Eriogonum fasciculatum, Baccharis pilularis, Baccharis salicifolia*).

    d. The 2.21-acre Residential Buffer located along the northern boundary of the park will include primarily native scrub species compliant with the Orange County Fire Authority OCFA fuel modification plant palette (e.g., *Baccharis pilularis, Opuntia littoralis, Encelia californica*, and *Rhus integrifolia*).

2. Plants identified by the California Invasive Plant Council as an invasive risk in southern California will be excluded from all landscaping within the park.

3. Park lighting will be limited to 3.5-foot bollards with cut-off louvers and will be positioned, directed or shielded so as to minimize artificial lighting from reflecting into native habitat.

4. Human intrusion into native habitat within the park will be discouraged through the use of signs and fencing. Signs identifying the native habitat areas (such as "No Trespassing Habitat Area Do Not Enter") will be posted at reasonable intervals and likely points of entry along the west side of the park.

5. Fencing (e.g., rope and post) will be installed, as necessary, to discourage unauthorized access into native habitat areas.

Construction of the Project:

6. Vegetation removal and clearing for the proposed project will occur between August 1 and February 14, outside the gnatcatcher breeding and nesting season.

7. The limits of vegetation removal will be delineated in all areas adjacent to preserved vegetation by bright orange plastic fencing, stakes, flags, or markers that are clearly visible to personnel on foot and in heavy equipment.

8. A qualified biologist[4] will be present during all vegetation removal and clearing and will have the authority to halt activities that might result in harm to the gnatcatcher or result in impacts beyond the limits of the project footprint as depicted in Figure 1.

9. Construction activities that occur within 200 feet of gnatcatcher habitat during the breeding and nesting season will be conducted in the presence of a qualified biologist. Construction activities will not occur within 200 feet of an active gnatcatcher nest. The qualified biologist will provide, on a weekly basis to the CFWO, a summary (including photos) of project activities completed during the breeding and nesting season.

Park Operations:

10. Vegetation clearing/tree trimming/pruning within the Streetscape Slope and will occur between September 1 and February 14, outside the gnatcatcher breeding season.

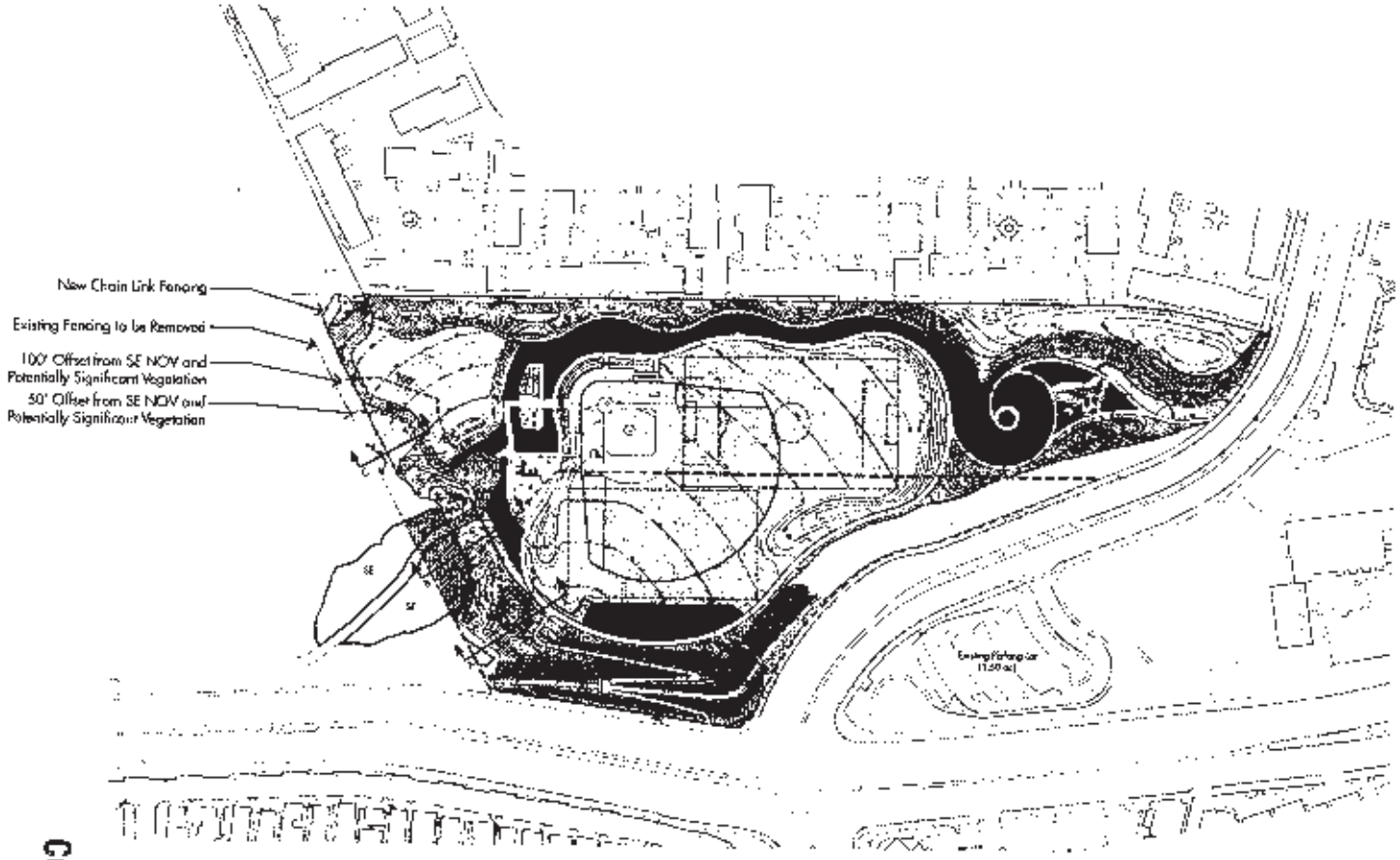
11. As part of the annual operations budget for the park, the City will dedicate adequate funding to ensure:

    a. During the first 5 years following public access to park facilities, human intrusion into habitat areas will be assessed on a regular basis. If signs and fencing are not effective, the City's landscape contractor (or qualified biologist) will recommend additional strategies. These recommendations and a record of their implementation will be submitted to the CFWO within 6 years of public access to the park.

    b. Non-native landscaping within the park will be maintained to prevent spill-over into gnatcatcher habitat.

[4] The qualified biologist will hold a 10(a)(1)(A) permit for the gnatcatcher.

c. All non-native landscape plants that have been inadvertently introduced into gnatcatcher habitat areas will be removed a minimum of once per year, as necessary. Habitat maintenance will be conducted outside of the gnatcatcher breeding season.



Planting Diagram

COASTAL COMMISSION
EXHIBIT # 9
PAGE 1 OF 4

May 30, 2012

Via Email

John Del Arroz, Coastal Program Analyst
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

RE: Sunset Ridge Park Project – 4850 West Coast Highway, Newport Beach, CA (City of Newport Beach); **CDP Application No. 5-11-302**

Dear John:

I appreciate the opportunity to highlight the somewhat unique circumstances relating to the complete and ongoing clearance of vegetation on the flat portions of the proposed City of Newport Beach Sunset Ridge Park. As you are aware, the subject Park property was previously owned by the California Department of Transportation (CALTRANS). Said agency graded almost the entire property down some 30 ft. below natural grade in the 1960's, which quite obviously completely removed any and all native vegetation well below the root zone. Subsequently, the State of California mowed and cleared the entire property of all vegetation, native and ruderal, on an ongoing annual basis during their extended ownership.

Upon acquiring ownership of the property from the State, the City regularly continued the annual mowing and maintenance of the property. Unlike other properties in the area, the Sunset Ridge property is in actuality a small finger of undeveloped land adjacent to a significantly larger open space area; there is a legitimate concern that the light, weedy, "flash fuels" that could grow back on the property would serve as a ladder to convey a wildfire directly onto the adjacent residential community into the heart of the City.

As already documentad, the subject property has been annually mowed by the City subsequent to their acquisition from the State (i.e. Spring 2007 to present). The subject property is surrounded by/abuts on three sides intense urban uses and development. Moreover, unlike similarly situated properties, the subject property has never been fenced off; as such, the site has been historically disturbed and utilized recreationally by children/youth in the community. It is our understanding that the local youth have periodically set up impromptu dirt bike and go kart tracks on the land.

Accordingly, it is clear that the annual complete mowing of the property is unique to the subject property, and is not necessarily a precedent that would apply elsewhere.

USFWS Critical Habitat Designation:

We wish to also address references to a 2007 determination by US Fish & Wildlife Service (USFWS) that the subject property is included in a larger area designated as "critical habitat" for California gnatcatchers.

SCHMITZ & ASSOCIATES, INC.
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Please find below the following excerpts from a USFWS document on *Critical Habitat* (source: http://www.fs.fed.us/r9/wildlife/tes/docs/esa_references/critical_habitat.pdf):

> **The areas shown on critical habitat maps are often large. Are all the areas within the mapped boundaries considered critical habitat?**
> No. Our rules normally exclude by text developed areas such as buildings, roads, airports, parking lots, piers and other such facilities.
>
> **Why are large areas shown on critical habitat maps if the entire area is not actually considered critical habitat?**
> In such cases, precisely mapping critical habitat boundaries is impractical or impossible, because the legal descriptions for these precise boundaries would be to unweildy [sic].

In short, "critical habitat" designations do not take into account the specific biological conditions that actually exist on the ground. Instead, if there is known viable habitat in the surrounding area, this will often result in the inclusion of non-critical habitat in the larger mapped area, as is the case here.

In plain English, there is no difference between the disturbed Encelia area on the South side of the proposed park, and the area adjacent to the condominium complex, as it pertains to the designation of critical habitat. It is all within the critical habitat area, but this should not be misconstrued as an assessment by USFWS when they designated the entire area as critical habitat; it is a broad brush planning tool. In fact, last week when I met with representatives of the USFWS they affirmed that the City could legally mow the subject property weekly (including the disturbed Encelia area) should they deem fit and it would not be a violation of their regulations. However, and importantly, it is their professional opinion that the planting plan for the proposed park will represent a significant improvement to habitat values for the gnatcatchers in the area from that which presently exists, which is the intent of the broad mapping of critical habitat designation in the first place.

Accordingly, USFWS has already concluded based on site specific assessment of the subject property, that "when considering potential impacts to gnatcatcher, [USFWS has] determined that the revised project is in compliance with the [Endangered Species] Act" (April 27, 2012 USFWS letter).

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

Sincerely,
SCHMITZ & ASSOCIATES, INC.

Don Schmitz

CC: Andy Tran, City of Newport Beach
Christine Medak, US Fish & Wildlife Services

City of Newport Beach
Urban Wildland Interface Area
Standard for Hazard Reduction

Fire Resistive Plant List

Common Name	Botanical Name	Plant Form	Remarks
Aaron's Beard	Hypericum calycimum	Shrub	Good t very good drought tolerance
Aeonium	Aeonium decorum	Ground cover	
African Sumac	Rhus lancea	Tree	25' height
Alkali Heath	Frankenia salina	Ground Cover	Native
American Sweet Gum	Liquidambar styraciflua	Tree	
Australian Fuscia	Corea pulchella	Ground Cover	12" height, 36" spread
Australian Tea Tree	Leptospermum laevigatum	Shrub	
Autums Sage	Salvia greggii	Shrub	
Baby Blue Eyes	Nemophilia menziesii	Annual	
Beach Bur-Sage	Ambrosia chamnissonis	Perennial	
Beach Evening Primrose	Camissonia cheiranthifiloa	Perennial Shrub	Native
Beach Sagewort	Artemisia pycnocephala	Perennial	
Bearberry	Arctostaphylos uva-ursi	Ground Cover	Excellent drought tolerance, spreading 4-6', height to 1'
Beard Tongue	Penstemon spp.	Shrub	
Berber Orchard Grass	Baxtylis glomerata	Grass	
Big Leaf Maple	Acer macrophyllum	Tree	
Big Pod Ceanothus	Ceanothus megarcarpus	Shrub	
Bird of Paradise	Strelitzia reginae	Perennial	
Bird's Eyes	Gilia tricolor	Perrenial	
Bird's Foot Trefoil	Lotus corniculatus	Ground Cover	Green lush look
Bladderpod	Isomeris arborea	Shrub	Native - Drought tolerant
Blanketflower	Gaillardia x grandiflora	Ground Cover	Ornamental flower
Blood-Red Trumpet Vine	Distinctis buccinatoria	Vine/Climbing vine	
Blue Dicks	Dichelostemma capitatum	Herb	
Blue Eyed Grass	Sisyrinchium bellum	Ground Cover	Drought tolerant
Blue Hibiscus	Alogyne huegeli	Shrub	
Blue Stemmed Bush Penstemon	Keckiella ternata	Subshrub	
Boobyalla	Myoporum insulare	Shrub	
Bottle Palm	Beaucarnea recurvata	Shrub/Small Tree	
Bougainvillea	Bougainvillea spectabilis	Shrub	
Brewer Saltbush	Atriplex lentiformis ssp. breweri	Shrub	Native
Bush Ice Plant	Lamprathus aurantiacus	Ground Cover	
Bush Morning Glory	Convolvulus cneorum	Shrub	White flower color
Bush Poppy	Dendromecon rigida	Shrub	
Bush Snapdragon	Galvezia speciosa	Shrub	Red flowers
Bushrue	Cneoridium dumosum	Shrub	
Califiornia Coreopsis	Coreopsis californica	Annual	
California Black Walnut	Juglans californica	Tree	
California Brome	Bromus carinatus	Grass	
California Bulrush	Scirpus californicus	Perennial	Native
California Coffee Berry	Rhamnus californica	Shrub	Green leaves, drought tolerant
California Croton	Croton californicus	Ground Cover	

Common Name	Botanical Name	Plant Form	Remarks
California Encelia	Encelia californica	Small Shrub	Native
California Evening Primrose	Oenothera hookeri	Flower	Drought tolerant
California Everlasting	Gnaphalium Californicum	Annual	
California Flannelbush	Fremontondendron californicum	Shrub	
California Laurel	Umbellularia californica	Tree	Very spreading
California Plantain	Plantago erecta	Annual	
California Poppy	Eschscholzia californica	Flower	
California Scrub Oak	Quercus berberdifolia	Shrub	Valuable soil binder
California Sycamore	Plantanus racemosa	Tree	Native
Cape Honeysuckle	Tecomaria capensis	Ground Cover	Vine
Carmel Creeper Ceanothus	Ceanothus griseus var. horizontalis	Shrub	Excellent drought tolerance.
Carob	Ceratonia siliqua	Tree	
Carolina Cherry Laurel	Prunus caroliniana	Shrub/Tree	White flower color
Carpet Bugle	Ajuga reptans	Ground Cover	Poor on slopes
Catalina Cherry	Prunus lyonii	Shrub/Tree	White flower color
Caucasian Artesmisia	Artemisia caucasica	Ground Cover	Very low maintenance; takes some foot traffic
Century Plant	Agave attenuata	Succulent	
Chalk Dudleya	Dudleya pulverulenta	Succulent	Native
Chaparral Bloom	Baccharis pilularis ssp. Consanguinea	Shrub	Native - Drought tolerant
Chapparal Mallow	Malacothamnus Fasciculatus	Shrub	
Chapparal Nolina	Nolina cismontana	Shrub	
Chinese Houses	Collinsia heterophyllia	Annual	
Chinese Pistache	Pistacia chinesis	Tree	
Citrus	Citrus spp.	Tree	
Coast Cholla	Opuntia prolifera	Cactus	Native
Coast Live Oak	Quercus agrifolia	Tree	Oak woodland
Coastal Goldenbush	Isocoma menziesii	Small Shrub	Native
Coastal Scrub Oak	Quercus dumosa	Shrub	
Common Yarrow	Achillea millefolium	Low Shrub	Prune back after flowering to remove dried fire fuel
Coral Tree	Erythrina spp.	Tree	Red/pink flower color
Coreopsis	Coreopsis lanceolata	Ground Cover	Ornamental flowering
Cork Oak	Quercus suber	Tree	
Crape Myrtle	Lagerstroemia indica	Tree	
Creeping Coprosma	Coprosma kirkii	Ground Cover/Shrub	Subject to dieback after 3-4 years
Creeping Sage	Salvia sonomensis	Ground Cover	
Creeping Snowberry	Symphoricarpos mollis	Shrub	
Deerweed	Lotus scoparius	Shrub	Native
Desert Carpet	Acacia redolens desert carpet	Shrub	
Desert Lupine	Lupinus arizonicus	Annual	
Desert Marigold	Baileya multiradiata	Ground Cover	Drought tolerant
Desert Wild Grape	Vitis girdiana	Vine	
Dewflower	Drosanthemum speciosus	Ground Cover	
Douglas Nightshade	Solanum douglasii	Shrub	
Dwarf Goldfields	Lasthenia californica	Annual	
Dwarf Periwinkle	Vinca minor	Ground Cover	Very spreading

Common Name	Botanical Name	Plant Form	Remarks
Eastwood Manzanita	Arctostaphylos glandulosa ssp.	Shrub	
Edging Candytuft	Iberis sempervirens	Ground Cover	White flower color
Elephant's Food	Portulacaria Afra	Shrub	
Emory Baccharis	Baccharis emoyi	Shrub	
Engelmann Oak	Quercus engelmannii	Tree	Open structure
English Ivy	Helix Canariensis	Ground Cover	
Evergreen currant	Ribes viburnifolium	Shrub	
Evergreen Plantain	Plantago sempervirens	Ground Cover	
Fernleaf Ironwood	Lyonothamnus floribundus ssp. Asplenifolius	Tree	Grey leaves; drought tolerant
Firethorn	Pyracantha spp.	Shrub	
Firewheel Tree	Stenocarpus sinuatus	Tree	
Foothill Needlegrass	Nassella (stipa) lepidra	Ground Cover	Native
Four-Wing Saltbush	Atriplex canescens	Shrub	
French Lavender	Lavandula dentata	Shrub	
Fuschia Flowering Goosebberry	Ribes speciosum	Shrub	Native
Germander	Teucarium chamedrys	Ground Cover	
Giant Bird of Paradise	Strelitzia nicolai	Perennial	
Giant Wild Rye	Leymus condensatus	Large Grass	Native
Globe Candytuft	Iberis umbellatum	Ground Cover	Ornamental flowering
Globe Gilia	Gillia capitata	Perrenial	
Glossy Abelia	Abelia x grandiflora	Shrub	
Golden Abundance Oregon Grape	Mahonia aquifolium 'Golden Abundance'	Shrub	
Golden Currant	Ribes aureum	Shrub	Bright yellow flowers
Goldmoss Sedum	Sedum acre	Ground Cover	Not recommended on steep slopes
Grass Tree	Xanthorrhoea spp.	Perennial accent/shrub	
Green Bark Ceanothus	Ceanothus spinosus	Shrub	
Green Carpet Natal Plum	Carissa macrocarpa	Ground Cover/Shrub	Fair-good drought tolerance, spreads 12-18"
Green Lavender Cotton	Santolina virens	Shrub	
Green Stonecrop	Sedum album	Ground Cover	
Greensphere Manzanita	Arctostaphylos x 'Greensphere'	Shrub	
Guadalupe Palm	Brahea edulis	Palm	
Gum Plant	Grindelia stricta	Ground Cover	Green foliage
Hall's Japanese Honeysuckle	Lonicera japonica 'Halliana'	Vining Shrub	
Hard Stem Bulrush	Scirpis acutus	Perennial	
Heart Leaved Penstemon	Keckiella cordifolia	Subshrub	
Hoary California Fuschia	Epilobium canum [Zauschneria californica]	Shrub	
Holly Leafed Cherry	Prunus ilicifolia ssp. Ilicifolia	Shrub	
Hollyleaf Redberry	Rhamnus crocea ssp. Ilicifolia	Shrub	
Hopseed Bush	Dodonaea viscosa	Shrub	Drought tolerant
Hyron Rose Clover	Trifolium hirtum 'Hyron'	Ground Cover	Drought tolerant
Indian Hawthorne	Rhaphiolepis spp.	Shrub	
Italian Alder	Alnus cordata	Tree	
Italian Buckthorn	Rhamnus alaternus	Shrub	
Ivy Geranium	Pelargonium peltatum	Ground Cover	
Jade Tree	Crassula ovata	Shrub	
Kangaroo Paw	Anigozanthus flavidus	Perennial/accent	
Lance-leaved Dudleya	Dudleya lanceolata	Succulent	Native

Common Name	Botanical Name	Plant Form	Remarks
Lavender Cotton	Santolina chamaecyparissus	Ground Cover	
Lemon Thyme	Thymus serpyllum	Ground Cover	
Lemonade Berry	Rhus integrifolia	Shrub	Native - May be trimmed up to tree form
Likiang Cotoncaster	Cotoneaster congestus 'Likiang'	Ground Cover/Vine	
Lilac Vine	Hardenbergia comptoniana	Shrub	
Lippia	Phyla nodiflora	Ground Cover	
Little Sur Manzanita	Arctostaphylos edmundsii	Ground Cover	Slow to establish
Loosely Flowered Annual Lupine/Coulter's Lupine	Lupinus sparsiflorus	Annual	
Loquat	Eriobotrya japonica	Tree	
Louis Edmunds Ceanothus	Ceanothus griseus 'Louis Edmunds'	Shrub	
Macadamia Nut	Macadamia integrifolia	Tree	
Maidenhair Tree	Ginkgo biloba	Tree	
Matilija Poppy	Romneya coulteri	Shrub	Large showy white flowers
Mayten Tree	Maytenus boaria	Tree	
Medicinal Aloe	Aloe Vera	Succulent	
Mexican Blue Palm/Blue Hesper Palm	Brahea armata	Palm	
Mexican Elderberry	Sambucus mexicana	Tree	Drought tolerant
Mexican Evening Primrose	Oenothera belandieri	Ground Cover	
Mexican Grasstree	Nolina spp.	Shrub	Drought tolerant
Mexican Palo Verde	Parkinsonia aculeata	Tree	Yellow flowers
Mexican Poppy	Eschscholzia mexicana	Herb	
Mojave Woolly Star	Eriastrum sapphirinum	Annual	
Mondo Grass	Ophiopogon japonicus	Ground Cover	
Monkeyflower	Mimulus spp.	Flower	
Monterey Carpet Manzanita	Arctostaphylos hookeri 'Monterey Carpet'	Low Shrub	Excellent drought tolerance, semi-upright to 12 inches
Mulefat	Baccharis salicifolia	Shrub	Native - Drought tolerant
Nevin Mahonia	Mahonia nevenii	Shrub	Yellow flowers
New Zealand Christmas Tree	Metrosideros excelsus	Tree	
no common name	Aeonium simsii	Ground cover	
no common name	Agave victoriae-reginae	Ground Cover	Low maintenance
no common name	Aloe aristata	Ground Cover	
no common name	Aloe brevifoli	Ground Cover	
no common name	Antirrhinum nuttalianum ssp.	Subshrub	
no common name	Arctostaphylos pungens	Shrub	
no common name	Brickellia californica	Subshrub	
no common name	Cistus crispus	Ground Cover	
no common name	Cistus incanus	Shrub	
no common name	Cistus incanus ssp. Corsicus	Shrub	
no common name	Cotoneaster buxifolius	Shrub	
no common name	Cotoneaster apricyi	Shrub	
no common name	Crassula lactea	Ground Cover	
no common name	Crassula multicava	Ground Cover	Not recommended for steep slopes
no common name	Crassula tetragona	Ground Cover	
no common name	Drosanthemum hispidum	Ground Cover	
no common name	Eriophyllum confertiflorum	Shrub	Native
no common name	Limonium pectinatum	Ground Cover	Drought and salt tolerant
no common name	Myoporum debile	Shrub	Excellent along seacoast
no common name	Myoporum parvifolium	Ground Cover	

Title

1972

Title

1993

Selected Photos

5-11-302
Exhibit 12

Selected Photos

5-11-302
Exhibit 12

Selected Photos

5-11-302
Exhibit 12

November 6, 2009

Selected Photos

5-11-302
Exhibit 12

March 20, 2010

Selected Photos

5-11-302
Exhibit 12