

CALIFORNIA COASTAL COMMISSION

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Staff Report: 7/27/12
Hearing Date: 8/9/12

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 is the second coastal development permit application for a park 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 The application was withdrawn by the applicant prior to Commission action at the November 2011 hearing.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.

Staff Note:

The Commission continued the subject application from the July 12, 2012 hearing with direction for staff to develop a set of potential conditions that would be necessary to approve the project. These conditions are added as Exhibit 26 to the staff report. However, the staff's recommendation of denial for the proposed project remains unchanged. No changes to the proposed project have been analyzed by staff in this report. Changes to the staff report since the July 2012 hearing include: corrections regarding the land use plan designation for the site, fixes to typographical errors, and addition of exhibits.

Regarding the Land Use Plan designation for the site, although the City of Newport Beach Land Use Plan (LUP) Amendment 1-06 Part B, which was approved on July 12, 2006, designated the site as Open Space, the Commission later approved LUP amendment 1-07 on February 6, 2009. LUP Amendment 1-07 created a new land use designation of Parks and Recreation (PR), and the new PR designation was applied to the subject site. The PR category is applied both to areas where no sensitive resources exist, and those areas where sensitive resources may exist, such as beaches and Upper Castaways Park. The PR category allows for active and passive parks, and the designation was used in areas where some recreational activity was anticipated. In sum, the PR designation does not indicate that a whole site was intended for active recreation. Furthermore, the policies of the LUP are applicable to all properties, no matter their LUP designation. Therefore, regardless of whether a site is designated as PR or Open Space, the ESHA protection policies in the LUP still apply.

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EXHIBITS

Exhibit 1 - Vicinity Map

Exhibit 2 - Planting Plan

Exhibit 3 - Grading Plan

Exhibit 4 - Site Plan

Exhibit 5 - Letters in opposition to the project dated May 17-30, 2012

Exhibit 6 - Letters in support of the project dated May 29, 2012

Exhibit 7 - Biological Memorandum from Dr. Jonna Engel, Staff Ecologist
Exhibit 8 - AG Opinion No. SO 77/39
Exhibit 9 - May 22 Letter from City of Newport Beach
Exhibit 10 - May 30 Letter from City of Newport Beach
Exhibit 11 – Newport Beach List of Fire Resistant Species
Exhibit 12 - Selected Photographs of Site
Exhibit 13 - Public Comment Letters Dated June 5, 2012 to June 17, 2012
Exhibit 14 - Director's Deed of Property to City
Exhibit 15 - Senate Bill 124
Exhibit 16 - Letter from City dated 10/14/2011 re SB124
Exhibit 17 - Excerpts from OCFA Guideline c-05: Vegetation Management Technical Design Guideline
Exhibit 18 - Public Comment Letters dated June 28 to July 24, 2012
Exhibit 19 - Letter from City of Newport Beach dated July 9, 2012
Exhibit 20 - Letters from City of Newport Beach dated July 11, 2012
Exhibit 21 - Letter from City of Newport Beach Fire Chief Scott Poster dated July 17, 2012
Exhibit 22 - Letter from City of Newport Beach Recreation Dept. dated July 20, 2012
Exhibit 23 - Letter from Newport Beach City Manager Dave Kiff dated July 23, 2012
Exhibit 24 - Extension of 180 day Permit Streamlining Act Deadline and associated letters
Exhibit 25 - Ex-Parte Declarations
Exhibit 26 - Potential Special Conditions of Approval

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 Semeniuk 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 Semeniuk 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 number 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 (Exhibit 22).

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 below in Section C, Historical and Existing Vegetation Patterns.

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.

In its letter, dated July 9, 2012, the City argues that the statutory transfer, Senate Bill 124 (2001) (“SB 124”) (Exhibit 15), of the subject site dictated that the City could only build an active park on the site. In a letter, dated October 14, 2011, from the Newport Beach City Attorney’s office, the City argues that legislative history further bolsters this position. (Exhibit 16) The City’s position is not supported by the plain meaning of the statutory language of the legislative transfer. In cases of statutory interpretation, the fundamental task is to determine the Legislature’s intent. (*Baker v. Worker’s Comp. Appeals Bd.* (2011) 52 Cal.4th 434, 442.) The text of the statute is the “best indicator of legislative intent” and the courts may “reject literal construction that is contrary to the legislative intent apparent in the statute or that would lead to absurd results.” (*Ibid.*) Thus, the court’s “first task is to look to the language of the statute itself. When the language is clear and there is not uncertainty as to the legislative intent, [the court] look[s] no further and simply enforce[s] the statute according to its terms.” (*Ibid.*) Given this judicial method for statutory interpretation, it is clear that the language of SB 124 does not explicitly prohibit the development of a passive park. Rather, the legislature simply transferred the subject property to the State Parks (structured in a manner where State Parks took title under SB 124 with the City managing it) for state park purposes. There is no other conditional language indicating that the park shall be active or otherwise. Thus, the statutory language is clear that there is no limiting language regarding the type of park contemplated under SB 124. As such, there is no need to resort to legislative history to interpret the statute.

Even if the City were correct that SB 124 should be subject to interpretation using legislative history, the City mischaracterized the legislative history of SB 124. The only reference in the Bill Analysis to an active park is a statement that it is the *City’s intent*, not the Legislature’s intent, to build baseball and soccer fields. There is nothing in the referenced legislative history (see Exhibit 16) mandating that the City has to build an active park on the transferred property.

Finally, the City claims that the Sunset Ridge property must be used for an active park because it alleges that the purchase and sale agreement between the City and the State, when the State decided to sell the property to the City instead of having the City manage the property for State Parks, dictated as much. The Grant Deed (Exhibit 14) which includes a City Council resolution authorizing the purchase of the subject property, dated September 26, 2006, states that the purchase and sale agreement provides, among other things, that “[t]he property must be used as a park consistent with the current Open Space-Active (OS-A) zoning.” The OS-A zoning designation is no longer part of the City’s zoning code, so it is unclear upon which standard the City could even rely on to comply with the purchase and sale agreement condition. Moreover, at the July 2006 hearing, prior to the City’s resolution, dated September 26, 2006, regarding the purchase of the subject property and the City’s acceptance of the subject site deed on November 16, 2006, the Commission certified a land use plan amendment, as submitted, for the subject property, with the

designation of the site going from Medium Density Residential to Open Space. (NPB-MAJ-1-06 Part B (Caltrans West)) In the findings, the Commission notes that the Open Space designation is “intended to provide areas for a range of public and private uses to meet the recreation needs of the community and to protect, maintain, and enhance the community’s natural resources.” The Commission’s findings also noted that a detailed natural resource analysis must be conducted when the City proposes a project and “that the developable area of the site may be restricted by the existence of habitat and associated setbacks/buffers.” Given that the Commission certification of this LUP amendment, changing the land use designation of the subject site to Open Space, happened before the City’s resolution authorizing the purchase of Caltrans West subject to the condition that the City build a park consistent with a designation not assigned to the property, OS-A, it is illogical that the City agreed to a condition in the purchase and sale agreement contrary to the existing zoning at the time.

Moreover, even if the purchase and sale agreement contemplated an active park, the Commission was not a party to this agreement and is not bound by its terms. Further, the City’s argument that it must build an active park fails because parties to a contract may be excused from performing under the terms of the contract where the performance is prevented by operation of law. (See *National Pavements Corp. of Calif. V. Hutchinson Co.* (1933) 132 Cal.App. 235, 238.) In this vein, the City entered into the purchase and sale agreement in 2006, well after the effective date of the Coastal Act which contains policies to protect coastal resources in the coastal zone and after the effective date of the subject site’s land use designation as Open Space, not Open Space-Active. Thus, any conditions in the purchase and sale agreement would likely be excused as impossible to perform by operation of laws existing at the time of the agreement, including the Coastal Act and its own zoning designation of the site. Therefore, the City cannot support its position that it must build an active park because the purchase and sale agreement between it and the State said so.

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 Park 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. LUP Amendment NPB-MAJ-1-07

Although the City of Newport Beach Land Use Plan (LUP) Amendment 1-06 Part B, which was approved on July 12, 2006, designated the site as Open Space, the Commission later approved LUP

amendment 1-07 on February 6, 2009. LUP Amendment 1-07 created a new land use designation of Parks and Recreation (PR), and the new PR designation was applied to the subject site. The PR category is applied both to areas where no sensitive resources exist, and those areas where sensitive resources may exist, such as beaches and Upper Castaways Park. The PR category allows for active and passive parks, and the designation was used in areas where some recreational activity was anticipated. In sum, the PR designation does not indicate that a whole site was intended for active recreation. Furthermore, the policies of the LUP are applicable to all properties, no matter their LUP designation. Therefore, regardless of whether a site is designated as PR or Open Space, the policies provided in the LUP still apply.

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 the 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 from the City of 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 resistant 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 not known to be qualified biologists and thus 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 Robb 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. The available photographs show 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. Coastal sage scrub on Newport Banning Ranch and the Park Site is best characterized as California encelia series because it is dominated by

California encelia. 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 encelia or California buckwheat were co-dominant with sagebrush. This provides additional evidence that California encelia is one of the California sage scrub species most favored by the gnatcatcher. 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 populations⁵. 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

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. California Gnatcatcher territorial behavior. *Western Birds*, Vol. 29: 242-257.

⁵ Ibid.

area of Encelia Scrub located partially on and partially adjacent to the Park Site, and about 160 feet 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 conference 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 gnatcatchers⁸. 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 property adjacent to the Park Site is known as Newport Banning Ranch. Newport Banning Ranch 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 Fish and Wildlife Service (FWS) 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 FWS 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, FWS noted that the area was occupied by gnatcatchers at the time of listing and at the time of designation of critical habitat

⁸ Atwood, J.L. and D.R. Bontrager. 2001. California Gnatcatcher (*Poliophtila californica*). In The Birds of North America, No. 574 (A. Poole and F. Gill, eds.). The Birds of North America, Inc. Philadelphia, PA.

and the area “contains all the features essential to the conservation of the coastal California 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). FWS 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 Sawyer, 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 yards of earth from the site. Additionally, the site has been subject to mowing activities which have

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

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 Highway 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 major 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. As noted above, the subject site contains major vegetation and, thus, pursuant to the Coastal Act, any removal of the major vegetation requires a property owner to apply for and obtain a coastal development permit from the Commission before such removal.

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, 975-976).

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 and a claimant must submit a coastal development permit application to seek approval for its development.

For the present matter, there is major vegetation on the subject site and any removal of this vegetation constitutes development which triggers the requirement for the City to seek approval of a coastal development permit application for the removal of the vegetation. To date, the Commission has not issued any coastal development permits for mowing of the major vegetation at the subject site. Further, an applicant claiming a vested right in certain development must submit a vested rights claim application to the Commission before the applicant can establish a legal vested right in development in the coastal zone. (See, *LT-WR v. Coastal Commission* (2007) 152 Cal.App.4th 770, 783-786.) The City of Newport Beach has not submitted a vested rights application, and, additionally, prior to the City's ownership, Caltrans never applied for a vested rights determination from the Commission which, as noted above, is required to establish a vested right in development. Thus, since the Commission has not approved any vested rights claim for mowing of the major vegetation at the subject site, the City cannot maintain it has a vested right to mow the major vegetation on the subject site. Even if the City applies for a vested rights determination, it is unclear if periodic mowing would even qualify as an activity that would merit the evaluation of a vested rights determination because a party does not typically perform substantial work and incur substantial liabilities when engaging in annual or semi-annual mowing on a parcel. Moreover, mowing of a site's major vegetation is likely not an activity that would qualify for a vested rights determination because the City's claim that it has authority to mow the site in perpetuity is one that has no defining point of completion while a vested right typically applies in situations where there is a beginning and an end to a government-approved construction project. (See, *Avco Community Developers, Inc. v. South Coast Regional Commission* (1976) 17 Cal.3d 785, 791; see, also, *Billings v. California Coastal Commission*, (1980) 103 Cal.App.3d 729, 735.)

Therefore, it is the Commission's position that since neither Caltrans nor the City ever applied for a vested right in the mowing, neither can claim it has established a vested right for the ongoing mowing of major vegetation at the site, and that activity is subject to coastal development permit requirements pursuant to the Coastal Act. The Commission cannot consider and decide a matter which has not been applied for, presented and noticed and as such cannot consider this implicit claim for a vested right within a permit application.

In a letter, dated July 9, 2012, the City argues that "[t]he City's ongoing maintenance activities pre-date the Coastal Act and, in any event, the City has a vested right to continue that ongoing pre-Coastal Act use." The City seems to be making two different arguments, a claim that the mowing is exempt maintenance and a claim that the City has a vested right to continue mowing.

The City claims its mowing activities are maintenance activities which pre-date the Coastal Act and, as such, it never needed a CDP to conduct maintenance on the subject site. In other words, the City claims its mowing activities constitute exempt maintenance. As the staff report notes, below, the subject site contains extensive areas of ESHA within the proposed active park. Pursuant to section 30610(d) of the Coastal Act, certain maintenance activities are exempt from CDP requirements except methods of maintenance that involve a risk of substantial adverse environmental impact as dictated by the Commission's regulations. Under section 13252 of the Commission's regulations, the exemption does not apply when the maintenance activity involves

the use of mechanized equipment within ESHA. Therefore, the City's "ongoing maintenance" is not exempt maintenance, constitutes development and is unpermitted development because the City has never acquired a CDP for its mowing activities in ESHA.

As noted above, the City is required to submit a vested rights claim application to the Commission before it can claim it has established a vested right. Therefore, it cannot claim it has a vested right unless the Commission has already acted on a vested rights claim by the City. The City relies on an appellate court case, *Monterey Sand Company v. CCC* (1987) 191 Cal.App.3d 169 ("*Monterey Sand Co.*"), for the general proposition that it doesn't need a CDP for its ongoing mowing activities because it has a vested right to continue these activities under the premise that the mowing is a "continued operation," with Caltrans having started the operations before Prop. 20. In *Monterey Sand Co.*, the plaintiff challenged the *Commission's denial of a vested rights application* and the court held that the plaintiff had established a vested right in its continued operation of sand extraction from Monterey Bay because it established it had all the requisite permits from governing regulatory agencies before passage of Proposition 20. (*Id.* at pp 175-179.) In stark contrast, the City has never applied for a vested rights determination, and thus stands inapposite to the plaintiff in *Monterey Sand Co.* Moreover, since neither the City nor Caltrans has ever applied for a vested rights claim determination, the City cannot use this coastal development permit application process as a forum to assert its mowing activities on the subject property is a type of activity that would qualify for a vested rights claim. Rather, the Commission may only make this determination during a properly noticed and scheduled hearing that clearly indicates that the Commission will be considering a vested rights application on its agenda. (14 CCR §§ 13059, 13200-13204.) Therefore, since the City has not applied for a vested rights claim determination, there has been no noticing or scheduling of such a vested rights claim, thus the Commission cannot consider the merits of such a claim at this time.

Monterey Sand Co. also establishes why a vested rights claim would be unlikely to succeed. The court explained that "[t]he foundation of the vested rights doctrine is estoppel which protects a party that detrimentally relies on the promises of the government." (*Id.* at 177.) Unlike in *Monterey Sand Co.*, where the State had approved a lease prior to enactment of the Coastal Act and the mining company had made significant investments in reliance on that lease, the City has not identified any past promises by the state regarding the mowing activity nor has it identified any significant investments that it made in order to continue the mowing activity.

6. City's Nuisance Abatement Goes Beyond What is Necessary to Abate the Newport Beach Fire Department's Declared Nuisance

In its letter, dated July 9, 2012, the City argues that its "on-going maintenance activities are legal because they constitute nuisance abatement which is not subject to coastal development permit requirement." To support its position, the City has submitted a "Notice of Nuisance," dated June 8, 2012, issued by the Newport Beach Fire Marshal likely in response to the Commission's prior staff report on this project, for the November 2011 Commission meeting, which noted that the City could not rely on a claim of nuisance abatement of the Sunset Ridge property when it never followed its own abatement procedures, as dictated in Newport Beach Municipal Code section 10.48.030 "Notice of Nuisance." The City's Notice of Nuisance on June 8, 2012 does not have retroactive effect and is entirely irrelevant to the mowing activities that occurred prior to June 8, 2012.

Pursuant to Newport Beach Municipal Code section 10.48.020, the Fire Marshal may declare and abate a public nuisance under limited circumstances including the following:

- A. *Weeds growing upon highways, streets, sidewalks, parkways or private property in the City.*
- B. *Dry grass, stubble, brush, garden refuse, litter or other flammable material which constitutes a fire hazard or which, when dry, will in reasonable probability constitute a fire hazard.*
- C. *Poison oak and poison ivy when the location of such plants constitutes a menace to the public health.*
- D. *All rubbish, refuse and dirt upon parkways or sidewalks and all rubbish and refuse upon private property in the City. (Ord. 2001-2 § 2, 2001: Ord. 1194 § 2 (part), 1966)*

In its Notice of Nuisance, the Fire Marshal appeared to rely on subsection (B) as grounds for requiring the City to abate the nuisance on the subject site. The Notice of Nuisance findings conclude that “the property will need to be cleaned of all dry grass, stubble, brush, garden refuse, litter, or other flammable material that constitutes a fire hazard or that will when dry.” The City’s nuisance abatement, however, is subject to coastal development permit requirements because the Fire Marshal’s recommended abatement activities go beyond what is necessary to abate a nuisance. Notably, the Fire Marshal did not include the qualifying language in Newport Beach Municipal Code section 10.48.020(B) which allows for clearing if the vegetation will, “in reasonable probability,” constitute a fire hazard when the vegetation is dry.

In *Citizens for a Better Eureka v. Coastal Commission* (“CBE”) (2011) 196 Cal.App.4th 1577, the court established the following “workable rule” when evaluating activities targeted at abating a city or county declared nuisance: “[W]here a local government properly declares a nuisance and requires abatement measures that are narrowly targeted at abating the declared nuisance, those measures do not require a [CDP]. On the other hand, a CDP is required if the development “activity exceeds the amount necessary” “simply to abate the nuisance.” (*Id.* at p. 1585.) In *CBE*, the court upheld the Commission’s findings that the plaintiff’s abatement activities to allegedly comply with the City of Eureka’s nuisance declaration to clean up contaminated soils, cut weeds and pick up litter on plaintiff’s project site, went beyond what was necessary to abate the nuisance. (*Id.* at p. 1586.) The court agreed with the Commission’s position that plaintiff’s proposed abatement which incorporated a wetland fill and restoration aspect of development involved “environmental and regulatory issues significantly beyond those presented in the ‘site remediation’ portion of the development in which the nuisances identified by the City—contaminated soil, rubbish, and overgrown vegetation—would be abated.” (*Id.* at p. 1587.) As such, the court concluded that the plaintiff needed to attain a CDP for any activity that goes beyond what is necessary to abate a nuisance. (*Ibid.*)

Similarly, the Newport Beach Fire Department, in its Notice of Nuisance goes beyond what is necessary to abate the nuisance on the subject property when it declared that the City must clean the

subject property “of all dry grass, stubble, brush, garden refuse, litter, or other flammable material that constitutes a fire hazard or that will when dry.” Without more direction, the abatement procedures will exceed what is necessary to abate the nuisance. Generally, the Commission does not require a property owner to seek a CDP for fuel modification activities within a certain distance, usually 100 feet, of structures consistent with local government fire codes. The City has a similar provision in its Municipal Code. Any clearing beyond the generally allowed fuel modification area close to structures requires a coastal development permit. In cases where a local government has declared a nuisance due to fire hazards on a site and required abatement of the entire site, going beyond the typically-allowed clearing of vegetation within 100 feet from a structure, the Commission would look at the habitat of the site to determine which species on the site do not present a fire hazard and work with the local government in the CDP context to create a detailed, narrowly-tailored fuel management plan that does not have significant adverse effects on coastal resources. Dr. Engel, contrary to the City’s allegation¹⁰, characterizes the subject site, in particular the Disturbed Encelia area, as containing extensive areas of ESHA since the Commission, as noted below, considers the subject site condition as though the unpermitted mowing did not occur, with the primary species in that area being the fire resistant plant species, *Encelia californica*. The 3.3-acre Disturbed Encelia area on the subject site also consists of fire resistant, and native, deerweed (*Lotus scoparius*). The Newport Beach Fire Department (See Exhibit 11) and the Orange County Fire Authority¹¹ (Exhibit 17) both list the *Encelia californica* and deerweed as fire resistant species. The Orange County Fire Authority states that *Encelia californica* is “[a]cceptable in all fuel modification wet and dry zones in all locations” where a fuel modification zone is defined as a “strip of land where combustible native or ornamental vegetation has been modified and partially or totally replaced with drought tolerant, fire resistant, plants.” Based on this, Orange County essentially advises its residents to plant *Encelia californica* in all fuel modification zones throughout the county. Thus, the City’s suggestion that abatement of the nuisance on the subject site requires complete clearing of the property goes beyond what is required to eliminate fire hazards on the subject site since a majority of the Disturbed Encelia area on the subject site contains fire resistant plant species, like *Encelia californica* and deerweed (*Lotus scoparius*). Therefore, while the Coastal Act recognizes the City’s power to declare, prohibit, and abate a nuisance as provided in section 30005, its abatement activities go beyond what is required to abate the declared nuisance and, thus, those activities are not exempt from permitting requirements and the City must apply for a CDP if it wishes to abate a nuisance by clearing areas beyond the areas 100 feet from structures on the subject site.

E. ENVIRONMENTALLY SENSITIVE HABITAT AREAS

Coastal Act Section 30107.5 states:

¹⁰ The City is completely in error when it declared, in its letter, that “Dr. Engel further states that but for the City’s mowing, the disturbed vegetation would be closely spaced and include highly flammable and undesirable plant species, such as black mustard and thistle.” The City does not cite to a specific document to support its assertion that Dr. Engel made such a statement. And, in fact, the City cannot support this position because Dr. Engel never made this statement.

¹¹ http://www.ocfa.org/_uploads/pdf/guidec05.pdf

"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 and 1:1 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 CSS¹². 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

¹² Westman, W.E. 1981. Factors influencing the distribution of species of California coastal sage scrub. *Ecology* 62:439-455; Michael Brandman Assoc. 1991. A rangewide assessment of the California gnatcatcher. A report to the Building Industry Association of Southern California cited by J.E. O'Leary, et al. 1994, *Bibliographies on coastal sage scrub and other related malacophyllous shrublands of Mediterranean-type climates*. California Wildlife Conservation Bulletin No. 10.

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-dominant 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.

In its letter, dated July 9, 2012, the City argues that since the Commission did not comment on its draft EIR when the City circulated it for the Sunset Ridge project then the Commission is precluded from claiming that the Disturbed Encelia area constitutes ESHA. While the Commission makes every effort to submit comments to a lead agency on its draft EIR findings as the findings relate to the Coastal Act policy considerations, due to severe Commission staff time restraints, staff cannot always submit written comments to a lead agency before the end of the draft EIR comment period. The conclusions of the EIR, however, do not in any way limit the Commission's evaluation of the project's consistency with Coastal Act requirements. Coastal Act section 30621 requires the Commission to review CDP applications de novo. The City's argument that the EIR limits the Commission's review is inconsistent with this requirement. Further, Public Resources Code section 21174 provides that where CEQA and the Coastal Act conflict, the Coastal Act controls. Therefore, the City's position that the Commission cannot make an ESHA finding that differs from the City's certified EIR is incorrect.

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 Semeniuk 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 of sports fields.

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 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:

(1) 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*

America¹³. 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 wetlands¹⁴. 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 artificial¹⁵, 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 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.

¹³ Connor, H.E. and D. Charlesworth. 1989. Genetics of male-sterility in gynodioecious *Cortaderia* (Gramineae). *Heredity*, Vol. 63: 373–382.

¹⁴ Hamilton, R. (December 10, 2009) op. cit.

¹⁵ 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”.

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 Semeniuk Slough. Semeniuk 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 Semeniuk 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 Semeniuk Slough, the project would not result in degradation of water quality in the adjacent Semeniuk 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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COASTAL COMMISSION

EXHIBIT # 1
PAGE 1 OF 1

LEGEND

- Expanded CSS - Native
Acreage: .10 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: 5.52 ac.
 - Butterfly Garden
Acreage: .10 ac.
 - Streetscape Slope
Acreage: 1.31 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)
Acreage: .24 ac.
- *Areas are outside of Grading Limits and are Not to Be Disturbed as part of the Sunset Ridge Park Project.
- NOV Areas
 - Body 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. + 1.50 ac. Existing Parking Lot = 15.20 ac.



Planting Diagram

Red Denotes Plant Native to Southwest California Floristic Province

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

■ Denotes Plant Native to Coastal Sage Scrub Plant Community

EXPANDED CSS

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

WATER INFILTRATION / NATIVE BUFFER AREA

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

RESIDENTIAL BUFFER

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

STREETSCAPE SLOPE

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

BUTTERFLY GARDEN

■ <i>Achillea clavennae</i>	Silvery Yarrow
■ <i>Achillea millefolium</i> 'Rosea'.....	Common Yarrow
■ <i>Anagallis flavida</i>	Butterfly Bush
■ <i>Buddleia davidii</i>	Wild Lilac
■ <i>Ceanothus g. h. 'Carmel Creeper'</i>	Wild Lilac
■ <i>Ceanothus</i> 'Joyce Coulter'.....	Wild Lilac
■ <i>Ceanothus</i> 'Concha'.....	Pride of Madeira
■ <i>Echinum candicans</i>	Coast Sunflower
■ <i>Encelia californica</i>	Common Buckwheat
■ <i>Eriogonum fasciculatum</i>	Blue Fescue
■ <i>Festuca o. g. 'Siskiyau Blue'</i>	Lavender
■ <i>Lavandula angustifolia</i> 'Hidcote'.....	Arroyo Lupine
■ <i>Lupinus succulentus</i>	Monkey Flower
■ <i>Mimulus</i> spp.....	Scarlet Bugler
■ <i>Penstemon centranthifolius</i>	Grimmell's Beardlongue
■ <i>Penstemon graminifolius</i>	Manilla Poppy
■ <i>Romneya coulteri</i>	Rosemary
■ <i>Rosmarinus</i> 'Collingwood Ingram'.....	Autumn Sage
■ <i>Salvia greggii</i>	Purple Sage
■ <i>Salvia leucophylla</i>	Dwarf Black Sage
■ <i>Salvia mellifera</i> 'Terra Seca'.....	Stonecrop
■ <i>Sedum spathulifolium</i>	Mono Groundsel
■ <i>Senecio flaccidus</i> var. <i>monoensis</i>	Blue Chalk Sticks
■ <i>Sisyrinchium bellum</i>	Blue-Eyed Grass
■ <i>Tagetes lemmonii</i>	Mexican Marigold
■ <i>Teucrium chamaedrys</i>	Creeping Germander
■ <i>Trichostema lanatum</i>	Woolly Blue Gums

ACTIVE AREA

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

TREES

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



KEY MAP

Comprehensive Tree, Shrub, Grass and Groundcover Planting List

CEPT DESIGN



EARTHWORK		
COLOR	CUT(-) / FILL(+)	AREA (SF)
Blue	-30' to -12'	33,168
Light Blue	-12' to -6'	49,773
Green	-6' to 0'	226,778
Yellow	0' to +6'	153,391
Red	+6' to +12'	60,196
Purple	+12' to +27'	10,055

PARK SITE EARTHWORK QUANTITY	
CUT	57,223 CY
FILL	36,559 CY
EXPORT	20,664 CY
*EXPANSION INDEX = 0	

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 cify 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

The contents of Exhibit 5 were not supplied in the printed edition of the staff report because they were provided to the Commission at the June and July hearings. Instead, they are provided herein as part of the electronic copy of the staff report.

EXHIBIT # 5
PAGE 1 OF 54

Del Arroz, John@Coastal

From: Barbara Wood [barb]@sboglobal.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

COASTAL COMMISSION

EXHIBIT # 5
PAGE 2 OF 54

5/30/2012

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 Coastal 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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5/30/2012

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 mowing 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

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5/30/2012

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

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5/30/2012

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 be 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, nature's 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

IMPORTANT NOTICE: This message, including any attachments, is confidential and may be proprietary, privileged and be protected from disclosure. It is intended only for the use of the individual or entity to which it has been sent. If you are not the intended recipient, you may not use, read, copy, forward or disclose this message or its attachments. If you have received this message in error, please advise the sender and permanently delete this message. Any use of this email, including disclosure, distribution or replication by someone other than its intended recipient is prohibited.

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5/30/2012

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 mowing 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

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5/30/2012

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 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 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 Newport 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 wildlife such as raptors) living on Sunset Ridge, and Banning Ranch.
- As nature keeps being divided up into the smallest possible units for our suburban 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

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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, and 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>

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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 occurred 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

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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 of 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

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

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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

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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 overlooking the area being proposed by the City for the Sunset Ridge Park and have been witness to the deliberate destruction of the habitat 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 occurrence with nothing to do with fire suppression. It appears to be a deliberate attempt to destroy the habitat. It has changed the wildlife from the original natural inhabitants to basically pests, rabbits have been replaced with ground squirrels 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 of this special habitat, is there anyway to have the City of Newport Beach respect the wonders that this habitat provides and stop the mowing?

Sincerely,
 Dave Sutherland
 12 Summerwind

COASTAL COMMISSION

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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 habitat for the rare and endangered species that are attempting to establish

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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 Cosylyon, Newport Beach Code Enforcement, Area 1
mcosylyon@newportbeachca.gov

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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 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 1/2 x 11 in size.

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

COASTAL COMMISSION

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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/mtocurr.html>.

See you on June 13!

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

Dorothy Kraus
medjkraus@yahoo.com

If you no longer wish to receive these emails, please reply to this message with "Unsubscribe" in the subject line or simply click on the following link:
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Concerned Residents of Newport Beach
Benning Ranch
Newport Beach, California 92663
US
[Read the VerticalResponse marketing policy.](#)



COASTAL COMMISSION

EXHIBIT # 5
PAGE 11 OF 54

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; Veasari, 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 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.

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

COASTAL COMMISSION

EXHIBIT # 5
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5/29/2012

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 Commission 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 Gnatcatcher 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

COASTAL COMMISSION

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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

COASTAL COMMISSION

EXHIBIT # 5
PAGE 25 OF 54

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 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
- 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 Netai

400 Cabrillo St., Costa Mesa, CA 92627

COASTAL COMMISSION

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5/29/2012

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

COASTAL COMMISSION

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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**

COASTAL COMMISSION

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5/29/2012

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 Coslyon
Senior Code Enforcement Officer
City of Newport Beach

Dear Mr Coslyon,

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 its mowing pattern.

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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



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COASTAL COMMISSION

EXHIBIT # 5
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May 26, 2012

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

RECEIVED
South Coast Region
MAY 29 2012
CALIFORNIA
COASTAL COMMISSION

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 mowing 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 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.

COASTAL COMMISSION

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

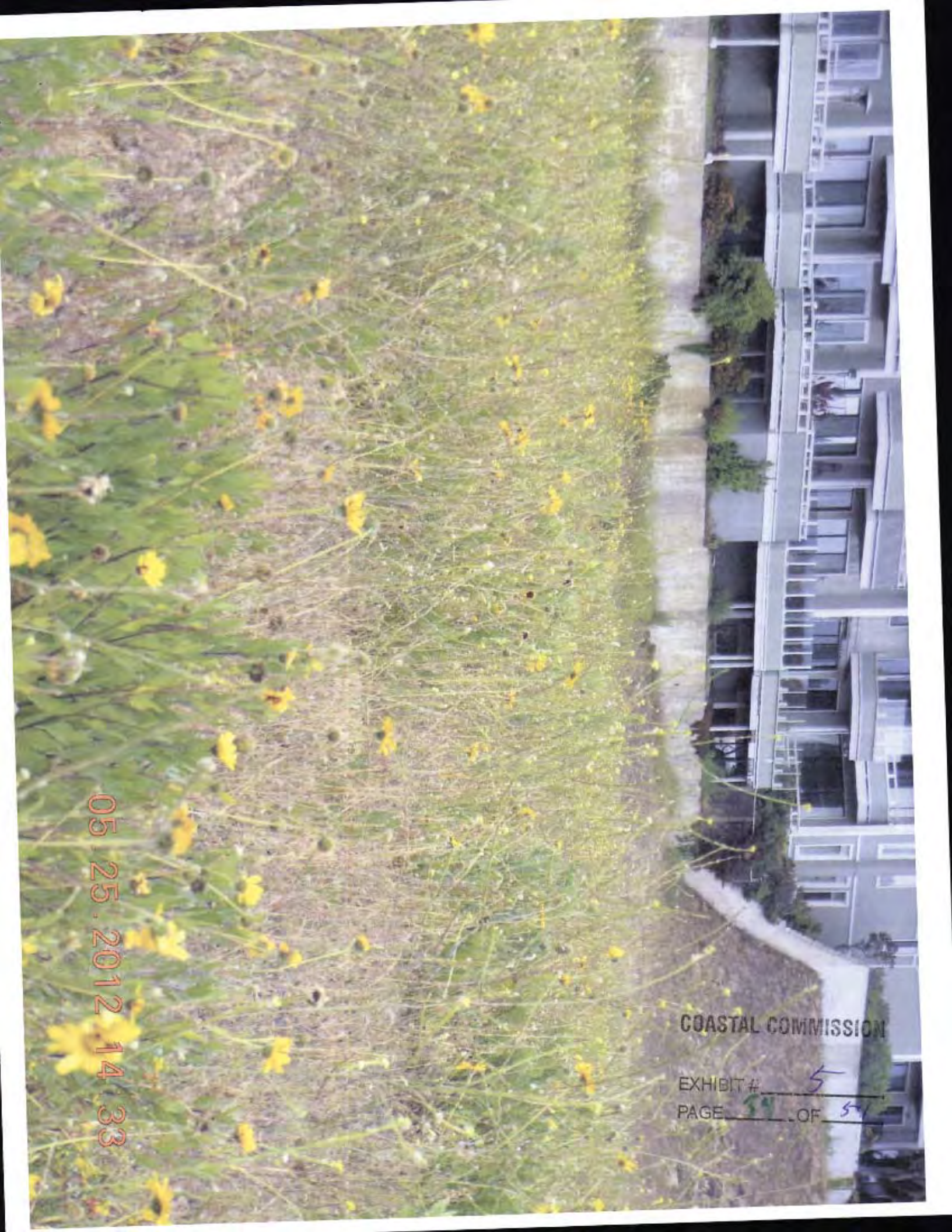
cc:

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

Enclosures

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05.25.2012 14:33

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05-25-2012 14:35



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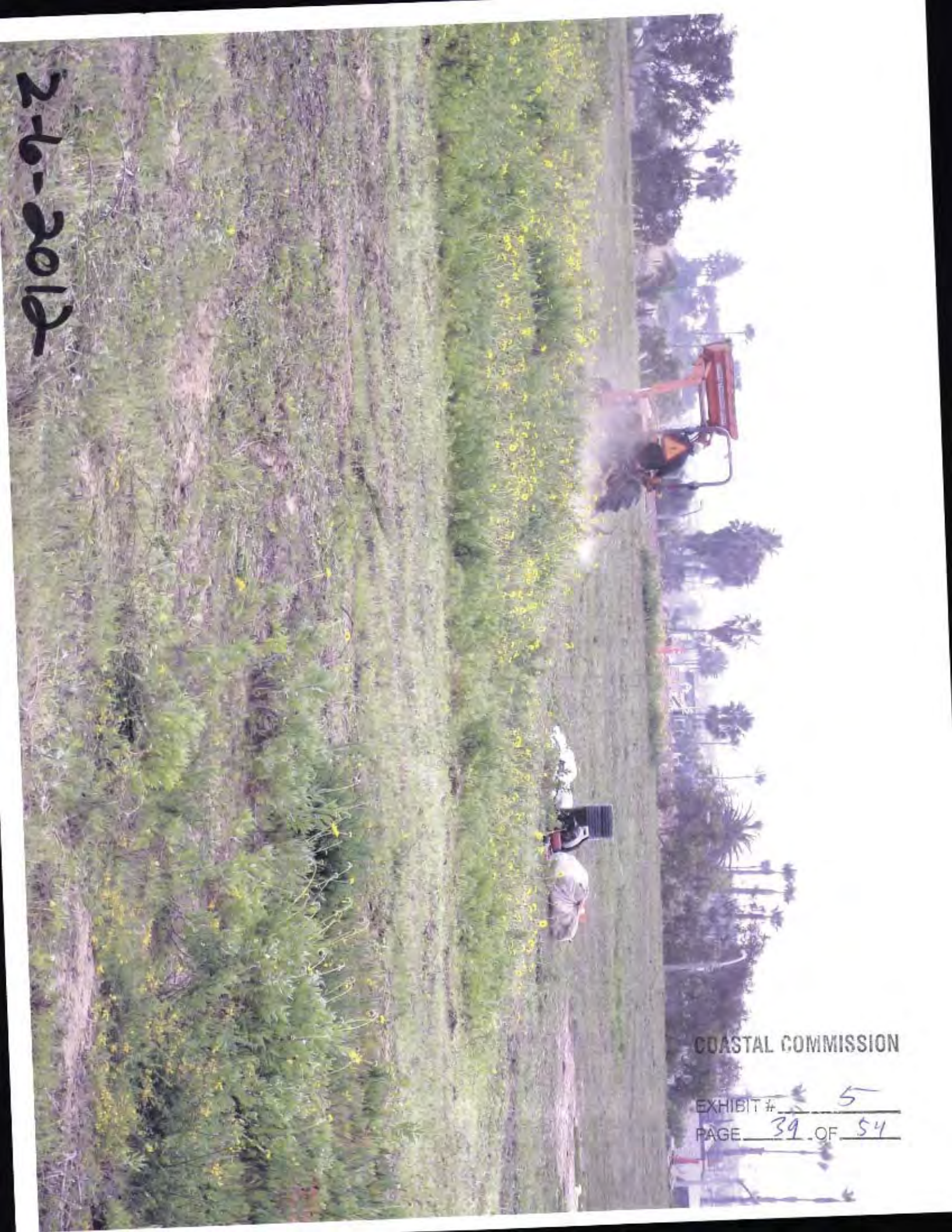


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05.25.2012 14:34

2-6-2012



COASTAL COMMISSION

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COASTAL COMMISSION

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2-1-2012

COASTAL COMMISSION

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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

COASTAL COMMISSION

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5/18/2012

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.

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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".

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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.

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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.

COASTAL COMMISSION

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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: _____

COASTAL COMMISSION

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Also, an email from early 2010, obtained by the Freedom of Information Act, suggests some uncertainty 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

COASTAL COMMISSION

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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 explanation why it would benefit the City and still provide for two soccer fields and one baseball field.

Terry Welsh
Banning Ranch Conservancy

COASTAL COMMISSION

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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."

COASTAL COMMISSION

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

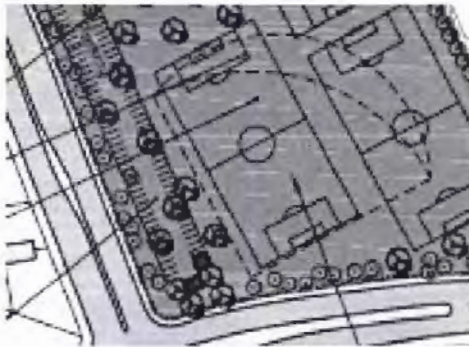
COASTAL COMMISSION

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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, ***whether Banning Ranch is preserved or developed***.

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 and the Coastal Act.

Terry Welsh
President, Banning Ranch Conservancy

COASTAL COMMISSION

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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
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COASTAL COMMISSION

EXHIBIT # 6
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5/29/2012

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
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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 out¹ (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 rainfall². 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 littoralis*) series³. 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 Conception⁴ 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 annuals⁵. Dominant species include California sunflower, live-forever (*Dudleya sp.*), and prickly pear⁶.

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 bluffs⁷. 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 sagebrush⁹. 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 America¹¹. 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 wetlands¹². 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 artificial¹³, 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 frequency [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 regions¹⁶. One such species is the coastal California gnatcatcher (*Polioptila californica*). The California gnatcatcher is an obligate, year-round resident of coastal sage scrub communities¹⁷. 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 buckwheat¹⁸. Gnatcatcher densities in northern San Diego County were found to be highest in areas where California encelia and California buckwheat were co-dominant with sagebrush¹⁹. Where these species are in low abundance, California gnatcatchers will forage on other species, including some non-natives such as black mustard²⁰. They also use grassland, chaparral, and riparian habitats in proximity to sage scrub for dispersal and foraging²¹.

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 1993²². 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, respectively²⁵. 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 California²⁶. 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 2007²⁷ (Figure 10; California Gnatcatcher 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 Gnatcatcher (*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 populations³¹. 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 ground³². 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 larger³³. 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. California 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 conference 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 (*Poliophtila 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 (*Poliophtila 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 2010³⁸. 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 or developed areas), and the territory maps do not distinguish

³⁷ U.S. Fish and Wildlife (USFWS). 1997b (July 28). Coastal California Gnatcatcher (*Poliophtila 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 2000⁴⁰. 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” areas⁴¹ 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 Appendices⁴² 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.

ESHA East

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 extinction⁴⁵ 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 pH⁴⁸. 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 boundary⁴⁹. 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 abundance⁵⁰. 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 decreased⁵¹.

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 predation⁵⁴. 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 frequency and for a length of time sufficient to support San Diego fairy shrimp. In the absence of maintenance we expect VP 39 will continue to pond (and pond for longer periods over time as silts collect in basin), unless the roadway fill is removed. To ensure the proposed project does not result in unintended impacts to listed species, we recommend protocol surveys for San Diego fairy shrimp are conducted in VP 39 prior to filling the pool.

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

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

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

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

06/15/2011 01:34 PM

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

Subject Banning Ranch Site Visit

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

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

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

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

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

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 consultation on oil operations and restoration on the project site.

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

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

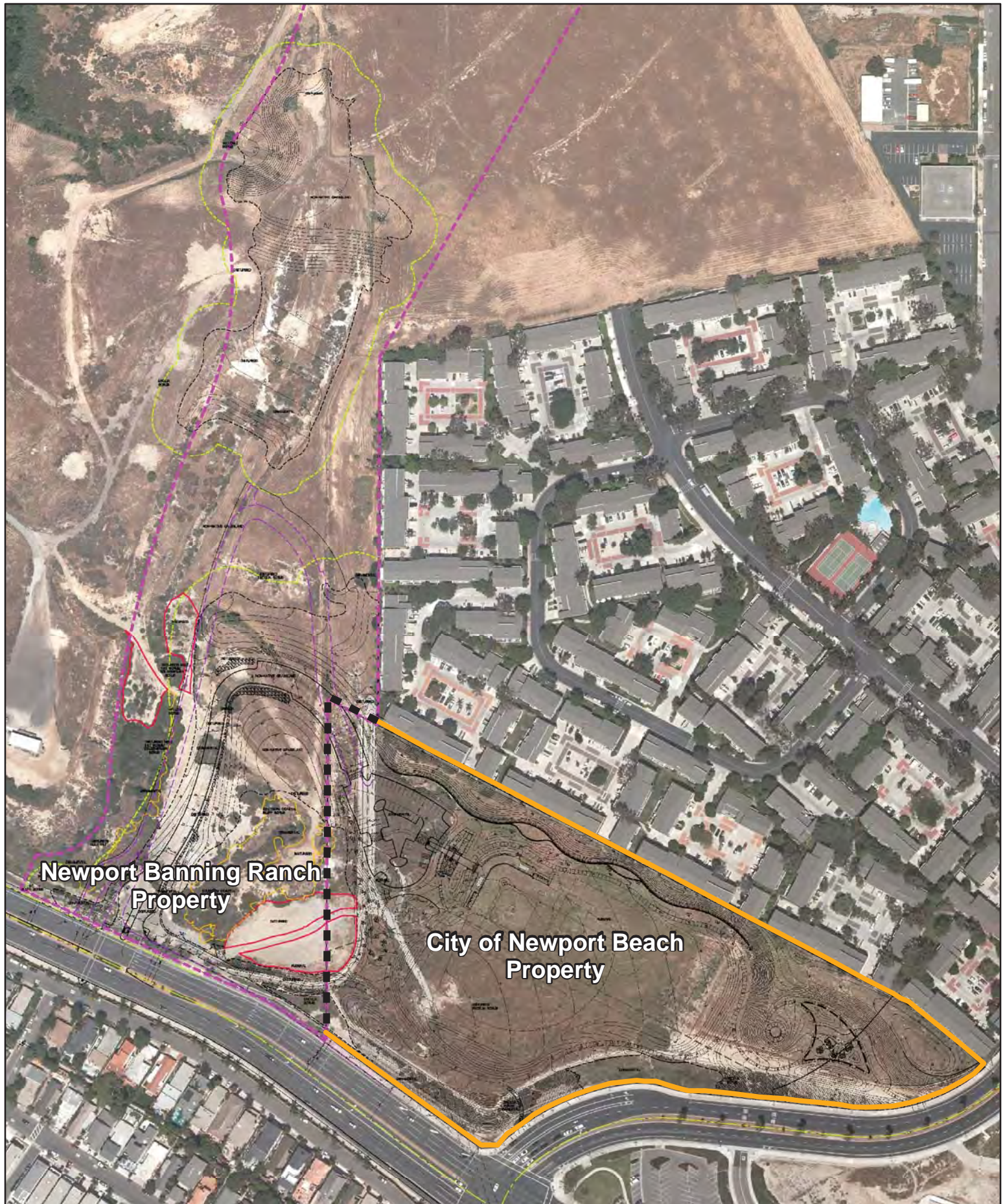
Jonna,

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

Hope this helps.







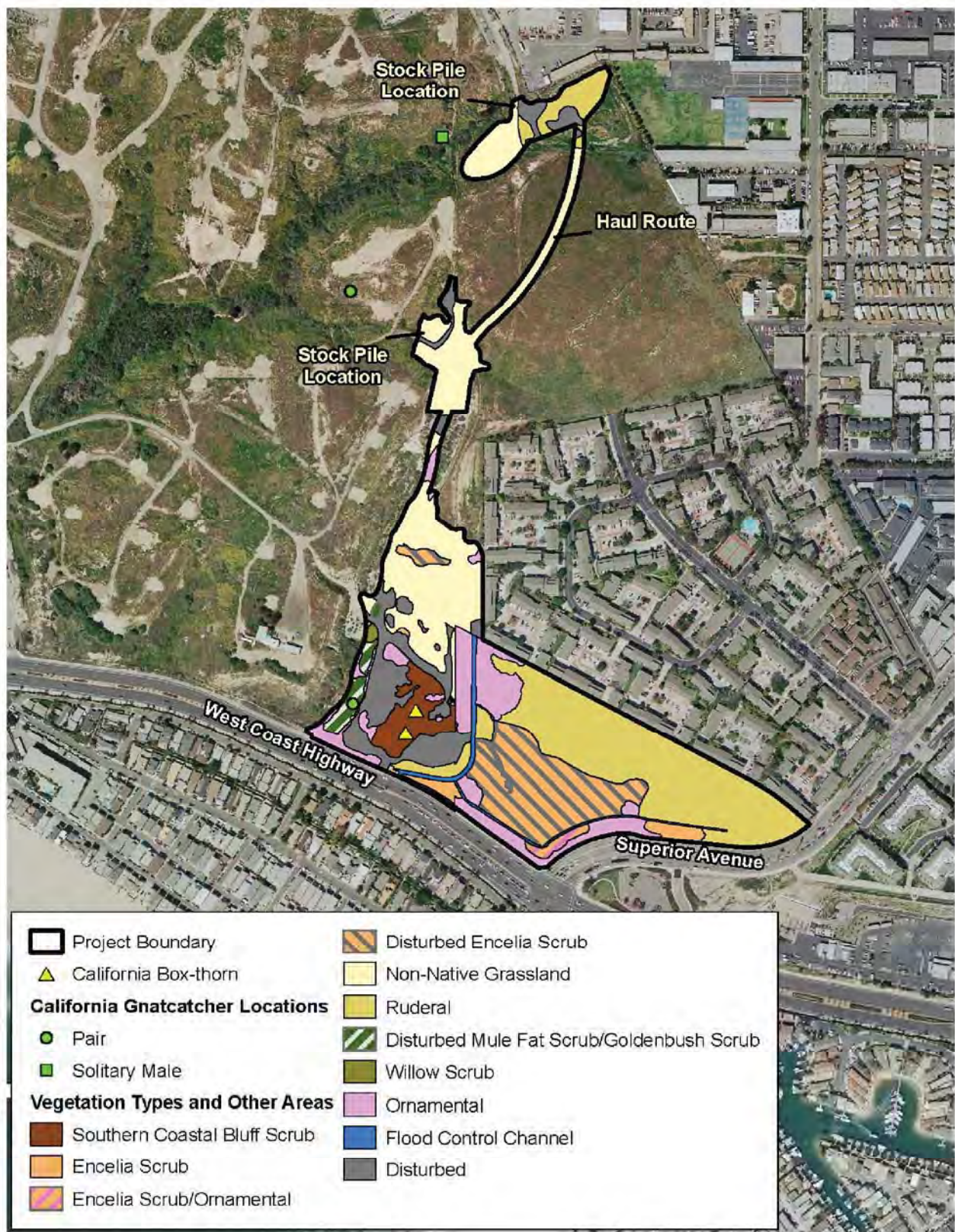


**Northwest
Polygon**

**Northeast
Polygon**

**Southeast
Polygon**





Special Status Biological Resources

Exhibit 4.6-2

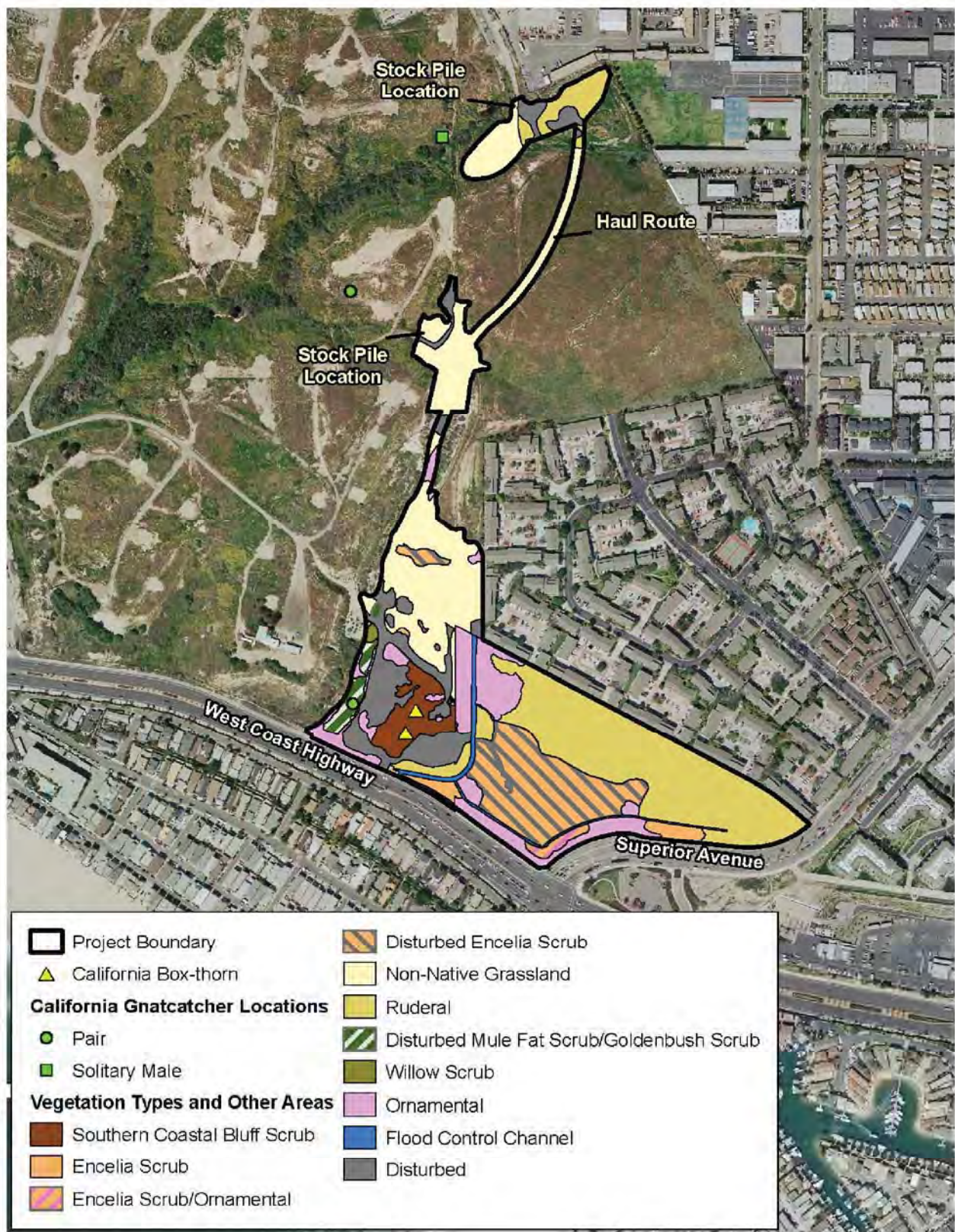
Sunset Ridge Park EIR



Bonterra
CONSULTING

(REV: JFG 03-08-10)R:\Projects\Newport\0016\Graphics\EIR\ex4.6-2_Special_Status.pdf





Special Status Biological Resources

Exhibit 4.6-2

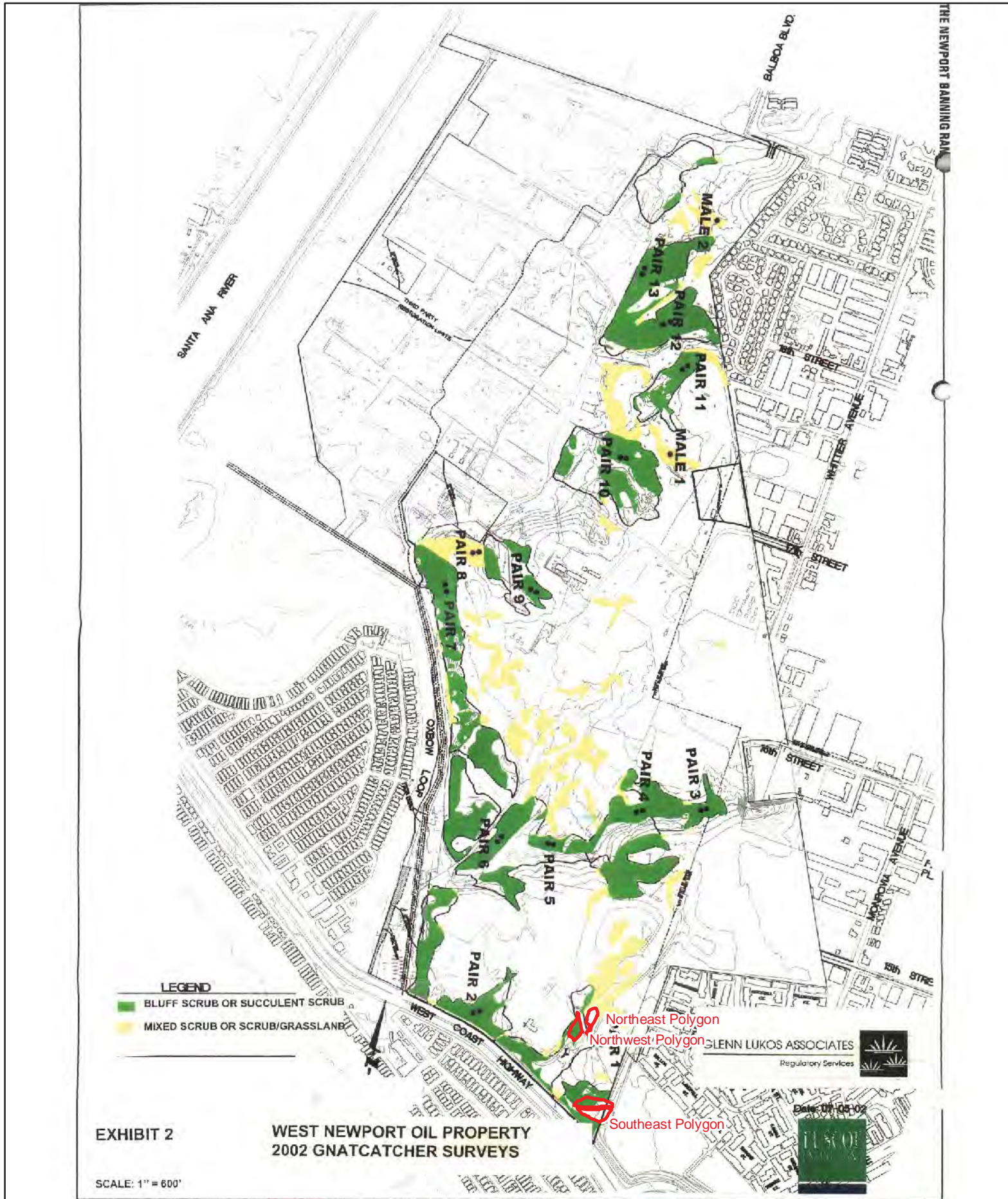
Sunset Ridge Park EIR



Bonterra
CONSULTING

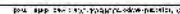
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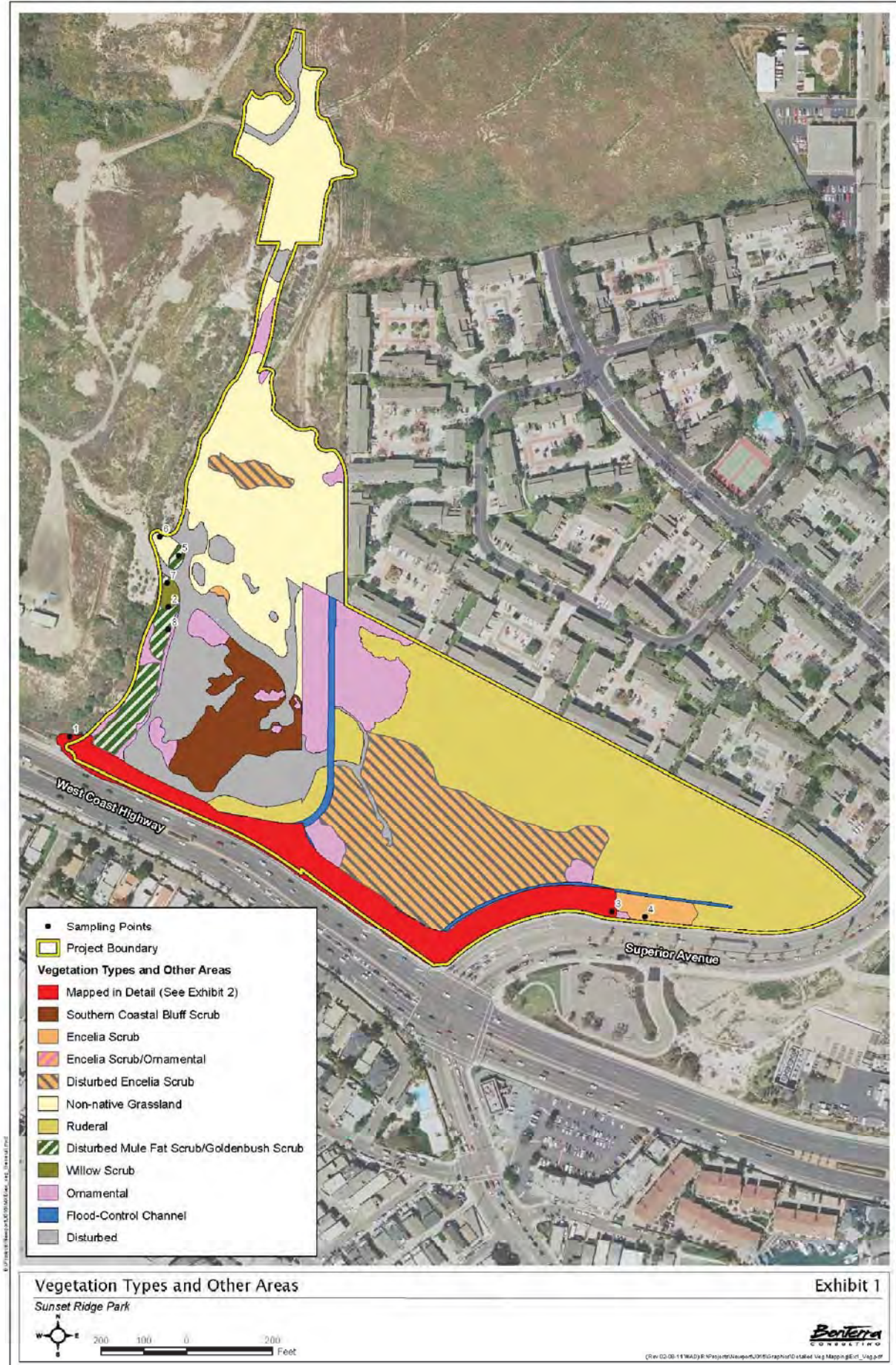






1 230 N GLENVIEW SQUARE                       





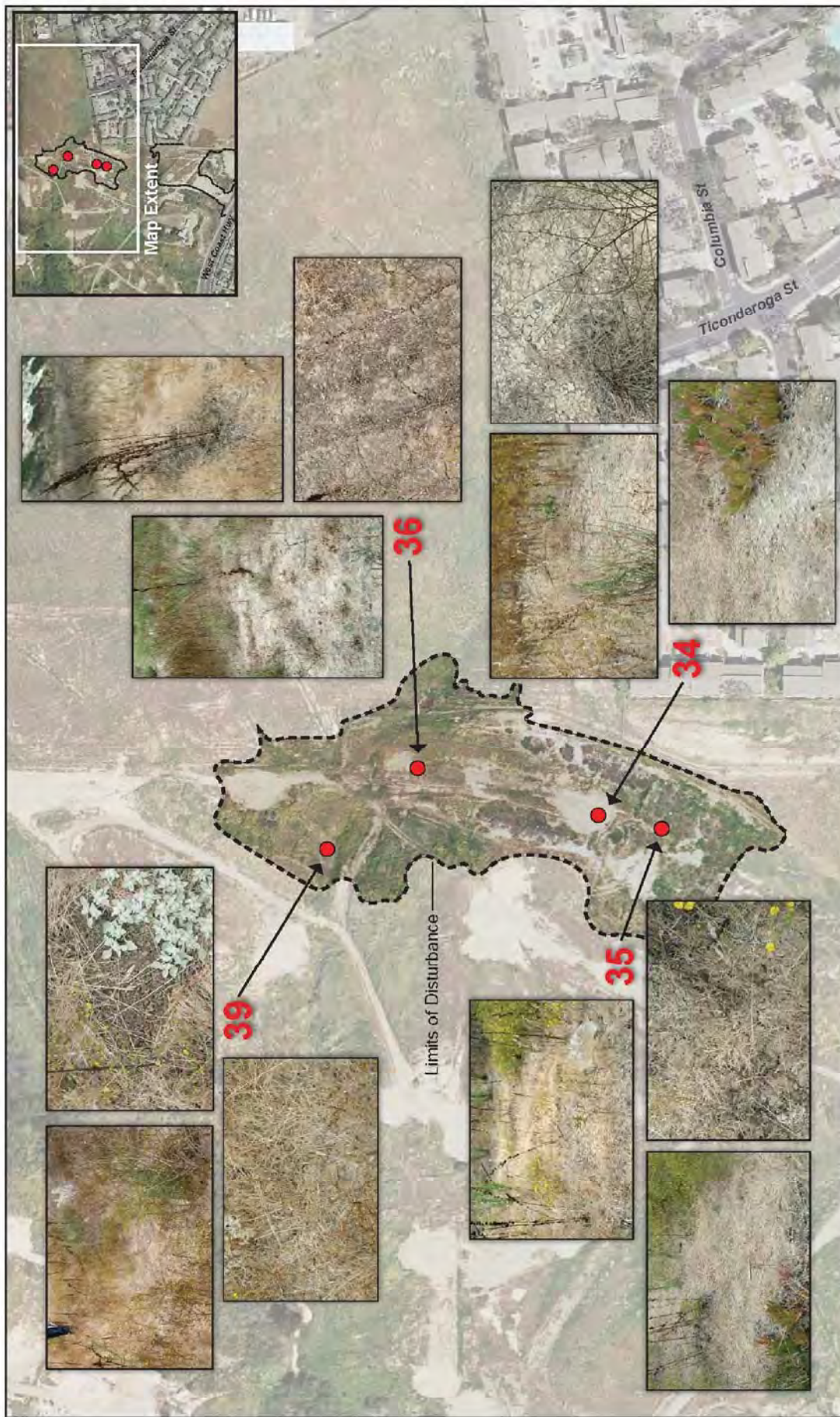


Exhibit 2

Bonterra
CONSULTING

(03a0011.gxd) 5-11-302 Sunset Ridge Park BRC Features CS-AE-02_Drupal.pdf

BRC Features 34, 35, 36, and 39

Sunset Ridge Park



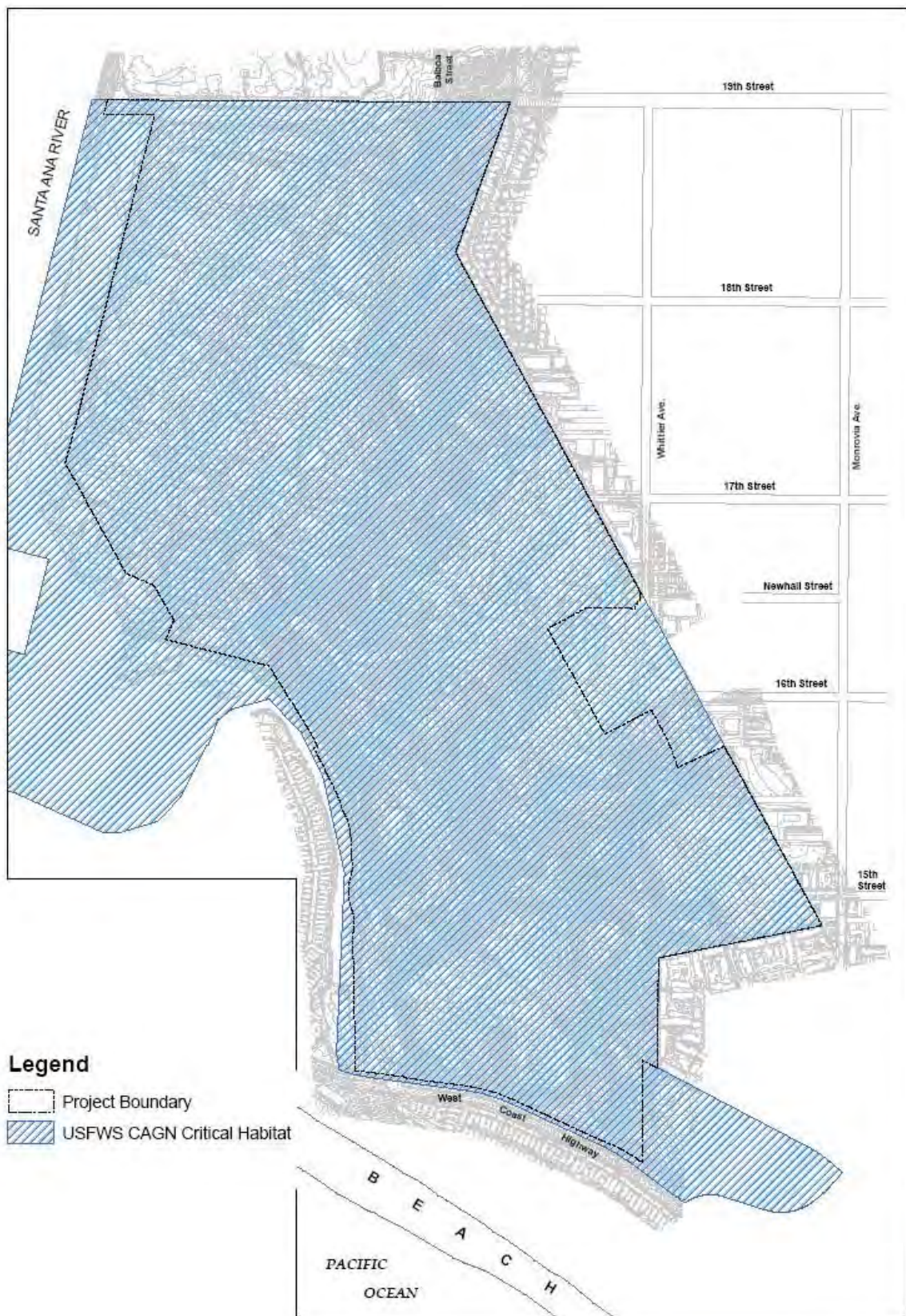
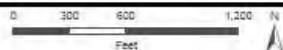


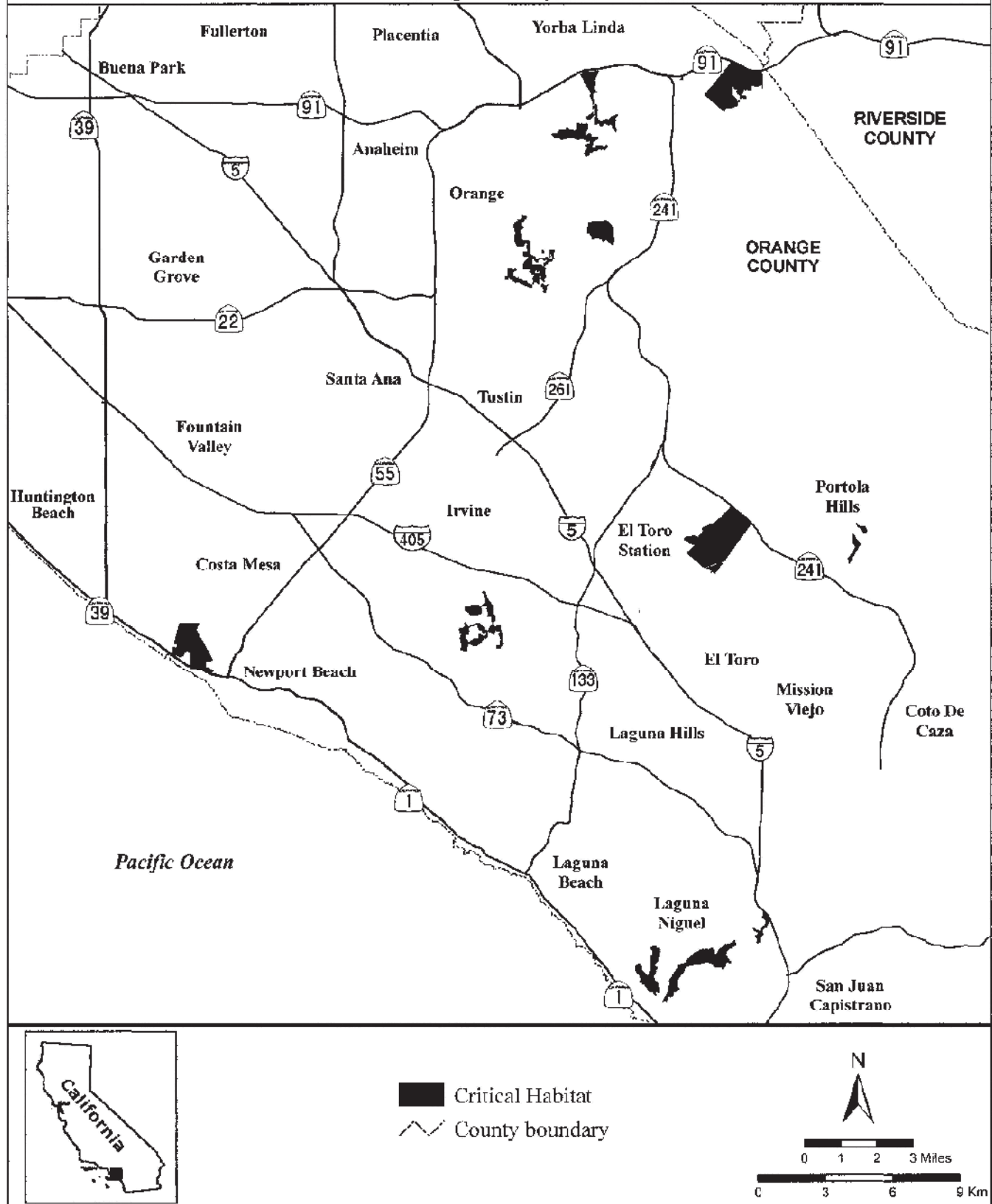
Exhibit 13

California Gnatcatcher Critical Habitat Unit Map



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







Habitat from LSA (c. 1991)

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

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



Legend

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



NEWPORT BANNING RANCH

Transect Location Map

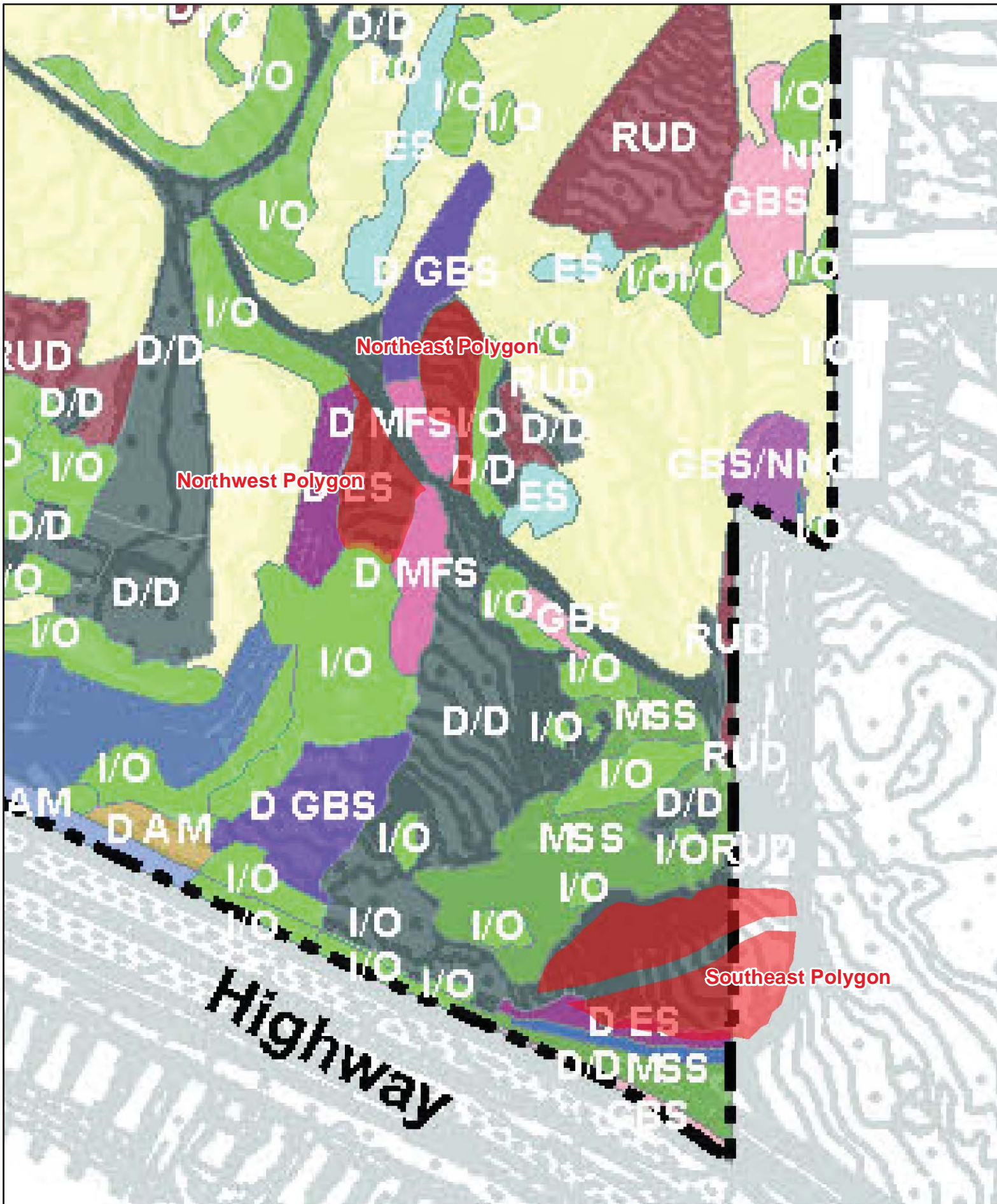
GLENN LUKOS ASSOCIATES

Exhibit 9



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SANTA ANA RIVER

19th Street

18th Street

Whittier Ave.

17th Street

Monrovia Ave.

Newhall Street

16th Street

15th Street

Legend

- Project Boundary
- ESHA Scrub
- Non-ESHA Scrub
- ESHA Wetland and/or Riparian
- Non-ESHA Wetland and/or Riparian

Northeast Polygon

Northwest Polygon

Southeast Polygon

West

Coast

Highway

PACIFIC
OCEAN

Exhibit 12

Environmentally Sensitive Habitat (ESHA) Map

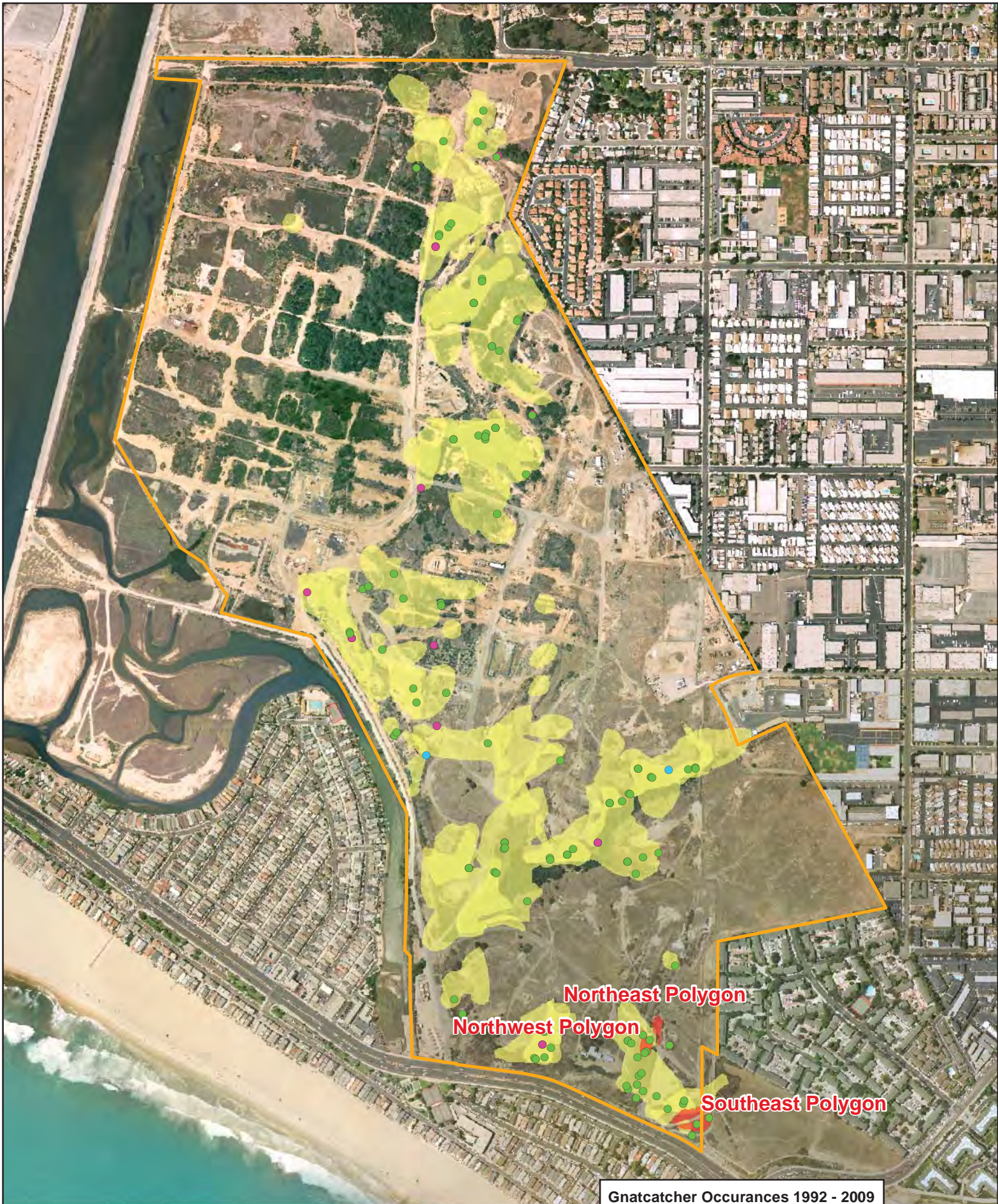


Not To Scale.
All Locations Approximate.
For Illustrative Purposes Only.

Figure 17

5-11-302 Exhibit 7 Page 50 of 72

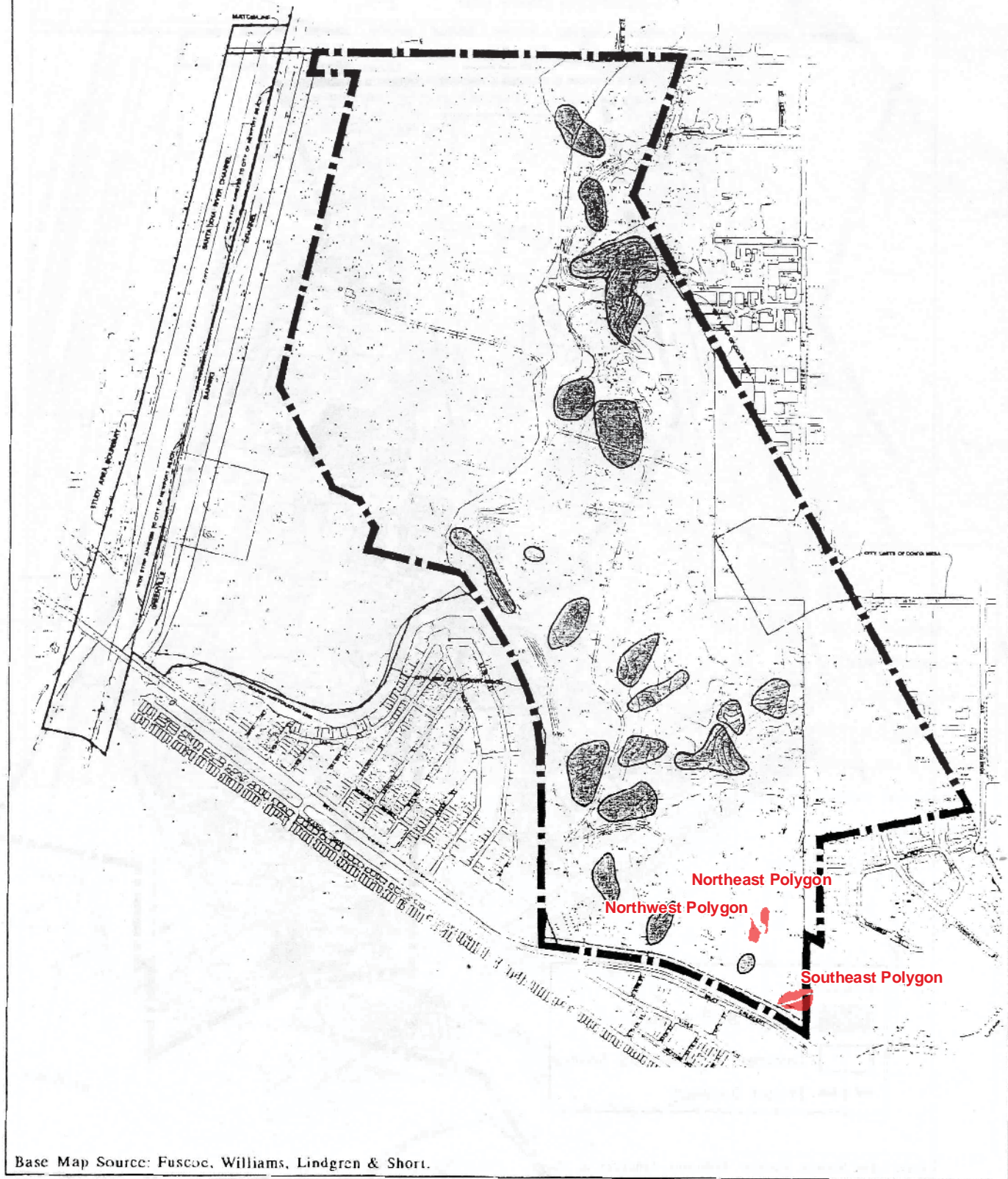
DSM 9/11



Gnatcatcher Occurances 1992 - 2009

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

Figure 18
5-11-302 Exhibit 7 Page 51 of 72



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.

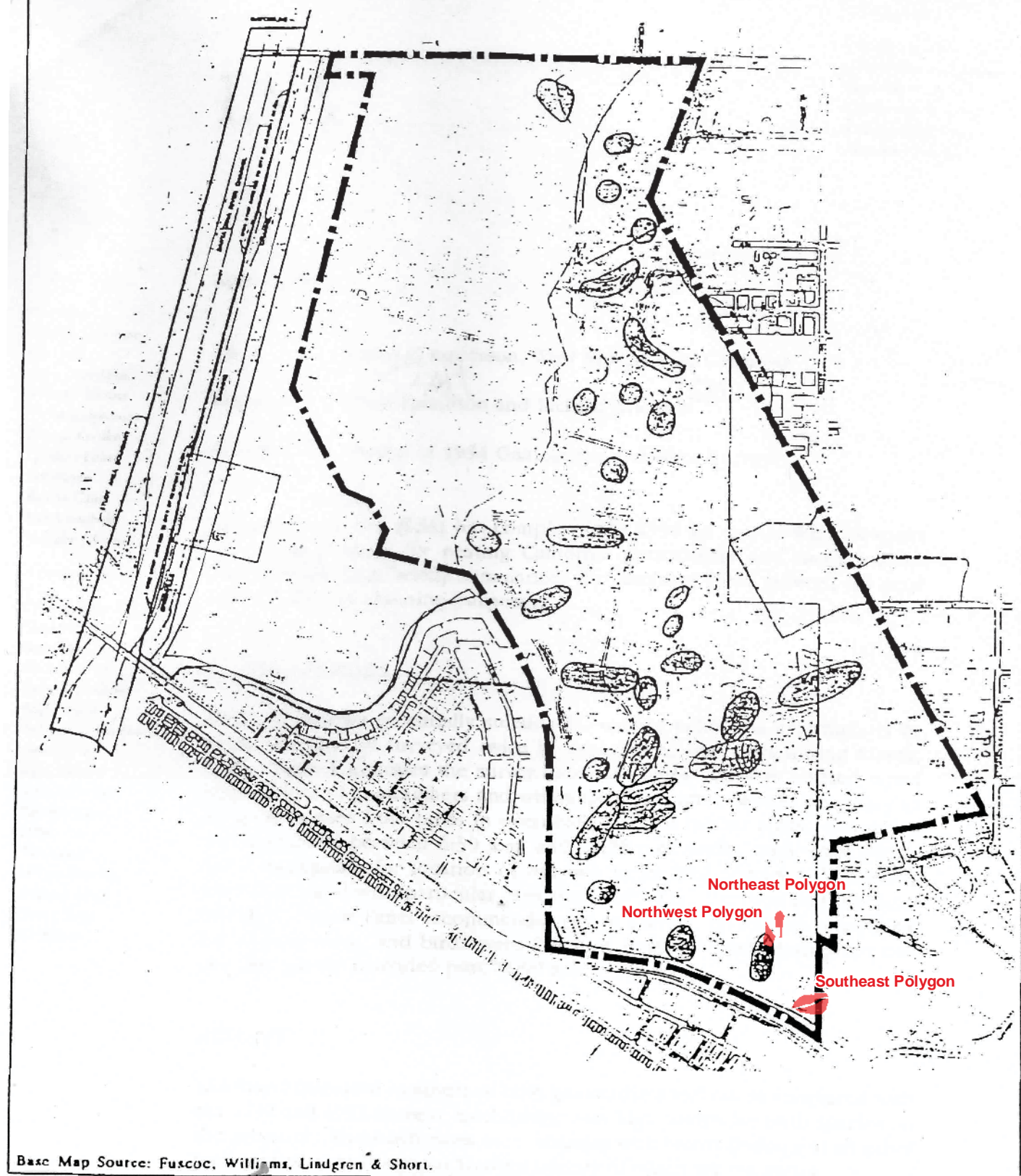
Figure 19a

5-11-302 Exhibit 7 Page 52 of 72

DSM 9/11







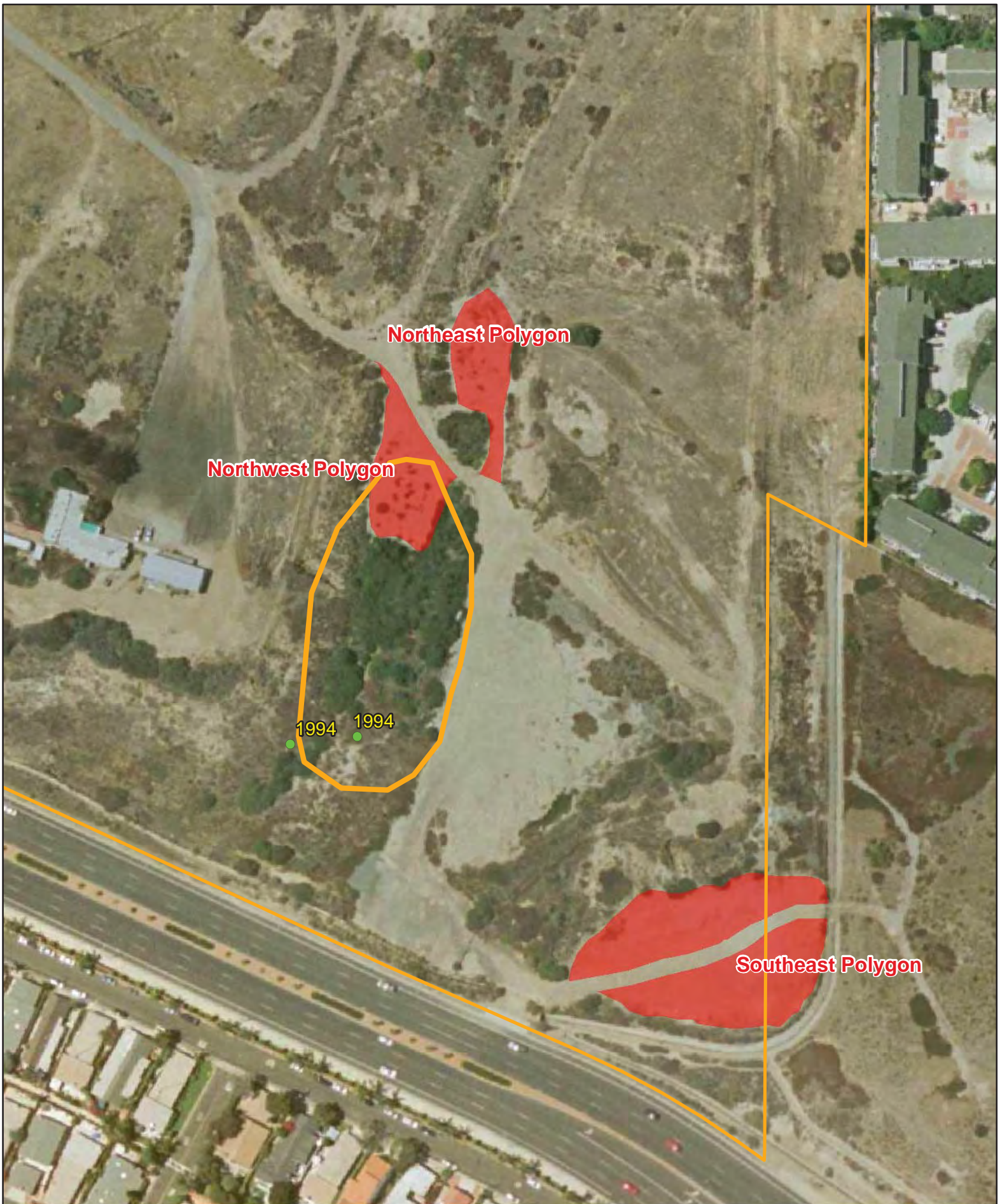
Base Map Source: Fuscoc, Williams, Lindgren & Short.
4/7/94(WNO401)

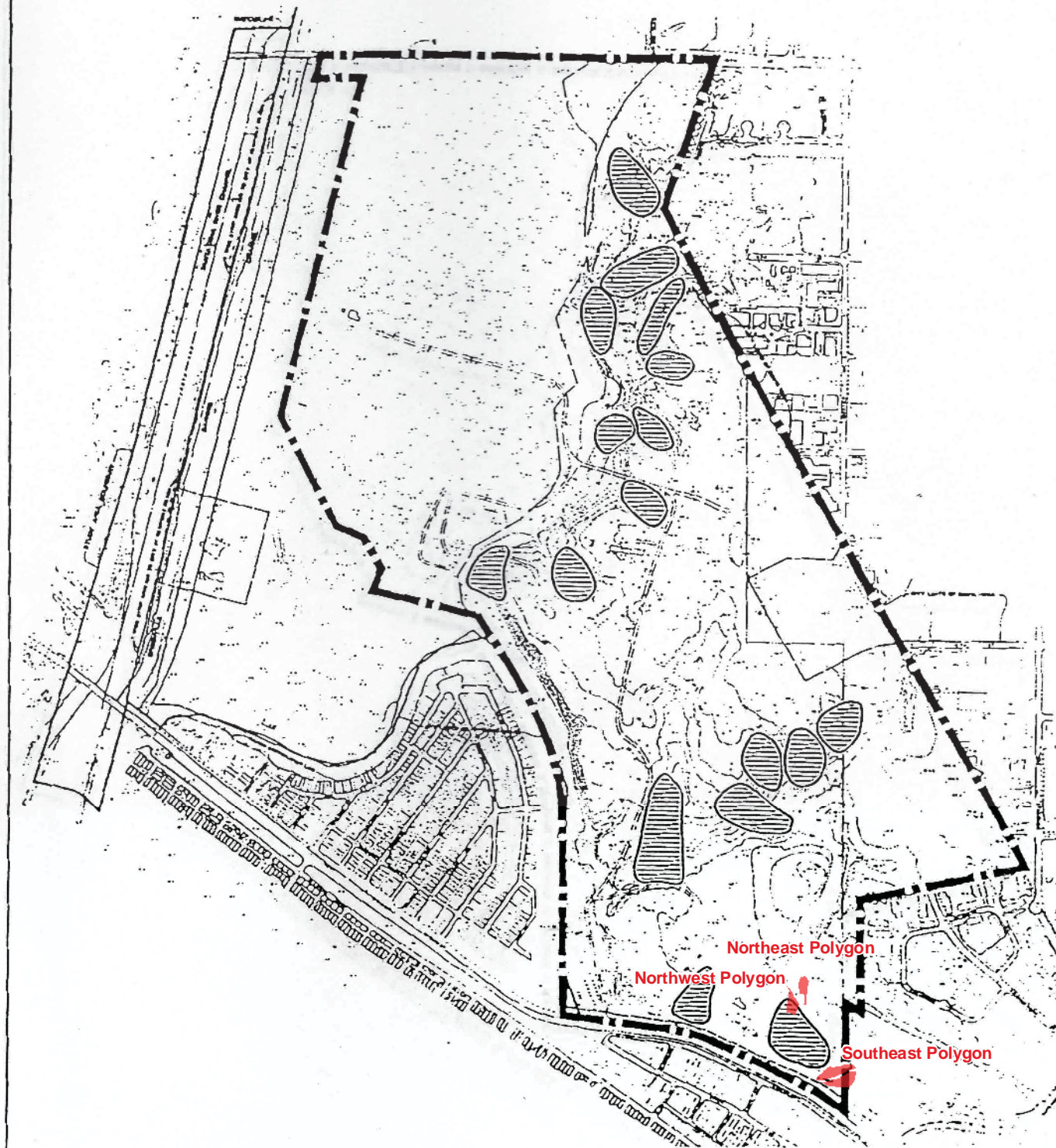


Scale in Feet

gnatcatcher







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

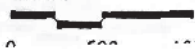
4/15/96(WNO201)

Figure 1



LSA

Scale in Feet



Spring 1996

gnatcatcher





Northeast Polygon

Northwest Polygon

Southeast Polygon



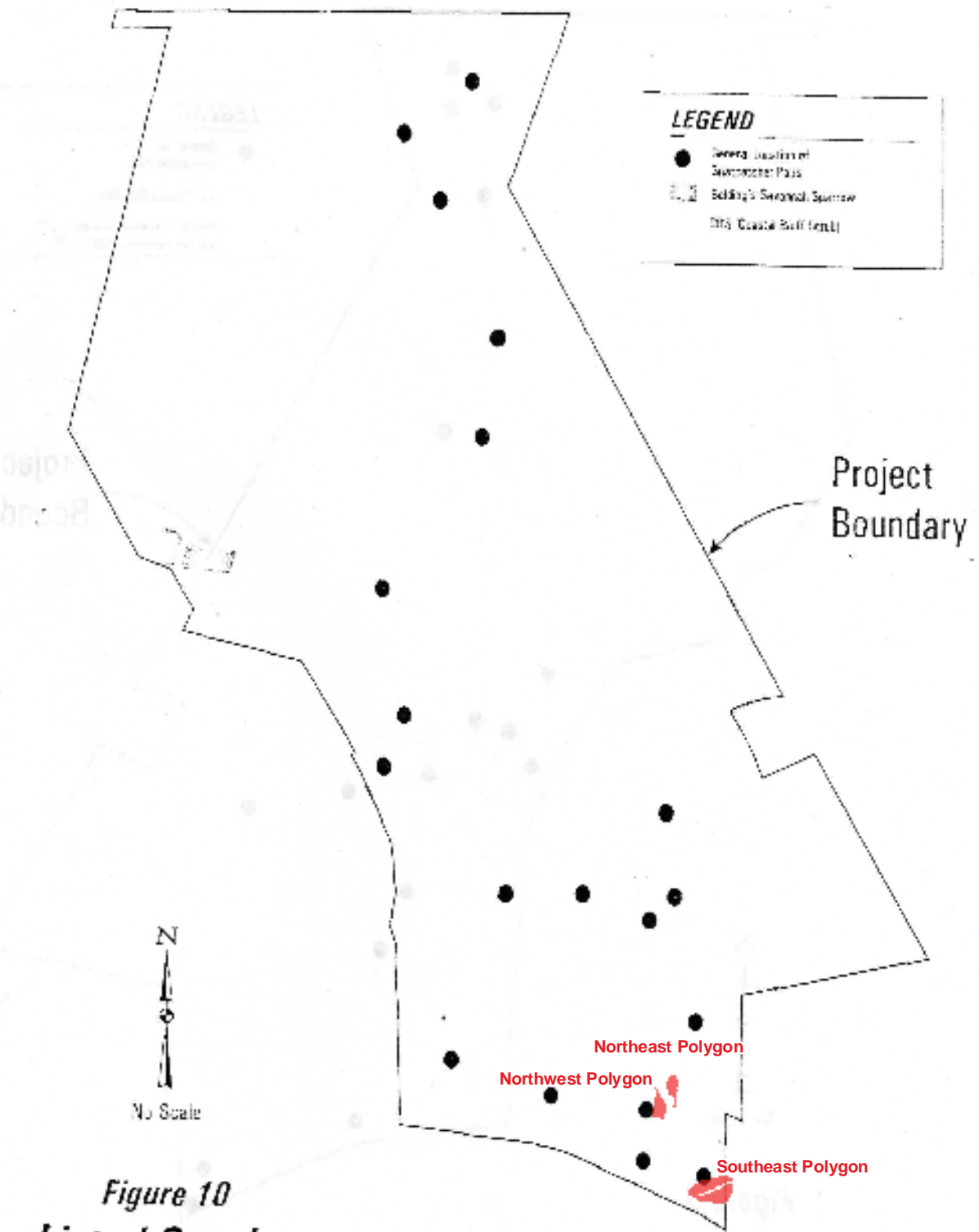


Figure 10
Listed Species
Occupied Habitat
1998

Date Prepared: 1-25-99

GLENN LUKOS ASSOCIATES
 REG. CIVIL ENGINEER

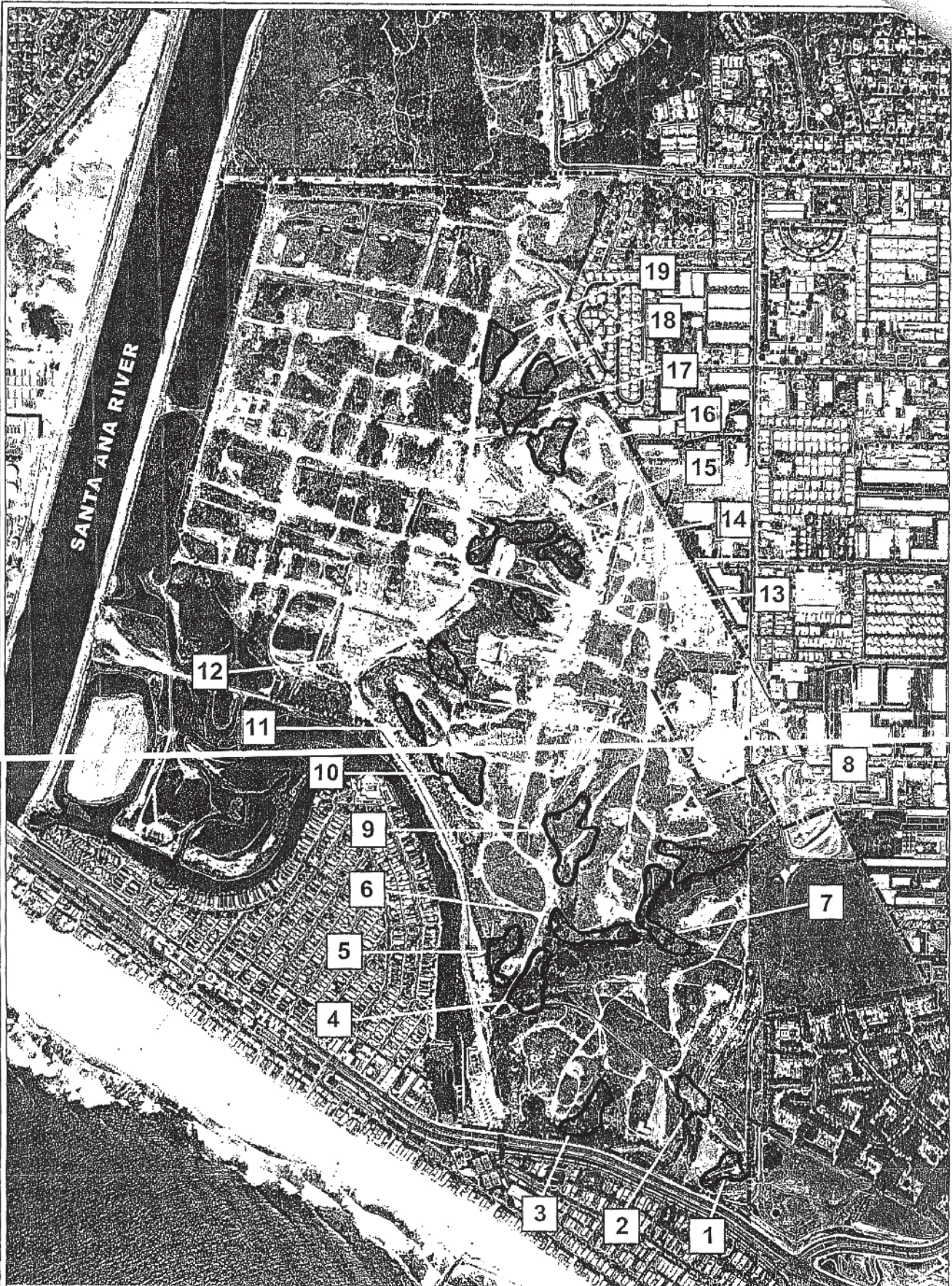


Preliminary Draft For Discussion Purposes Only

Integrated Resource Conservation Plan







LEGEND



California Gnatcatcher Observation Areas

2000









Gnatcatcher Occurances 2006

- Pair
- Single







SOURCE: PHOTOGRAPHED 1967
PCR, October 1967



CALIFORNIA GNATCATCHER TERRITORIES

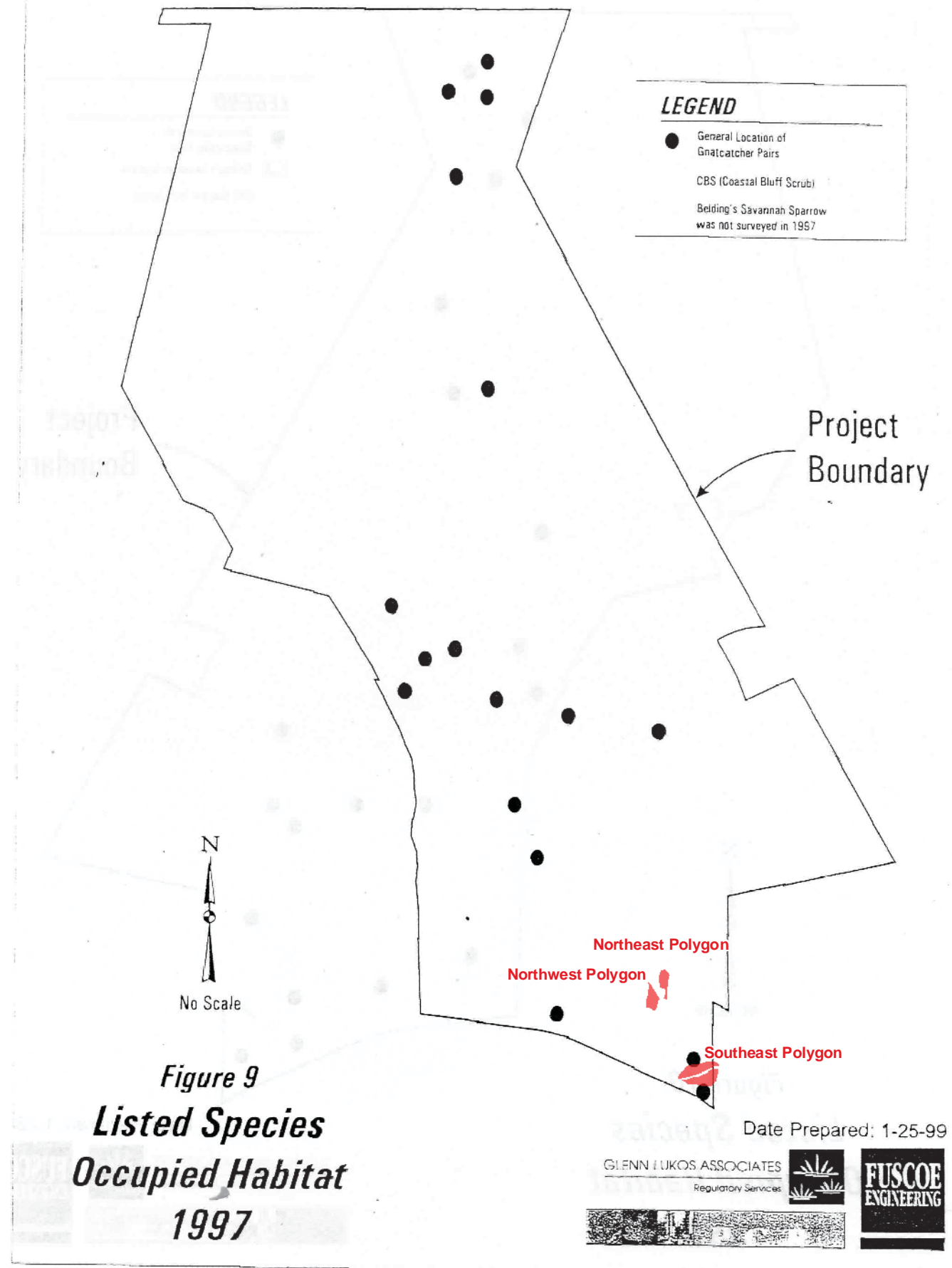
PROPERTY BOUNDARY

- | | | |
|---------|----------|----------|
| 1 - 222 | 7 - 285 | 12 - 292 |
| 2 - 272 | 11 - 276 | 13 - 290 |
| 3 - 274 | 12 - 288 | |
| 4 - 280 | 13 - 287 | |



Figure 3
Newport Banning Ranch -
California Gnatcatcher Sightings
and Territories

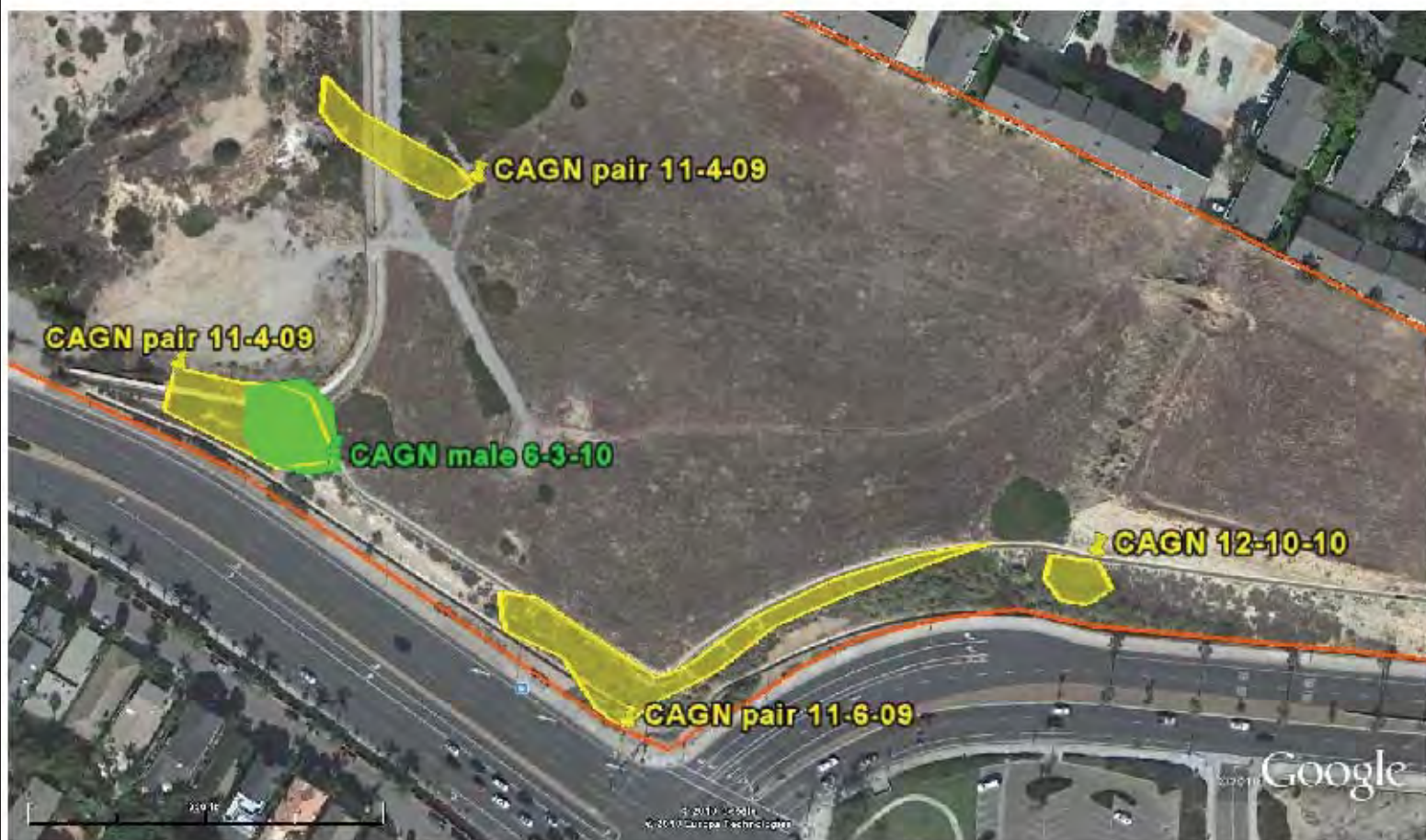




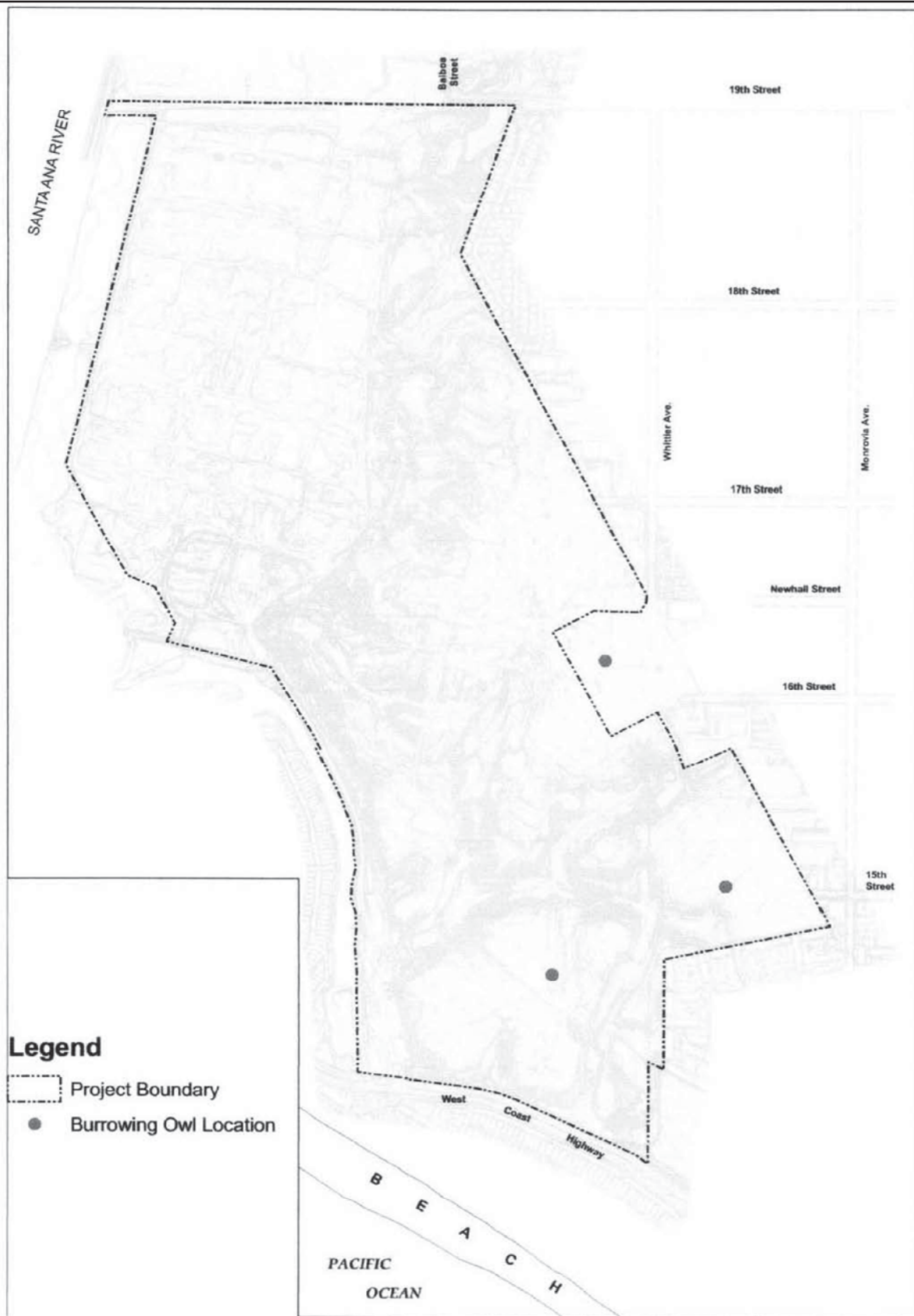
Preliminary Draft For Discussion Purposes Only

Integrated Resource Conservation Plan









NEWPORT BANNING RANCH

0 300 600 1,200 Feet

2008 Wintering Burrowing Owl Location Map

Exhibit 7

GLENN LUKOS ASSOCIATES

FORMA

March 25, 2008





OFFICE OF THE ATTORNEY GENERAL

Department of Justice

333 CAPITOL MALL, SUITE 330
SACRAMENTO 95814
(916) 445-2585

RECEIVED APR 21 1978

RECEIVED
APR 10 1978
CALIFORNIA
COASTAL COMMISSION

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.)

COASTAL COMMISSION

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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

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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

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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

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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 on-going coastal agricultural activities:

"The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the 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.)

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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."

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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

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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

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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

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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 coastal 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

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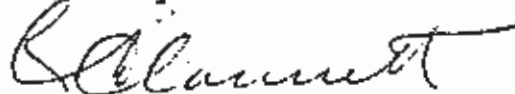
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facts. For example, an unreasonable time having passed since the removal of the eucalyptus trees in your first example, and no planting of the fruit trees, would tend to show, notwithstanding the "stated intent" of the landowner, that the trees were 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

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May 22, 2012

Via Hand Delivery

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

RECEIVED
South Coast Region

MAY 22 2012

CALIFORNIA
COASTAL COMMISSION

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 any 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 that the "revised project will restore more habitat than is impacted."

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PROVIDERS OF LAND USE PLANNING
FOR A BETTER COMMUNITY

HEADQUARTERS - MALIBU OFFICE
29350 PACIFIC COAST HWY., SUITE 12
MALIBU, CA 90265
TEL: 310.589.0773 FAX: 310.589.0353
EMAIL: INFO@SCHMITZANDASSOCIATES.NET

REGIONAL - CONCORD VALLEY OFFICE
5234 CHESEBRO ROAD, SUITE 200
ACCORDA HILLS, CA 91301
TEL: 818.338.8636 FAX: 818.338.3423
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

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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 (*Poliophtila 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

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revised Sunset Ridge Park Project to "harm" gnatcatchers¹. 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 project².

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 1992³. 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 authorized 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.

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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,



 Karen A. Goebel
Assistant Field Supervisor

cc:

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

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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 fasciculatum*, *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.

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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 biologist⁴ 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.

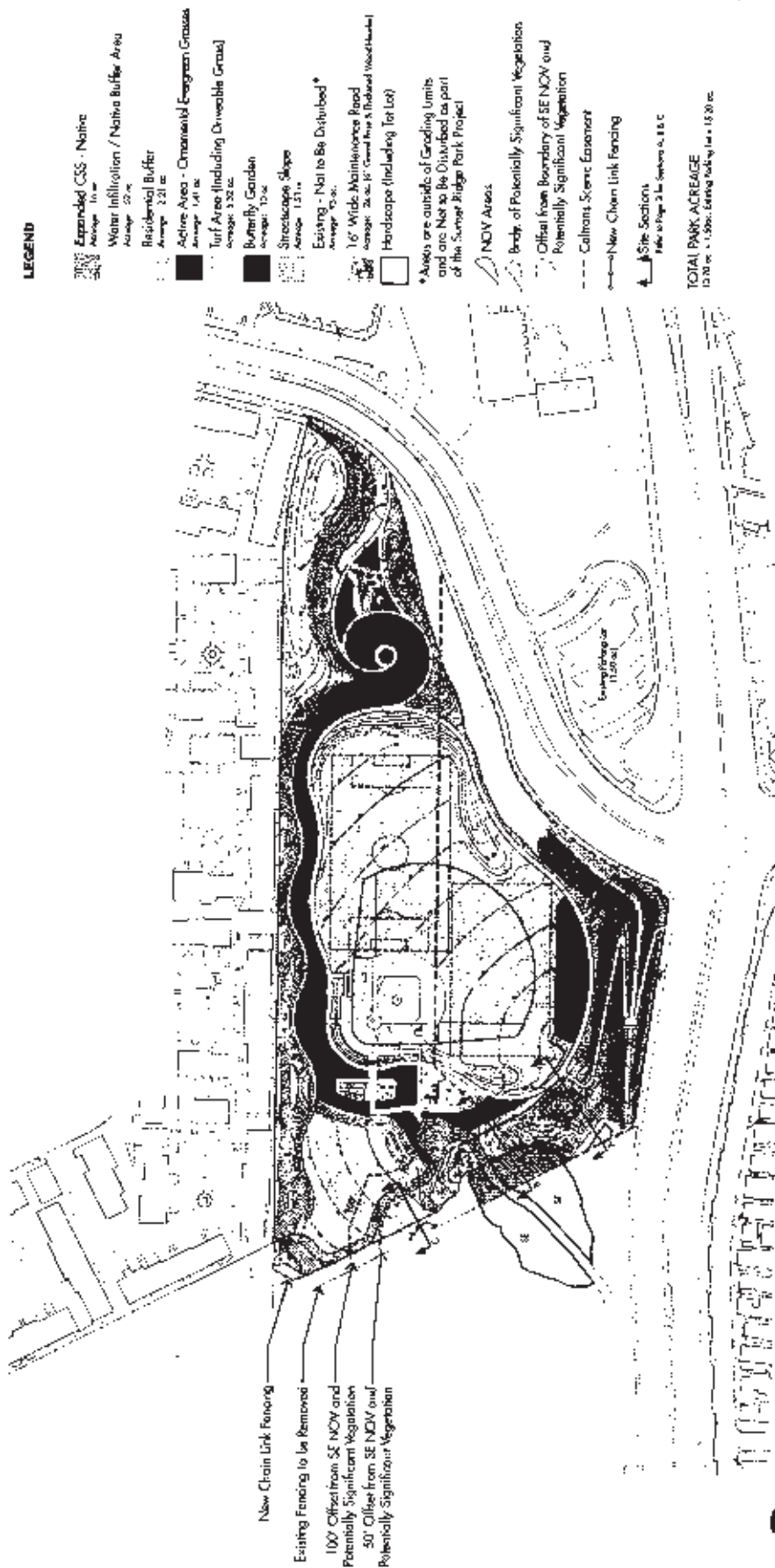
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- c. All non-native landscape plants that have been inadvertently introduced into gnatcatcher habitat areas will be removed a minimum of once per year, as necessary. Habitat maintenance will be conducted outside of the gnatcatcher breeding season.

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LEGEND

- Expanded CSS - Native
Average: 11.1 ac
- Water Infiltration / Native Buffer Area
Average: 22.7 ac
- Residential Buffer
Average: 2.21 ac
- Active Area - Ornamental/Emergent Grasses
Average: 1.41 ac
- Turf Area (Including Drivable Grass)
Average: 3.32 ac
- Butterfly Garden
Average: 1.3 ac
- Streetscape Slope
Average: 1.51 ac
- Existing - Not to Be Disturbed
Average: 15.3 ac
- 16' Wide Maintenance Road
Average: 26.3 ac (Grand Ave & Railroad Visual Buffer)
- Hardscapes (Including Tot Lot)
- Assets are outside of Grading Limits and are Not to be Disturbed as part of the Sunset Bridge Park Project
- NOV Areas
- Body of Potentially Significant Vegetation
- Offset from Boundary of SE NOW and Potentially Significant Vegetation
- Cultural Science Element
- New Chain Link Fencing
- Site Section
Refer to Page 2 L Sections A, B & C

TOTAL PARK ACRES
12.70 ac ± 1.58 ac Existing (Total) = 14.28 ac

Planting Diagram

COASTAL **PT** COMMISSION

City of Newport Beach
12/10/2013

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 documented, 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.

COASTAL COMMISSION



HEADQUARTERS - MAIN OFFICE
29350 PACIFIC COAST HWY. - SUITE 112
MALIBU, CA 90265
TEL: 310.588.0772 FAX: 310.588.0366
EMAIL: INFO@SCHMITZANDASSOCIATES.NET

EXHIBIT 10
SCHMITZ & ASSOCIATES, INC.
REPAGE - COASTAL COMMISSION
5254 CHESTNUT ROAD - SUITE 200
AGOURA HILLS, CA 91301
TEL: 818.338.3636 FAX: 818.338.3423
WWW: WWW.SCHMITZANDASSOCIATES.COM

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 too unwieldy [sic].

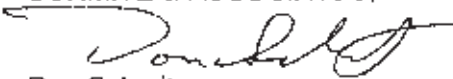
In short, "critical habitat" designations do not take into account the specific biological conditions that actually exist on the ground. Instead, if there is known viable habitat in the surrounding area, this will often result in the inclusion of non-critical habitat in the larger mapped area, as is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

COASTAL COMMISSION

EXHIBIT # 10
PAGE 2 OF 2



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

Fire Resistive Plant List

<u>Common Name</u>	<u>Botanical Name</u>	<u>Plant Form</u>	<u>Remarks</u>
Aaron's Beard	Hypericum calycinum	Shrub	Good to very good drought tolerance
Aeonium	Aeonium decorum	Ground cover	
African Sumac	Rhus lancea	Tree	25' height
Alkali Heath	Frankonia salina	Ground Cover	Native
American Sweet Gum	Liquidambar styraciflua	Tree	
Australian Puscia	Corea pulchella	Ground Cover	12" height, 36" spread
Australian Tea Tree	Leptospermum laevigatum	Shrub	
Autumn Sage	Salvia greggii	Shrub	
Baby Blue Eyes	Nemophila menziesii	Annual	
Beach Bur-Sage	Ambrosia chamissonis	Perennial	
Beach Evening Primrose	Camissonia cheiranthifolia	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 megacarpus	Shrub	
Bird of Paradise	Strelitzia reginae	Perennial	
Bird's Eyes	Gilia tricolor	Perennial	
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	Distictis buccinatoria	Vine/Climbing vine	
Blue Dicks	Dichelostemma capitatum	Herb	
Blue Eyed Grass	Sisyrinchium bellum	Ground Cover	Drought tolerant
Blue Hibiscus	Alopyne huegelii	Shrub	
Blue Stemmed Bush Penstemon	Keckia 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	
California 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	

COASTAL COMMISSION

EXHIBIT # 11
PAGE 1 OF 4

<u>Common Name</u>	<u>Botanical Name</u>	<u>Plant Form</u>	<u>Remarks</u>
California Encelia	Encelia californica	Small Shrub	Native
California Evening Primrose	Oenothera hookeri	Flower	Drought tolerant
California Everlasting	Gnaphalium Californicum	Annual	
California Flannelbush	Fremontodendron californicum	Shrub	
California Laurel	Umbellularia californica	Tree	Very spreading
California Plantain	Plantago erecta	Annual	
California Poppy	Eschscholzia californica	Flower	
California Scrub Oak	Quercus berberidifolia	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 Artemisia	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
Chapparral Mallow	Malacothamnus Fasciculatus	Shrub	
Chapparral Nolina	Nolina cismontana	Shrub	
Chinese Houses	Collinsia heterophylla	Annual	
Chinese Pistache	Pistacia chinensis	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	Balfoya multiradiata	Ground Cover	Drought tolerant
Desert Wild Grape	Vitis girdiana	Vine	
Dewflower	Diosanthemum speciosus	Ground Cover	
Douglas Nightshade	Solanum douglasii	Shrub	
Dwarf Goldfields	Lasthenia californica	Annual	
Dwarf Periwinkle	Vinca minor	Ground Cover	Very spreading

COASTAL COMMISSION

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PAGE 2 OF 4

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

COASTAL COMMISSION

EXHIBIT # 11
 PAGE 3 OF 4

<u>Common Name</u>	<u>Botanical Name</u>	<u>Plant Form</u>	<u>Remarks</u>
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	Lupinus sparsiflorus	Annual	
Lupine/Coulter's Lupine			
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	Brabea armata	Palm	
Mexican Elderberry	Sambucus mexicana	Tree	Drought tolerant
Mexican Evening Primrose	Oenothera belandieri	Ground Cover	
Mexican Grass tree	Nolina spp.	Shrub	Drought tolerant
Mexican Palo Verde	Parkinsonia aculeata	Tree	Yellow flowers
Mexican Poppy	Eschscholzia mexicana	Herb	
Mojave Woolly Star	Eriastrum saphirinum	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 brevifolia	Ground Cover	
no common name	Antirrhinum nuttallianum 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 apneyi	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	Diosanthemum 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	

EXHIBIT # 11
PAGE 4 OF 4
Revised 8/07

1972

Title



Selected Photos

5-11-302
Exhibit 12

Title

1993



Selected Photos

5-11-302
Exhibit 12



Selected Photos



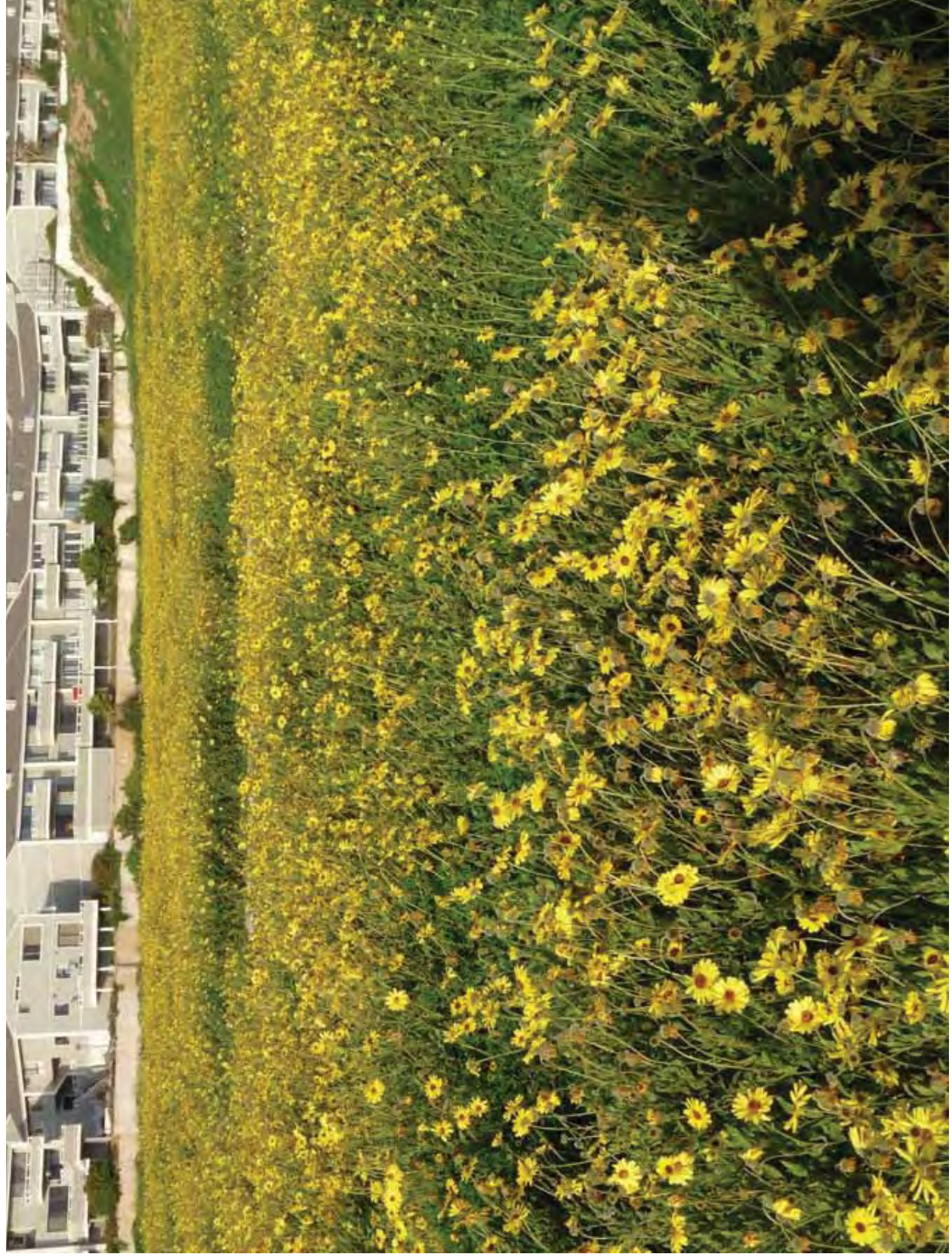
September 2006
Right before City took
control of property



November 6, 2009

Selected Photos

5-11-302
Exhibit 12



March 20, 2010

Selected Photos

5-11-302
Exhibit 12



HAMILTON BIOLOGICAL

June 17, 2012

Dr. Jonna Engel
California Coastal Commission
200 Ocean Gate
Long Beach, CA 90802-4316

The contents of Exhibit 13 were not supplied in the printed edition of the staff report because they were previously supplied to the Commission at the July hearing. Instead, they are provided herein as part of the electronic copy of the staff report.

**SUBJECT: POTENTIAL COASTAL ACT VIOLATIONS
SUNSET RIDGE PROJECT, CITY OF NEWPORT BEACH
APPLICATION 5-11-302, W11C**

Dear Dr. Engel,

On behalf of the Banning Ranch Conservancy, Hamilton Biological, Inc. is reviewing and evaluating biological issues related to the proposed Sunset Ridge park project in the City of Newport Beach (City). In preparation for the June hearing in Huntington Beach, I read the staff report for this proposed project, dated June 1, 2012. I also attended the hearing in Huntington Beach on June 13, when this item was originally scheduled to be heard by the Commission (before it was postponed by the City). I am taking this opportunity to express support for the notion that enforcement action should be taken on any potential violations of the Coastal Act before the Commission further considers the City's application for a park development on this site.

APPARENT REMOVAL OF ESHA MUST BE ADDRESSED

I commend staff for providing a coherent and thorough discussion of issues related to the City's repeated disturbances of 3.3 acres of scrub dominated by *Encelia californica* (i.e., "Disturbed Encelia Scrub"). The City and its consultants have attempted to explain why the City is justified in mowing and applying herbicide to this native scrub community as far as 570 feet from any structure. Despite these ongoing disturbances, the 3.3 acres of Disturbed Encelia Scrub remains a sensitive biological resource to this day. Obviously, the habitat values of this vegetation would be greater for California gnatcatchers and most other native species were the City to refrain from mowing and spraying it, but the simple fact is that this native scrub community *exists* and should not be treated as a non-entity.

COASTAL COMMISSION

The same basic point is made on Page 2 of the staff report:

... 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 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.

Near the bottom of Page 26, the staff report states:

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.

At the June 13 hearing, Executive Director Charles Lester noted that, since a determination had been made confirming ESHA and that the appropriate findings had been provided, staff may now commence with enforcing the Coastal Act with regard to the City's unpermitted development activities. I support the staff in this course of action, and trust that the Commission will not be rendering any decision on the City's application for the Sunset Ridge project until this enforcement issue is resolved. It is also apparent that Commissioners are concerned about this issue of enforcement action preceding consideration of the application, as expressed in their discussions of both the Shea and Sunset Ridge applications. Along with other members of the public, I look forward to Executive Director Lester's report to the Commission on this issue at the July hearing in Chula Vista.

PROPOSED PLANTING OF ENCELIA AT SUNSET RIDGE

It should not escape anyone's attention that the City is now proposing to plant *Encelia californica* in those parts of the Sunset Ridge project site closest to existing residences. This is appropriate, given that the City Fire Department regards *Encelia californica* as a "fire-resistant species," but it demonstrates bad faith on the part of City representatives, who consistently claim that this same plant species must be mowed and sprayed — both on Sunset Ridge and on Newport Banning Ranch — in the name of fuel modification.

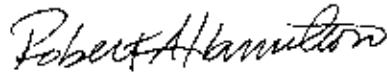
COASTAL COMMISSION

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PAGE 2 OF 30

CONCLUSION

Thank you for the opportunity to provide these comments. If you have questions, please call me at (562) 477-2181 or send e-mail to robb@hamiltonbiological.com.

Sincerely,



Robert A. Hamilton
President, Hamilton Biological, Inc.
<http://hamiltonbiological.com>

cc: Charles Lester, Lisa Haage, Andrew Willis, Pat Veesart, Sherilyn Sarb, John DelArroz, Karl Schwing, and Teresa Henry

COASTAL COMMISSION

EXHIBIT # 13
PAGE 3 OF 32



California Native Plant Society

ORANGE COUNTY CHAPTER

P.O. Box 54891

Irvine, CA 92615-4891

occnps.org

June 10, 2012

The mission of the California Native Plant Society is to conserve California native plants and their natural habitats, and to increase understanding, appreciation, and horticultural use of native plants.

OCCNPS focuses that mission on the native plants and remaining areas of natural vegetation in Orange County and adjacent Southern California.

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

RE: Sunset Ridge Park, Newport Beach CA, Application 5-11-302, W11c

Dear Sir:

The Orange County Chapter of the California Native Plant Society is concerned that development of the proposed Sunset Ridge Park, if done according to the plan in the current application, will not adequately protect the site's biological resources. We have two major concerns:

1. The proposed plan would remove 3.3 acres of Disturbed *Encelia* Scrub. The Staff Report relates that the 3.3 acres has been mowed, in the name of fire safety, at least annually since about 1970, and that the *Encelia* grows back after mowing.

Encelia californica readily flushes new growth in "spring" (i.e. in our rainy season) after a heavy cutting-back; just such pruning is recommended to keep *Encelia* from getting leggy and senescent in the garden^{1,2,3}. The abundance of new growth on variously sized individuals seen in Exhibit 12 demonstrates that *Encelia* also readily reproduces by seed and by self-layering.

The mowing acts as an extreme version of the herbivory that *Encelia* would be subject to in an undisturbed natural habitat. The mowing keeps *Encelia* from reaching its full height and spread, and keeps the stand from developing the intricate interweaving of its slender branches that would provide more permanent shelter for birds and small animals. The mowing also keeps individual plants from maturing, senescing and dying (perhaps within 5-10 years). Thus the mowing perpetuates this patch of Disturbed *Encelia* Scrub in an early seral stage. The patch's ample new growth in spring likely feeds a wide variety of herbivores which in turn feed a wide

1. Bornstein, Fross and O'Brien, 2005, *California Native Plants for the Garden*.

2. O'Brien, Landis and MacKey, 2006, *Care & Maintenance of Southern California Native Plant Gardens*.

3. Celia Kutcher, personal experience.

COASTAL COMMISSION

EXHIBIT # 13
PAGE 4 OF 32

variety of predators, even though the patch does not provide the year-round habitat of an undisturbed mature stand.

Mown or unmown, the 3.3 acres of Disturbed Encelia Scrub is a biological resource. Destroying it to develop the park as proposed would end its role in the functioning of the site's overall habitat, thus would not adequately protect the site's other biological resources.

OCCNPS requests that the park be redesigned so that the 3.3 acres of Disturbed Encelia Scrub is not removed, but instead becomes an element in the overall park design and part of the protected habitat.

2. OCCNPS disagrees with the Staff Report (p. 29) that "The proposed landscaping plan does not include the installation of plant species which are invasive..." In fact the plan's palette includes:

- *Pennisetum alopecuroides* 'Little Bunny': all *Pennisetum* spp. and forms are wind-dispersed reseeder (some heavily so) and are known invasives.
- Several other non-native grasses; in general non-native grasses, especially those that are wind-dispersed, can easily invade native wildlands.
- Several *Acacia* spp. and forms: Acacias are notorious reseeder and known to invade nearby wildlands.

These should be removed from the plant palette.

We concur with the rest of the Staff Report, p. 29, that the proposed "... plant palette includes plant species which could result in future impacts to ESHA." For the reasons detailed on p. 29, we suggest that all non-natives be removed from the palette. There are California native plant species that can fulfill all the park's landscape needs except turf for the sports fields, for example see http://www.californianativeplants.com/index.php/plants/planning_tools/plant-respecifier.

Please include this letter among any addenda to the Staff Report, and/or make it available to the Commissioners. Thank you for the opportunity to comment.

Respectfully,

Celia Kutcher
Conservation Chair

cc:

John D. Dixon, Ph.D, Ecologist
Jonna Engel, Ph.D, Staff Ecologist
Teresa Henry, District Manager for Orange County
Sherilyn Sarb, Deputy Director for Orange County
Karl Shwing, Coastal Program Analyst

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Del Arroz, John@Coastal**From:** Linda Vas [luzwombat@hotmail.com]**Sent:** Saturday, June 09, 2012 1:14 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**California Coastal Commission Members:**

As a resident of Newport Beach, California for more than forty years, I feel strongly about preserving some unspoiled areas of land in our community. We have open space and important wildlife habitat to protect so my concerns are:

- 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 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 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'.
- '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.

Please consider these issues as you review the plans for the development of the Banning Ranch land.

Sincerely,

Linda Vas

Newport Beach Resident and Homeowner

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6/11/2012

To: John DeArroz

California Coastal Commission

200 Oceangate, 10th Floor

Long Beach, CA 90802-4416

From: Kevin Nelson

Hello John,

In regards to the Sunset Ridge Park application by the City of Newport Beach, please include this letter in staff reports on the project.

I would like to state my opposition to the current plan as an active sports field for the following reasons:

1. **Destroys Local Habitat:** The plan would destroy too much habitat and disrupt the area's use by large predators. Sunset Ridge is part of a larger ecosystem that stretches west to the Santa Ana River and north for over a mile. Impacts to a habitat of this size and diversity should therefore be carefully considered. All of us who pay attention to nature and her wonders have seen how small projects like this gradually impinge on and degrade the places we love.
2. **Piecemeal Impact:** If an active park goes in, the biological value of the Banning area goes down. Keeping this resource whole now is the only way to enable it to be saved in the future.
3. **Key Project Facts Obscured:** City project managers apparently concluded that the best way to get Coastal Commission approval was to obscure fundamental facts by first teaming with Newport Banning Ranch developers on what was to become a four lane road into a massive development, then mowing native vegetation in the middle of winter for "fire prevention".
4. **Higher Use Not Considered:** Since Sunset Ridge is a logical entry point for cyclists and hikers into a future Banning Nature Preserve, this use deserves highest priority. While a ball field would be a nice addition to the community, it is insignificant compared with the lasting regional benefits of a nature preserve.
5. **Poor City Planning:** The city should have planned for other ball field options. If less intensive development choices had been made by the city a number of other ball field locations might be available. In addition, the city of Costa Mesa evidently has an agreement for after school use of fields that includes Newport residents.
6. **Bigger Goal :** If the Commission's great mission of conservation is to be achieved over the long run, projects such as this that result from poor planning as well degrade key habitat should be rejected.
7. **Potential Pacific Pocket Mouse Site:** Though Banning has been noted as having potential for this endangered species, it is the Sunset Ridge area that has a combination of elements the Pocket Mouse seems to require; light cover of native vegetation and a particular type of

COASTAL COMMISSION

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sandy soil. Although the chances for an existing population's survival on or near Sunset Ridge have likely been lowered by the disturbance of the city's mowing, it could still become a translocation site as research into this possibility matures. And this again points to area's value as a haven for the many species pushed towards extinction by overdevelopment.

Many of the residents who face onto Sunset Ridge have mentioned to me the wildlife that they observe from their decks and windows. The stories include hawks landing on decks with prey, coyotes hunting, fox sightings and regular heron use.

Consequently, I decided to spend a few days this spring 2012 to record species use of the area.

Early the first day, the show was all about hawks, turkey vultures or other predators lightly visiting or swooping in very low and fast in what appeared to be a hunting tactic. On average, this happened every 30-60 minutes over first part of the day before dropping in frequency.

The next day I was able to spend a few hours, Egrets and Herons were dining on lizards, as many as four birds at a time. For the 5 hours I was there the hunting was non-stop as video time stamps can confirm. And most of this survival activity occurred around the only vegetation left after the city's mowing, the iceplant.

Until city contractors thoroughly mowed the Encelia and Deerweed and trimmed stands of Mulefat in early 2012, a tip of the native plant community reached most of the distance north from PCH north to the edge of the Newport Crest property. If left un-mowed for 2-3 years, it is hard to understand why it wouldn't cover all of the lower section of Sunset Ridge.

In observing the area I have also noticed that large bird species seem to be traveling between area wetlands. If true, the biological combination of Newport Back Bay, Banning marshlands and Bolsa Chica makes it more imperative that these elements be protected.

Due to these considerations, I urge the Coastal Commission to reject the Sunset Ridge Sports Park in order to promote a small passive park located primarily on the upper level of the property near Superior St.

Below are a few pictures of wildlife, Encelia coverage and stills from video. At your request I'll be happy to send videos taken this year.

With appreciation for the job you do,

Kevin Nelson

733 Calle Vallarta

San Clemente, CA 92673

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March 2010



Jan 2011 before Jan 18th mowing

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Texture in this 2005 shot suggests that Encelia has covered the entire area



Hawk on fence overlooking Sunset Ridge. 2010



Heron hunting April 2 2012

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Turkey Vulture June 2 2012



Coyote overlooking area 2011



Hawk overlooking area in 2009



Resident who took this has Hawks feeding at Sunset Ridge



Hawk over SR taken by me April 23 2012



Groups of this small bird species hunt in SR grass daily

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Hawk on ground April 2012



Heron hunting in iceplant April 2012



Egret about to strike a lizard in SR iceplant April 2012

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BRUCE E. BARTRAM
Attorney at Law
2 Seaside Circle
Newport Beach, CA 92663
Tel. (949) 650-8682
Fax (949) 515-1589

RECEIVED
South Coast Region

JUN 11 2012

CALIFORNIA
COASTAL COMMISSION

June 7, 2012

John Del Arroz
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Sent via email and US Mail

Re: City of Newport Beach -- Sunset Ridge Park (Coastal Development Permit Application No. 5-11-302) June 13, 2012 Meeting Agenda Item 11c.

Dear Coastal Commission:

Throughout all proceedings regarding Sunset Ridge Park it has been the position of the City of Newport Beach that its design must be as an "active sports park." That is, it must include active sports fields for baseball and soccer. This to serve an alleged need of the community. Therefore, the City has repeatedly told the California Coastal Commission and the citizens of Newport Beach these fields must be built even if their construction involves the destruction of environmentally sensitive habitat areas (EHSA) on Sunset Ridge. This despite any conflict with the California Coastal Act and its stated protections for ESHIA.

This position/policy of the City is reflected (and perhaps originates) in a City Parks, Beaches & Recreation Commission Staff Report dated May 20, 2008 concerning the Sunset Ridge Park Updated Concept Plan. A copy of the Staff Report is attached. As you can see, the Staff Report deals in part with the results of a City Council Study Session on March 25, 2008 at which a report was presented concerning the progress "of the outreach and planning for the Sunset Ridge Park." According to the Report, during public comment issues brought forth included the following:

"There is an immediate need for a baseball field for 13 and 14 year olds to play league games for the Newport Harbor Baseball Association in West Newport Beach.

There is a need for more soccer fields for at least 1000 children who play soccer for AYSO 97 in West Newport Beach."

AYSO 97 stands for "American Youth Soccer Organization, Region 97" the AYSO organization which serves the Newport Beach area. Their website is located at: <http://www.newportayso.com/>.

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In any event, from the above it appears the "need" for the sports fields on SRP arises in large part from the claims of these two organizations -the Newport Harbor Baseball Association and AYSO 97.

It is the "need" by these two organizations for sports fields that the City is championing by demanding sports fields on SRP. Thus, these organizations' true need for additional sports fields become the issue.

Attached are the pertinent pages of the City of Costa Mesa Public Services Department, Recreation Division" Athletic Field Use and Allocation Policy dated January 2012. The full Policy is located at: <http://www.ci.costa-mesa.ca.us/recreation/FUA-Policy.pdf>. As you can see in the Introduction on Pg. 2:

"The City of Costa Mesa Public Services Department, Recreation Division coordinates and issues permits for the use of athletic fields in the City and at Newport Mesa Unified School District sites in Costa Mesa when school is not in session to organizations and the general public for cultural, social and recreational activities and programs. The City and the Newport Mesa Unified School District work cooperatively in accordance with a Joint Use Agreement. The purpose of this policy is to outline procedures and allocation priority for the permitted use of City and Newport Mesa Unified School District athletic fields within the City of Costa Mesa.

Priority will be given to Costa Mesa residents."

On the same Pg. 2, in the Resident Status section it is stated:

"Two youth sports groups (AYSO Region 97 and Newport Harbor Baseball Association) have special status assigned by City Council action as a result of having had historical use of fields which exempts them from the 75% residency requirement. See page 3 & 4 for Groups 1-6 resident status." (Emphasis added)

On Pgs. 3-4 in the Priority Use Classifications and Qualifications section it is stated in pertinent part:

"Organizations that have special status OR have special status assigned by City Council action as a result of having had historical use of fields or receive special status assigned by City Council action as a result of servicing Newport Mesa Unified School District students.

Group 1 organizations shall have highest priority, equal to City sponsored leagues, for use of City and School District fields." (Emphasis added)

Thus, AYSO Region 97 and Newport Harbor Baseball Association are deemed as Group 1 organizations by the City of Costa Mesa and have the highest priority for use of City and School District fields.

On Pg. 8 in the Adult Field use section, the number of City of Costa Mesa and NMUSD fields AYSO Region 97 and Newport Harbor Baseball Association have priority access to are listed. These include:

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" Adult field use for 2012 is allowed at Back Bay High School, Balearic Center, Davis Field at Lions Park, Killybrooke School, TeWinkle Park Sports Complex and Wilson School. These fields may be scheduled if they have not already been previously permitted to their maximum for sustainability Monday through Saturday. No Adult Field Use Will Be Allowed at Adams, California, College Park, Davis, Harper, Kaiser, Paularino, Pomona, Rea, Sonora, Victoria, Whittier and Woodland Elementary Schools, TeWinkle Middle School. Parsons field and Jack Hammett Sports Complex. Estancia High School and Costa Mesa High School adult field usage is not allowed though August 2013."

By my count from the above, AYSO Region 97 and Newport Harbor Baseball Association have priority access to fields located at 23 City park and School District locations in the City of Costa Mesa. This fact casts serious doubt on the AYSO Region 97 and Newport Harbor Baseball Association stated "need" for additional sports fields on SRP justifying the destruction on EHSA protected by the Coastal Act.

One of the City of Costa Mesa parks discussed above to which AYSO Region 97 and Newport Harbor Baseball Association have priority access is Davis Field at Lions Park. Lions Park is located 1.5 miles from the site of the Sunset Ridge Park. Attached is a Daily Pilot article dated February 2, 2012 which describes \$520,000 in upgrades made to Davis Field at Lions Park. Contained in the article is a photograph of a uniformed member of the Newport Harbor Baseball Association aged 10 years old eyeing the improvements to Davis Field. Thus, the City of Newport Beach proposes to construct sports fields on SRP when a "state of the art" facility located 1.5 mile away already exists to which the interested sports organizations have priority access.

Needless to say, the above information should be presented to the Coastal Commission before and/or at the June 13 hearing on the SRP CDP. Given the above, I oppose the SRP project and support the Coastal Commission Staff Recommendation the SRP CDP application be denied.

Very truly yours,



Bruce Bartram
2 Seaside Circle
Newport Beach, CA 92663

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**CITY OF NEWPORT BEACH
PB&R COMMISSION STAFF REPORT**

Agenda Item No. _____
May 20, 2008

TO: PB&R Commission

FROM: Recreation & Senior Services Department
Wes Morgan, Director — 949-644-3157 — wmorgan@city.newport-beach.ca.us

SUBJECT: Sunset Ridge Park UPDATED Draft Concept Plan

STAFF RECOMMENDATION

1. Review the Sunset Ridge Park UPDATED Draft Concept Plan presentation by EPT Design Group.
2. Accept public comment regarding the UPDATED Draft Concept Plan.
3. Forward a PB&R Commission recommendation to the City Council regarding this Concept Plan.

DISCUSSION

The Recreation Element of the *General Plan* which was approved by the City Council in 2006 addresses citywide issues and needs regarding park lands. The Recreation Element states that the service area of West Newport has a current deficit of 21.6 park acres. This is based on the standard of five acres of park land for each 1000 of population. Additionally, in Service Area 1 – West Newport, Sunset Ridge Park is designated as an active park which will include ball fields, picnic areas, a playground, parking and restrooms. The planning and outreach process for this project began in November 2007 and continues to move toward an approved concept plan.

At the City Council Study Session on March 25, 2008, the City Council received a report on the progress of the outreach and planning for the Sunset Ridge Park. The Council listened to public comment regarding the draft concept plan for Sunset Ridge Park. Issues which speakers brought forth to the City Council included the following:

- There is an immediate need for a baseball field for 13 and 14 year olds to play league games for the Newport Harbor Baseball Association in West Newport Beach.
- There is a need for more soccer fields for at least 1000 children who play soccer for AYSO 97 in West Newport Beach.
- Residents who live adjacent to the park site expressed the following concerns:
 - Traffic created by park users will be a problem for homeowners.
 - Noise created by youth sports games will disturb the nearby neighborhood.
 - Park facilities and athletic fields are being placed too close to homes.
 - Security for nearby residents will diminish.
 - There is a potential loss of scenic views.
 - Trash will be left by park users.
 - There will be a loss of privacy for homeowners.

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Sunset Ridge Park UPDATED Draft Concept Plan

Page 2

At the conclusion of the City Council Study Session, the Council directed staff to revise the draft concept plan for the park. The Council wants to improve the park design in ways which continue to allow for the active park elements while addressing the concerns of the residents.

To achieve these goals, staff directed the City's architect to create a buffer zone between the private property owners and the sports fields, restroom, parking lot and playground. The updated draft concept plan now includes a new buffer zone which is 10 ft above the active park areas. The buffer zone creates the opportunity for the sports fields to retain the size needed for youth sports programs in West Newport while maximizing the use of the available land to protect the nearby residents from any potential issues brought on by activities in the park.

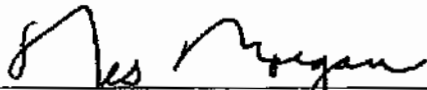
The elevation of the proposed Butterfly Garden and the Vista Point near Superior Avenue will be preserved at the present height of the site.

Also all the active park elements have been moved from a distance of 50 ft adjacent to the bordering properties to a new distance of at least 100 ft of clearance.

The updated draft concept plan is more than just a compromise from the original basic plan. It improves the park layout by making better use of the property to create a passive area near the residential properties, allowing for sports fields of the necessary size and retains the present elevation for the proposed Vista Point.

Following this Special Meeting of the PB&R Commission, the updated plan will be returned to the City Council for further review.

Prepared & Submitted by:



Wes Morgan, Recreation & Senior Services Director

- Attachments:
1. General Plan Recreation Element 8-10
 2. General Plan Recreation Element 8-15
 3. General Plan Recreation Element 8-40-41
 4. Minutes from March 25, 2008 City Council Study Session
 5. May 20 2008 PB&R Commission Special Meeting Public Notice

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City of Costa Mesa ♦ Public Services Department
Recreation Division

Athletic Field Use And Allocation Policy



Parks and Recreation Commission

- Approved September 25, 1996
- Amended March 26, 1997
- Amended February 23, 2000
- Amended May 23, 2001
- Amended May 26, 2004
- Amended March 23, 2005
- Revised June 27, 2007
- Revised May 28, 2008 and September 24, 2008
- Revised March 24, 2010
- Revised January 26, 2011
- Revised November 16, 2011

City Council

- Amended November 3, 1997
- Amended March 20, 2000
- Amended June 18, 2001
- Upheld May 17, 2005
- Amended September 6, 2005
- Amended July 17, 2007
- Amended October 8, 2008
- Revised October 3, 2009
- Revised April 20, 2010
- Revised February 15, 2011
- Revised January 3, 2012

Planning Commission

- Clarification on Conditions of Use, Farm Complex August 12, 2002

Joint Use Agreement between CITY and NMUSD

- Revised and Dated February 14, 2006
- Approved City Council January 17, 2006
- Approved NMUSD February 14, 2006

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City of Costa Mesa ♦ Public Services Department, Recreation Division
ATHLETIC FIELD USE AND ALLOCATION POLICY
January 2012



I. INTRODUCTION

The City of Costa Mesa Public Services Department, Recreation Division coordinates and issues permits for the use of athletic fields in the City and at Newport Mesa Unified School District sites in Costa Mesa when school is not in session to organizations and the general public for cultural, social and recreational activities and programs. The City and the Newport Mesa Unified School District work cooperatively in accordance with a Joint Use Agreement.

The purpose of this policy is to outline procedures and allocation priority for the permitted use of City and Newport Mesa Unified School District athletic fields within the City of Costa Mesa.

Athletic fields are allocated and permitted in two, 6-month periods from February through June and from July through January as sustainability allows. The Recreation Division will monitor proper use of allocations and permits. Priority will be given to Costa Mesa residents. The City may charge to recover public costs to operate, maintain, supervise and administer the use of schools, parks and athletic facilities. Submission of an Application and Agreement Request does not constitute approval.

Requests for additional use or programs not covered by the Athletic Field Use and Allocation Policy should be addressed in writing to the Recreation Manager. The Public Services Department Director will make interpretation of language in the Field Use and Allocation Policy. An appeal to the Parks and Recreation Commission of the Director's decision must be submitted in writing with justification within ten (10) working days from the decision and will be heard at the next regularly scheduled Parks and Recreation Commission meeting, unless appeal is received fewer than 10 days prior to a meeting, in which case it will be heard at the following meeting of the Parks and Recreation Commission.

II. DEFINITION OF TERMS AND FEES

Resident Status

Resident status will be determined from the prior season's actual rosters (fall season for fall season, spring season for spring season). Team rosters and/or individual participant utility bills/photo ID may be required by City staff to verify residency status. Two youth sports groups (AYSO Region 97 and Newport Harbor Baseball Association) have special status assigned by City Council action as a result of having had historical use of fields which exempts them from the 75% residency requirement. See page 3 & 4 for Groups 1-6 resident status required percentages.

Youth Status

Youth status is defined as persons 19 years of age or under.

Non-Profit Status 501 c

Organization must be established as a non-profit organization. Non-profit status is defined as an organization that is so defined by the Internal Revenue Service, 501c and has a State of California Tax Identification Number. Visit www.irs.gov for additional information on Non-profit Status 501 c.

Organization must submit the following to be considered for Non-Profit Status:

1. Submit 501c IRS papers and bylaws.
2. Current financial statement.

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City of Costa Mesa ♦ Public Services Department, Recreation Division
ATHLETIC FIELD USE AND ALLOCATION POLICY
January 2012



3. Roster of Officers
4. List of persons authorized to make reservations for your organization.

Commercial Status

Business or leagues that are running a business and making a profit from the use of community use fields.

Fees are charged per hour per field usage for utility, baseball and softball fields:

- Non-Profit resident - \$20.
- Non-Profit non-resident - \$30
- Private resident - \$72
- Private non-resident - \$130
- Commercial resident - \$130
- Commercial non-resident - \$234

Other fees

- Baseball & Softball Field Preparations - \$40 per prep
- Refundable Deposits for tournaments and large events
 - 1 Field with 20 or more participants \$100
 - 2 Fields \$100
 - 3 to 6 Fields \$300
 - 7 or more Fields \$500

III. USE OF CITY AND SCHOOL ATHLETIC FIELDS/FACILITIES

Neighborhood and community parks and Newport Mesa Unified School District schools in Costa Mesa that have athletic field space designated in their design are available for use. Due to the limited number of fields available, the Public Services Department and Field Use and Allocation Committee have established priority use. Adult field use is limited to specific sites. Allocation of fields will follow the terms set forth in this Field Use and Allocation Policy as sustainability allows. The City has exclusive discretion in decisions relating to the scheduling of City and District Active Use Areas and such decisions shall be final.

Priority Use Classifications and Qualifications

Priority scheduling of use of fields/facilities will be as follows:

Group 1 organizations must meet all of the following:

- Organizations, or portions of organizations, that assign registrants to teams in an effort to make the teams in each division of equal playing experience and talent (not assigned to teams of differing talent levels)
- Have an "everyone plays" philosophy requiring that each player suited up and able to play is entered into games for a significant period of time (i.e., 1/2 of game or 2 of every 5 innings or 2 of 4 quarters, etc)
- Is recreational in nature (versus teams that are more competitive or have selected players) – this excludes AP, all-stars and tournaments
- 501(c)(3) status certificate
- No child turned away that wants to play
- 75% or greater Costa Mesa residents, for priority use of City fields; 50% Costa Mesa residents for priority use of NMUSD fields. Organizations that have special status OR have special status assigned by City Council action as a result of having had historical use of fields or receive special

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ATHLETIC FIELD USE AND ALLOCATION POLICY

January 2012



status assigned by City Council action as a result of servicing Newport Mesa Unified School District students.

Group 1 organizations shall have highest priority, equal to City sponsored leagues, for use of City and School District fields

NOTE: Organizations that have both recreational and competitive teams will be assigned status based upon the nature of the play. Recreational and Advanced Placement teams will have Group 1 user status and competitive (select/travel) teams in that organization will have Group 3 status.

Group 2: Newport Mesa Unified School District related programs. NMUSD has priority at NMUSD sites prior to 4:00 p.m. on weekdays when school is in session.

Group 3: Organizations that may otherwise meet all Group 1 requirements EXCEPT:

- 50% or greater Costa Mesa residents, for priority use of City and NMUSD fields

OR

- Have at least 50% or greater Costa Mesa residents in which tryouts are held in order to place registrants according to their ability on competitive teams (select, travel, etc); applicants may be turned away; not every player suited up and not able to play in every game

All select/travel games must have at least one team from the Group 3 organization on the field, or fee assessed for that field will be at the Group 5 rate.

Group 3 organizations shall have third highest priority for use of City and School District fields

Group 4: Adult programs, organizations or events with at least 75% Costa Mesa residents. *Group 4 organizations shall have fourth highest priority for use of City and School District fields, except on Sundays when they shall have second highest priority after City adult programs.*

Group 5: Youth programs, organizations or events with less than 50% Costa Mesa residents. *Group 5 organizations shall have fifth highest priority for use of City and School District fields.*

Group 6: Adult programs, organizations or events with less than 75% Costa Mesa residents. *Group 6 organizations shall have lowest priority for use of City and School District fields except on Sundays when they shall have third highest priority after City adult programs and Group 4 adult programs.*

Priority use of fields will be given to traditional primary season sports and by priority grouping.

IV. PROCESS FOR OBTAINING PERMITS

Application and Agreement

Fields are allocated and permitted for two use periods: February through June and July through January. Each organization is required to sign and submit the following documents by the first week of November for the February 1 through June 30 use period and by the first week of May for the July 1 through January 31 use period.

- Application and Agreement Request For Use of City of Costa Mesa and Newport Mesa Unified School District Athletic Field form (see page 23)
- Field User Information Sheet (see page 24), Athletic Field Use Rules and Regulations form (see page 25)

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ATHLETIC FIELD USE AND ALLOCATION POLICY

January 2012



NMUSD representative upon request. The City has exclusive discretion in decisions on scheduling of City and District fields and such decision shall be final.

- **Adult field use for 2012** is allowed at Back Bay High School, Balearic Center, Davis Field at Lions Park, Killybrooke School, TeWinkle Park Sports Complex and Wilson School. These fields may be scheduled if they have not already been previously permitted to their maximum for sustainability Monday through Saturday. **No Adult Field Use Will Be Allowed** at Adams, California, College Park, Davis, Harper, Kaiser, Paularino, Pomona, Rea, Sonora, Victoria, Whittier and Woodland Elementary Schools, TeWinkle Middle School, Parsons field and Jack Hammett Sports Complex. *Estancia High School and Costa Mesa High School adult field usage is not allowed though August 2013.*
- A copy of the City-issued permit must be available at each site approved for use for inspection by City or NMUSD staff, including Field Ambassadors, Park Rangers and Police. It is the responsibility of the organization president and the individual identified as the person in charge of the City-issued permit to enforce the rules and regulations regarding the conduct of the members of the organization while on permitted facilities.
- Use begins and ends at the times stated on the permit including set-up and clean up. Groups are not allowed on fields prior to the start time shown on the City-issued permit and are required to have the fields clean, picked up and be off the fields at the ending time indicated on the permit. Additional fees will be charged for unauthorized or extended field use beyond times listed on the permit. No member of the organization holding a City-issued permit is allowed on any field approved for that organization's use prior to time listed on permit.
- Sub-leasing of fields is NOT allowed under any circumstance. *Subleasing of fields may result in revocation of all permits.*
- Property boundary walls, perimeter fences and foul line fences are not to be used as backstops at any time.
- Groups are authorized to use portable goals, benches and makers which need to be stored in a designated space after each use as well as remove all trash from the field area.
- Fields not being utilized by the appropriate organization or team indicated on the City-issued use schedule will result in the field being reassigned. City will notify organization president or person identified as in charge of the City-issued permit by phone or e-mail when City staff observes that a field has gone without use. A written letter will be sent after second non-use observed. Third non-use observed will result in reassignment and re-issuance of permits. Lit fields may be re-assigned after two non-use observed. Teams and organizations may be required to provide schedules that indicate all allocated fields are being used.
- Field Ambassadors may temporarily re-assign a field not being used according to the City-issued use policy to other youth organizations. If the group holding a City-issued field permit does not show up for use after 30 minutes from the start of the permitted time, any City-approved youth user group may use the field. If it is a Group 3 or Group 5 user organization, City reserves the right to charge that organization for the additional use. In the event that the originally scheduled group shows up, the non-scheduled group must leave that field within 10 minutes. There will be no charge to non-scheduled Group 3 or Group 5 organizations that leave the field per this rule.
- At the conclusion of games or practice each user group is responsible for picking up trash and debris and depositing it into the proper trash bins. Adjoining areas must be clear of all trash. In the event that trash is found on site prior to or at the start of use, notify the Field Ambassador who will note it in the log. Any costs incurred by the City or NMUSD to clean fields may be charged to last user group permitted.
- **NO** alcoholic beverages, smoking, gambling, fireworks or flammable material, narcotics or drugs are allowed on City or Newport Mesa Unified School District property. No dogs are allowed on school property. Dogs must be on leash on City property.

COASTAL COMMISSION

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DAILY PILOT

Wednesday, June 6, 2012
10:44 a.m. PDT

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Lions Park receives upgrades for field

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Comments

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February 2, 2012 | 10:02 p.m.



PHOTO:

Lions Park in Costa Mesa was the site of a lighting ceremony Thursday evening, where new eco-friendly lights illuminated the upgrades.

Some \$520,000 of Costa Mesa's redevelopment agency funds was used to provide Davis Field with new vinyl-coated perimeter fencing, 50-foot baseball netting and a new lighting

system, according to a city news release.

The lighting system for the West 18th Street facility will cut energy use by about 1.2 million kilowatt hours and 873 metric tons of carbon dioxide over a 25-year period. The system can also be turned on and off via phone and online.

"This is a project of great importance because we are able to offer recreational opportunities for our residents," said Ernesto Munoz, the city's interim public services director. "Installation of new sports

COASTAL COMMISSION

EXHIBIT # 13
PAGE 23 OF 30



Lantz Bell, 10, who plays on a team in the Newport Harbor Baseball Assn., looks at the lights Thursday above Davis Field during a ceremony to celebrate the improvements made for the facility at Lions Park in Costa Mesa. (SCOTT SMELTZER, Daily Pilot / February 2, 2012)

lights and field improvements will allow Costa Mesa residents to fully utilize the facility for its intended potential. Great venues like this allow users to play at higher levels and further develop their skills."

— Sarah Peters

Twitter: @speters01



Comments 2

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0

COASTAL COMMISSION

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EXHIBIT #
PAGE 24 OF 31

Del Arroz, John@Coastal

From: olwen hageman [o-hageman@sbcglobal.net]

Sent: Friday, June 08, 2012 9:58 AM

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

Subject: 5-11-302 Sunset Ridge Park

Dear Callifornia Coastal Commissioners,

We greatly appreciate your efforts and dedication to saving what is left of the natural environment.

I am greatly concerned about the excessive mowing on Sunset Ridge Park and urge you to take measures that will put an end to it.

This precious land and its inhabitants -- the Gnatcatchers, the wonderful herons, the hawks, the coyotes, and even the squirrels who eat my plants when they can't find food -- must be treated with respect. This land should be used for people to enjoy nature, the ocean, peace and quiet.

The fate of this virgin land is in your hands and we are counting on you to protect it. Please let your legacy be that you saved it from civic encroachment.

Thank you,

Olwen Hageman

COASTAL COMMISSION

EXHIBIT # 13
PAGE 25 OF 30

6/8/2012

Del Arroz, John@Coastal

From: RODGER hageman [evenkeel4@sbcglobal.net]
Sent: Friday, June 08, 2012 11:03 AM
To: Del Arroz, John@Coastal; Dixon, John@Coastal; Sarb, Sherilyn@Coastal; Willis, Andrew@Coastal; Veasart, Pat@Coastal; Haage, Lisa@Coastal; Henry, Teresa@Coastal; Schwing, Karl@Coastal; Engel, Jonna@Coastal; Lester, Charles@Coastal
Subject: APPLICANT: CITY OF NEWPORT BEACH 5-11-302

Agenda No. Unassigned

Applic.No.

Item No.Wllc

Permit No. 5-11-302

Rodger Hageman - OPPOSED

Dear Mr Del Arroz and Commissioners,

Again, I am petitioning you for consideration of a continuing denial of the Referenced project on a basis other than protecting the native flora and fauna, which is, of course, pertinent. The need for this park is not a proven one. No feasibility study or cost effectiveness projection has been presented to justify

another expensive commitment for the taxpayer's burden.

As you have readily noted, it is an awkward and inaccessible location skewed to the northwest part of town, not one favorable to easy usage by the city's youngsters on a daily basis. One might believe it is an attempt to justify the debatable expenditure of some \$5,000,000 a few years ago to purchase the land.

Your good offices are engaged to approve a marginal project. One of your criterion is " IS IT A PRUDENT USE BY CURRENT AND FUTURE GENERATIONS".

Thank you, r hageman / 949 642 1998

THE LAST CROP IS ASPHALT!

COASTAL COMMISSION

EXHIBIT # 13
PAGE 26 OF 30

Del Arroz, John@Coastal

From: Mary Parsell [mfp2001@hotmail.com]
Sent: Wednesday, June 06, 2012 12:52 PM
To: Del Arroz, John@Coastal; Schwing, Karl@Coastal
Subject: June 13, 2012 Banning Ranch Deny the CDP Request inclusion in addendum staff report

We request that this letter be made part of the addendum staff report. Thank you, in advance.

El Dorado Audubon
California Chapter of The National Audubon Society
PO Box 90713, Long Beach, CA 90809-0713

June 1, 2012

California Coastal Commission

RE: Banning Ranch, June 13, 2012, Deny CDP
Support Staff Report and Prefer a passive park at the site, sparing the Encelia Scrub

Dear Commissioners:

We recommend denial of the Coastal Development Permit (CDP). Mowing "a mature stand of Encelia Scrub which would qualify as ESHA (environmentally sensitive habitat area)" occurs on Sunset Ridge. The Encelia mowing is subject to the Coastal Act and requires a CDP. No CDP has been issued. The project itself relies on the elimination of the ESHA for the construction of active sport fields, an improper "use" under the Coastal Act. Thus, the proposed project is therefore inconsistent with Coastal Act and must be denied.

Sunset Ridge has valuable habitat on it and is part and parcel of entire Banning Ranch area which is rich in birds, plants and the entire web of life of one of our last remaining coastal open spaces.

Sincerely,

Mary Parsell
President, El Dorado Audubon
Long Beach, Seal Beach & surrounding communities

email: eldoradoaudubon@yahoo.com
mfp2001@hotmail.com
banningranchconservancy.org

COASTAL COMMISSION

EXHIBIT # 13
PAGE 27 OF 30

6/6/2012

Del Arroz, John@Coastal

From: Sara Kent [sara@coastlawgroup.com]
Sent: Tuesday, June 05, 2012 8:59 AM
To: Del Arroz, John@Coastal
Cc: Dixon, John@Coastal; Sarb, Sherilyn@Coastal; Engel, Jonna@Coastal; Veasart, Pat@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Schwing, Karl@Coastal; Haage, Lisa@Coastal; Lester, Charles@Coastal; Livia Borak; Marco Gonzalez
Subject: Application No. 5-11-302 (Sunset Ridge Park)
Attachments: CERF CCC Sunset Ridge Park.pdf

Good morning, Mr. DelArroz and Coastal Commission Staff Members:

Please find the attached comments on behalf of the Coastal Environmental Rights Foundation (CERF) regarding Application No. 5-11-302 (Sunset Ridge Park). Please consider these comments and include them in any Commission materials for the Wednesday, June 13 meeting.

Thank you.

Sincerely,

Sara Kent
 Programs Director
 Coastal Environmental Rights Foundation



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To ensure compliance with requirements imposed by the IRS, we inform you that (a) any U.S. tax advice in this communication (including attachments) is limited to the one or more U.S. tax issues addressed herein; (b) additional issues may exist that could affect the U.S. tax treatment of the matter addressed below; (c) this advice does not consider or provide a conclusion with respect to any such additional issues; (d) any U.S. tax advice contained in this communication (including attachments) is not intended or written to be used, and cannot be used, for the purpose of promoting, marketing or recommending to another party any transaction or matter addressed herein, and (e) with respect to any U.S. tax issues outside the limited scope of this advice, and U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of avoiding tax-related penalties under the Internal Revenue Code.

COASTAL COMMISSION

EXHIBIT # 13
 PAGE 28 OF 30

COASTAL ENVIRONMENTAL RIGHTS FOUNDATION

June 5, 2012

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

Via Electronic Mail
jdalarroz@coastal.ca.gov

Re: Application No. 5-11-302 (City of Newport Beach Public Park (Sunset Ridge))
Preserve vital habitat, limit mowing activities, recommend denial

Dear Mr. DelArroz and Coastal Commission Staff Members:

Please accept the following comments on behalf of Coastal Environmental Rights Foundation (CERF). We write to respectfully request you include information about current mowing activities and the City of Newport Beach's maintenance activities which threaten vital habitat in your staff report related to Application No. 5-11-302. CERF is a nonprofit environmental organization founded by surfers in North San Diego County and active throughout California's coastal communities. CERF was established to aggressively advocate, including through litigation, for the protection and enhancement of coastal natural resources and the quality of life for coastal residents.

CERF commends Coastal Commission Staff for its thorough staff report and recommendation of denial regarding Application No. 5-10-168, dated September 23, 2011¹. Page 4 of this report raises the concern "whether or not the degraded encelia scrub habitat located on site (within the footprint of the proposed park) is legally mowed, or if that area, which would qualify as ESHA if not mowed, is being mowed illegally." Apparently, this area may indeed be being mowed illegally.

The City of Newport Beach has a practice of excessive and unnecessary mowing at the proposed Sunset Ridge Park site well beyond fire safety guidelines. According to local residents, this activity has destroyed sensitive habitat, can be deemed a disturbance to the gnatcatchers inhabiting the coastal sage scrub in the vicinity, and is perhaps setting precedent for the destruction of these resources in the adjacent and upcoming Banning Ranch project.

CERF advises Coastal Commission staff that this mowing activity, left unchecked, has already negatively impacted natural resources. Approval of expanded uses and impacts at the proposed Sunset Ridge Park in advance of the proposed Banning Ranch project will likely represent piecemeal approval of permanent, cumulative impacts to the natural resources of the region, including sensitive coastal sage scrub gnatcatcher habitat.

Additionally, CERF strongly recommends Coastal Commission staff further investigate the legality of the City's activities in regard to impacts to habitat and species within the vicinity and footprint of Sunset Ridge Park, and possibly take enforcement action.

Given the sensitivity of the wetlands features within the footprint of the park, the City's apparent unwillingness to heed Coastal Commission staff's recommendations as set forth in the related September 23rd report, and ongoing and likely impacts to sensitive habitat, CERF urges staff to recommend denial of the Sunset Ridge Park application.

COASTAL COMMISSION


EXHIBIT # 13
PAGE 29 OF 30

¹ <http://documents.coastal.ca.gov/reports/2011/10/Th9a-10-2011.pdf>

For the foregoing reasons, we urge you to investigate the impacts of the City of Newport Beach's ongoing and likely illegal maintenance activities, include information regarding these habitat-destructive mowing activities in your staff report, and recommend **DENIAL** of Application No. 5-11-302.

Sincerely,

COASTAL ENVIRONMENTAL RIGHTS FOUNDATION


Sara Kent
Programs Director

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

COASTAL COMMISSION

EXHIBIT # 13
PAGE 30 OF 30

RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:

State of California
DEPARTMENT OF TRANSPORTATION
Caltrans - District 12
Office of Right of Way
3337 Michelson Drive Suite CN380
Irvine, CA 92612-1699

Attn: R/W Excess Lands

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

NO FEE

2006000813583 10:16am 12/05/06

106 33 D10 8

0.00 0.00 0.00 0.00 0.00 0.00 0.00 0.00

Map No.: E120010-15
RWPE: C. SMYTHE (01/04/01)
Written:CS Check:DO

Space above this line for Recorder's Use

DIRECTOR'S DEED

District	County	Route	Post	Number
12	Orange	1	19.7	DD 040766-01-01

OCT - 2006 - 01

The STATE OF CALIFORNIA, acting by and through its Director of Transportation, does hereby grant to the

City of _____ of _____ Newport Beach

all that real property in the City of Newport Beach County of Orange, State of California, described as:

Parcel No. DD 040766-01-01

That portion of Lot 1 of Tract No. 463 in the City of Newport Beach, County of Orange, State of California as shown per a map filed in Book 32, Pages 2 and 3 of Miscellaneous Maps in the office of the County Recorder of said county; that portion of Lot 1 of Tract No. 2250 as shown per a map filed in Book 104, Pages 6 and 7 of said Miscellaneous Maps; that portion of Melrose Mesa (Tract No. 15) as shown on a map filed in Book 9, Page 19 of said Miscellaneous Maps; that portion of Lot D of the Banning Tract, as shown on a map of said tract filed in the case of Hancock Banning, et al. vs. Mary H. Banning for partition, and being Case No. 6385 upon the Register of Actions of Superior Court of Los Angeles County, California, bounded as follows:

Bounded northeasterly by the northeasterly line of the lands described as Parcel 1 of State Parcel No. 40767 in a Grant Deed recorded February 14, 1966 in Book 7839, Page 739 of Official Records in the office of the County Recorder of Orange County, California;

MAIL TAX

STATEMENTS TO:

City of Newport Beach
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92658-8915

This office is exempt from
filing fees under Government
Code Section 6103

Page 1 of 5

Bounded westerly by the westerly line of said Grant Deed, said westerly line also being described as a portion of the northerly prolongation of the westerly line of Annexation No. 55 to the City of Newport Beach dated September 19, 1963;

Bounded southwesterly by the northeasterly line of "new" Pacific Coast Highway as described in a Director's Deed (State Parcel No. DD 040767-03-01) from the State of California to the City of Newport Beach, a municipal corporation, recorded May 6, 1993 as Instrument No. 93-0304178 of said Official Records;

and bounded southerly and southeasterly by the center line of "new" Superior Avenue as described in a Director's Easement Deed (State Parcel No. DE 040766-1) from the State of California to the City of Newport Beach, a municipal corporation and charter city, recorded May 6, 1993 as Instrument No. 93-0304175 of said Official Records.

EXCEPTING THEREFROM those rights and interests previously excepted from that parcel of land described in the deed from A.E.S. Chaffey, et al., to the State of California (State Parcel No. 40766), recorded January 7, 1966 in Book 7801, Page 108 of said Official Records.

ALSO EXCEPTING THEREFROM those rights and interests previously excepted from those parcels of land described in the deed from BEECO, LTD., to the State of California (State Parcel No. 40767), recorded February 14, 1966 in Book 7839, Page 739 of said Official Records.

SUBJECT TO an easement for storm drain purposes, 35.00 feet wide; and an easement for sanitary sewer purposes, 30.00 feet wide, both as described in a Director's Deed (State Parcel No. DE 040767-01-02) from the State of California to the Newport Crest Homeowners Association, a California Nonprofit Mutual Benefit Corporation, recorded September 11, 1990 as Instrument No. 90-479322 of said Official Records.

There shall be no abutter's rights of access appurtenant to the above-described real property in and to the adjacent state highway over and across those portions of the northeasterly line of "new" Pacific Coast Highway hereinabove described in said deed recorded as Instrument No. 93-0304178 of Official Records, said portions of the northeasterly line being further described as having a bearing and a distance of "North 54°21'52" West, 215.42 feet" and "North 53°13'07" West, 167.37 feet".

PARCEL 040766-3

RESERVING UNTO THE GRANTOR AN EASEMENT FOR SCENIC VIEW AND OPEN SPACE PURPOSES OVER THE AFOREMENTIONED PROPERTY, LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE INTERSECTION OF THE SOUTHWESTERLY LINE OF LOT 3 OF TRACT NO. 7817, PER MAP FILED IN BOOK 308, PAGES 33 AND 34 OF MISCELLANEOUS MAPS, IN SAID OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, WITH A LINE PARALLEL WITH AND DISTANT 100.00 FEET WESTERLY OF THE WESTERLY LINE OF SAID LOT 3; THENCE ALONG SAID PARALLEL LINE, S00°19'10"W 505.12 FEET TO THE TRUE POINT OF BEGINNING; THENCE N71°14'04"E 254.46 FEET TO A POINT ON A LINE PARALLEL WITH AND DISTANT 263.60 FEET SOUTHWESTERLY OF SAID SOUTHWESTERLY LINE OF SAID LOT 3; THENCE ALONG SAID PARALLEL LINE S62°13'53"E 838.20 FEET TO A POINT ON THE NORTHERLY LINE OF "NEW" SUPERIOR AVE AS DESCRIBED IN A DOCUMENT RECORDED MAY 6, 1993 AS INSTRUMENT NO. 93-0304175 OF SAID OFFICIAL RECORDS.

EXCEPTING THEREFROM THAT PORTION OF SUPERIOR AVENUE AS DESCRIBED IN SAID DOCUMENT RECORDED MAY 6, 1993 AS INSTRUMENT NO. 93-0304175 OF SAID OFFICIAL RECORDS.

GRANTEES USE OF SAID EASEMENT AREA SHALL BE LIMITED TO THOSE "PERMITTED" USES UNDER GRANTEE'S ZONING DESIGNATION OPEN SPACE - ACTIVE AS DEFINED UNDER TITLE 20 OF GRANTEES ZONING CODE AS IT EXISTED ON OCTOBER 12, 2006. ADDITIONALLY THE GRANTEE IS PROHIBITED FROM PLACING PERMANENT STRUCTURES OR PAVEMENT WITHIN THE EASEMENT AREA, AND NO PARKING OF MOTORIZED VEHICLES SHALL BE PERMITTED WITHIN THE EASEMENT AREA.

GRANTEE SHALL BE RESPONSIBLE FOR ALL MAINTENANCE WITHIN THE EASEMENT AREA.

Attached hereto and made a part hereof is a map entitled "Exhibit 'A'". This map is for informational purposes only and is subordinate in all respects to the above legal description.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyor's Act.

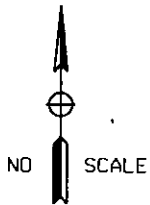
Signature: _____

**SCOTT E. ESTEP, PLS 7066
EXPIRATION: 12-31-2006**

Date: _____

9-24-2006





SITE

SUPERIOR AVENUE

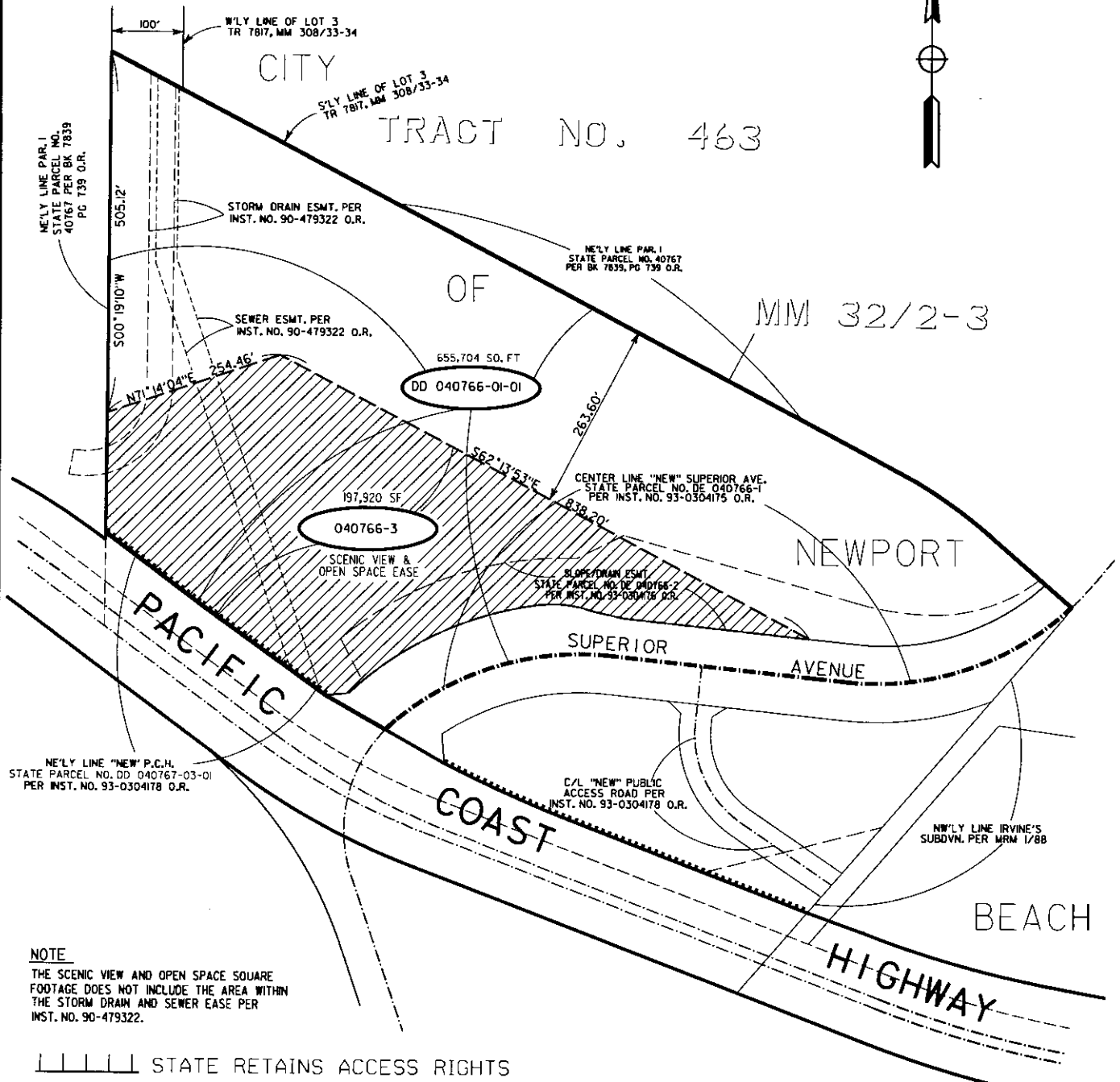
ROUTE 55
NEWPORT FREEWAY

PACIFIC COAST HIGHWAY
STATE ROUTE 1

SITE

DIST	COUNTY	RTE	P.M.
12	ORA	1	19.7

EXHIBIT "A"



NOTE
THE SCENIC VIEW AND OPEN SPACE SQUARE
FOOTAGE DOES NOT INCLUDE THE AREA WITHIN
THE STORM DRAIN AND SEWER EASE PER
INST. NO. 90-479322.

STATE RETAINS ACCESS RIGHTS

STATE OF CALIFORNIA--DEPARTMENT OF TRANSPORTATION--DISTRICT 12
PLAT ACCOMPANYING

DIRECTOR'S DEED DD 040766-01-01

REF. MAP: E120010-15

SHEET 4 OF 5

SCALE: N.T.S.

DRWN:SEE CHKD:GBG

DATE: 11/18/04

dd040766-01-01.dgn 09/25/2006 1:18:03 PM

Subject to special assessments if any, restrictions, reservations, and easements of record.

This conveyance is executed pursuant to the authority vested in the Director of Transportation by law and, in particular, by the Streets and Highways Code.

WITNESS my hand and the seal of the Department of Transportation of the State of California, this
30th day of OCTOBER 2006.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

Will Kempton
Director of Transportation

By
George L. Pink Jr.
Attorney in Fact

APPROVED AS TO FORM AND PROCEDURE
Joanne van Buren
ATTORNEY
DEPARTMENT OF TRANSPORTATION

STATE OF CALIFORNIA } SS
County of Sacramento

PERSONAL ACKNOWLEDGMENT

On this the 30th day of OCTOBER 2006, before me, SAMANTHA PENNALA, Notary Public
Name, Title of Officer-E.G., "Jane Doe, Notary Public"
personally appeared GEORGE L. PINK JR.
Name of Signer

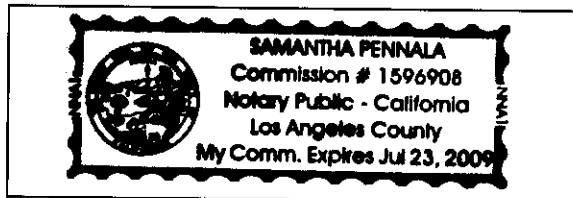
☒ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person whose name is subscribed to the within instrument and acknowledged to me that _____ he/~~she~~ executed the same in _____
his/~~her~~ authorized capacity, and that by _____ his/~~her~~ signature on the instrument the person, or the entity upon behalf of which the person
acted, executed the instrument.

WITNESS my hand and official seal.

Samantha Pennala

(Notary Public's signature in and for said County and State)



(for notary seal or stamp)

THIS IS TO CERTIFY that the California Transportation Commission has authorized the Director of Transportation to execute the foregoing deed at its meeting regularly called and held on the 12th day of October 2006, in the City of Santa Rosa.

Dated this 16th day of October 2006.

John F. Barna Jr.
JOHN F. BARNA, JR., Executive Director
CALIFORNIA TRANSPORTATION COMMISSION

RESOLUTION 2006-89

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF NEWPORT BEACH
AUTHORIZING THE PURCHASE OF SUNSET RIDGE PARK
AND AGREEING TO TERMS AND CONDITIONS ASSOCIATED WITH A
PURCHASE AND SALE AGREEMENT FOR THE PARK PROPERTY**

WHEREAS, the City of Newport Beach and its residents have long envisioned the 15 acres of land at the corner of Superior Avenue and West Coast Highway as a park, including both active and passive components; and

WHEREAS, extensive dealings with the owner of the property, California Department of Transportation ("Caltrans"), have occurred in the nearly thirty years since this property was declared surplus in 1976; and

WHEREAS, the City of Newport Beach was successful in sponsoring Senate Bill 124 (Johnson, 2001) which authorized the transfer of Sunset Ridge Park to the California Department of Parks and Recreation from Caltrans for a purchase price of \$1.3 million as long as the City entered into an Operating Agreement with State Parks to operate the land as a state park facility; and

WHEREAS, further discussions with Governor Schwarzenegger's administration, the State Department of General Services, members of the Legislature, and others, have led the City and Caltrans to propose a direct sale of the property to the City at a price of \$5,000,000; and

WHEREAS, the direct sale would be completed through a Purchase and Sale Agreement, a scenic easement, and deed restrictions that would provide that:

- The \$5 million be paid in three installments and at 4.75% interest;
- The property must be used as a park consistent with the current Open Space-Active (OS-A) zoning; and
- The City agrees to a 197,920 square foot Scenic Easement that would allow only uses of the property that are consistent with the OS-A zoning in place as of the date of this Resolution with the exception of permanent structures and pavement in the Scenic Easement Area.

WHEREAS, this Purchase and Sale Agreement requires the approval of the California Transportation Commission (CTC); now, therefore, be it:

RESOLVED by the City Council of the City of Newport Beach that it hereby:

1. Finds and declares that the Caltrans West Parcel (15.05 acres) shall be used by the City to develop Sunset Ridge Park and shall use the Parcel solely for park purposes, consistent with OS-A zoning; and

2. Authorizes the purchase of the Caltrans West Parcel from Caltrans at a price of \$5 million paid in three installments at 4.75% interest; and
3. Authorizes the placement of a Scenic Easement (or similarly-named easement) over 197,920 square feet of the parcel, within which all Open Space-Active (OS-A) uses that exist as of the date of this Resolution are permitted except for permanent structures and pavement (the latter two uses are not permitted); and
4. Authorizes the Mayor of the City of Newport Beach to execute a Purchase and Sale Agreement to this effect; and
5. Authorizes the City Manager to execute any related documents that might accompany the Purchase and Sale Agreement in order to accomplish the sale of the property.

ADOPTED this 26th Day of September, 2006.



DON WEBB

Mayor of Newport Beach

ATTEST:



LAVONNE HARKLESS

City Clerk



STATE OF CALIFORNIA }
COUNTY OF ORANGE }
CITY OF NEWPORT BEACH } ss.

I, LaVonne M. Harkless, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing resolution, being Resolution No. 2006-89 was duly and regularly introduced before and adopted by the City Council of said City at a regular meeting of said Council, duly and regularly held on the 26th day of September 2006, and that the same was so passed and adopted by the following vote, to wit:

Ayes: Curry, Selich, Rosansky, Ridgeway, Daigle, Nichols, Mayor Webb

Noes: None

Absent: None

Abstain: None

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 27th day of September 2006.

LaVonne M. Harkless
City Clerk
Newport Beach, California

(Seal)





CITY OF NEWPORT BEACH

OFFICE OF THE MAYOR

Mayor

Don Webb

Mayor Pro Tem

Steven Rosansky

Council Members

Keith D. Curry

Leslie J. Daigle

Richard A. Nichols

Tod W. Ridgeway

Edward D. Selich

November 16, 2006

California Department of Transportation
21073 Pathfinder Road, Suite 100
Diamond Bar, CA 91765
Attn: Vincent Lundblad

LETTER OF ACCEPTANCE – DD #040766-01-01

Dear Mr. Lundblad:

The City of Newport Beach hereby accepts the property described in Director's Deed #040766-01-01 and agrees to the terms of the Purchase and Sale Agreement (attached to this letter).

I have also enclosed a check for \$2,000,000.00. This is the initial payment as prescribed by the Purchase and Sale Agreement.

The City appreciates Caltrans' assistance and support of this important purchase. If you have any questions about these documents, please do not hesitate to contact us at 949-644-3000.

Sincerely,

DON WEBB
Mayor of Newport Beach

Attachments

cc: Members of the Newport Beach City Council
City Manager Homer Bludau
Assistant City Manager Dave Kiff
Caltrans Director Will Kempton
Ms. Bimla Rhinehart, Caltrans

City Hall • 3300 Newport Boulevard • Post Office Box 1768
Newport Beach California 92658-8915 • www.city.newport-beach.ca.us
(949) 644-3004

Senate Bill No. 124

CHAPTER 761

An act relating to state property.

[Approved by Governor October 11, 2001. Filed
with Secretary of State October 12, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

SB 124, Johnson. Department of Transportation: property transfer: Department of Parks and Recreation: City of Newport Beach.

(1) The California Constitution authorizes the Legislature, by statute, with respect to state surplus property located in the coastal zone and acquired by the expenditure of certain tax revenues, to transfer the property, for a consideration at least equal to the acquisition cost paid by the state to acquire the property, to the Department of Parks and Recreation for state park purposes.

This bill would require the Department of Transportation to transfer a certain parcel of land in the City of Newport Beach to the Department of Parks and Recreation, for use as a park upon payment of consideration of \$1,356,485 by the City of Newport Beach. The bill would require the funds to be deposited in the State Highway Account. The bill would make the transfer of the property contingent on the execution of an agreement between the Department of Parks and Recreation and the City of Newport Beach that requires the city to perform all of the responsibilities related to, and to assume the liability for, the construction, operation, and maintenance of the park and its improvements.

(2) The bill would declare that, due to the special circumstances concerning the Department of Transportation property in the City of Newport Beach, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution, and the enactment of a special statute is therefore necessary.

(3) To the extent that the bill would impose new duties on the City of Newport Beach, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. (a) The Department of Transportation shall transfer to the Department of Parks and Recreation, upon payment by the City of Newport Beach of consideration of one million three hundred fifty-six thousand four hundred eighty-five dollars (\$1,356,485), which is at least equal to the acquisition cost paid by the state, pursuant to Section 9 of Article XIX of the California Constitution, the state-owned real property described in subdivision (b), for state park purposes. The funds paid pursuant to this section shall be deposited in the State Highway Account.

(b) The property to be transferred pursuant to subdivision (a) consists of approximately 15.05 acres, located in the coastal zone of the City of Newport Beach, adjacent to Superior Avenue and Pacific Coast Highway, identified by Director's Deed #040766-01-01 and known as "Caltrans West."

SEC. 2. Execution of the property transfer specified in Section 1 of this act shall be contingent upon the execution of an agreement between the Department of Parks and Recreation and the City of Newport Beach that requires the city to accept and perform all of the responsibilities relating to, and to assume the liability for, the construction, operation, and maintenance of the park and its improvements.

SEC. 3. Due to the unique circumstances concerning the Department of Transportation property in the City of Newport Beach, the Legislature finds and declares that a general statute cannot be made applicable within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution, and that this special statute is necessary.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

O



CITY OF NEWPORT BEACH

OFFICE OF THE CITY ATTORNEY

Aaron C. Harp, City Attorney

October 14, 2011

Via E-Mail to jdelarroz@coastal.ca.gov

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

RE: SUNSET RIDGE PARK / SENATE BILL 124 (2001)
Matter No. A10-00630

Dear Mr. Del Arroz:

To follow up our discussion yesterday, enclosed please find a copy of Senate Bill 124, which is referenced in your staff report dated September 23, 2011, for the City's Sunset Ridge Park project. During our discussion yesterday, it was suggested that a passive park would be supported by the Commission staff. However, we believe that a passive park would be in direct contravention of the Legislature's intent in enacting SB 124.


For your background, enclosed are copies of the Assembly Committee Report on Appropriations and the Senate Committee on Governmental Organization pertaining to SB 124. As I am certain your legal counsel will agree it is well established that, when interpreting a statute, courts must ascertain legislative intent so as to effectuate purpose of a particular statute. Of prime consideration in statutory interpretation are the legislature's objectives. The enclosed reports reflect an intent to facilitate a transfer of the property to the City to effectuate the construction of baseball and soccer fields, restroom facilities, parking on the site, and walking/bike trails. These reports, prepared contemporaneously with passage and before signing, will be considered by a court to be instructive on matters of legislative intent.

Mr. John Del Arroz
October 14, 2011
Page: 2

As a result, it is our opinion that the suggestion that a passive park is preferred over the active park proposed by the City is inconsistent with California law, and in particular Senate Bill 124.

Sincerely,

CITY ATTORNEY'S OFFICE



Leonie Mulvihill
Assistant City Attorney

LM:slm

Enclosure

cc: Don Schmitz, Schmitz and Associates
Dave Webb, Deputy Director of Public Works

[A10-00630]

BILL ANALYSIS

SB 124
Page 1

Date of Hearing: August 22, 2001

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Carole Migden, Chairwoman

SB 124 (Johnson) - As Amended: June 4, 2001

Policy Committee: Business and
Professions Vote: 12-0

Urgency: No State Mandated Local Program:
No Reimbursable:

SUMMARY

This bill requires the Department of Transportation (Caltrans) to transfer a 15-acre state-owned parcel to the Department of Parks and Recreation (DPR) upon payment by the City of Newport Beach of almost \$1.4 million and agreement by the city to assume responsibility for construction, operation, and maintenance of any improvements on the property.

FISCAL EFFECT

Potential net revenue loss of \$2.8 to the Public Transportation Account (PTA), which represents the difference between the \$4.2 million appraised value and the \$1.4 million specified in the bill.

COMMENTS

1) Background and Purpose . According to the author, this bill is intended to invoke a constitutional provision aimed at encouraging the preservation of park and agricultural land in the coastal zone. Article XIX, Section 9 of the State Constitution authorizes the transfer of surplus state property located in the coastal zone that was purchased with fuel tax or vehicle registration fee funds. The transfer must be made to the Department of Parks and Recreation for state park purposes, to the Department of Fish and Game for the protection of fish and wildlife habitat, to the Wildlife Conservation Board, or the Coastal Conservancy to preservation of agricultural lands. The department receiving the property must pay a cost at least equal to the state's original acquisition cost.

SB 124
Page 2

The 15-acre parcel was purchased by Caltrans in January 1966 as potential right-of-way for the Coast Freeway, which was never built. Caltrans indicates that it identified the property as surplus land in 1975 and has been negotiating with the City of Newport Beach for 10 years regarding sale of the property, which is zoned in the city's general plan for residential or open space use. A March 2000 appraisal valued the property at approximately \$4.185 million, assuming the development of a 40-unit single family residential tract on the parcel. The City of Newport Beach intends to build baseball and soccer fields, restroom facilities and parking on the site and include walking/bike trails linked to the proposed 1,000+ acre Orange Coast River Park adjacent to the nearby Santa Ana River.

The city recently determined that due to budget constraints (the city's annual general fund expenditures for all capital projects are about \$4 million) it could not pay market value for the property and still commit the \$5-6 million of additional funds necessary for construction of a park on the property. Proponents believe that the California Constitution clearly authorizes this parcel to be acquired and preserved as parkland at its original price. The sponsor of this bill, the City of Newport Beach, emphasizes that this parcel is a regional asset that should be preserved for the public trust to provide convenient access from the Pacific Coast Highway to park users throughout Orange County.

2) Opposition . Caltrans and the California Transportation Commission do not support the use of Article XIX, Section 9 by local public agencies to obtain state properties at less than market value, because the loss of revenue to the PTA for reinvestment in transportation projects.

Analysis Prepared by : Chuck Nicol / APPR. / (916) 319-2081

City Letter Dated 10/14/2011 re SB124

EXHIBIT 16 to 5-11-302
3 of 6

BILL ANALYSIS

124

Bill No: SB

SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION
 Senator Don Perata, Chair
 2001-2002 Regular Session
 Staff Analysis

SB 124 Author: Johnson
 As Amended: March 14, 2001
 Hearing Date: April 3, 2001
 Consultant: Art Torzakis

SUBJECT

State Property Transfer: City of Newport Beach

DESCRIPTION

SB 124 requires Caltrans to transfer a specified parcel of land located in the City of Newport Beach to the Department of Parks and Recreation so that the property may be preserved for the public benefit. Specifically, this measure:

1. Requires Caltrans to transfer to the Department of Parks and Recreation, upon payment by the City of Newport Beach of consideration at least equal to the acquisition cost paid by the state, approximately 15.05 acres of coastal zone property located in the city, adjacent to Superior Avenue and Pacific Coast Highway, for state park purposes.
2. Stipulates that the property transfer shall be contingent upon an agreement between the Department of Parks and Recreation and the city that requires the city to assume liability and responsibility for operation, construction, and maintenance of the park and its improvements.
3. Contains a "special statute" disclaimer provision, as specified. In addition, the measure contains "boiler plate" language absolving state government responsibility for certain costs incurred by a local agency.

SB 124 (Johnson) continued
 Page 2

RELATED LEGISLATION

SB 543 (Vasconcellos) 2001-2002 Session. Would authorize the director of the Department of General Services (DGS) to sell, lease, or exchange a specified parcel of real property in the City of Santa Clara upon terms and conditions and subject to reservation and exceptions that the director determines are in the best interests of the state. (Pending in this committee)

SB 809 (Ortiz) 2001-2002 Session. Would authorize the director of DGS to purchase, exchange, or acquire real property and construct facilities within the County of Sacramento or the City of West Sacramento for use by specified state agencies. (Pending in this committee)

SB 901 (Costa) 2001-2002 Session. Would authorize the director of DGS to enter into a joint powers agreement with the Fresno Redevelopment Agency in connection with the development of new state-owned office space in the City of Fresno. (Pending in this committee)

SB 951 (Committee on Governmental Organization) 2001-02 Session. The annual DGS surplus property bill. (Pending in this committee)

EXISTING LAW

The California Constitution (Article XIX, Section 9) authorizes the Legislature, with respect to surplus state property located in the coastal zone and acquired by the expenditure of tax revenues, to transfer such property, for a consideration at least equal to the acquisition cost paid by the state to acquire the property, to the Department of Parks and Recreation for state park purposes, or to the Department of Fish and Game for the protection and preservation of fish and wildlife habitat, or to the

City Letter Dated 10/14/2011 re SB124

EXHIBIT 16 to 5-11-302
 4 of 6

Wildlife Conservation Board for purposes of the Wildlife Conservation Law of 1947, or to the State Coastal Conservancy for the preservation of agricultural lands.

BACKGROUND

Purpose of Bill: According to the author's office, SB 124 is intended to invoke a constitutional provision aimed at

SB 124 (Johnson) continued
Page 3

encouraging the preservation of park and agricultural land in the coastal zone. Pursuant to Article XIX, Section 9 of the California Constitution, SB 124 would provide for a parcel of surplus land owned by Caltrans to be transferred to the State Department of Parks and Recreation at a price equal to the property's purchase price (approximately \$1.18 million in 1966) for use as a park. The City of Newport Beach would assume all costs associated with the transfer, development, and operation of the park. In addition, the city would indemnify the state and assume any liability associated with the park.

Subject Property: The property consists of approximately 15.05 acres of vacant land, within the coastal zone, in the City of Newport Beach. The parcel, known as "Sunset Ridge Park" or "Caltrans Wast" was purchased by Caltrans in January 1966, for about \$1.18 million, as a possible right-of-way for the never built Coast Freeway using gas tax revenue. The property is in the Newport Beach General Plan and is zoned residential or open space. A March 2000 appraisal valued the property at approximately \$4.185 million -- assuming the development of a 40-unit "high quality single family residential tract development" on the parcel. The City of Newport Beach intends to build ballfields, restroom facilities and parking on the site and include walking/bike trails linked to the proposed 1,000+ acre Orange Coast River Park adjacent to the nearby Santa Ana River. The city estimates that construction costs for the 15-acre parcel will amount to \$5-6 million.

Recent History: The City of Newport Beach and Caltrans had been negotiating the city's purchase of the property, however, the city recently determined that because of budget constraints (the city's general fund annual expenditures for all capital projects is about \$4 million) it could not pay market value (about \$4-6 million) for the 15-acre parcel and still commit \$5-6 million additional funds for construction of a park on the property.

Arguments in Support: Proponents believe that the California Constitution clearly authorizes this parcel to be acquired and preserved as parkland at its original price. Proponents emphasize that this parcel is a regional asset that should be preserved for the public trust to provide park users throughout Orange County convenient

SB 124 (Johnson) continued
Page 4

access from the Pacific Coast Highway.

Arguments in Opposition: The California Transportation Commission points out that it has a long standing policy to protect the State Highway Account against transfers of revenue to non-transportation uses. The Commission claims that it seeks to sell excess Caltrans property at current market value and to reinvest the revenue for transportation purposes. The Commission contends that to transfer the 15-acre parcel to the Department of Parks and Recreation would cost the State Highway Account over \$3 million and could serve as a costly precedent in future sales of excess Caltrans properties. Thus, the Commission believes that the parties involved in the negotiations should continue good faith efforts to agree on a "current fair market value" for the property.

Suggested Amendment: The author may wish to consider amending this measure either in this committee or the Senate Appropriations committee to clarify that the City of Newport Beach will reimburse the state General Fund for costs associated with the transfer of the property.

SUPPORT: As of March 29, 2001:

City of Newport Beach
Orange County Coastal Coalition
California Park and Recreation Society

City Letter Dated 10/14/2011 re SB124

EXHIBIT 16 to 5-11-302
5 of 6

Orange County Supervisor Thomas W. Wilson
Endangered Habitats League
Newport Beach Chapter, Surfrider Foundation
West Newport Beach Association

SUPPORT: (continued)

Central Newport Beach Community Association
Friends of Harbors, Beaches and Parks
Biomerica
Newport Crest Home Owners Association
Homeowners of Park Lido Association, Newport Beach (23
individuals)
Newport Harbor Area Chamber of Commerce
Bottoncourt & Associates
Lido Sands Community Association
The Newport Conservancy
Orange County Coastkeeper

SB 124 (Johnson) continued
Page 5

Numerous private citizens

OPPOSE: As of March 29, 2001:

California Transportation Commission

FISCAL COMMITTEE: Senate Appropriations Committee

ORANGE COUNTY FIRE AUTHORITY

Planning & Development Services Section

1 Fire Authority Road, Building A, Irvine, CA 92602 714-573-6100 www.ocfa.org

Vegetation Management Technical Design Guideline



Approved and Authorized by

Guideline C-05

Laura Blaul
Fire Marshal / Assistant Chief

Date: January 1, 2011

Serving the Cities of: Aliso Viejo • Buena Park • Cypress • Dana Point • Irvine • Laguna Hills • Laguna Niguel • Laguna Woods • Lake Forest • La Palma • Los Alamitos • Mission Viejo • Placentia • Rancho Santa Margarita • San Clemente • San Juan Capistrano • Santa Ana • Seal Beach • Stanton • Tustin • Villa Park • Westminster • Yorba Linda • and Unincorporated Areas of Orange County

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DESIRABLE PLANT LIST - List of plants exhibiting characteristics of low fuel volume, fire resistance, and drought tolerance which make them desirable for planting in areas of high fire danger.

DRIPLINE - Ground area at the outside edge of the canopy.

DROUGHT TOLERANT - The ability of a plant or tree to survive on little water.

FIRE BREAK - Removal of growth, usually in strips, around housing developments to prevent a fire from spreading to the structures from open land or vice versa.

FIRE RESISTANT - Any plant will burn with enough heat and proper conditions. Resistance is often used as a comparative term relating to the ability of a plant to resist ignition.

FIRE RETARDANCE - Relative comparison of plant species related to differences in fuel volume, inherent flammability characteristics, and ease of fire spread.

FUEL BREAK - A wide strip or block of land on which the native or pre-existing vegetation has been permanently modified so that fires burning into it can be more readily extinguished.

FUEL LOAD - The weight of fuels in a given areas, usually expressed in tons per acre.

FUEL MODIFICATION ZONE - A strip of land where combustible native or ornamental vegetation has been modified and partially or totally replaced with drought tolerant, fire resistant, plants.

FUEL MOISTURE CONTENT - The amount of water in a fuel, expressed as a percentage of the oven dry weight of that fuel.

FUEL VOLUME - The amount of fuel in a plant in a given area of measurement. Generally, an open-spaced plant will be low in volume.

HORIZONTAL CONTINUITY - The extent or horizontal distribution of fuels at various levels or planes.

LADDER FUELS - Fuels which allow the vertical transmission of fire to over-story vegetation. Fire is able to carry from ground surface fuels into crowns with relative ease.

LITTER - The uppermost layer of loose debris composed of freshly fallen or slightly decomposed organic material such as dead sticks, branches, twigs, leaves or needles.

LONG TERM - In perpetuity of the fuel modification plan requirement.

Attachment 8

FUEL MODIFICATION ZONE PLANT LIST

(Note: Legend can be found on page 35)

	<u>Code</u>	<u>Botanical Name</u>	<u>Common Name</u>	<u>Plant Form</u>
1.	W	Abelia x grandiflora	Glossy Abelia	Shrub
2.	n	Acacia redolens desert carpet	Desert Carpet	Shrub
3.	o	Acer macrophyllum	Big Leaf Maple	Tree
4.	X	Achillea millefolium	Common Yarrow	Low Shrub
5.	W	Achillea tomentosa	Woolly Yarrow	Low Shrub
6.	X	Aeonium decorum	Aeonium	Ground cover
7.	X	Aeonium simsii	no common name	Ground cover
8.	W	Agave attenuata	Century Plant	Succulent
9.	W	Agave shawii	Shaw's Century Plant	Succulent
10.	N	Agave victoriae-reginae	no common name	Ground Cover
11.	X	Ajuga reptans	Carpet Bugle	Ground Cover
12.	W	Alnus cordata	Italian Alder	Tree
13.	o	Alnus rhombifolia	White Alder	Tree
14.	N	Aloe arborescens	Tree Aloe	Shrub
15.	N	Aloe aristata	no common name	Ground Cover
16.	N	Aloe brevifoli	no common name	Ground Cover
17.	W	Aloe Vera	Medicinal Aloe	Succulent
18.	W	Alogyne huegeii	Blue Hibiscus	Shrub
19.	o	Ambrosia chammissonis	Beach Bur-Sage	Perennial
20.	o	Amorpha fruticosa	Western False Indigobush	Shrub
21.	W	Anigozanthus flavidus	Kangaroo Paw	Perennial/accnt

22.	o	<i>Antirrhinum nuttalianum</i> ssp.	no common name	Subshrub
23.	X	<i>Aptenia cordifolia</i> x 'Red Apple'	Red Apple Aptenia	Ground cover
24.	W	<i>Arbutus unedo</i>	Strawberry Tree	Tree
25.	W	<i>Arctostaphylos</i> 'Pacific Mist'	Pacific Mist Manzanita	Ground Cover
26.	W	<i>Arctostaphylos edmundsii</i>	Little Sur Manzanita	Ground Cover
27.	o	<i>Arctostaphylos glandulosa</i> ssp.	Eastwood Manzanita	Shrub
28.	W	<i>Arctostaphylos hookeri</i> 'Monterey Carpet'	Monterey Carpet Manzanita	Low Shrub
29.	N	<i>Arctostaphylos pungens</i>	no common name	Shrub
30.	N	<i>Arctostaphylos refugioensis</i>	Refugio Manzanita	Shrub
31.	W	<i>Arctostaphylos uva-ursi</i>	Bearberry	Ground Cover
32.	W	<i>Arctostaphylos</i> x 'Greensphere'	Greensphere Manzanita	Shrub
33.	N	<i>Artemisia caucasica</i>	Caucasian Artemisia	Ground Cover
34.	X	<i>Artemisia pycnocephala</i>	Beach Sagewort	Perennial
35.	X	<i>Atriplex canescens</i>	Four-Wing Saltbush	Shrub
36.	X	<i>Atriplex lentiformis</i> ssp. <i>breweri</i>	Brewer Saltbush	Shrub
37.	o	<i>Baccharis emoyi</i>	Emory Baccharis	Shrub
38.	W o	<i>Baccharis pilularis</i> ssp. <i>consanguinea</i>	Chaparral Bloom	Shrub
39.	X	<i>Baccharis pilularis</i> var. <i>pilularis</i>	Twin Peaks #2'	Ground Cover
40.	o	<i>Baccharis salicifolia</i>	Mulefat	Shrub
41.	N	<i>Baileya multiradiata</i>	Desert Marigold	Ground Cover
42.	W	<i>Beaucarnea recurvata</i>	Bottle Palm	Shrub/Small Tree
43.	N n	<i>Bougainvillea spectabilis</i>	Bougainvillea	Shrub
44.	N n	<i>Brahea armata</i>	Mexican Blue Palm/Blue Hesper Palm	Palm
45.	N n	<i>Brahea brandegeei</i>	San Jose Hesper Palm	Palm
46.	N n	<i>Brahea edulis</i>	Guadalupe Palm	Palm
47.	o	<i>Brickellia californica</i>	no common name	Subshrub

48.	W o	Bromus carinatus	California Brome	Grass
49.	o	Camissonia cheiranthifloa	Beach Evening Primrose	Perennial Shrub
50.	N	Carissa macrocarpa	Green Carpet Natal Plum	Ground Cover/Shrub
51.	X	Carpobrotus chilensis	Sea Fig Ice Plant	Ground Cover
52.	W	Ceanothus gloriosus 'Point Reyes'	Point Reyes Ceanothus	Shrub
53.	W	Ceanothus griseus 'Louis Edmunds'	Louis Edmunds Ceanothus	Shrub
54.	W	Ceanothus griseus horizontalis	Yankee Point	Ground Cover
55.	W	Ceanothus griseus var. horizontalis	Carmel Creeper Ceanothus	Shrub
56.	W	Ceanothus griseus var. horizontalis	Yankee Point Ceanothus	Shrub
57.	o	Ceanothus megacarpus	Big Pod Ceanothus	Shrub
58.	W	Ceanothus prostratus	Squaw Carpet Ceanothus	Shrub
59.	o	Ceanothus spinosus	Green Bark Ceanothus	Shrub
60.	W	Ceanothus verrucosus	Wart-Stem Ceanothus	Shrub
61.	W	Cerastium tomentosum	Snow-in-Summer	Ground cover/Shrub
62.	W	Ceratonia siliqua	Carob	Tree
63.	W	Cercis occidentalis	Western Redbud	Shrub/Tree
64.	X	Chrysanthemum leucanthemum	Oxeye Daisy	Ground Cover
65.	W	Cistus Crispus	no common name	Ground Cover
66.	W	Cistus hybridus	White Rockrose	Shrub
67.	W	Cistus incanus	no common name	Shrub
68.	W	Cistus incanus ssp. Corsicus	no common name	Shrub
69.	W	Cistus salviifolius	Sageleaf Rockrose	Shrub
70.	W	Cistus x purpureus	Orchid Rockrose	Shrub
71.	W	Citrus species	Citrus	Tree
72.	o	Clarkia bottae	Showy Fairwell to Spring	Annual
73.	o	Cneoridium dumosum	Bushrue	Shrub

74.	o	<i>Collinsia heterophyllia</i>	Chinese Houses	Annual
75.	W o	<i>Comarostaphylis diversifolia</i>	Summer Holly	Shrub
76.	N	<i>Convolvulus cneorum</i>	Bush Morning Glory	Shrub
77.	W	<i>Coprosma kirkii</i>	Creeping Coprosma	Ground Cover/Shrub
78.	W	<i>Coprosma pumila</i>	Prostrate Coprosma	Low shrub
79.	o	<i>Coreopsis californica</i>	California Coreopsis	Annual
80.	W	<i>Coreopsis lanceolata</i>	Coreopsis	Ground Cover
81.	N	<i>Corea pulchella</i>	Australian Fuschia	Ground Cover
82.	W	<i>Cotoneaster buxifolius</i>	no common name	Shrub
83.	W	<i>Cotoneaster congestus</i> 'Likiang'	Likiang Cotoneaster	Ground Cover/Vine
84.	W	<i>Cotoneaster aprneyi</i>	no common name	Shrub
85.	X	<i>Crassula lactea</i>	no common name	Ground Cover
86.	X	<i>Crassula multicava</i>	no common name	Ground Cover
87.	X	<i>Crassula ovata</i>	Jade Tree	Shrub
88.	X	<i>Crassula tetragona</i>	no common name	Ground Cover
89.	W o	<i>Croton californicus</i>	California Croton	Ground Cover
90.	X	<i>Delosperma</i> 'alba'	White trailing Ice Plant	Ground Cover
91.	o	<i>Dendromecon rigida</i>	Bush Poppy	Shrub
92.	o	<i>Dichelostemma capitatum</i>	Blue Dicks	Herb
93.	N	<i>Distinctis buccinatoria</i>	Blood-Red Trumpet Vine	Vine/Climbing vine
94.	N	<i>Dodonaea viscosa</i>	Hopseed Bush	Shrub
95.	X	<i>Drosanthemum floribundum</i>	Rosea Ice Plant	Ground Cover
96.	X	<i>Drosanthemum hispidum</i>	no common name	Ground Cover
97.	X	<i>Drosanthemum speciosus</i>	Dewflower	Ground Cover
98.	o	<i>Dudleya lanceolata</i>	Lance-leaved Dudleya	Succulent
99.	o	<i>Dudleya pulverulenta</i>	Chalk Dudleya	Succulent

100.	W	<i>Elaeagnus pungens</i>	Silverberry	Shrub
101.	o	<i>Encelia californica</i>	California Encelia	Small Shrub
102.	o *	<i>Epilobium canum</i> [<i>Zauschneria californica</i>]	Hoary California Fuschia	Shrub
103.	o	<i>Eriastrum Sapphirinum</i>	Mojave Woolly Star	Annual
104.	N	<i>Eriobotrya japonica</i>	Loquat	Tree
105.	o	<i>Eriodictyon crassifolium</i>	Thick Leaf Yerba Santa	Shrub
106.	o	<i>Eriodictyon trichocalyx</i>	Yerba Santa	Shrub
107.	W o	<i>Eriophyllum confertiflorum</i>	no common name	Shrub
108.	W	<i>Erythrina species</i>	Coral Tree	Tree
109.	N	<i>Escallonia species</i>	Several varieties	Shrub
110.	W o	<i>Eschscholzia californica</i>	California Poppy	Flower
111.	X	<i>Eschscholzia mexicana</i>	Mexican Poppy	Herb
112.	N	<i>Euonymus fortunei</i>	Winter Creeper Euonymus	Ground Cover
113.	N	<i>Feijoa sellowiana</i>	Pineapple Guava	Shrub/Tree
114.	N	<i>Fragaria chiloensis</i>	Wild Strawberry/Sand Strawberry	Ground Cover
115.	o	<i>Frankenia salina</i>	Alkali Heath	Ground Cover
116.	W	<i>Fremontodendron californicum</i>	California Flannelbush	Shrub
117.	X	<i>Gaillardia x grandiflora</i>	Blanketflower	Ground Cover
118.	W	<i>Galvezia speciosa</i>	Bush Snapdragon	Shrub
119.	W	<i>Garrya ellipta</i>	Silktassel	Shrub
120.	X	<i>Gazania hybrids</i>	South African Daisy	Ground Cover
121.	X	<i>Gazania rigens leucolaena</i>	Training Gazania	Ground Cover
122.	o	<i>Gillia capitata</i>	Globe Gilia	Perrenial
123.	W	<i>Gilia leptantha</i>	Showy Gilia	Perrenial
124.	W	<i>Gilia tricolor</i>	Bird's Eyes	Perrenial
125.	W	<i>Ginkgo biloba</i>	Maidenhair Tree	Tree

126.	o	Gnaphalium californicum	California Everlasting	Annual
127.	W	Grewia occidentalis	Starflower	Shrub
128.	o	Grindelia stricta	Gum Plant	Ground Cover
129.	N n	Hakea suaveolens	Sweet Hakea	Shrub
130.	W	Hardenbergia comptoniana	Lilac Vine	Shrub
131.	N	Heliathemum muutabile	Sunrose	Ground Cover/Shrub
132.	o	Helianthemum scoparium	Rush Rose	Shrub
133.	o	Heliotropium curassavicum	Salt Heliotrope	Ground Cover
134.	X	Helix Canariensis	English Ivy	Ground Cover
135.	W	Hesperaloe parviflora	Red Yucca	Perennial
136.	o n	Heteromeles arbutifolia	Toyon	Shrub
137.	X	Hypericum calycimum	Aaron's Beard	Shrub
138.	N	Iberis sempervirens	Edging Candytuft	Ground Cover
139.	N	Iberis umbellatum	Globe Candytuft	Ground Cover
140.	o	Isocoma menziesii	Coastal Goldenbush	Small Shrub
141.	o	Isomeris arborea	Bladderpod	Shrub
142.	W	Iva hayesiana	Poverty Weed	Ground Cover
143.	N	Juglans californica	California Black Walnut	Tree
144.	o	Juncus acutus	Spiny Rush	Perrenial
145.	o	Keckiella antirrhinoides	Yellow Bush Penstemon	Subshrub
146.	o	Keckiella cordifolia	Heart Leaved Penstemon	Subshrub
147.	o	Keckiella ternata	Blue Stemmed Bush Penstemon	Subshrub
148.	W	Kniphofia uvaria	Red Hot Poker	Perennial
149.	W	Lagerstroemia indica	Crape Myrtle	Tree
150.	W	Lagunaria patersonii	Primrose Tree	Tree
151.	X	Lamprathus aurantiacus	Bush Ice Plant	Ground Cover

152.	X	Lampranthus filicaulis	Redondo Creeper	Ground Cover
153.	X	Lampranthus spectabilis	Trailing Ice Plant	Ground Cover
154.	W	Lantana camara cultivars	Yellow Sage	Shrub
155.	W	Lantana montevidensis	Trailing Lantana	Shrub
156.	o	Lasthenia californica	Dwarf Goldfields	Annual
157.	W	Lavandula dentata	French Lavender	Shrub
158.	W	Leptospermum laevigatum	Australian Tea Tree	Shrub
159.	W	Leucophyllum frutescens	Texas Ranger	Shrub
160.	o	Leymus condensatus	Giant Wild Rye	Large Grass
161.	N	Ligustrum japonicum	Texas privet	Shrub
162.	X	Limonium pectinatum	no common name	Ground Cover
163.	X	Limonium perezii	Sea Lavender	Shrub
164.	W n	Liquidambar styraciflua	American Sweet Gum	Tree
165.	W	Liriodendron tulipifera	Tulip Tree	Tree
166.	X	Lonicera japonica 'Halliana'	Hall's Japanese Honeysuckle	Vining Shrub
167.	o	Lonicera subspicata	Wild Honeysuckle	Vining Shrub
168.	X	Lotus corniculatus	Bird's Foot Trefoil	Ground Cover
169.	o	Lotus hermannii	Northern Woolly Lotus	Perennial
170.	o	Lotus scoparius	Deerweed	Shrub
171.	W	Lupinus arizonicus	Desert Lupine	Annual
172.	W	Lupinus benthamii	Spider Lupine	Annual
173.	o	Lupinus bicolor	Sky Lupine	Flowering annual
174.	o	Lupinus sparsiflorus	Loosely Flowered Annual Lupine/Coulter's Lupine	Annual
175.	W	Lyonothamnus floribundus ssp. Asplenifolius	Fernleaf Ironwood	Tree
176.	W	Macadamia integrifolia	Macadamia Nut	Tree
177.	W	Mahonia aquifolium 'Golden Abundance'	Golden Abundance Oregon Grape	Shrub

178.	W	Mahonia nevenii	Nevin Mahonia	Shrub
179.	o	Malacothamnus fasciculatus	Chapparal Mallow	Shrub
180.	X	Malephora luteola	Training Ice Plant	Ground Cover
181.	W	Maytenus boaria	Mayten Tree	Tree
182.	W	Melaleuca nesophila	Pink Melaleuca	Shrub
183.	N	Metrosideros excelsus	New Zealand Christmas Tree	Tree
184.	o *	Mimulus species	Monkeyflower	Flower
185.	o	Mirabilis californica	Wishbone Bush	Perrenial
186.	N	Myoporum debile	no common name	Shrub
187.	W	Myoporum insulare	Boobyalla	Shrub
188.	W	Myoporum parvifolium	no common name	Ground Cover
189.	W	Myoporum 'Pacificum'	no common name	Ground Cover
190.	o	Nassella (stipa) lepidra	Foothill Needlegrass	Ground Cover
191.	o	Nassella (stipa) pulchra	Purple Needlegrass	Ground Cover
192.	o	Nemophila menziesii	Baby Blue Eyes	Annual
193.	X	Nerium Oleander	Oleander	Shrub
194.	o	Nolina cismontana	Chapparal Nolina	Shrub
195.	N	Nolina species	Mexican Grasstree	Shrub
196.	W	Oenothera belandieri	Mexican Evening Primrose	Ground Cover
197.	N	Oenothera hookeri	California Evening Primrose	Flower
198.	W	Oenothera speciosa	Show Evening Primrose	Perrenial
199.	X	Ophiopogon japonicus	Mondo Grass	Ground Cover
200.	o *	Opuntia littoralis	Prickly Pear	Cactus
201.	o *	Opuntia oricola	Oracle Cactus	Cactus
202.	o *	Opuntia prolifera	Coast Cholla	Cactus
203.	W	Osmanthus fragrans	Sweet Olive	Shrub

204.	X	<i>Osteospermum fruticosum</i>	Training African Daisy	Ground Cover
205.	X	<i>Parkinsonia aculeata</i>	Mexican Palo Verde	Tree
206.	W	<i>Pelargonium peltatum</i>	Ivy Geranium	Ground Cover
207.	X	<i>Penstemon species</i>	Beard Tongue	Shrub
208.	W	<i>Photinia fraseria</i>	no common name	Shrub
209.	W	<i>Pistacia chinensis</i>	Chinese Pistache	Tree
210.	X	<i>Pittosporum undulatum</i>	Victorian Box	Tree
211.	o	<i>Plantago erecta</i>	California Plantain	Annual
212.	**	<i>Plantago insularis</i>	Woolly Plantain	Annual
213.	X	<i>Plantago sempervirens</i>	Evergreen Plantain	Ground Cover
214.	W	<i>Plantanus racemosa</i>	California Sycamore	Tree
215.	W	<i>Plumbago auriculata</i>	Plumbago Cape	Shrub
216.	o	<i>Populus fremontii</i>	Western Cottonwood	Tree
217.	X	<i>Portulacaria afra</i>	Elephant's Food	Shrub
218.	o	<i>Potentilla glandulosa</i>	Sticky Cinquefoil	Subshrub
219.	X	<i>Potentilla tabernaemontanii</i>	Spring Cinquefoil	Ground Cover
220.	X	<i>Prunus caroliniana</i>	Carolina Cherry Laurel	Shrub/Tree
221.	o	<i>Prunus ilicifolia</i> ssp. <i>Ilicifolia</i>	Holly Leafed Cherry	Shrub
222.	X	<i>Prunus lyonii</i>	Catalina Cherry	Shrub/Tree
223.	N	<i>Punica granatum</i>	Pomegranate	Shrub/Tree
224.	W	<i>Puya species</i>	Puya	Succulent/Shrub
225.	W	<i>Pyracantha species</i>	Firethorn	Shrub
226.	o	<i>Quercus agrifolia</i>	Coast Live Oak	Tree
227.	o n *	<i>Quercus berberidifolia</i>	California Scrub Oak	Shrub
228.	o n *	<i>Quercus dumosa</i>	Coastal Scrub Oak	Shrub
229.	X	<i>Quercus engelmannii</i>	Engelmann Oak	Tree

230.	X	<i>Quercus suber</i>	Cork Oak	Tree
231.	X	<i>Rhamnus alaternus</i>	Italian Buckthorn	Shrub
232.	o	<i>Rhamnus californica</i>	California Coffee Berry	Shrub
233.	o	<i>Rhamnus crocea</i>	Redberry	Shrub
234.	o	<i>Rhamnus crocea</i> ssp. <i>ilicifolia</i>	Hollyleaf Redberry	Shrub
235.	N	<i>Raphiolepis</i> species	Indian Hawthorne	Shrub
236.	o	<i>Rhus integrifolia</i>	Lemonade Berry	Shrub
237.	N	<i>Rhus lancea</i>	African Sumac	Tree
238.	o n	<i>Rhus ovata</i>	Sugarbush	Shrub
239.	o	<i>Ribes aureum</i>	Golden Currant	Shrub
240.	o	<i>Ribes indecorum</i>	White Flowering Currant	Shrub
241.	o	<i>Ribes speciosum</i>	Fuschia Flowering Gooseberry	Shrub
242.	W	<i>Ribes viburnifolium</i>	Evergreen currant	Shrub
243.	o *	<i>Romneya coulteri</i>	Matilija Poppy	Shrub
244.	X	<i>Romneya coulteri</i> 'White Cloud'	White Cloud Matilija Poppy	Shrub
245.	W n	<i>Rosmarinus officinalis</i>	Rosemary	Shrub
246.	W n	<i>Salvia greggii</i>	Autums Sage	Shrub
247.	W n	<i>Salvia sonomensis</i>	Creeping Sage	Ground Cover
248.	o	<i>Sambucus mexicana</i>	Mexican Elderberry	Tree
249.	W	<i>Santolina chamaecyparissus</i>	Lavender Cotton	Ground Cover
250.	W	<i>Santolina virens</i>	Green Lavender Cotton	Shrub
251.	o	<i>Satureja chandleri</i>	San Miguel Savory	Perennial
252.	o	<i>Scirpis scutus</i>	Hard Stem Bulrush	Perennial
253.	o	<i>Scirpus californicus</i>	California Bulrush	Perennial
254.	X	<i>Sedum acre</i>	Goldmoss Sedum	Ground Cover
255.	X	<i>Sedum album</i>	Green Stonecrop	Ground Cover

256.	X	<i>Sedum confusum</i>	no common name	Ground Cover
257.	X	<i>Sedum lineare</i>	no common name	Ground Cover
258.	X	<i>Sedum x rubrotinctum</i>	Pork and Beans	Ground Cover
259.	X	<i>Senecio serpens</i>	no common name	Ground Cover
260.	o	<i>Sisyrinchium bellum</i>	Blue Eyed Grass	Ground Cover
261.	o	<i>Solanum douglasii</i>	Douglas Nightshade	Shrub
262.	o	<i>Solanum xantii</i>	Purple Nightshade	Perennial
263.	W	<i>Stenocarpus sinuatus</i>	Firewheel Tree	Tree
264.	W	<i>Strelitzia nicolai</i>	Giant Bird of Paradise	Perennial
265.	W	<i>Strelitzia reginae</i>	Bird of Paradise	Perennial
266.	o	<i>Symphoricarpos mollis</i>	Creeping Snowberry	Shrub
267.	W	<i>Tecoma stans</i> (<i>Stenolobium stans</i>)	Yellow Bells	Shrub/Small Tree
268.	X	<i>Tecomaria capensis</i>	Cape Honeysuckle	Ground Cover
269.	N	<i>Teucrium chamedrys</i>	Germander	Ground Cover
270.	N	<i>Thymus serpyllum</i>	Lemon Thyme	Ground Cover
271.	N	<i>Trachelospermum jasminoides</i>	Star Jasmine	Shrub
272.	o	<i>Trichostema lanatum</i>	Woolly Blue Curls	Shrub
273.	X	<i>Trifolium hirtum</i> 'Hyron'	Hyron Rose Clover	Ground Cover
274.	X	<i>Trifolium fragerum</i> 'O'Connor's'	O'Connor's Legume	Ground Cover
275.	o	<i>Umbellularia californica</i>	California Laurel	Tree
276.	o	<i>Verbena lasiostachys</i>	Western Vervain	Perennial
277.	N	<i>Verbena peruviana</i>	no common name	Ground Cover
278.	X	<i>Verbena species</i>	Verbena	Ground Cover
279.	X	<i>Vinca minor</i>	Dwarf Periwinkle	Ground Cover
280.	o	<i>Vitis girdiana</i>	Desert Wild Grape	Vine
281.	X	<i>Vulpia myuros</i> 'Zorro'	Zorro Annual Fescue	Grass

282.	W	Westringia fruticosa	no common name	Shrub
283.	W	Xannithorrhoea species	Grass Tree	Perennial accent/shrub
284.	W	Xylosma congestum	Shiny Xylosma	Shrub
285.	X	Yucca Species	Yucca	Shrub
286.	o	Yucca whipplei	Yucca	Shrub

Legend:

- X = Plant species prohibited in wet and dry fuel modification zones adjacent to reserve lands. Acceptable on all other fuel modification locations and zones.
- W = Plant species appropriate for use in wet fuel modification zones adjacent to reserve lands. Acceptable in all other wet and irrigated dry (manufactured slopes) fuel modification locations and zones.
- o = Plant species native to Orange County. Acceptable in all fuel modification wet and dry zones in all locations.
- N = Plant species acceptable on a limited basis (maximum 30% of the area) in wet fuel modification zones *adjacent to reserve lands*. Acceptable on all other fuel modification zones.
- * = If locally collected.
- ** = Not native but can be used in all zones.
- n = Plant species acceptable on a limited use basis. Refer to qualification requirements following plant palette.

Approved Plant Palette – Qualification Statements for Select Plant Species

2. **Acacia redolens desert carpet:** May be used in the upper ½ of the “B” fuel modification zone. The plants may be planted at 8-foot on center, maximum spacing in meandering zones not to exceed a mature width of 24 feet or a mature height of 24 inches.
43. **Bougainvillea spectabilis (procumbent varieties):** Procumbent to mounding varieties may be used in the mid “B” fuel modification zone. The plants may be planted in clusters at 6-foot on center spacing not to exceed eight plants per cluster. Mature spacing between individual plants or clusters shall be 30-foot minimum.
44. **Brahea armata:** Additional information may be required as directed by the OCFA.
45. **Brahea brandegeel:** Additional information may be required as directed by the OCFA.

-
46. **Brahea edulis:** May be used in upper and mid “B” fuel modification zone. The plants shall be used as single specimens with mature spacing between palms of 20-foot minimum.
129. **Hakea suaveolens:** May be used in the mid “B” fuel modification zone. The plants shall be used as single specimens with mature spacing between plants of 30-foot minimum.
136. **Heteromeles arbutifolia:** May be used in the mid to lower “B” fuel modification zone. The plants may be planted in clusters of up to 3 plants per cluster. Mature spacing between individual plants or clusters shall be 30-foot minimum.
164. **Liquidambar styraciflua:** May be used in the mid “B” fuel modification zone. The plant shall be used as single specimens with mature spacing between trees and 30-foot minimum.
227. **Quercus berberdifolia:** Additional information may be required as directed by the OCFA.
228. **Quercus dumosa:** May be used in the mid to lower “B” fuel modification zone. The plants may be planted in clusters of up to 3 plants per cluster. Mature spacing between individual plants or clusters shall be 30-foot minimum.
238. **Rhus ovata:** May be used in the mid to lower “B” fuel modification zone of inland areas only. The plants may be planted in clusters of up to 3 plants per cluster. Mature spacing between individual plants or clusters shall be 30-foot minimum.
245. **Rosmarinus officinalis:** Additional information may be required as directed by the OCFA.
246. **Salvia greggii:** Additional information may be required as directed by the OCFA.
247. **Salvia sonomensis:** May be used in the mid to upper “B” fuel modification zone. The plants may be planted in clusters of up to 3 plants per cluster. Mature spacing between individual plants or clusters shall be 15-foot minimum.



CALIFORNIA FARM BUREAU FEDERATION

GOVERNMENTAL AFFAIRS DIVISION

1127 11TH STREET, SUITE 626 SACRAMENTO, CA 95814 • PHONE (916) 446-4647

July 3, 2012

RECEIVED
South Coast Region

JUL 5 2012

CALIFORNIA
COASTAL COMMISSION

Honorable Mary Shallenberger, Chair
California Coastal Commission
c/o John Del Arroz, Coastal Program Analyst
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

SUBJECT: CDP Application No. 5-11-302 (City of Newport Beach-Sunset Ridge Park Project)

Dear Chair Shallenberger:

The California Farm Bureau Federation ("Farm Bureau") reviewed with great interest the staff report (hereinafter "staff report") for the above-referenced project which is to be considered by you on July 12, 2012. As you are aware, Farm Bureau represents more than 74,000 agricultural, associate and collegiate members in 56 counties and strives to protect and promote agricultural interests throughout the state of California. We submit this letter to you to express our strong concerns with California Coastal Commission (CCC) staff's analysis and conclusions with respect to the historical site disturbance of the City of Newport Beach's Sunset Ridge Park project. CCC Staff's position on this matter has potential detrimental ramifications for our coastal farming communities and we respectfully request your careful consideration and decision on this issue.

The staff report acknowledges in numerous areas that it is undisputed that the Park property has been subject to "large amounts of disturbance over the years, including a major grading event which removed thousands of cubic yards of earth from the site. Additionally, the site has been subject to mowing activities which have occurred since prior to the Coastal Act." (CDP 5-11-302 staff report, pg. 18) Nevertheless, staff concludes that the ongoing weed abatement/site maintenance activities constitute "unpermitted development" and thus the property must be viewed as if the site disturbance and annual maintenance activities, which commenced as far back as at least the 1960s, did not occur when evaluating its biological resources. This conclusion is reached despite the statement on pg. 19 of the staff report that,

"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."

Staff clearly acknowledges that the subject site maintenance activities would not have required a CDP from the CCC due to the historical and "disturbed nature of the site" but for the fact the designation of a particular species as threatened. Thus, staff makes clear that the designation of "major vegetation" and environmentally sensitive habitat area (ESHA) on the Park property stems from the fact that a designated threatened species has been observed **off-site** on adjacent private property and thus there is the *potential* for the species to utilize the Park property. The circular argument continues with the finding that because the site contains "major vegetation"/ESHA, the property owner should have applied for and obtained a Coastal Development Permit (CDP) before the removal of such vegetation on the property.

Honorable Mary Shallenberger

July 3, 2012

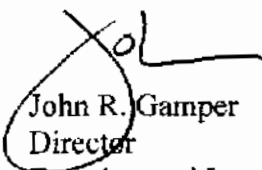
Page Two

Staff reasons that because no CDP was ever issued, the site disturbance must therefore be viewed as if it did not occur.

The logic and conclusion is extremely disconcerting to the Farm Bureau and the ramifications of your acceptance of this analysis and findings could have far reaching implications on farmlands within the Coastal Zone. Virtually all of California coastal farmland has been in operation since prior to the effective date of the Coastal Act; accordingly, these farmlands are not required to have CDPs from the Coastal Commission pursuant to Public Resources Code § 30106. However, we can envision numerous scenarios wherein a farm has been in existence and operational since well before the Coastal Act, and suddenly a threatened or endangered species is identified to be located off-site on "nearby" property. If the staff's analysis and conclusion for the Sunset Ridge Park property are applied, it is reasonable to imagine that the CCC could suddenly classify the regularly disturbed farmlands to contain ESHA and therefore require a Coastal Development Permit despite the aforementioned exemption. It is clear from the Sunset Ridge Park situation that the outcome is not just a requirement of a CDP after-the-fact, but a denial of use of the historically highly disturbed property due to the perceived (not demonstrated) *potential* habitat value.

In short, we are gravely concerned that the Coastal Commission can deem property that has been incontrovertibly disturbed and maintained for half a century to suddenly contain "major vegetation"/ESHA due to the perceived *possibility* that if the disturbance had not occurred, the property *could potentially* provide foraging habitat for a threatened or endangered species. Farm Bureau respectfully urges the Coastal Commissioners to reject this erroneous logic and unsubstantiated conclusion.

Sincerely,



John R. Gamper
Director

Taxation and Land Use

Cc: Honorable Members, California Coastal Commission
Governor Jerry Brown
Senator Darryl Steinberg
Speaker John Perez

Letter of Support
Page 2

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South Coast Region

JUL 3 2012

CALIFORNIA
COASTAL COMMISSION

June 29, 2012

The California Coastal Commission

Re: Permit# 5-11-302/ City of Newport Beach for Sunset Ridge Park

Dear Sirs:

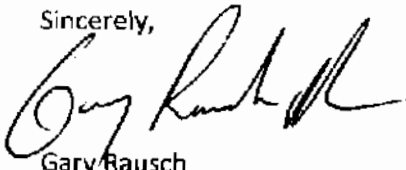
I am extremely troubled at the amount of Time and Expense being spent to build a small park the City and citizens of Newport Beach wishes to build. I find it to be a monumental waste of taxpayers money and everyone's time on this issue. Your commission seems to be arbitrary and uneven in your judgements you make on what projects go forward and which don't.

To be clear on my position, the guitarist for the Rock Band U-2 can build several mansions on 147 coastal acres in Malibu, however, children in Newport Beach/ Costa Mesa can't play soccer on a dirt lot above Pacific Coast Highway.

I hope you realize the folly in this matter and approve the park. Please spare the already stressed taxpayers additional money and time over this issue. I hope you will approve it forthwith.

Thank you for your time.

Sincerely,



Gary Rausch
260 Cagney Lane Suite 120
Newport Beach, Ca. 92663

*Letters of
Support
Page 3*

June 28, 2012

California Coastal Commission

South Coast District

200 Oceangate, Ste. 1000, 10th FL

Long Beach, CA 90802

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JUN 29 2012

CALIFORNIA
COASTAL COMMISSION

In Favor

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South Coast Region

CALIFORNIA
COASTAL COMMISSION

Subject: July 12, 2012 Chula Vista Meeting

Item No: th 11c, Application No: 5-11-302

Dear Commissioners and Staff:

I live in the West Newport "Tsunami Danger Zone". One of three 40 foot City poles with Tsunami alarm horns on top is located directly across our street in the West Newport Park. Pacific Coast Highway (PCH) is on the other side of the Park's block wall. If a Tsunami alarm occurs, a nearby City sign advises the public to head for higher ground.

The nearest higher ground on the North side of PCH is now unreachable due to wire fencing. We need a PCH Sunset Ridge Park entrance as our escape destination. Currently, our only choice is to walk/run rapidly along PCH to the distant Balboa/Superior intersection and halfway up the Superior Avenue hill to be safe.

Having lived in this area for fifty years, I have experienced the traffic gridlock when everyone is trying to leave the lowlands by car at the same time. On one summer day, several years ago, the lifeguards ordered everyone off the beaches due to a reported poison gas cloud drifting towards West Newport. It took over an hour to leave the area by car. The Japanese recently had fifteen minutes to reach higher ground after their Tsunami warning.

Please keep in mind the importance of this Sunset Ridge Park's hilly location as a safe retreat for those of us who are living here or for visitors to our attractive beaches in this Tsunami Danger Zone.

Sincerely,



Mike Johnson

5803 Seashore Drive

Newport Beach, CA 92663

(949) 642-3125

Letters of Support
Page 4

CALIFORNIA CATTLEMEN'S ASSOCIATION

1221 H STREET • SACRAMENTO, CALIFORNIA • 95814-1910

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South Coast Region

JUL 11 2012

Honorable Mary Shallenberger, Chair
California Coastal Commission
c/o John Del Arroz, Coastal Program Analyst
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416**SUBJECT: CDP Application No. 5-11-302 (City of Newport Beach-Sunset Ridge Park Project)**CALIFORNIA
COASTAL COMMISSION

The California Cattlemen's Association (CCA) has reviewed the staff report for the application for the Newport Beach Sunset Ridge Park Project, which is up for consideration on July 12, 2012. CCA represents more than 2,000 ranchers, many of whom ranch along California's coastal areas and within the jurisdiction of the California Coastal Commission (Commission).

As most of our members have been ranching for generations and surely before the passage of the Coastal Act (Act), we are writing this letter to express grave concern with the Commission staff's analysis and conclusions with respect to the historical land use and site disturbance on the project site. While the application in question does not directly relate to agriculture or livestock grazing, we believe that the conclusions drawn by staff set a dangerous precedent. Staff's circuitous reasoning to deny a permit to the City of Newport demonstrate faulty and inconclusive evidence combined with an egregious lack of logical thought, giving the greater regulated community reason for pause. We respectfully ask your consideration on this matter and hope that a more logical policy will be adopted prior to finalizing a decision on the permit application.

Of several concerning policy conclusions raised by the staff analysis, the most unsettling determination is that the project should not go forward as proposed because of damage to environmentally sensitive habitat areas (ESHA). The staff report makes reference several times to the well-acknowledged and documented fact that the project property in question had, over the course of 40 years, been subject to regular disturbances, including grading and mowing, including several years of mowing which occurred prior to the passage of the Coastal Act¹.

Although staff confirms this action, and states that "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."² It is yet concluded, however, "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."³ This conclusion seems to be in direct conflict with the evidence of six years of photo documentation prior to the passage of the Act.

Staff proceeds to state that the weed abatement and fuel management constitute "unpermitted development", and if the park site had not been mowed, it would be considered ESHA. According to staff, "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

¹ California Coastal Commission, Staff Report, Application 5-11-302, pg 2.² Ibid.9.³ Ibid.11.Letter of Support
Page 5

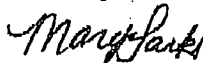
is subject to the requirements of the Coastal Act." According to the logic of staff, because the Encelia Scrub provides *potential* habitat for the endangered gnatcatcher, any mowing would constitute a violation of the Act. However, staff does note that "Although neither Caltrans nor the City of Newport 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."⁴ The conclusions outlined in the staff report based off this sequence of events seem ambiguous and wholly contradict the historical record of the site.

A more appropriate and logical conclusion would be that because mowing occurred before the passage of the act and before the listing of the species, that the property cannot possibly be determined to be ESHA. Additionally, no gnatcatcher has ever been observed on the property, and the US Fish and Wildlife Service has determined that the project has little to no effect on the population or habitat of the gnatcatcher.⁵ The Service is the agency responsible for determining what species and habitat are endangered or threatened, not the Commission. As such, the Commission should not contradict the conclusions of the Service that continued mowing will not impact the gnatcatcher.

This flawed logic based off the recorded site history and presented evidence is extremely concerning to CCA, and should this analysis be accepted, we are concerned this logic might be used in future decisions affecting agricultural production on the coast. As previously stated, an overwhelming majority of the family ranches on the coast have been operating long before the passage of the Coastal Act, and thus, these ranchers are not required to obtain CDPs from the Commission, pursuant to Public Resources Code § 30106. However, it is possible to imagine scenarios in which a ranch or nearby property is identified as habitat for an endangered species. In this case, the logic as presented by the Commission staff to deny this permit leads us to believe that vegetation management of the property, or other routine and beneficial management activities that involve land disturbance would be seen as violating the provisions of the Coastal Act.

We urge the Commission to base their conclusions on evidence, the best available science and most importantly solely within the framework of the Coastal Act. Anything else, would be inappropriate and an overreach of regulatory authority. It is of great concern that the Commission would be willing to entertain this sort of analysis and retroactively require permitting on land that has the *potential* to qualify as ESHA had its historic management been different. CCA respectfully urges the Coastal Commissioners to reject this staff report which has been based on egregiously flawed logic.

Sincerely,



Margo Parks

Associate Director of Government Relations

Cc: Honorable Members, California Coastal Commission

Governor Jerry Brown

Senator Tom Harman

⁴ Ibid.19.

⁵ Ibid.8.

KEVIN KESTER
PRESIDENT
PARKFIELD

JACK HANSON
TREASURER
SUSANVILLE

BILLY GATLIN
EXECUTIVE VICE PRESIDENT
HERALD

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NEWPORT BEACH ASSOCIATION OF REALTORS

401 Old Newport Boulevard, Suite 100
Newport Beach, California 92663
Telephone (949) 722-2300 FAX (949) 631-4276
www.nbaor.com

RECEIVED

South Coast Region

JUL 11 2012

CALIFORNIA
COASTAL COMMISSION

July 11, 2012

Ms. Sherilyn Sarb
California Coastal Commission
200 OceanGate, 10th Floor
Long Beach, CA 92802-4416

Dear Ms. Sarb:

The Newport Beach Association of REALTORS® would like to express our support for the application of Sunset Ridge Park, which we feel will greatly enhance the communities we serve.

The Sunset Ridge Park is a sports only park which will fill the need in West Newport Beach when there is an immediate and overwhelming demand for sports facilities.

Sunset Ridge Park should be considered separate from the Banning Ranch project.

Sincerely,

Tricia Moore, RCE, CAE
Executive Vice President

TM:kf

2012
OFFICERS
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MARY FEWEL

TREASURER
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BARBARA AMSTADTER
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ROBERT MILLIKEN
ROB NORQUIST
CARL YOUNG

EXECUTIVE VICE-PRESIDENT
PATRICIA MOORE, CAE, RCE

Letters of Support

Page 7



PROUDLY SERVING THE COMMUNITIES OF COSTA MESA AND NEWPORT BEACH



Del Arroz, John@Coastal

From: Kris Graves [kgraves@schmitzandassociates.net]
Sent: Tuesday, July 10, 2012 10:38 AM
To: Del Arroz, John@Coastal; Schwing, Karl@Coastal
Subject: Sunset Ridge Park CDP 5-11-302 Letter sent to Commissioners
Attachments: 2012 July CSFA letter - Th11c.pdf

Good morning,

I emailed the following attachment and message to Chair Shallenberger and the Commissioners.

On behalf of Gene Gantt, Executive Director, of the California State Firefighters' Association, Inc. I have attached a comment letter for the Sunset Ridge Park project.

After your review, should you have any questions, please contact us at your convenience.

Thank you very much for your time.

Best regards,
Kris Graves
Kris Graves / Schmitz & Associates Inc.
5234 Chesebro Road Ste. 200
Agoura Hills, CA 91301
V: (818)338-3636 / F: (818)338-3423
E: kgraves@schmitzandassociates.net

Letters of Support
Page 8



California State Firefighters' Association, Inc.

2701 K Street, Suite 201 • Sacramento, CA 95816-5113 • (916) 446-9880 • (800) 451-CSFA • Fax (916) 446-9889

www.csfa.net

"CSFA: A Strong and United Voice."

Organized: November 10, 1922

Mary Shallenberger, Chair
California Coastal Commissioners
c/o John Del Arroz, Coastal Program Analyst
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

SUBJECT: CDP Application No. 5-11-302 (City of Newport Beach – Sunset Ridge Park Project)

Chair Shallenberger and Honorable Commissioners:

The California State Firefighters Association (CSFA), a professional state-wide fire trade organization is asking you to support and uphold the findings made by the California Department of Forestry and Fire Protection (CAL FIRE). Cal Fire has reviewed the Coastal Development Permit application staff report (hereinafter "staff report") for the City of Newport Beach ("City") Sunset Ridge Park project which is to be considered by you at this month's CCC hearing. One of CSFA's and Cal Fire's missions is to protect life and property through fire prevention engineering programs, while managing and protecting California's natural resources. CSFA understands that it is the City's position, which the historical records support, that the Park property has been maintained and the subject of weed abatement activities since the 1960s. CSFA is asking you to support of the City's ability to make nuisance abatement and necessary fuel modification determinations as is authorized specifically by the California Fire Code and the California Coastal Act.

It is our understanding that CCC staff has recommended denial of the City's Park project due to the fact that the historical and ongoing mowing of the property for weed abatement purposes occurred without the benefit of a Coastal Development Permit. Specifically, the staff report acknowledges in numerous areas that it is undisputed that "the site has been subject to mowing activities which have occurred since prior to the Coastal Act." (CDP 5-11-302 staff report, pg. 18) Nevertheless, staff concludes that because the ongoing weed abatement/site maintenance activities constitute "unpermitted development," it must be viewed as if the site disturbance and annual maintenance activities did not occur when evaluating the project's potential impacts on biological resources.

It is the City's Fire Department's responsibility to protect their community through fire prevention activities, policies and programs. Requiring appropriate and adequate fuel modification and conducting regular weed abatement activities are an essential part of these policies and programs. As you may be aware, California Fire Code Section 1103.2.4 (Combustible Vegetation) requires "Cut or uncut weeds, grass, vines and other vegetation shall be removed when determined by the chief to be a fire hazard. Designated areas shall be cleared of combustible vegetation to establish the fuel breaks." Moreover, Section 30005 of the Coastal Act provides: "No provision of this division [the Coastal Act] is a limitation on any of the following: . . . (b) On the power of any city or county or city and county to declare, prohibit, and abate nuisances."

It is clear from the historical records that the Park property has been graded and cleared of vegetation since as far back as the 1960s and continued annually to present day. It is also clear that the City of Newport Beach Fire Department has determined each year that weed abatement/fuel modification is necessary for the safety of the community. We support municipalities' authority in making such a determination and believe that the Coastal Act explicitly cannot impede the same. Accordingly, we request that you carefully consider the implications of your decision on this project on imperative nuisance abatement activities throughout coastal communities up and down the State. We believe that a determination that the City's annual weed abatement activity constitutes unpermitted development and an illegal activity will have detrimental ramifications to critical fire prevention programs in California.

Sincerely,

Gene Gantt
Gene Gantt
Executive Director

Letters of Support

Page 9

Del Arroz, John@Coastal

From: Sheila Pfafflin [spfafflin@gmail.com]
Sent: Thursday, July 05, 2012 3:08 PM
To: Del Arroz, John@Coastal
Subject: Opposition to Newport Beach park proposal at Superior and PCH

Dear Mr. DelArroz:

I wish to express my strong opposition to the park which Newport Beach is proposing for the property on the corner of Superior and the Pacific Coast Highway(PCH), near the Banning Ranch property. I frequently drive down Superior to its intersection with the PCH. It is a steep, curved road, on which people are often changing lanes so as to be able to make a turn at the bottom. The last thing that should be build here is a playground with the potential for greatly increased bicycle traffic, and parking located where it would lead to many children and teenagers trying to cross Superior. Any additional access here, or on the Pch side of this property would be a hazard as well.

I believe that Newport Beach itself originally opposed the arrangement they are now advocating, and changed their minds only when their original proposal was rejected. They seem to be more concerned with getting something in place which will destroy the natural character of the area, and act as a stalking horse for the very extensive proposal for development on the Banning Ranch itself, than they are with a suitable use for this land which will preserve its character for future generations.

This property is environmentally sensitive. It should be left in as natural state as possible. An appropriate use, which would allow it to be enjoyed by nature lovers and others who appreciate its beauty and views, would be to set it up as a nature preserve, with perhaps one or two trails. The proposed parking arrangement would probably not create a hazard under such a scenario.

I urge the Coastal Commission to reject this application by Newport Beach.

Sincerely,

Sheila M Pfafflin
 1750 Whittier Ave., # 42
 Costa Mesa, CA 92627
 (949) 646-3123
spfafflin@gmail.com

..

*Letter of
Opposition
Page 1*

Del Arroz, John@Coastal

From: Jim Mosher [jimmosher@yahoo.com]
Sent: Thursday, July 05, 2012 12:33 PM
To: Del Arroz, John@Coastal
Subject: Public comment letter re Th11c-7-2012

Attachments: Comments on Th11c-7-2012 -- Jim Mosher_to_CoastalCommission.pdf



Comments on
Th11c-7-2012 -- Ji.

John,

Please find attached a letter regarding the new Sunset Ridge CDP application (5-11-302) which I hope can be included in any supplement distributed to the Commissioners in advance of next Thursday's hearing.

Thank you,

Jim Mosher

P.S.: there are several references in the current staff report to "Semeniuk Slough." Should it need to be mentioned in a future staff report, I believe the spelling used in the Newport Beach General (and Coastal Land Use?) Plans is "Semeniuk" (without the "o").

*Letter of
Opposition
Page 11*

Agenda Item: Title (July 12, 2012)

Application Number: 5-11-302

My name: MOSHER

Position: OPPOSED

California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, Ca 90802-4416

Attn: John Del Arroz (via e-mail, for distribution to the Commissioners)

Dear Commissioners,

The captioned item is the City of Newport Beach (CNB)'s application for development of an active sports park on its Sunset Ridge property. The staff report offers compelling evidence why the application must be denied due to its impact on Coastal Act protected ESHA consisting primarily of illegally mowed *Encelia* – a situation which, based on the recent photos in Exhibit 12, as well as my personal observation, extends considerably beyond the 3.3 acre area cited on page 11 and depicted in Exhibit 7 (Figures 3, 4 and 8). In fact, despite the history of grading and mowing, the area appears so favorable to *Encelia* that it can be observed sprouting from the cracks in the concrete culverts.

In addition to that, I hope the Commission will continue to recognize the larger concern regarding the impossibility of making a rational decision about an appropriate use for this land separate from its imminent decision regarding the adjacent Newport Banning Ranch (NBR) property. As Commissioner Stone observed when a similar application for Sunset Ridge was heard on November 2, 2011, this parcel is essentially landlocked, precluding most development unless done in cooperation with the adjoining landowner.

For example, page 2 suggests the current proposal relies on a currently unimproved road across the NBR property to provide access for maintenance vehicles, handicapped visitors, and possibly shuttles. Yet earlier grants of easements to the City appeared to be predicated on development of that path into a major improved road, and it is unclear if NBR would agree to permanently dedicate the road in its current state for park use, or if that would even fit into their more general plans for development of their land. Similarly, alternative II.F.c. on pages 34-35 of the staff report refers to the possibility of placing the sports fields on a site on the NBR property "*depend[ing] on the City's ability to purchase the area from the property owner, and on the habitat resources located in that area.*" Although the impacts on habitat at any alternative location remain to be resolved, the Commission may want to know that the Newport Beach City Council is tentatively set to consider at a July 23, 2012 meeting an NBR application which involves the development of a North Community Park immediately north of Sunset Ridge, which would provide three lighted soccer fields overlaid with youth baseball and youth/adult softball fields, six lighted tennis courts, one lighted basketball court and 274 off-street parking spaces, all of which would be dedicated to the City at no cost to taxpayers. That proposal, if approved by the Council, will then be going to the Commission, and it would seem highly premature for the Commission to grant an approval for a specific plan at Sunset Ridge without knowing what may or may not be approved adjacent to it on NBR.

Beyond that I would like to offer the following additions to the staff report:

1. Under **History** (II.A.3.), on page 6, the report correctly observes that the formerly pristine coastal bluffs at Sunset Ridge were acquired by Caltrans in the pre-Coastal Act 1960's and then pillaged as a "borrow" site to provide dirt for operations elsewhere. The report then suggests that "*In 2001, Senate Bill 124 directed Caltrans to transfer the property to the City.*" CNB did indeed lobby for that special legislation, but it actually directed Caltrans to transfer the property to the California Department of Parks and Recreation for development as a park upon reimbursement to Caltrans by

*Letter of
Opposition
Page 3*

CNB of Caltrans' original 1960's purchase price of \$1.3 million. It appears that CNB, apparently not wanting the public access restrictions that might attend a State Park designation, chose to ignore the special legislation and in 2006 paid Caltrans the much higher then-current fair market value of \$5 million to acquire the property outright, with no state parks involvement.

2. On page 1 of Exhibit 9, CNB's agent addresses the problem of the adequacy of the 64 space City parking lot, already intended for beach visitors, to handle the additional demands created by active sports fields by noting that athletic games will be scheduled to avoid beach holidays, specifically July 4th. I am not sure scheduling events to avoid times of high beach use is actually practical, but the Commission may be interested to know that to discourage visitors CNB closes this parking lot on July 4th.
3. When the previous application was heard in November 2011, there was considerable testimony and correspondence regarding the need for active youth sports fields in the area around Sunset Ridge, a proposition partially rebutted by Bruce Bartran in the letter at page 13 of Exhibit 13 to the current report. I would submit in addition, not only as the report acknowledges that ball fields are not a coastal resource dependent use, but that there is an equally pressing need for spaces where city dwellers can get away from such typically urban activities.
4. Finally, although not explicitly mentioned in the report, I am not sure CNB has fulfilled its legal obligation to properly notice the current CDP application. Shortly before the June 13, 2012 hearing (on the 180th day) there appeared on a stake at the northwest corner of PCH and Superior a single regulation yellow notice of the application which said it had been posted on "May 17, 2012." Since then that sign has been lying illegibly in the dirt, but whether visible or not, it is difficult to reconcile the date on it with the requirement in California Code of Regulations Title 14, Division 5.5, Section 13054 for posting "*At the time the application is submitted for filing.*" Since the staff report indicates the current application was filed on December 16, 2012 (which I assume is a typo for 2011), CNB's posting of the notice appears to have been six months late.

In my view, this plot of land has a shameful history, from its thoughtless rape by Caltrans prior to the Coastal Act, to the City's failure to provide public access to it in the five years of its ownership. In a perfect world I would like to see the bluffs at Sunset Ridge restored to their original state – an opportunity CNB recently missed when it had massive amounts of coastal fill dirt available from its Civic Center construction. Short of that, removing yet another 20,000 cubic yards to construct youth sports fields does not seem like a rational choice to me. Pending full restoration and/or a definitive decision on use of the adjacent NBR property, I think Sunset Ridge would be of more value to our state's youth if preserved as a passive, interpretive park – an object lesson in the need for the Coastal Act, and nature's ability to recover from the abuses inflicted on it by man's follies.

Yours sincerely,

James M. Mosher, Ph.D. (Caltech, 1977)
2210 Private Road
Newport Beach, CA. 92660

*Letters of
Comment
Page 4*

Del Arroz, John@Coastal

From: Penny Elia [greenp1@cox.net]
Sent: Sunday, July 01, 2012 9:41 AM
To: Del Arroz, John@Coastal
Cc: Schwing, Karl@Coastal; Willis, Andrew@Coastal; Haage, Lisa@Coastal; Veasart, Pat@Coastal; Sarb, Sherilyn@Coastal; Henry, Teresa@Coastal; Engel, Jonna@Coastal
Subject: Fwd: Code Enforcement on Sunset Ridge

Good morning, John -

Mr. Bennett asked me to forward the email stream below to you for your information as well as inclusion in any addendi you might be preparing for the Sunset Ridge Park staff report (I did not include the photos as they exceeded your limit, but they have already been uploaded to the CCC ftp site in the past). In our ex-parte with Commissioners the subject of enforcement does come up but our focus of request is support of the staff recommendation for denial.

Thank you for your consideration of this information.

Penny Elia
Sierra Club
949-499-4499

Begin forwarded message:

Letter of Opposition
Page 5

From: Penny Elia [mailto:greenp1@cox.net]
Sent: Monday, July 02, 2012 1:40 PM
To: Schwing, Karl@Coastal; Del Arroz, John@Coastal; Sarb, Sherilyn@Coastal; Haage, Lisa@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Engel, Jonna@Coastal
Subject: Fwd: Code Enforcement on Sunset Ridge

----- Forwarded message -----

From: Harp, Aaron <aharp@newportbeachca.gov>
Date: Mon, Jul 2, 2012 at 7:30 AM
Subject: RE: Code Enforcement on Sunset Ridge
To: bill bennett <shokobennett@gmail.com>
Cc: "Cosylion, Matt" <MCosylion@newportbeachca.gov>, "Mulvihill, Leonie" <LMulvihill@newportbeachca.gov>

Hi Bill,

I appreciate your sending me your concerns over this matter. The city has thoroughly researched these issues and it is our opinion that the actions taken at Sunset Ridge Park fully comply with all applicable laws. Once again, thank you for expressing your concerns regarding this matter.

Aaron C. Harp
City Attorney
City of Newport Beach
3300 Newport Blvd.
Newport Beach, CA, 92658
Phone: (949) 644-3131
Fax: (949) 644-3139
Email: aharp@newportbeachca.gov

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From: bill bennett [mailto:shokobennett@gmail.com]
Sent: Sunday, July 01, 2012 9:26 AM
To: Harp, Aaron
Subject: Fwd: Code Enforcement on Sunset Ridge

Mr Aaron Harp
City Attorney
City of Newport Beach

*Letter of
Opposition
Page 6*

Dear Mr Harp,

On May 26, I sent the email below to Mr Matt Cosylyon. It is my understanding that he forwarded this email to you for review and comment. My question remains. In light of the opinion of Coastal Commission members and staff, is the City moving forward with any program to modify it's fuel abatement program on Sunset Ridge?

Thank you to your attention to this matter.

Yours,

**Bill Bennett
10 Odyssey Court
Newport Beach, 92663 949 642 8616**

----- Forwarded message -----

From: bill bennett <shokobennett@gmail.com>

Date: Sat, May 26, 2012 at 6:54 AM

Subject: Code Enforcement on Sunset Ridge

To: mcosylion@newportbeachca.gov

Cc: dkiff@newportbeachca.gov, palford@newportbeachca.gov,
msinacori@newportbeachca.gov

**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

Letter of Appreciation
[Signature]

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 its 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

Letter of Opposition
Page 8

Del Arroz, John@Coastal

From: Don Bruner [don_bruner@hotmail.com]
Sent: Monday, July 23, 2012 11:35 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
Cc: Gary Garber; dorothy kraus
Subject: Sunset Ridge Park
Follow Up Flag: Follow up
Flag Status: Red

Charles D. Bruner
 11 Serena Court
 Newport Beach, CA 92663
 Phone (949) 646-8092
 E-Mail: don_bruner@hotmail.com

July 22, 2012

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

Dear Mr. Del Arroz:

Please find attached my e-mail of November 8, 2011 to Patrick Alford, Associate Planner, City of Newport Beach, Planning Department with copies to all the Members of City Council, at that time, pointing out my concerns Cancer Burden calculations referred to on pages 4.10-31 and 32 of the Air Quality second of the DEIR appear to be based on incorrect distances of the nearest receptors to the Project fence line. The Tier 1 analysis under "Threshold 4.10-4 refers to off-site receptors 100 meters from the Project fence line. One hundred meters is 328 feet. What happens to people who are closer than 100 meters from the Project fence line?

Virtually all of the 52 perimeter courtyards are within 328 feet of the Project fence line, which means that this will impact between 300 to 400 people, if just two people live in each condo. None of these people are included in the Tier 1 analysis. It also appears that Carden Hall School may be within the 100 meter distance. And it appears the new Coastline Community College may be within the 100 meter distance. The analysis only applies to people beyond 100 meters. What is the cancer burden for those who are inside the boundaries?

How many people of the 86,000 could be expected to get cancer? And what about the Newport Crest residents who are inside the 100-meter boundary used for the calculations? How many of them could be expected to get cancer?

Letters of
 Opposition
 Page 9

I requested for the calculations to be redone using figures that actually reflect the distances of the nearest receptors from the Project fence line? The response included the reference to the same data base, indicating no change in the DEIR.

7/25/2012

To ensure the minimum Cancer Burden regarding the active park development plan the calculations need to be redone using figures that reflect the correct distances of the nearest receptors from the Project fence line. **It would be appreciated if you would include this information in any staff report to the Commission.**

Sincerely,
Charles D. Bruner

Charles D. Bruner
11 Serena Ct
Newport Beach, CA 92663

November 8, 2011

City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92663

Attention: Patrick Alford
palford@newportbeachca.gov

Dear Mr. Alford:

The calculations for **the Cancer Burden** referred to on pages 4.10-31 and 32 of the Air Quality second of the DEIR appear to be based on incorrect distances of the nearest receptors to the Project fence line. The Tier 1 analysis under "Threshold 4.10-4 refers to off-site receptors 100 meters from the Project fence line. One hundred meters is 328 feet. What happens to people who are closer than 100 meters from the Project fence line?

Based on the DEIR's "Community Transitions and Interface Key Map," which includes a series of exhibits that depict the distances between Newport Crest residences "immediately contiguous to the Project" and the Community Park and Bluff Road, the distances of the nearest receptors to the Project fence line will be much closer than 100 meters or 328 feet. Exhibit 4.1-2g "Central Community Park Interface with Newport Crest" Section E1-E1 depicts the interface of Bluff Road with the most northwestern portion of the Newport Crest complex. According to Section E1-E1 the narrowest point of Community Park separating Newport Crest residences from Bluff Road is twenty-two feet (22 ft).

Virtually all of the 52 perimeter courtyards are within 328 feet of the Project fence line, which means that this will impact between 300 to 400 people, if just two people live in each condo. None of these people are included in the Tier 1 analysis. It also appears that Carden Hall School may be within the 100 meter distance. And it appears the new Coastline Community College may be with in the 100 meter distance. The analysis only applies to people beyond 100 meters. What is the cancer burden for those who are inside the boundaries?

On page 4.10-31, what does "provide reductions of cancer risk at 40 percent of the fence line receptors" mean? Also, "reduction of chronic non-cancer risk at 29 percent of the receptors?" How does this apply to the hundreds within the 100-meter distance?

On page 4.10-31 and 32, under "Cancer Burden," it refers to 19 census tracts with a combined population of just over 86,000 people. It then says that if everyone in the tracts was exposed to a 4 in 1 million incremental cancer risk, the cancer burden would be 0.34, which is less than the SCAQMD significance threshold of 0.5."

Letters of
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Page 10

Page 2 Cancer Burden

What conditions would create a 4 in 1 million incremental cancer risk? It seems the cancer burden at 0.34 is uncomfortably close to the SCAQMD significance threshold of 0.5. **At 0.34, how many people of the 86,000 could be expected to get cancer? And what about the Newport Crest residents who are inside the 100-meter boundary used for the calculations? How many of them could be expected to get cancer?**

Thank you for taking the time to review my letter. In your response, would you please advise if these calculations will be redone using figures that actually reflect the distances of the nearest receptors from the Project fence line?

Yours truly,

Mr. and Mrs. Don Bruner
11 Serena Ct.
Newport Beach, CA 92663

Letters of
Opposition
Page 11

Del Arroz, John@Coastal

From: Stacy Kline [stacykline@gmail.com]
Sent: Saturday, July 21, 2012 11:56 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: City of Newport Beach Coastal Development Application (CDP) for the Sunset Ridge Park project
Follow Up Flag: Follow up
Flag Status: Red

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

Dear Honorable Coastal Commission Members,

We are sending this email to ask our California Coastal Commission to reject the City of Newport Beach's application to develop the Sunset Ridge Park. As residents of Newport Beach, we feel that this is one of the last vestiges of wilderness in our beautiful city, and we would like to see it protected in its natural state, as the citizens of Newport Beach voted when they adopted their updated General Plan.

The following are a list of concerns regarding Sunset Ridge and the Banning Ranch property:

- 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 only call for mowing within 100' structures. The reason for this appears obvious: to destroy the natural, sensitive, and endangered habitat by removing plants, animals, and birds.
- We have enjoyed the Sunset Ridge area for a many years, and relish the wealth of habitat that exists there. We are upset by the destruction that has occurred from the excessive mowing done by the City of Newport Beach.
- We object to the needless destruction of habitat and the ruination of 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.
- Is there some sort of enforcement action regarding an injunction against the City of Newport Beach that can take place to protect this sensitive habitat from being destroyed again in the future?
- One can only conclude that this mowing is a deliberate and systematic effort to eliminate the habitat for the gnatcatcher (and other wildlife) living on Sunset Ridge.
- We would like to see the Banning Ranch natural area to be protected in its entirety, with absolutely no develop of the area allowed for commercial or residential use.

As the final open space areas in Newport Beach keeps being divided up into the smallest possible units for our economic purposes, it's no surprise that key predators and sensitive species suffer unexplained drops in numbers. We have not left enough open space/wilderness for these fragile species to survive.

Thank you for helping protect this exquisite remaining pocket of wilderness in Newport Beach.

Sincerely yours,

Stacy & Greg Kline

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Del Arroz, John@Coastal

From: s.mankarious [smankar2004@yahoo.com]
Sent: Saturday, July 21, 2012 1:31 PM
To: Del Arroz, John@Coastal
Cc: Dixon, John@Coastal; Sarb, Sherilyn@Coastal; jengle@coastal.ca.gov; Veearl, Pat@Coastal; Willis, Andrew@Coastal; Henry, Teresa@Coastal; Schwing, Karl@Coastal; Haage, Lisa@Coastal; Lester, Charles@Coastal
Subject: Comments on the plans for Sunset Ridge Park, City of Newport Beach, CA
Follow Up Flag: Follow up
Flag Status: Red

Dear Mr John del Arroz:

In reviewing the plans submitted by the city of Newport Beach, we noticed that they have included a lookout structure, complete with seats and shelter [ie. roof] in the East part of the park,

While we can understand the reason behind providing a seating arrangement, the rationale behind building a tall structure to shelter those seated is unclear. Such a structure would stick out in contrast to the surroundings of the proposed serene part of the park.

In addition, we view the justification of a shelter in the form of a tall structure as rather weak, when you consider that the sunset observers would not be protected from the sun above as it normally sets horizontally in the west. If that protection is intended against the rain, then it is quite obvious there will be no sunsets to gaze at, and therefore no need for protection, on rainy days.

We fear that such a structure would become more of an attractive nuisance in addition to being an eye sore and we hope that the coastal commission would agree with our comment and approve the seating but not the tall sheltered structure attached to it.

Please include our comments in the above Park file.

Your attention and input are greatly appreciated.

Mr. and Mrs R. Mankarious
 7 Tribute Ct.
 Newport Beach, CA

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GARY A. GARBER
8 LAND FALL COURT
NEWPORT BEACH, CALIFORNIA 92663-2307

Phone (949) 650-6661 - Fax (949) 650-6661
E-Mail garbergary@yahoo.com

RECEIVED
South Coast Region

JUL 23 2012

CALIFORNIA
COASTAL COMMISSION

July 20, 2012

Mr. John Del Arroz, Costal Program Analyst
California Coastal Commission
200 Oceangate, 10th Floor
Long Beach, Ca 90802

Dear Mr. Del Arroz:


Please see attached my e-mail of December 1, 2009 to Janet Johnson Brown, Associate Planner, City of Newport Beach, Planning Department with copies to the all Members of City Council, at that time, pointing out my concerns with General Habitat and Wildlife Loss due to frequent mowing by the City.

Also see attached photos taken over the years since 1997 of various birds that I once was able to see from my balcony at, 8 Landfall Court, overlooking Sunset Ridge Park. Please also note the pictures show green foliage at that time. At present there is little green foliage due to constant mowing of natural vegetation by the City of Newport Beach. The ground squirrels are gone with only some of the holes left.

To enlarge photo's click picture, then download and open.

I am requesting that the Costal Commission direct the City of Newport Beach to stop frequent mowing, to protect the habitat and wildlife and turn down the Sunset Ridge Active Park project as currently planned.

Sincerely,



Gary A. Garber

Attachments

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Subject: Fw: General Habitat Loss & Wildlife Loss-p4.625

From: Gary Garber (garbergary@yahoo.com)

To: jbrown@newportbeachca.gov;

Cc: curryk@pfm.com; gardnerncy@aol.com; mfhenn@verizon.net; parahdigm@aol.com; edselich@roadrunner.com; don2webb@earthlink.net; lesliejaigle@aol.com;

Bcc: moosmann@adelphia.net; vcellini@ix.netcom.com; flesvig_Christine@allergan.com; b.bartram@verizon.net; sharon.boles@adelphia.net; don_bruner@hotmail.com; dursttaylor@sbcglobal.net; medjkraus@yahoo.com; ginnylombardi@yahoo.com; cmmalkemus@yahoo.com; pcmalkemus@gmail.com; smankar2004@yahoo.com; jtmansfield@ca.rr.com; terrywelsh@hotmail.com;

Date: Tuesday, December 1, 2009 1:20 PM

December 1, 2009

Janet Johnson Brown, Associate Planner
City of Newport Beach, Planning Department
3300 Newport Boulevard
P.O. Box 1768
Newport Beach, CA 92658-8915

Re: Draft Environmental Impact Report – 4.6-25 General Habitat Loss and Wildlife Loss

Dear Ms. Brown:

The following represents my comments regarding Section 4.6 Biological Resources - p.4.6-25 General Habitat Loss and Wildlife Loss.

Removing or altering habitats on the Project site would result in the loss of small mammals, reptiles, amphibians, and other slow-moving animals that live in the proposed Project's direct impact area. More mobile wildlife species that are now using the Project site would be forced to move into the remaining areas of open space, which would consequently increase competition for available resources in those areas. This situation would result in the loss of individuals that cannot successfully compete. The loss of native and non-native habitats that provide wildlife habitat is considered an adverse impact. However, the loss of habitat would not be expected to reduce wildlife populations below self-sustaining levels in the region. Therefore, this impact would be considered adverse, but less than significant.

There is no analysis of the potentially affected species, and the impacts to their self-sustaining levels. Would any of the species approach thresholds that could cause extirpation if unusual, but not impossible, environmental events occur, e.g. disease, fire, presence of a new predator? Please provide analysis of the potentially affected species, and impacts to their self sustaining levels.

Where have all the birds and ground squirrels gone?

- Please see attached five photos taken over the years since 1997 of various birds that I once was able to see from my balcony overlooking Sunset Ridge Park. Please note three birds are sitting on my balcony railing.
- Also note in three cases there is green ground cover in background. In one case there is

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- some green ground cover,
- In one case (most recent photo of bird) only dead ground cover in background due to what appears to be grass and weed killing agents.
- At present the dirt is now darkened and most if not all of the lovely ground squirrels are dead. Only their holes are left. I would be happy to send you photographs of the area now after someone dropped poison down the ground squirrel holes.
- To see enlarged photo's click picture, then download and then open. At that point you can enlarge the picture or reduce it.

Threshold 4.6-6: Would the project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan? The Project site occurs within the Santa Ana River Mouth Existing Use Area of the Central/Coastal Subregion NCCP/HCP. Existing Use Areas are comprised of areas with important populations of Identified Species but which are geographically removed from the Reserve System. The NCCP/HCP does not authorize Incidental Take within the Existing Use Areas; such activities must be submitted to the USFWS for review and approval, consistent with existing federal law. The Project would not conflict with the provisions of an adopted HCP/NCCP because it does not impact areas identified as part of the Central/Coastal Subregion Reserve System nor does it utilize the Take allocations associated with projects in the Subregion that are outside the Existing Use Areas. Impact Summary: No impact would occur.

A diagram showing the relevant Central/Coastal Subregion Reserve System NCCP/HCP areas under discussion should be provided.

p.4.6-33, MM 4.6-4 and 4.6-5: Implementation of the Project would result in the loss of 0.41 acres of coastal sage scrub habitat. Permanent impacts on coastal sage scrub vegetation must be mitigated at a two-to-one (2:1) ratio on the Project site or in suitable off-site locations in the Newport Beach/Costa Mesa area. Identify appropriate areas for mitigation on site under discussion, and in other City locations. To what extent does the current Sunset Ridge Park landscaping plan promote mitigation on site, and maintain / reflect the natural character of the site?

All of the above issues are a major valuation concern since Newport Crest front line unit owners paid a premium for their units to be close to nature and watch the wonders of wildlife from their balconies. I have brought up many of the above issues and other issues with City Council and the previous City Manager. I seriously object to the approval of this project in its present form. The above comments and all references contained therein are hereby incorporated into official record of proceeding of this project and its successors.

I look forward to receiving your timely response from you and the City Council on this matter.

Gary A. Garber
8 Landfall Court
Newport Beach

See Attachments Above

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Slideshow



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Banning Ranch Conservancy

July 20, 2012

Via Email Transmission

Officers:

Terry Welsh, M.D.
President
James Mansfield
Vice-President
Deborah Koken
Secretary
Jennifer Frutig, PhD.
Treasurer

Steve Ray
Executive Director

Board Members:

Patricia Barnes
Suzanne Forster
Mark Tabbert
John Sisker
Ciane Silvers

Jan Vandersloot, M.D.
in Memoriam

John del Arroz
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

Re: Application Number: 5-11-302

Dear Mr. del Arroz,

The Banning Ranch Conservancy ("Conservancy") reiterates our support for a park on Sunset Ridge. Our support is guided by two basic principles: 1) The park design must recognize, preserve and enhance the valuable natural resources that exist on the site, and 2) The uses proposed for the park must be appropriate for the topography, access and other restrictions particular to the site, and be consistent with principle No. 1 above.

The Conservancy once again offers our resources, services, expertise and cooperative attitude to the City of Newport Beach and the Coastal Commission to create a beautiful and useful Sunset Ridge Park.

The City of Newport Beach ("city" and "applicant") wisely withdrew its original application for Sunset Ridge Park given that it violated the California Environmental Quality Act and the California Coastal Act and that it would assuredly be denied by the Coastal Commission ("Commission"). In the current application (5-11-302) before the Commission, the City has significantly diminished the scope and impact of the proposed park design. However, all the impacts and issues have not been addressed in the new application and several remain to be resolved.

In an effort to eliminate or reduce the impacts and resolve identified issues to the end that the Commission may find a park project design that can be approved and sustained, Commissioners, at the July hearing of the application, directed staff to identify conditions necessary to sustainably approve the project.

The Banning Ranch Conservancy is pleased to offer conditions to be placed on the project that ensure that it conforms to the Coastal Act and that meet our two guiding principles stated above. The Conservancy looks forward to supporting the Sunset Ridge Park project subject to approval of the following numbered conditions. Information and discussion to support the conditions is also provided.

The Conditions are:

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P. O. Box 16071
Newport Beach,
CA 92659-6071

(310) 961-7610

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www.banningranchconservancy.org

ENVIRONMENTALLY SENSITIVE HABITAT AREA ("ESHA")

1. The 3.3 acres identified as "disturbed encelia scrub" shall be declared ESHA and preserved as such.
2. Three other areas identified in the plan as "major vegetation" (southwest corner, northwest corner and "southeast polygon") shall be declared ESHA and preserved as such.
3. Buffers shall be required and sited to preserve the habitat value of all ESHA identified in conditions 1 and 2 above.

The Conservancy maintains that the only sustainable decision for the encelia identified in No. 1 is that it be declared and preserved as ESHA. The Conservancy's expert biologist has opined that this encelia scrub serves as forage habitat for the federally threatened California Gnatcatcher and has potential to serve as nesting habitat if not for regular destruction of the encelia scrub by the applicant. The Commission's staff biologists have made a similar determination that the encelia scrub qualifies as ESHA, if it is not being mowed illegally by the applicant. The applicant has engaged in frequent removal of this major vegetation with no legally granted vesting rights or Coastal Development Permit (CDP) as required by the Coastal Act. The applicant claims to have granted itself vesting rights, which is contrary to the provisions of the Coastal Act. Further, the applicant claims to mow it in the name of fuel modification; however, the extent of the mowing conflicts with the stated policies of the city and in sharp contrast to the city's fuel modification practices in every other area of the city's jurisdiction. Evidence supporting all these statements has already been entered into the record of these proceedings.

Not only does the applicant fail to conform to the Coastal Act in the areas discussed above, but it also fails to conform to the city's own Certified Land Use Plan (LUP), as approved by the Coastal Commission. The LUP specifies that the City must conform to the Coastal Act and must identify, protect and preserve actual or "potential" ESHA. In the Environmental Impact Report ("EIR") for the project, the City proclaims that it has no responsibility to conform to the Coastal Act requirements to identify ESHA, claiming that such declarations are the sole responsibility and duty of the Coastal Commission and/or other resource agencies. Since the City abrogates its responsibility to comply with the Act and their own LUP, the Commission should not countenance such self-serving, non-conforming behavior by rewarding it.

In order to authorize the destruction of this ESHA or potential ESHA, the Commission must provide legal findings to support one or both of the city's claims stated above. There is a specified process outlined in the Coastal Act for claims of vested rights. Put simply, the city has not followed it. For the Commission to recognize the applicant's self-proclaimed vested rights would be in error. Likewise, for the Commission to concur with the city's singular practice of a "scorched earth" policy (quoting Chair Shallenberger) on this property as opposed to its practice on any other property in the city, and without the city consulting or cooperating with the Commission staff regarding this excessive mowing, would also be in error and not sustainable.

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Therefore, the only viable options for the Commission are to deny the application or to condition the project so that the encelia scrub habitat ESHA is preserved and properly buffered.

The three areas identified in No 2 above seem to be recognized and hopefully uncontested by the applicant. To ensure proper protection of all three sites, a declaration of ESHA should be made by the Commission for these areas and properly buffered to ensure their preservation.

Buffers should extend 100 feet from ESHA delineation with an absolute minimum of 50 feet. The construction and grading plans for the park indicate that buffers will be graded, in some instances, right up to the ESHA. The Coastal Act requires buffers to be protected from development. Grading is defined in the Act as development. The construction and grading plans must be altered to protect the buffers from landform alteration and destruction of habitat caused by grading. Necessary landscaping activity in buffers can be performed manually.

WETLANDS

4. Wetlands shall be delineated and preserved.
5. Buffers of 100 feet shall be placed to preserve the habitat value of all wetlands.

Wetlands have been identified on the Sunset Ridge property. The wetlands should be formally delineated, declared and protected. Here again, the city has abrogated its responsibility under the Coastal Act and its own LUP to do so.

Buffers of 100 feet, as specified in the City's LUP, should be established to protect the delineated wetlands. The construction and grading plans must be altered to protect the buffers from landform alteration and destruction of habitat caused by grading. Necessary landscaping activity in buffers can be performed manually.

ROADWAY

6. The roadway proposed on the Sunset Ridge property, including the turn-around feature, shall be redesigned and sited to avoid interference with ESHA and the buffers established for ESHA.
7. The northerly portion of the proposed roadway shall be sited and constructed on top of the planned buried storm drain feature to enhance habitat values to its east and west.
8. The proposed roadway shall be constructed with permeable surface material.

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9. Since access to the proposed park and its roadway is through the adjacent Newport Banning Ranch (NBR) property, the portion of the NBR property containing the access roadway shall be included as part of this project application. Any NBR access roadway improvements planned to support this project, whether accomplished by applicant or NBR owners, shall be included as part of this project application, including required environmental review and analysis specific to the access roadway usage and improvements.
10. An "access agreement" between the city and NBR owners specifying a grant of access and all conditions pertaining thereto relative to the access to and usage of the NBR access roadway and improvements thereof shall be made a part of the application for this project and submitted to the Commission for review and concurrence prior to hearing the application.
11. Usage of the project roadway shall be limited to emergency and maintenance vehicles. The undefined term, "shuttles" shall be removed from the application prior to any approval. Usage of the roadway for any other purpose shall be specifically requested and defined as to purpose and scope. Any regular, ongoing access shall constitute regular public access and require appropriate environmental review and analysis prior to approval.

Simply stated, redesign and siting of the roadway to avoid ESHA and ESHA buffers is absolutely required by the Coastal Act.

The northerly portion of the roadway can be constructed over the planned buried storm drain, thereby providing additional habitat space on each side of the road, especially the west side. The current design for the northerly portion of the roadway to drastically swerve to the west and then back to the east results in unnecessary destruction of habitat with no vital reason.

Constructing the roadway with a permeable surface is, of course, the most environmentally sustainable methodology (and probably the most economical).

The proposed roadway is, essentially, a "road to nowhere" without access from the contiguous NBR property. The proposed project roadway clearly intends to connect with and utilize the "historic" oil road on NBR that traverses the southeast polygon ESHA. Otherwise, there is no other access opportunity to the park. That's clear. Therefore, the portion of NBR that contains the roadway must, of legal necessity, be included in the park project application for planning and environmental review and analysis. It is also reasonable to assume that some improvements to the NBR portion of the roadway will also be performed as a result of this project. These must also be included in this project application with appropriate environmental review and analysis.

Access to the park site, especially for emergency and maintenance vehicles (in addition to whatever other traffic is permitted), is vital. It is also vital to ensure such access.

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Access from the park site and through NBR is controlled by locked gates and security. Therefore, an agreement between the city and NBR owners is necessary to grant access through the privately-held NBR to the city and specifying all provisions related to that access. The agreement should include all necessary or planned improvements to the NBR portion of the project roadway and adjacent areas and specify conditions relative to those issues. This agreement must be processed and approved by the city through its statutory requirements and presented to the Commission for review and approval for conformance with Coastal Act requirements. It should be accomplished prior to approval of the project application.

Use of the project roadway is intended for emergency and maintenance vehicles. The Conservancy has no objection to this. However, the city has included the undefined term "shuttles" to designate additional usage. What does "shuttles" mean? That is unknown and must be stricken from the application prior to approval. If the city has other uses planned, they must disclose the specific as to what and who those uses are, the type(s) of vehicle(s) expected, and provide information on the numbers and frequencies of usage. Because this roadway traverses directly through protected ESHA and ESHA buffers, on both the city and NBR portions of the road, any regular usage by other than emergency and maintenance vehicular traffic constitutes this roadway as a public access road. Therefore, public access must be assured. Further, all information on this usage must be detailed, reviewed for conformity with the Coastal Act and analyzed for environmental impacts and/or mitigation prior to approval.

LANDSCAPING AND NATIVE VEGETATION

- 12. The proposed landscaping plan shall be redesigned to exclude all plant species that are non-native to Southern California. Further, the plant palette shall exclude all invasive plant species, native or non-native, and any plant species which could result in current or future negative impacts to ESHA.**
- 13. All recommendations of the California Native Plant Society, Orange County Chapter, detailed in their letter of June 10 2012, to the Coastal Commission shall be adopted and are incorporated herein by reference.**
- 14. All recommendations and conditions of the U.S. Fish and Wildlife Service detailed in their letter of April 27, 2012, pages 3 through 6, to the City of Newport Beach shall be adopted and are incorporated herein by reference.**

The goal of every project before the Commission should be to preserve and/or enhance the habitat values of the site. In this case, permitting the destruction of any native plants should result in an equal or better native plant habitat. The plant palette proposed for this project contains many questionable species that are either non-native, or highly invasive, or both, and some which could damage ESHA located on the project site or on the contiguous NBR property. Simply, the landscape plan needs revision.

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The Conservancy endorses every recommendation and/or condition listed in the two letters that are referenced.

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LIGHTING

15. No stationary pole or lighting or portable lighting, except portable lighting for emergency purposes only, shall be permitted on the park project site.
16. Park lighting shall be limited to 3.5-foot bollards with cut-off louvers and shall be positioned, directed or shielded to as to minimize artificial lighting from reflecting into native habitat or adjoining residences.

Inappropriate lighting causes glare, disturbance and other negative impacts to wildlife functions, to neighboring residents and to vehicular traffic on adjacent streets.

In summary, placing all of the above conditions on the proposed Sunset Ridge Park project still permits a significant opportunity to design and construct a park that protects natural resources and provides valuable recreational opportunities for residents. It will meet most objectives for the park while providing a superior environmental alternative to the current proposed application. Further, it will assure compliance with the California Environmental Quality Act and conformance with the California Coastal Act and the city's Certified Land Use Plan.

With the aforementioned conditions included on the project application, the Banning Ranch Conservancy will enthusiastically support the Sunset Ridge Park project.

Please contact the undersigned for any questions or for further information. Thank you for the opportunity to comment.

Please include this letter with the Staff Report for the August hearing.

Sincerely,

Steve Ray /s/

Steve Ray
Executive Director

Cc: Charles Lester
Sherilyn Sarb
Teresa Henry
Karl Schwing
Jonna Engel

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Schwing, Karl@Coastal

From: Penny Elia [greenp1@cox.net]
Sent: Wednesday, July 11, 2012 9:14 AM
To: Schwing, Karl@Coastal
Cc: Robb Hamilton
Subject: Sunset Ridge Park - response to late submittal from City of Newport Beach
Importance: High
Attachments: Fuel Mod PRAR Hobo Aliso.pdf
 Good morning, Karl -

Thank you for allowing us to submit these very late comments in response to the City of Newport Beach's latest submittal of July 9th. It's unfortunate the City and their agents could not have had the courtesy of bringing these issues forward at an earlier date given that the staff report was released in early June.

Please find attached:

- Photos and captions from Robb Hamilton, Banning Ranch Conservancy biologist on the fire departments application of their fuel mod regulations.
- Document submitted to Coastal Commission in 2009 detailing the "partnership" between the applicant (including their agent, Steven Kaufmann), City of Laguna Beach and Laguna Beach Fire Department in an effort to destroy ESHA prior to the release of the applicant's Draft EIR.

At the November 2, 2011 hearing on this issue (application withdrawn at the last minute by applicant's agent) it became very apparent that Steven Kaufmann had been hired to initiate this same type of "partnership" to circumvent the Coastal Act.

We object strongly to these tactics and once again reiterate our support of staff's recommendation for denial. It is rather insulting for the applicant to think that the Commission, Commission staff and the environmental community would actually believe this charade that's been foisted upon everyone at the last minute. This is a major waste of staff time and resources.

Again, thank you for including our comments. We will speak to this issue at the hearing tomorrow in greater detail. This is a very abbreviated version of our comments.

Penny Elia
 On behalf of the Sierra Club's Save Banning Ranch Task Force
 949-499-4499

From: Robert Hamilton <robb@hamiltonbiological.com>
Date: July 10, 2012
To: Penny Elia <greenp1@cox.net>
Subject: Response to City of Newport Beach - Sunset Ridge Park

A 43 page attachment accompanied this email. The contents of that attachment are not included in the printed version of this staff report, but are available to view/download as part of the staff report posted on the Commission's web site.

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Thicket of "unapproved" Acacia and Eucalyptus growing right up to the edge of Newport Crest that has not been required for clearance by the Fire Department

Please note photos below (before and after destruction) showing what the City did to mulefat 260 feet from the nearest structure where A PAIR OF GNATCATCHERS were observed on 11-4-09:

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Why is it that the Fire Department is so intent on doing "weed abatement" on native plant species THAT ARE APPROVED FOR ALL FUEL MOD ZONES and yet has no problem with a thicket of unapproved Acacia and Eucalyptus growing right up to the edge of Newport Crest? This inconsistency in application of regulations can only be attributed to strategically planned and blatant destruction of gnatcatcher habitat.

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Date: January 26, 2009

To: California Coastal Commission

Re: City of Laguna Beach Proposed City-Maintained Fuel Break Zones 10 & 11
and Athens Group Driftwood Properties, LLC

After Athens Group purchased the Driftwood properties, Laguna Beach, in 2004, they and the Laguna Beach City Manager, Fire Department and Community Development department began a vigorous and methodical campaign to reinstate fuel modification on Athens property that had been abandoned in 1994. These newly established City-Maintained Fuel Breaks (Zones 10 & 11) are indicated on a 2005 city map as being "proposed". These fuel break zones are only proposed and have not been incorporated into the city's Local Coastal Program.

The city of Laguna Beach and Fire Department management did not respond to ongoing email and phone call inquiries from us in 2007 and 2008 regarding proposed City-Maintained Fuel Break Zones 10 & 11/Driftwood Properties, LLC.

With the accompanying documents, we are seeking to demonstrate the following:

1. As of December 2008, when we filed a Public Records Act Request, the city of Laguna Beach and Fire Department management had not copied, scanned/dated pertinent city, county and state documents related to fuel modification of the Driftwood Property, and had not submitted these documents to the city file for the Aliso Creek Area Plan that includes Driftwood Properties, LLC (31106 Coast Hwy, Laguna Beach, CA, 92651). This absence of pertinent documentation raises serious questions about the accuracy of the pending application and upcoming Draft Environmental Impact Report process that includes this property as a proposed subdivision.
2. The Athens Group initiated the fuel modification campaign for their property.
3. The city of Laguna Beach and Athens worked together to reintroduce fuel modification on the Driftwood property, and the resulting fragmentation of ESHA to facilitate a proposed 9-lot residential subdivision which would be highly lucrative for both the land owner and city.
4. The city of Laguna Beach and Athens worked together in way that could circumvent the California Coastal Act and the Coastal Commission staff's endeavors in negotiating fuel modification plans that would insure the preservation of endangered flora and fauna species and ESHA on Athens' property located on Hobo Aliso Ridge.

We are submitting the accompanying documents, acquired from the city of Laguna Beach through the Public Records Act, in support of a harmonious solution to protect and preserve this unique coastal resource.

Dan and Penny Elia
30632 Marilyn Drive
Laguna Beach, California 92651
949-499-4499

COMMENTS ON DOCUMENT (Selected Excerpts)
Information Pertaining to The City of Laguna Beach
PROPOSED CITY-MAINTAINED FUEL BREAKS ZONES 10 & 11
and THE ATHENS GROUP DRIFTWOOD PROPERTIES, LLC

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The Athens Group Driftwood Properties, LLC initiates fuel modification (fuel mod) efforts for their property.

Pg. 8

The City of Laguna Beach (CLB) attempts to facilitate building permits (development) for the Driftwood property containing endangered Crownbeard (*Verbesina*) with the cooperation of California Department of Fish & Game. The California Coastal Commission (CCC) is not contacted for their input.

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The Athens Group conducts unpermitted fuel mod in a city-mapped watercourse located on the Driftwood property without a directive from the city to do so and incurs a Coastal Act violation resulting in Violation CCC-06-NOV-02 and Consent Order CCC-06-RO-03.

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The Athens Group (Bill Claypool) again requests the city to begin fuel mod of the Driftwood property.

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2005 map of the proposed city-maintained fuel break zones 10 & 11:
To date, these fuel break zones are not a part of the city's Local Coastal Program (LCP).

Pg. 13–14

The Athens Group (Martyn Hoffman) continues to inquire how to accomplish fuel mod of the Driftwood property.

Pg. 31–32

The Athens Group (Martyn Hoffman) could be attempting to pass the fuel mod and permitting on to the adjacent property owners and the non-existent homeowners association (HOA). An adjacent property owner (Curt Bartsch) states that fuel mod of the Driftwood property has been ignored for many years.

Pg. 36

The CLB Community Development Director (John Montgomery) could be attempting to usurp CCC authority.

Pg. 38

The CLB City Manager (Ken Frank) and The Athens Group (Martyn Hoffman) work together in a way that could circumvent the Coastal Act and CCC staff's endeavors. The City Manager states that he will contact an attorney (Steven Kaufman) to assist in dealing with the fuel mod issue.

Pg. 39

The Athens Group (Martyn Hoffman) continues to initiate fuel mod of the Driftwood property by introducing *police power* policy to the CLB City Manager via CLB Community Development Director.

Pg. 45

The Athens Group (Martyn Hoffman) acknowledges the need for a Coastal Development Permit (CDP) for fuel mod activities.

Pg. 57

Attorney Steven Kaufman responds to CLB City Manager with an analysis of Martyn Hoffman's plan for fuel mod *police power* that could circumvent the Coastal Act and CCC authority.

Pg. 58, 64–66

The CLB City Manager states the city's opposition to a required CDP. He also states that fuel breaks existed in 1956. If these fuel breaks were truly developed prior to the Coastal Act of 1972, then the ensuing Emergency Nuisance Abatement Order of 2007 (*police power*) would not have been necessary for fuel mod of the Driftwood property.

Pg. 93–94 & 102

The CLB City Manager could usurp CCC authority by exercising the city's *police power* to create proposed city-maintained fuel break zones 10 & 11 on the Athens Group Driftwood property.

Pg. 103–104

The CLB Fire Department states "creation" (new + maintenance = required CDP & LCP amendment) of proposed fuel break zones 10 & 11 had begun.

Pg. 108–110

The CLB City Manager states that the city does not need a CDP for the "creation" of proposed city fuel breaks on the Driftwood property and uses *police power* that could usurp CCC authority. Also, he could be providing a tactic for reimbursement from The Athens Group for *city-maintained* fuel break duties.

Pg. 120–121

The CLB City Manager states that debris from 2007 fuel mod activities on the Driftwood property was left on the land to "retard future growth". This method is inconsistent with CCC staff's attempts at restoration of this land's endangered flora and fauna species and Environmentally Sensitive Habitat Area (ESHA). This could be another tactic to fragment existing ESHA on the site and that might facilitate development.

Pg. 126–127

Glenn Lukos Associates (biological services) states the need for a new plan to expand the proposed fuel mod boundaries from 200 feet from “existing structures” to 200 feet “within property boundaries” to facilitate “development of portions of the site in the near future”. CCC staff disagrees and states that fuel breaks for future proposed development should be considered as part of the CDP process for new construction.

Pg. 142

The CLB Fire Department repeats fuel mod in zones 10 & 11 at the end of 2008. After receiving The Athens Group's (Greg Vail) cooperation, the Fire Department uses “imminent threat” and the city's *police power* to prevent CCC intervention again.

Pg. 143

The CLB Fire Department could be attempting to further legitimize fuel mod activities in zones 10 & 11.

Pg. 144

The CLB City Manager (Ken) gives approval for the Fire Department to contact attorney Steven Kaufman regarding fuel mod on the Driftwood property and to seek his opinions on the city's LCP requirements and permitting.

Pg. 146

The CLB Fire Department receives new state law that defines *defensible space* as being no greater than 100 feet. The Fire Department asks Cal Fire if there are any conditions that would allow a property owner to prevent CCC involvement.

Pg. 150

Excerpt from a local newspaper article:

The CLB City Manager states he ordered emergency action to fuel mod the Driftwood property. He acknowledges that this is contrary to CCC recommendations. Also, he acknowledges that The Athens Group (*not the city*) would be doing the fuel mod and he seems to feel fortunate that Athens can easily afford it.

Pg. 154–155

Again, CCC staff attempts to negotiate a long-term fuel mod and maintenance plan for the Driftwood property with the CLB Fire Department.

Pg. 156

Again, The CLB Fire Department exercises the city's *police power* to conduct fuel mod on the Driftwood property which could affect CCC staff and CLB negotiations.

Prepared by
Dan and Penny Elia
30632 Marilyn Drive
Laguna Beach, CA 92651
949-499-4499

Information Pertaining to
The City of Laguna Beach

**PROPOSED CITY-MAINTAINED
FUEL BREAK ZONES 10 & 11**

and

**THE ATHENS GROUP
DRIFTWOOD PROPERTIES, LLC**

Prepared by:
Dan and Penny Elia
January 26, 2009



MEMORANDUM



DATE: November 29, 2004

TO: Ken MacLeod, Fire Chief

FROM: Kris Head, Fire Marshal

SUBJECT: Goat Grazing – Barracuda/Nyes/Driftwood

Chief, the goats were moved behind Nestal this last weekend and we anticipate they will be in the area for approximately two months. Where we move the goats next depends on our ability to secure approval to graze the Barracuda/Nyes/Driftwood areas.

Attached is a map with the proposed areas for fuel modification utilizing the goat program. Ray Lardie has been approached by the owners of Driftwood Properties Llc. (Montage) to move the goats into this area. I am told that we have previously grazed the area behind Nyes (City owned) as recently as 2-3 years ago.

After meeting with Don Barnes and Ray Lardie I am assured that we have some excess capacity for grazing. This proposed addition could be incorporated with our current grazing program without detrimental effect to the other areas we currently maintain.

We have a valid Rare Plant Survey prepared in June of 1995 and it identifies Crown Beard and other Very High Value resources in much of the proposed area. I have met with the area representative from Fish and Game regarding grazing around the Crown Beard and she is OK with our current techniques for protecting the plant. We would utilize this technique as well for the other identified species.

Please let me know if this something we could pursue further with written permission from the property owner(s) and City Council approval.

Thanks, Kris



LAGUNA BEACH FIRE DEPARTMENT

February 7, 2005

Mary Ann Showers, Lead Botanist
Department of Fish and Game
Habitat Conservation Planning Branch
1416 9th Street, 12th Floor
Sacramento, CA 95814

Dear Mrs. Showers,

Thank you for meeting with representatives from the City of Laguna Beach on January 31st, 2005 to discuss the Verbesina. The Verbesina is one more reason why Laguna Beach is such a special place. As you might imagine the City is interested in receiving a definitive plan from your office on how to move forward with processing building permit applications for lots with Verbesina located on them.

It is also the hope of the City that your office can expedite a solution that is reasonable and timely for installing a fuel modification zone utilizing the goat program. Of great concern is the possibility that the City may enter the 2005 fire season without a fuel break in the wildland interface behind Barracuda Way, Nyes Place, and Driftwood. The absence of a fuel modification zone exacerbates our wildland fire threat; a situation that the City wishes to avoid. Should a reasonable and timely plan become unlikely, please give consideration to exempting the City from a take permit for installing a fuel modification zone based on the need of the City to provide for public safety.

Please call me at (949) 497-0354 should you have any questions.

Sincerely,

Kris Head
Fire Marshal

Cc: Ken MacLeod, Fire Chief
Ann Larson, Planning Administrator
Liane Schuller, Zoning Administrator
Nancy Csira, Senior Planner

Head, Kris FD

From: Head, Kris FD
Sent: Tuesday, October 25, 2005 4:10 PM
To: Larson, Ann CD
Cc: Macey, Mike FD; Frank, Ken CM; 'kthompson@montagelagunabeach.com'; 'mhoffmann@athensdevco.com'; 'bclaypool@montagelagunabeach.com'
Subject: Fuel Mod - Montage

Ann,

I met today with representatives from the Montage and Athens Group today regarding fuel modification behind Ocean Vista Condos and the water reservoir. As you are aware Penny Elia complained to the City today regarding the work that was done in this area by the Montage. The representatives from the Montage and Athens Group were very apologetic about the procedural miss-step of not gaining DRB approval prior to doing the clearance. I am in large part to blame for this error because I met at the site with representatives from the Montage to discuss the scope and method for completing the work. At no time did I mention the need for a DRB approved fuel modification plan because I was unaware of the requirement.

The work completed by the Athens Group and Montage will enhance the adjacent properties chances of surviving a wildland fire event. The motivation for doing this work appears to be one good neighbor doing the right thing to help another neighbor. To the Montage and Athens Group's credit it appears that they are not discouraged by this new wrinkle and will work within the City's requirements to achieve the desired results and correct this issue. The alternative of doing nothing is still an option; however it would serve as a detriment to F/F safety, public safety, and property conservation if inaction was their policy. Please feel free to call me if you have any questions.

Thanks,

Kris

Head, Kris FD

From: Head, Kris FD
Sent: Thursday, December 15, 2005 7:17 AM
To: Frank, Ken CM; Macey, Mike FD; 'bclaypool@montagelagunabeach.com'
Cc: Lardie, Ray FD
Subject: Fuel Modification at Nyes, Bolsana , Barracuda
Attachments: RECOMMENDATION_FOR_FIRE_MANAGEMENT_BY_GRAZING_OF_VERBESINA_DISSITA_HABITAT_IN_LAGUNA_BEACH.doc;
10-31-05 Bio Study of Grazed Areas - Glen Lukos.pdf

After much work with California Fish and Game and our own biologist we have developed a workable plan for grazing in Zone 10. With the blessing of Fish and Game we may graze amongst the Crown Beard during select times of the year. January happens to be a very good month and it appears that we can move the heard into the area around the first of the year. We may get complaints since we have not been there in quite a long time. I have attached a letter from Fish and Game with their affirmation that grazing is acceptable and a bio-study commissioned by the City that suggests the same thing.

Mr. Claypool requested the services of the goats in this area almost a year ago but a lot has occurred during that time. Bill, does the Montage still want to address this property with vegetation management by way of the goats? I would consider the presence of a biologist more of a CYA-political move but wise given the atmosphere. Would you be interested in providing a biologist for monitoring in this area during the grazing? We will have a biologist visit the site post grazing and the Fish and Game may stop by too. Please contact me at 497-0354 if you have any questions.

Sincerely,

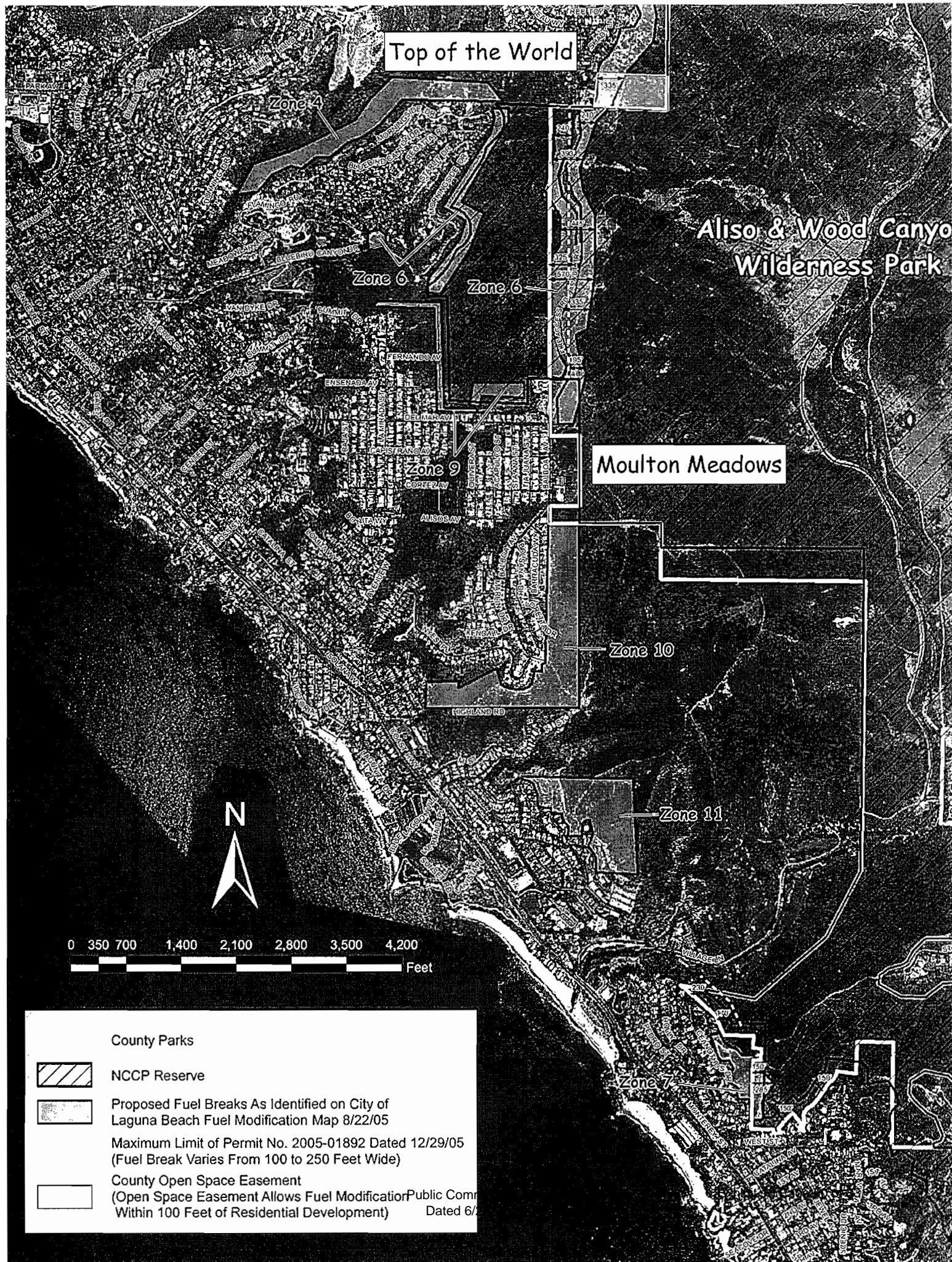
Kris

12/17/2008

Public Comment Letters
Dated 6/28 - 7/24

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LAGUNA BEACH FIRE DEPARTMENT

May 1, 2006

Martyn Hoffman
Director of Forward Planning
The Athens Group
3110 Pacific Coast Highway
Laguna Beach, CA 92651

Dear Mr. Hoffman:

This letter is in response to your inquiry April 24th, 2006 regarding fuel modification at the Driftwood site. I have provided a response to each of your questions.

- 1). What are the required fuel mod zones (distances) and treatments surrounding the water tank, fuel storage area associated with the water tank, and condos?

The City's requirement for a fully installed fuel modification zone is 195' measured from the edge of combustible construction into all directions of the interface. The closest zone to the structure(s) being protected is zone A which is 20' wide and should contain only lush, irrigated, and highly maintained vegetation if any at all. Zone A is considered "Defensible Space" where Firefighters can operate during a fire. Zone B is 50' wide and should also be irrigated, high moisture retentive plants (see the City's Landscape and Fuel Modification Guidelines for a list of appropriate plants). Zone C is 75' wide and begins at the terminus of Zone B. Zone C consists of natural vegetation thinned 50% and 100% removal of dead and dying vegetation as well as all highly flammable plants (see City's Landscape and Fuel Modification Guidelines). Zone D is 50' wide and consists of 30% thinning with the same principles applied as Zone C.

- 2). What kind of vegetation would be appropriate within the 195' zone?

The City's Landscape and Fuel Modification Guidelines provide a list of acceptable plants for each zone. Natural vegetation should not be closer than 70' to any combustible structure.

13.

3). What level of maintenance is necessary in these zones?

The answer really depends on what is planted in the zones. Zones A and B could require weekly maintenance where zones C and D may only require bi-annual or annual maintenance. All properties that require fuel modification are subject to inspection and verification for adequate maintenance.

4). Would Coastal Sage Scrub and Crownbeard be acceptable planting material if located within 195' of these structures?

Coastal Sage Scrub consists of many native plant species, some of which are considered more fire resistive than others. Buckwheat, California sage and sage are components of Coastal Sage Scrub and are considered highly flammable and mandatory removal is required within the 195 fuel modification zone. Laurel Sumac and Lemonadeberry are more fire resistive components of Coastal Sage Scrub and may remain. The annual grasses would require regular maintenance. Crownbeard is not considered a fire resistive plant, but with the help of a Fire Protection Plan consultant it has been allowed to exist in small quantities in Zones C and D and occasionally in outer 1/3 of Zone B when the structure is engineered to withstand the projected fire behavior.

I hope this letter serves to answers your questions and provide some clarification for the use and intent of the City's Landscape and Fuel Modification Guidelines. Please call me at 949-497-0354 should you have any questions.

Sincerely,

Kris Head

Kris Head, Fire Marshal

Laguna Beach Fire Department

Christopher, Tom FD

From: Head, Kris FD
Sent: Friday, June 29, 2007 2:51 PM
To: Macey, Mike FD; Christopher, Tom FD
Cc: Lardie, Ray FD
Subject: FW: Fuel Modification Status

Importance: High

Chiefs:

FYI. I handed this one off to Ray earlier in the week as it seemed like a fuel mod/weed abatement issue. I haven't talked to Ray about his conversation with Mr. Bartsch. I spoke to Martyn this afternoon and he said that the Athens Group would allow the HOA access to the area for the purposes of fuel mod if the HOA is able to secure the correct permits from all of the required regulatory agencies. It is very doubtful that this project would be approved by the Coastal Commission, Dept of Fish and Game, U.S. Fish and Wildlife, and Army Corps of Engineers before fire season has passed.

From: curt [mailto:ocean.vista@verizon.net]
Sent: Friday, June 29, 2007 1:49 PM
To: 'John Mansour'; 'Martyn Hoffmann'
Cc: Head, Kris FD; 'bill'; bobtursiop@aol.com
Subject: Fuel Modification Status
Importance: High

John & Martyn,

Following our conversation from last Thursday, June 21st, I contacted the Laguna Beach Fire Department this week to request an assessment of the current fuel status on the Athens property behind our residence as well as the Bill Barnise and the Case's residence(s) on Ocean Vista Drive adjacent to the water tower. Many of us were inspired on October 5, 2005 at a neighborhood meeting conducted by Kris Head at Fred Lang Park which outlined the need to evaluate the need for fuel modification action prior to the high fire season. The loss of several hundred homes near Lake Tahoe this week further heightened our awareness in this most severe drought in recent California history.

The three property owners were very appreciative of the significant positive fuel modification steps taken by the Athens Group in 2005 after being ignored by the previous owner for many years. We are all aware of the substantial fine brought against the Athens Group by so-called environmentalists who have a political agenda to stop new home development in the old Driftwood project, now called "Aliso Lots". They could care less when our homes all burn to the ground if a wild fire hits South Laguna under these dry conditions.

Yesterday I received a return phone call from Ray Lardy (sp?) on behalf of my inquiry to Kris Head's office on Wednesday. The Laguna Beach Fire Department declined to assess our fuel modification situation as a result of the previous political action. Unfortunately, their position is that until the Athens Group goes through a projected long permit application process, they choose not to be involved. Frankly, I think a qualified assessment of Zone D (as defined by the Fire Department) should precede the determination to pursue a permit. Based on the Athens Group independent study as outlined in the "Driftwood Estates Fuel Modification Biological Report", the report found that:

- a) fuel modification does not pose a threat to long-term sustainability of the big-leaved crownbeard and southern maritime chaparral, according to PCR Services Corporation
- b) no erosion hazard, per the Geosyntec Consultants memo.

So where does that leave the homeowner citizens of Laguna Beach? The Fire Department apparently refuses to become proactively involved and we are at the mercy of a potential long permit process, if the Athens Group chooses to pursue. It would appear that at some point this critical issue will need to be addressed, if for no other reason to protect the property of the proposed new residential zoned "Aliso Lots". In the meantime, we appear to be "held hostage" in the middle of a political action at the risk of our property during a well documented high fire hazard season. We are open to your thoughts and suggestions and appreciate your efforts in the past to step up and do the right thing.

Regards,

Curt & Jan Bartsch
21617 Ocean Vista Drive
Laguna Beach, CA 92651
949-499-0820

p.s. Like some of our neighborhood activists, I am also a member of the Sierra Club: # 43770093

cc: Bill Barnise
Robert and Gwenne Case

Macey, Mike FD

From: Montgomery, John CD
Sent: Tuesday, August 07, 2007 6:04 PM
To: 'Ryan Todaro'
Cc: Frank, Ken CM; Macey, Mike FD; Larson, Ann CD
Subject: Laguna beach LCP Amendment - LGB-MAJ-2-06

Ryan,

This is a follow-up confirmation email to our discussion this afternoon (8/7/07).

The City objects to the Coastal staff's proposed additions and deletions in the last three lines of Suggested Modification No. 2 starting with "and any other . . ."


We are not going to put the City residents at risk by altering the City's long standing annual weed abatement program and already approved fuel modification programs. We also strongly maintain that those programs have adequate protocols established to protect ESHA.

John Montgomery
Community Development Director
City of Laguna Beach
(949) 497-0361; FAX (949) 497-0771
505 Forest Avenue, Laguna Beach, CA 92651
jmontgomery@lagunabeachcity.net
www.lagunabeachcity.net

MEMORANDUM

DATE: August 10, 2007

TO: Philip Kohn, City Attorney
Mike Macey, Fire Chief
John Montgomery, Director of Community Development ✓

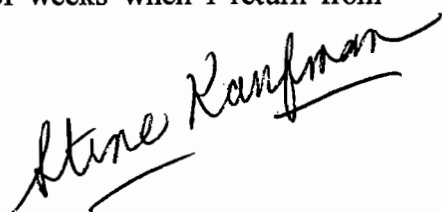
FROM:  Kenneth Frank, City Manager

SUBJECT: NUISANCE ABATEMENT FUEL MODIFICATION

One of the Athens Group employees put together the attached analysis of the City's right to do weed abatement. What is interesting are the comments about the Coastal Act. We are in a battle with the Coastal Commission and its staff and they are trying to reign in or require permits for the annual weed abatement program and fuel modification. If, in fact, this Coastal Act section specifically allows the City to define a nuisance and doesn't allow the Coastal Commission to override a City action to declare, prohibit and abate nuisances, this would go a long way to resolving our problem with the Coastal Commission.

My thought is that we contact the attorney who was previously with the Attorney General's office and have him look at the Coastal Act along with our LCP and see how much leeway we have. If there is no objection, I will contact him in a couple of weeks when I return from vacation.

Please let me know your thoughts. Thanks.



Attachment

Frank, Ken CM

From: Montgomery, John CD
Sent: Tuesday, August 07, 2007 9:12 AM
To: Frank, Ken CM
Subject: FW: Nuisance Abatement/Fuel Mod

FYI

John Montgomery
 Community Development Director
 City of Laguna Beach
 (949) 497-0361; FAX (949) 497-0771
 505 Forest Avenue, Laguna Beach, CA 92651
jmontgomery@lagunabeachcity.net
www.lagunabeachcity.net

From: Martyn Hoffmann [mailto:mhoffmann@athensdevco.com]
Sent: Tuesday, August 07, 2007 9:06 AM
To: Montgomery, John CD
Subject: Nuisance Abatement/Fuel Mod

"Under the police power granted by the Constitution, counties and cities have plenary authority to govern, subject only to the limitation that they exercise this power within their territorial limit as and subordinate to state law. . . . Apart from this limitation, the 'police power [of a county or city under this provision] . . . is as broad as the police power exercisable by the Legislature itself.'" (*Candid Enters., Inc. v. Grossmont Union High Sch. Dist.* (1985) 39 Cal.3d 878, 885 [citing Cal. Const. art. XI, § 7]).

Coastal Act section 30005(b) explicitly recognizes the City's police power in this area, specifically providing that the Coastal Act shall not limit "the power of any city or county or city and county to declare, prohibit, and abate nuisances." (Pub. Resources Code § 30005(b)). Civil Code section 3479 defines nuisance as "[a]nything which is injurious to health, including, but not limited to, . . . an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property" (Civ. Code § 3479). The City's Municipal Code defines "nuisance" as "[a]ny public nuisance known at common law . . .," "[a]ny condition or use of premises . . . which is detrimental to the property of others," "[a]ny condition of vegetation overgrowth, dirt or land erosion which encroaches into, over or upon any public right-of-way, including, but not limited to, streets, alleys, or sidewalks, so as to constitute either a danger to the public safety or an impediment to public travel," and "[a]ny dangerous land conditions or land instability on private property." (Mun. Code § 7.24.010 (1), (9), (10), and (11)).

The City can exercise its police power to abate nuisances in a variety of ways. (See e.g., Mun. Code §§ 7.24.020, 7.24.080, 7.24.100, 7.24.110, 16.01.090(B)(1)–(5), (11)–(12)). As an initial matter, however, the City must inform the property owner that the City is concerned about the nuisance.

Martyn Hoffmann | *The Athens Group* | 31106 Coast Highway - Laguna Beach, CA 92651
 Office: 949.499.4794 | Fax: 949.499.4174

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Curt Brunson

716.479.4174

From: Martyn Hoffmann [mailto:mhoffmann@athensdevco.com]
Sent: Monday, September 10, 2007 8:11 AM
To: curt; Christopher, Tom FD
Cc: Macey, Mike FD; John Mansour; jmontgomery@lagunabeachcity.net
Subject: RE: Fuel Modification at Ocean Vista Drive Water Tank

Gentlemen,

I too am glad that the goats have been given the go ahead to do their duty! Congratulations. As it relates specifically to Athens property behind Ocean Vista avenue however, I am concerned that while City approval is in place, Coastal approval is not. That property is under the direct jurisdiction of the Coastal Commission, so approval from both the City and the Coastal Commission appear to be necessary to conduct fuel modification through grazing. I have cc'ed John Montgomery to get his insight into this as well.

As always, The Athens Group wants to see forward progress and cooperation on fuel mod on our property, but cannot place our ownership at liability with the resource agencies that control these matters. If the Coastal Commission issues a CDP, or agrees that one is not necessary, we would be supportive of moving forward with the goats under an approved plan.

Please feel free to give me a call to discuss this further if necessary,

Regards,

Martyn Hoffmann | *The Athens Group* | 31106 Coast Highway - Laguna Beach, CA 92651
Office: 949.499.4794 | Fax: 949.499.4174

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From: curt [mailto:ocean.vista@verizon.net]
Sent: Sunday, September 09, 2007 1:02 PM
To: 'Christopher, Tom FD'
Cc: 'Macey, Mike FD'; Martyn Hoffmann
Subject: RE: Fuel Modification at Ocean Vista Drive Water Tank
Importance: High

Tom & Mike,

I read the headlines in the local press that "goats get the go-ahead to graze". Congratulations, Mike, for your presentation and well founded "pro's". As Tom, Martyn and I discussed in walking the hillside behind our house on August 10th, there is no way a ground crew could effectively fuel modify the steep slopes of our terrain.

Now, the next obvious question, it's September 9th, when do we start? I would argue that since the City has consciously avoided using the goats in South Laguna for many years (over seven, since we have lived here) in order to avoid perceived concerns from local environmentalists; we should be put at the Top of the List!

Public Comment Letters
Dated 6/28 - 7/24

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45

Frank, Ken CM

Confidential

From: Steven H. Kaufmann [SKaufmann@rwglaw.com]
Sent: Thursday, September 20, 2007 3:33 PM
To: Frank, Ken CM; KFrank@CityHall.CLB.com
Subject: Fuel Modification Program

Ken:

I have reviewed your September 13, 2007 letter outlining the history of the City's fuel modification program. Here are my thoughts:

1. Under the Coastal Act, "development" requires a Coastal Development Permit (CDP). Grazing per se is not "development." However, "development" does include "the removal or harvesting of major vegetation other than for agricultural purposes" The question, then, is whether grazing by goats involves removal or harvesting of major vegetation. If the vegetation is, for example, coastal sage scrub or native grasses, the Coastal Commission considers that to be ESHA, so in that instance it could be argued that a CDP is required.
2. If the grazing involves the removal or harvesting of major vegetation but predates the effective date of the Coastal Act (1-1-77) or the 1972 Coastal Act (2-1-73), then no CDP is required to continue within the scope of the grazing in effect at that time. The use would be considered ongoing, and the City would have a vested right to continue it without first obtaining a CDP.
3. If the grazing qualifies as "development" but commenced after the effective date of the Coastal Act, a CDP would be required. However, Section 30005 of the Coastal Act, noted in Martyn Hoffman's August 2007 e-mail to John Montgomery, does provide that nothing in the Coastal Act shall limit "the power of any city or county or city and county to declare, prohibit, and abate nuisances." I agree with the analysis in Martyn's e-mail. The City's Code defines "nuisance" as including "[a]ny condition of vegetation overgrowth." Clearly, the City has the power to order, e.g., weed abatement. That would qualify under Section 30005 of the Coastal Act as an activity or development that falls outside the Coastal Act and jurisdiction of the Commission. The same is true of the type of grazing described in your letter, undertaken for the purpose of fuel modification. The better practice is for the City each year (1) to adopt a resolution declaring, prohibiting, and abating the nuisance under Section 30005, (2) to require the grazing as part of an essential fuel modification program, (3) to specify and limit the scope and precise area covered, and (4) adopt findings that explain why the vegetation removal through grazing is necessary to abate the nuisance.
4. Although Section 30005 is in the Coastal Act, Coastal staff will often ignore it or try to limit its application. Therefore, it is always better to make a solid paper record for why grazing is necessary to abate the nuisance.


Does this answer your issue? Let me know if you need any further input on this. Thanks.

~ Steve

Steven H. Kaufmann
Richards / Watson / Gershon
355 S. Grand Avenue, 40th Floor
Los Angeles, CA 90071-3101
Tel: (213) 626-8484
Fax: (213) 626-0078

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MEMORANDUM

DATE: October 4, 2007
TO: City Council
FROM:  Kenneth Frank, City Manager
SUBJECT: FIRE BREAKS/GOATS

This week, our staff from Community Development and the Fire Department met with about four staff members from the Coastal Commission including the Director of the Southern California region. The Coastal staff had previously advised us that the City needs to get a Coastal Development Permit to continue the goat grazing.

We have strongly objected to that notion and believe that the grazing is allowed without a Coastal Development Permit for the following reasons:

1. Most of the fuel break around the City has been grazed for many years and/or has been a hand-cleared fuel break. An example is the Irvine Company grazing along the City boundary in North Laguna which occurred for decades. Our best photo is from 1956 showing the hillsides above South Laguna which is clearly a complete fire break. There is absolutely no question that a fuel break has existed in South Laguna for at least 50 years, long before the Coastal Commission started business in about 1980.
2. Since the only way that removal of vegetation is defined as "development" in the Coastal Act, is because there would be environmentally sensitive plants like coastal sage scrub on the site. We have had biological studies for many years indicating that there have been no valuable plants damaged. The biologist used by the City attended the meeting and summarized his reports for the Coastal staff.
3. There is a nuisance provision of the Coastal Act which allows cities to take steps to prevent hazards. While we haven't formally called for the deployment of the goats as nuisance abatement, there is no question that it is the same thing. There have been public hearings and properties have been identified. If necessary, the Council could have a noticed nuisance abatement hearing and determine the area of fuel break and nuisance which would force private property owners to clear the area or the City could do it.

Prior to meeting with the Coastal Commission staff, we consulted with Steve Kaufmann who is an attorney who formally served as the legal counsel to the Coastal Commission. Steve is helping guide us through the Coastal Commission's latest attempt to wrestle any bit of local control away from cities and counties.

At the end of the meeting we agreed that the City staff would put in writing our position with supporting documentation about the history of fuel breaks in the City and send it up to the Coastal staff for their review.

cc: City Attorney
Director of Community Development ✓
Fire Chief
Assistant City Manager



October 15, 2007

Sherilyn Sarb
Deputy Director
California Coastal Commission
South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302

Dear Sherilyn:

Thank you for coming to Laguna Beach to meet with City staff, including the Fire Chief and the Director of Community Development. Please pass on our appreciation to your staff for taking the time out of their busy schedules to discuss the City's firebreak program.

In your letter of September 12, 2007, you stated that the use of goats to maintain the firebreak is inconsistent with currently certified regulations. As you probably expected, we strongly disagree with that assertion for three major reasons.

First, as we briefly discussed in our meeting, much of the firebreak was in existence before the Coastal Act was enacted. Attachments 1 and 2 are aerial photos of the South Laguna hillside which were taken in 1956 and 1970. It is obvious that the entire slope above that portion of South Laguna was a firebreak more than 20 years before the Coastal Commission was created.

As we mentioned during our meeting, cattle were used for decades by the Irvine Company to eliminate vegetation adjacent to the entire northern perimeter of Laguna Beach, i.e., everything north of Laguna Canyon Road. After the cattle were removed – maybe 20 years ago – the company allowed the City to maintain the firebreak in North Laguna with our goat herd. In short, there has been a continuous firebreak in North Laguna for 50 years. The attached letter from the Irvine Company describes this history.

Likewise, in the property previously owned by the Mission Viejo Company – which comprises all of the property abutting the City from the north end of Alta Laguna Boulevard to the south end of Moulton Meadows Park, cattle grazed a firebreak until the City, with permission from the Mission Viejo Company, constructed a fire access road between the Top of the World and Arch Beach Heights neighborhoods. Once the cattle were relocated from the area of the road, the City used mechanical disking and then goats to maintain the firebreak. Attachment 4 is a 1979 contract for mechanical clearance of the firebreak areas.



Moreover, for many decades, the City has had an annual weed abatement program in which private property owners are mandated to clear their parcels of vegetation. This program has been used to create internal fuelbreaks in some interior canyons. You saw one of those areas in the distance when we toured the fire road.

In short, most of the area which is now a firebreak has been maintained as such for many years prior to and subsequent to the Coastal Act. No permit is needed for those areas.

Secondly, under the Coastal Act, “development” only occurs when there is the removal of major vegetation other than for agricultural purposes. Since these firebreak areas have been cleaned on a periodic basis for decades, there is no significant vegetation, such as endangered plants, native grasses or coastal sage scrub which is being removed. The City retains a biologist to monitor the goat grazing program to ensure that sensitive plants are protected.

Thirdly, Section 3005(b) of the Coastal Act explicitly recognizes the power of a city “to declare, prohibit, and abate nuisances.” At various times in the last 25 years during which goats have been utilized to maintain the firebreak, the City Council has examined the need and location of the firebreak, the methods for maintaining the firebreak, ways to protect sensitive plants, and other aspects of the City’s fire safety efforts. In fact, in an extensive review after the 1993 firestorm destroyed about 270 homes in Laguna Beach, the City utilized Federal funding to expand the firebreak. Attachment 5 is a few of the agenda bills and minutes indicating that this issue has been discussed at length by the Council and that the Council has specifically acted to abate the nuisance and create a fuelbreak. Only after the Council received updated biological studies was the expansion ordered to abate the nuisance, i.e., brush that constituted a fire hazard. While the City could have required many of the individual property owners to abate the nuisances at their cost, the City offered to perform the abatement at City expense using the goats. In fact, each year the City Council formally approves an allocation for maintaining the fuelbreak. Attached is an excerpt from our current budget which depicts the separate allowance for that purpose.

While it is clear that the City’s existing firebreak is not subject to a Coastal Development Permit, we agree with you that any new development – whether it is a new subdivision or a single family house adjacent to the wildland interface – needs a Coastal Development Permit. In that case, the fuel modification program as delineated in the City’s certified LCP would be applied. If biological studies show that the fuel modification zone would damage sensitive habitat, the City can require the builder or subdivider to utilize alternative materials and methods in lieu of thinning for fuel modification. The Council has required alternative methods on several cases in order to protect coastal resources while affording the owner of the house a reasonable level of safety.

Again, we appreciate your site visit. We have enclosed a package of background materials, but let me know if you would like additional information.

Sincerely,



Kenneth Frank
City Manager

Attachments:

1. Color photo of South Laguna hillside (1956)
2. Black/white photo of South Laguna hillside (1970)
3. Irvine Company letter of May 14, 2004
4. Firebreak contract from 1979
5. Agenda bills and minutes of Council meetings
6. Excerpt from FY 2007-08 Fire Department budget

cc: Director of Community Development
Fire Chief
City Attorney
Special Counsel



October 23, 2007

Martyn Hoffmann
Driftwood Properties, LLC
Sent via email: mhoffmann@athensdevco.com

Dear Martyn:

As you know, Southern California is in the midst of extreme wild fires. We have received several complaints and concerns from neighbors adjacent to the property owned by Driftwood Properties, LLC in South Laguna. They are afraid that there has been inadequate preparation if a fire starts in the hillside above their homes. It is my understanding that Driftwood Properties, LLC previously brought in hand crews and started to reduce the overgrown brush as part of a fuel modification program requested by the Fire Department, but stopped at the request of the California Coastal Commission.

For many years, the City maintained a firebreak on this property. Attached is a photo from 1956 which depicts a portion of the firebreak in South Laguna. Also included is a diagram showing Zones 10 and 11 of the City's fuelbreak program. These areas have been grazed by goats repeatedly in the past. However, the goats have not been assigned to these areas for some time, apparently because of concerns for protection of certain sensitive plant species in the area.

City staff recently met with representatives of the Coastal Commission to discuss maintenance of the firebreak and informed Coastal Staff that the City's staff position is that the firebreak clearly predates the Coastal Act and does not need a Coastal Development Permit. Additionally, we have notified Sherilyn Sarb from the Coastal Commission today of the City's intent to proceed with fuel modification activities given the imminent fire hazard that exists due to Santa Ana wind weather conditions and regional fire outbreaks.

The California Constitution grants cities broad police powers to abate nuisances such as in this situation. (*Candid Enters., Inc. v. Grossmont Union High Sch. Dist.* (1985) 39 Cal.3d 878, 885). In addition, Coastal Act section 30005(b) explicitly grants the City police power to declare, prohibit, and abate nuisances. (Pub. Resources Code § 30005(b)). The City's Municipal Code defines "nuisance" as "[a]ny public nuisance known at common law . . .," and "[a]ny condition or use of premises . . . which is detrimental to the property of others," (Mun. Code § 7.24.010).

Pursuant to the City's nuisance abatement authority embodied in Municipal Code sections 7.24.020, 7.24.080, 7.24.100, 7.24.110, 16.01.090 and section 1103.2.4 of the 2001 California Fire Code (adopted by the City of Laguna Beach), based on the extreme fire hazard in the community, coupled with the high fuel load on the property, the Fire Chief has determined that the combustible vegetation in the areas of your property known as

Zone 10 and Zone 11 constitute a nuisance and a fire hazard. Therefore, the combustible vegetation, as directed by the Fire Chief, must be abated as soon as possible. Attached is a copy of the Chief's determination. This letter provides you notice that the City of Laguna Beach will conduct the work necessary to abate the hazard as soon as possible. In order to protect sensitive plant species, the City will also retain a biological consultant who will carefully check the areas so that any sensitive plants are protected.

To assist in abating this hazard in a timely manner, the City will redeploy its herd of goats to perform part of the abatement.

Our Fire Marshal, Chief Tom Christopher, will be contacting you to determine a mutually agreeable schedule for abating this nuisance.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth Frank".

Kenneth Frank
City Manager


Attachments

cc: Fire Chief



DATE: October 23, 2007

TO: Sherilyn Sarb, Deputy Director, California Coastal Commission
Teresa Henry, District Manager, California Coastal Commission

FROM:  Kenneth Frank, City Manager

SUBJECT: CITY OF LAGUNA BEACH FIREBREAK

I left a phone message at Sherilyn's San Diego Office to let you know that we will be working on a firebreak in South Laguna starting this week. There will be a combination of goats and hand crews. We will focus on the area that is part of Zones 10 and 11 of the City's firebreak program.

The Fire Chief has made a determination that the area in question is a hazard and that vegetation must be removed. The City has directed the Athens Group, which is the owner of most of the property, to clear the area immediately. We will have a biologist go through the area to mark any sensitive plants before the clearing is done.

If you have any questions, let me know.

Head, Kris FD

From: LaTendresse, Jeff FD
Sent: Wednesday, October 24, 2007 12:18 PM
To: Frank, Ken CM
Cc: Pietig, John CM; Sellers, Michael PD; Macey, Mike FD; Head, Kris FD; Christopher, Tom FD
Subject: Update

Ken,

I just wanted to give you an update of the current situation. Kris Head was released from the Santiago Fire last night and is here working today. He states his experiences at the Fire were incredible and extremely valuable. The ability to get that kind of experience is a one in a lifetime opportunity. As such, I was able to get the same opportunity for Tom Christopher today and he has been assigned to the Santiago Fire with the same understanding that he is immediately available to return to the City within 20 to 30 minutes. Additionally, we have been rotating our crews, with the exception of the OES engine, and thus are providing fresh crews and increasing the experience to more of our personnel.

I also met with Ray Lardie today out at the old Esslinger property on Driftwood and progress has started. Driftwood Properties LLC has contracted with Natures Images for part of the creation of the fuelbreak on their property in the areas known as "zone 10 and 11." Their work has begun with approximately one dozen workers utilizing weed whackers, chain saws, and hand tools to trim up bushes and clear some of the vegetation. Also on site was a biologist from Glenn Lukos who was working to identify sensitive habitat in the area with flags. Ray Lardie will be working with the biologist to ensure that both the goat herder and Natures Images personnel are aware to stay away from these areas. I should note that Mark Slymen, of the Montage, was on site and was coordinating the activities on behalf of Driftwood Properties LLC.

Finally, I met up with Andrew Willis from the California Coastal Commission on site. Andrew was interested in the activity we were doing and wanted to take pictures of the work being done to send to his colleagues throughout the State. He inquired how we determined this area to be a "fire hazard" and how large the "fuelbreak" would be. Between myself, Ray Lardie, and Steven Reihoehl (Natures Images) we explained that the fuelbreak would extend approximately 200' from the property line of adjacent structures that were located on the Driftwood Properties. Additionally, the areas identified by the biologist would be secured with "electric" fencing to keep the goats clear of sensitive habitat. I inquired if Andrew and the Coastal Commission were comfortable with our process and plan, and he (Andrew) stated that based on the emergency designation as a "fire hazard" that they could not interfere with the operations of the Fire Department. He was concerned with the sensitive habitat and I attempted to assure him that we were too and would do all we could to preserve the habitat. As for the goats, Ray will be fencing the area tomorrow and should have the goats moved by Friday.

If you have any questions please feel free to give me a call.

Jeff

Christopher, Tom FD

From: LaTendresse, Jeff FD
Sent: Thursday, October 25, 2007 8:39 AM
To: Frank, Ken CM
Cc: Macey, Mike FD; Head, Kris FD; Christopher, Tom FD; Lardie, Ray FD
Subject: Update on Driftwood Properties

Ken,

I wanted to provide an update on the progress being made for the creation of a fuelbreak at the Driftwood Properties. Ray Lardie has been working on site with the various agencies and the goat herder. Due to the amount of sensitive habitat in the area, it is going to take a little longer to fence off the posted areas to keep the goats out and the plants are protected. As such, the goats are now schedule to move to the site on Saturday and not Friday. Also, as stated above, large areas are going to be fenced off due to the number of plants that have been identified. This will result in a larger reliance on the use of hand crews to create the required fuelbreak on site. Ray will be working with representatives from Driftwood Properties LLC to accomplish this task. Finally, Ann Larson forwarded a call to me today from Meredith Osborne, Department of Fish and Game, who wanted to schedule a meeting on site to observe the work being done. I have asked Ann to schedule the meeting and I will meet with her on site. Again, I just wanted to provide an update so if you have any questions please feel free to give me a call.

jeff

Macey, Mike FD

From: Frank, Ken CM
Sent: Tuesday, November 06, 2007 2:51 PM
To: Christopher, Tom FD; Macey, Mike FD
Subject: RE: Modification to Emergency Sandbag Placement at Driftwood Estates

Tom and Mike, our position is very clear. First, the fire break in question preceeded the Coastal Act and is legal without a coastal development permit.

However, just as a backup, in case any portion was not done before the Coastal Act, there is a nuisance order by the Fire Chief under the Municipal Code which adopts the State fire code.

We will continue to maintain the fire break on a regular basis, maybe each year, maybe every other year, maybe every third year, depending upon the level of growth. We do not need a coastal permit for this ongoing maintenance and I don't believe we need an annual written directive from the Fire Chief as long as the city is willing to pay for the work. If we expect the private property owner to pay, then we need a formal declaration by the Fire Chief.

From: Christopher, Tom FD
Sent: Tuesday, November 06, 2007 1:57 PM
To: Macey, Mike FD; Frank, Ken CM
Subject: FW: Modification to Emergency Sandbag Placement at Driftwood Estates

FYI for the below email chain, see the highlighted red sentence...maybe we should meet to discuss the maintenance cycle for the fuel break and what might be the involvement of the Coastal Commission.

*Tom Christopher
Laguna Beach Fire Department
Fire Prevention
Office 949-497-0791
Fax 949-497-0784
tchristopher@lagunabeachcity.net*

From: Thienan Ly [mailto:tly@wetlandpermitting.com]
Sent: Thursday, November 01, 2007 10:13 AM
To: 'Andrew Willis'
Cc: Christopher, Tom FD
Subject: RE: Modification to Emergency Sandbag Placement at Driftwood Estates

Hi Andrew,

I took Martyn and Greg off the email chain and included Tom Christopher from the City. At this time, I do not have any direction from the City to continue maintaining the area or to conduct any additional work beyond what you've already seen/been advised. Additional future work to keep this zone routinely thinned is a discussion that I believe is ongoing between the City and Commission. My comment about maintaining a thinned environment was intended only to state the goal of the fire break, not to indicate that any ongoing maintenance is planned to occur. Sorry for the confusion.

Thanks,
Thienan

From: Andrew Willis [mailto:awillis@coastal.ca.gov]
Sent: Thursday, November 01, 2007 9:46 AM
To: tly@wetlandpermitting.com

Cc: Martyn Hoffmann; Greg Vail

Subject: RE: Modification to Emergency Sandbag Placement at Driftwood Estates

Hi Thienan, thanks for your thoughts on the cut veg in place, I'll pass that along to John Dixon. Not to drag this out any more than necessary, but the Commission is working with the City on the creation of this fuel break in response to the city manager's and fire department's specific declaration that a fire hazard existed on the property, "maintaining a thinned environment" could trigger further Commission review. Andrew

-----Original Message-----

From: Thienan Ly [mailto:tly@wetlandpermitting.com]

Sent: Wednesday, October 31, 2007 11:09 AM

To: Andrew Willis

Cc: 'Martyn Hoffmann'; 'Greg Vail'

Subject: RE: Modification to Emergency Sandbag Placement at Driftwood Estates

Thanks, Andrew. Comment noted on the emergency CDP issuance timeframe.

Regarding the thinning of vegetation, the City (fire department) is trying to establish a fire break where the chaparral occurs; therefore, maintaining a thinned environment is the goal. Although regrowth is not desired, the cut vegetation on the ground still provides some light penetration for regrowth to eventually occur. The taller woody vegetation was only limbed-up, so these trees and shrubs will still continue to grow and deposit seed. As you know, the understory in this area is already primarily bare. By leaving the cut vegetation on the ground, it helps reduce the potential for natural erosion.

If your biologist (Jonna?) still has questions, please have him/her contact me.

Thanks,
Thienan

From: Andrew Willis [mailto:awillis@coastal.ca.gov]

Sent: Wednesday, October 31, 2007 11:18 AM

To: Thienan Ly

Cc: Martyn Hoffmann; Greg Vail

Subject: RE: Modification to Emergency Sandbag Placement at Driftwood Estates

Thanks Thienan. And just a general note, emergency CDPs can be issued within 24 hours, but that's assuming staff agrees an emergency is imminent and the requirements in the regulations have been met.

Also, our biologist is still concerned about the effect that leaving cut vegetation in place in areas where dense chaparral was thinned could have on chaparral regrowth. Do you think there is some merit to that concern?

Thanks, Andrew

-----Original Message-----

From: Thienan Ly [mailto:tly@wetlandpermitting.com]

Sent: Tuesday, October 30, 2007 5:03 PM

To: Andrew Willis

Cc: Martyn Hoffmann; Greg Vail

Subject: Modification to Emergency Sandbag Placement at Driftwood Estates

Hi Andrew,

Per our site visit with you and Lisa Haage on October 12, 2007, please find attached a brief memo stating that The Athens Group will not conduct any emergency sandbag placement without an emergency CDP from the Commission.

Let me know if you have any questions.

Public Comment Letters
Dated 6/28 - 7/24

Thanks,

Thienan Ly
Regulatory Specialist
Glenn Lukos Associates
29 Orchard
Lake Forest, CA 92630
T: 949.837.0404 x34
F: 949.837.5834
<<0396-2g1.mem.pdf>>



November 19, 2007

Sara Wan, Commissioner
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105

Dear Commissioner Wan:

At last week's Coastal Commission hearing, you raised several excellent questions regarding a firebreak which is maintained by the City of Laguna Beach.

First you asked whether the emergency abatement order was only for one specific area. The answer is yes because most of the perimeter of the City has already been cleared of all brush this year. The only reason this particular segment on the South Laguna hillside had not already been cleared was that we were in discussions with your staff over the issue of the City's authority to conduct the fuel modification and the best way to reduce the fuel. Given the highly extraordinary weather conditions, I finally authorized the Fire Department to direct that the work be done on an emergency basis. In retrospect, I should have authorized the Fire Department to have the work done months ago, but we were trying to reach a consensus with the Commission staff.

Secondly you asked why there was a total clearance rather than a gradual thinning after a 50 feet clearance zone. Actually, for the firebreak around the perimeter of the City, we have a 150 to 200 foot clear zone. Some native shrubs and trees are allowed to remain in the zone, but all of the ground cover is cleared. Because of the sensitive habitat within this one area of our firebreak, we did not clear it for the entire 200 feet in some spots and we allowed additional plants to remain as recommended by the biologist.

You also questioned why the brush was left on the site. All of the abatement work was done under the direction of a biologist who was on site at all times during the removal. The biologist ensured that sensitive plants were protected. The biologist recommended that the debris be chipped into small pieces and left onsite as a layer of mulch to prevent erosion during the winter and to retard future growth. While the Fire Department preferred to haul off the brush, we acceded to the biologist's recommendation.

One of your enforcement staff was notified prior to the work being done and he was invited to visit the site, which he did, to observe both the clearing by hand crews and the grazing by the goats. In addition, because the State Department of Fish and Game had some concerns about the maintenance, we invited a representative of that department who also visited the site during the clearing. While I do not want to speak for representatives of other agencies, I believe that these individuals were reasonably satisfied with the way in which the City conducted the abatement.

Sincerely,



Kenneth Frank
City Manager

cc: Executive Director, California Coastal Commission
South Coast Deputy Director, California Coastal Commission
Fire Chief

MEMORANDUM

GLENN LUKOS ASSOCIATES

Regulatory Services



PROJECT NUMBER: 01850011FM10
TO: Ray Lardie
FROM: Paul Schwartz
DATE: December 20, 2007
SUBJECT: Plans to graze goats within Fuel Modification Zone 10

On November 29th 2007, an on-site meeting was held at the City of Laguna Beach Fuel Modification Zone 10 with Glenn Lukos Associates (GLA) representative Paul Schwartz, California Coastal Commission representative Andrew Willis, Athens Group representative Greg Vail, and Laguna Beach Fire Department (LBFD) representatives Ray Lardie and Tom Christopher. Per the request of Andrew Willis, it was agreed that fuel modification activities (i.e. the grazing and hand clearing of vegetation) would only be conducted within 200 feet from *existing structures*.

On December 19th 2007, GLA representative Paul Schwartz met onsite with LBFD representatives Ray Lardie and Tom Christopher, where LBFD expressed concerns regarding the previously agreed upon limits of fuel modification activities (200 feet from existing structures) due to plans to begin development of portions of the site in the near future (grading of pads has already occurred). In order to comply with Section 1103.2.4 of the 2001 California Fire Code, LBFD notified GLA that they plan to conduct fuel modification activities within 200 feet of the *property line*. This will allow for the fuel modification of lands within 200 feet of the future structures.

On December 19th, 2007 GLA left a voice message for Andrew Willis informing him of the new plans to conduct fuel modification activities within 200 feet of the existing property boundary, rather than the existing structures. At this time, no response has been given by Andrew Willis.

Currently, fuel modification has only occurred within 200 feet of the existing structures. Per the directive from the LBFD, GLA will coordinate the removal of additional vegetation to meet the requirements of the LBFD. This removal will take place in the form of goat grazing and should take place within the next two weeks.

Please let me know if you have any questions.

s:0185-11a.mem.doc

Christopher, Tom FD

From: Andrew Willis [awillis@coastal.ca.gov]
Sent: Thursday, January 24, 2008 4:13 PM
To: Christopher, Tom FD
Subject: RE: Zone 10

Hey Tom, it's staff opinion that the City's nuisance abatement order contemplated a fuel break around existing development only, as stated in the October 22 letter from Jeffrey LaTendresse to Martyn Hoffmann. The coastal development permit process for construction of a home on the undeveloped lots off Baracuda would be the proper forum to weigh environmental concerns and fuel modification needs. We haven't received notice of pending local action on this property, so it's apparently fairly early in the planning process. At the planning stage, the home could be sited and designed and adequate fuel modification plans adopted to avoid the need for a measure like a fuel break, which is potentially disruptive of the habitat of endangered species in Zone 10. Please let me know if you want to discuss this further with our staff and I'll see what I can arrange. Thanks, Andrew

-----Original Message-----

From: Christopher, Tom FD [mailto:tchristopher@lagunabeachcity.net]
Sent: Friday, January 18, 2008 1:27 PM
To: Andrew Willis
Cc: Macey, Mike FD
Subject: RE: Zone 10

Hi Andrew,

On our last conversation we talked about the area that was not grazed in our Zone 10 behind the two residential lots...you were going to get back to me regarding the grazing in that area...do you have anything to report back?, thanks Andrew and have a good weekend.

*Tom Christopher
Laguna Beach Fire Department
Fire Prevention
Office 949-497-0791
Fax 949-497-0784
tchristopher@lagunabeachcity.net*

From: Andrew Willis [mailto:awillis@coastal.ca.gov]
Sent: Monday, January 14, 2008 11:09 AM
To: Christopher, Tom FD
Subject: RE: Zone 10

Hey Tom, just an update, our Orange County supervisor, Karl Schwing, has been trading voice messages with Mark Denny to discuss putting the goats on County property. Andrew

-----Original Message-----

From: Christopher, Tom FD [mailto:tchristopher@lagunabeachcity.net]
Sent: Tuesday, January 08, 2008 11:51 AM
To: Andrew Willis
Subject: FW: Zone 10

Hi Andrew,

The contact info is Mark Denny, mark.denny@rdmd.ocgov.com. Phone is office 949-923-3743, cell 714-552-2726.

Tom Christopher

Lardie, Ray FD

From: Macey, Mike FD
Sent: Tuesday, July 29, 2008 2:16 PM
To: Christopher, Tom FD
Cc: Lardie, Ray FD
Subject: FW: Zone 11
Attachments: Zone 11 7.24.08.JPG

Tom:
Would you have Ray place those palm trees on the weed abatement list?
Thanks,
Mike

From: Christopher, Tom FD
Sent: Tuesday, July 29, 2008 1:54 PM
To: Macey, Mike FD
Cc: LaTendresse, Jeff FD; Head, Kris FD
Subject: Zone 11

Mike,

This is the grow back in Zone 11, I imagine Zone 10 is similar, just have not had time to check it...I talked to Greg Vail, they are OK with the clearing using the "imminent threat" again which as you can see it already is without winds...

*Tom Christopher
Laguna Beach Fire Department
Fire Prevention
505 Forest Ave.
Laguna Beach, CA 92651
Office - 949-497-0791
Fax - 949-497-0784
tchristopher@lagunabeachcity.net*

LaTendresse, Jeff FD

From: Macey, Mike FD
Sent: Wednesday, August 06, 2008 11:24 AM
To: Christopher, Tom FD
Cc: 'Greg Vail'; Frank, Ken CM; LaTendresse, Jeff FD; Head, Kris FD
Subject: Fuel Modification

Tom:

I spoke with Greg Vail today and provided an update on our status regarding fuel modification in Zones 10 and 11. In short, I affirmed the following:

1. The Fire Department has conducted a site survey and the general impression is that Zone 11 would benefit from fuel modification. The extent and nature of the mitigation has not been determined.
2. The Fire Department is researching what options, if any, are available to require the property owner to conduct fuel modification.
3. Once the Fire Department has confirmed the basis of enforcement the property owner/s of Zone 10 and Zone 11 will be notified.
4. You will be the contact person for the project, and over the next several weeks you will be working with City Staff on defining the regulations that influence fuel modification requirements in Zone 10 and Zone 11.

Thank you,
Mike Macey
Fire Chief

LaTendresse, Jeff FD

From: Christopher, Tom FD
Sent: Tuesday, August 19, 2008 10:47 AM
To: Macey, Mike FD
Cc: LaTendresse, Jeff FD; Head, Kris FD
Subject: RE: Attorney

Ok that is a good start, Kris would you like you sit in on this meeting? Mike also I would like the attorney's opinion on Dr Stricks situation and the interpretation of the PRC and GC.

*Tom Christopher
Laguna Beach Fire Department
Fire Prevention
505 Forest Ave.
Laguna Beach, CA 92651
Office - 949-497-0791
Fax - 949-497-0784
tchristopher@lagunabeachcity.net*

From: Macey, Mike FD
Sent: Tuesday, August 19, 2008 10:37 AM
To: Christopher, Tom FD
Cc: LaTendresse, Jeff FD; Head, Kris FD
Subject: Attorney

Tom:

Ken has given the approval to speak with Steve Kufman the attorney that specializes in permits (e.g., LCP and its relationship to fuel modification). Let Mr. Kufman know that Ken has provided the approval and to submit the invoice to the City. Please make sure you have a good idea of what it is we need clarified (i.e., in relation to Driftwood) before you call. Let me know what you learn and I will pass it on to Ken. Finally, could you forward the language you sent Bunting regarding the exceptions to the permit process?

Thanks,
Mike

October 15, 2008



Ruben D. Grijalva, Chief
CAL FIRE State Headquarters
PO Box 944246
Sacramento, CA 94244-2460

Dear Chief Grijalva:

Subject: Senate Bill 1595

The purpose of this letter is to request some clarification on the application of Senate Bill 1595. It is understood that this is early in the process and CAL FIRE will be providing a guidance document. However, it is hoped that some specific concerns can be addressed.

1. The City of Laguna Beach and other municipalities use goats for fuel management. It is noted that "fuel management" is defined as controlling fuels through the use of mechanical, chemical, biological, manual, or fire activities. However, the list does not address bovid or other grazing opportunities. The guidance document should clarify that grazing is an acceptable technique for fuel management.
2. As used in the Government Code, §51182, what is the definition of the term "average weather conditions"?
3. The new law defines defensible space as being *no greater than 100'*. What criteria was used in establishing the 100' ruling?
4. The City of Laguna Beach is under the influence of the California Coastal Commission, and creating new areas of defensible space involves their input. Are there any conditions where a property owner could obtain compliance with the law without the input of the California Coastal Commission?

Mitigating wildland urban interface issues is a daily objective in our community, and collectively we thank you for your global efforts in addressing interface concerns. It is hoped that your answers to the questions above will help us stay in the forefront of knowledge and understand how best to prepare our community to implement the new law.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Macey".

Mike Macey
Fire Chief

LAGUNA BEACH COASTLINE PILOT

Published Thursday, October 30, 2008 10:19 PM PDT

Some areas have not been grazed by the goats because of concerns expressed by members of the public and the California Coastal Commission, City Manager Ken Frank said. Last year, during the rampaging fires in Orange County, the city took emergency steps to permit hand crews to clear brush on privately owned property, formerly known as Driftwood Estates in South Laguna.

"The Coastal Commission didn't like it, but they didn't fight us," Frank said. "And the landowner is doing it again. Fortunately they have deep pockets."

Christopher, Tom FD

From: Sherilyn Sarb [ssarb@coastal.ca.gov]
Sent: Thursday, November 20, 2008 4:17 PM
To: Macey, Mike FD; Christopher, Tom FD
Cc: Andrew Willis; Aaron McLendon; Lisa Haage
Subject: RE: [Possible Spam] RE: voicemail - fire clearance at Athens site

Mike and Tom,

Thank you for getting back to me re: the anticipated fuel modification on the Driftwood Aliso Lots site. This email is back-up to the voice message I left on Tom's machine today. After talking with Mike yesterday, I discussed last year's plan with Andrew Willis our enforcement staff in the Long Beach office.

He indicated there is a follow-up plan dated 11/13/07 from Glen Lukos that shows where thinning took place and methodology used last year. That plan should be a good starting point to determine what additional work is necessary this year to meet your requirements, after reviewing the existing conditions in the field. He is able to meet on-site to discuss a potential plan prior to any work being done. Our goal is to minimize thinning or impact in the areas identified as sensitive and that the work not conflict with our efforts toward restoration of sensitive areas. We are interested in pursuing the concept of planting fire retardant natives as opposed to removal or thinning of vegetation if that can meet your goals of reducing fuel load. Please contact Andrew at 562-590-5071 to discuss the plan and a site meeting. Also, let me know if you have any questions or concerns regarding this approach and thank you for your cooperation.

Sherilyn Sarb
District Director
South Coast District, Orange County 562-590-5071
San Diego District 619-767-2370

-----Original Message-----

From: Macey, Mike FD [mailto:mmacey@lagunabeachcity.net]
Sent: Monday, November 17, 2008 11:08 AM
To: Sherilyn Sarb
Cc: Christopher, Tom FD
Subject: RE: [Possible Spam] RE: voicemail - fire clearance at Athens site

Sherilyn:

Our Fire Marshal, Tom Christopher is out of the office and due back tomorrow (11-18-2008). Upon his return he will call you and give you an update, or you can reach Tom at 949.497.0791.

Thank you,
Mike Macey
Laguna Beach Fire Department

From: Sherilyn Sarb [mailto:ssarb@coastal.ca.gov]
Sent: Friday, November 14, 2008 2:27 PM
To: Macey, Mike FD
Subject: RE: [Possible Spam] RE: voicemail - fire clearance at Athens site

Hi Mike,
I am leaving the office now, but will give you a call on Monday. If possible, pls let me know your availability for a phone conversation with you or your designee. Thanks, Sherilyn My San Diego number is 619-767-2370

-----Original Message-----

From: Sherilyn Sarb
Sent: Friday, November 14, 2008 11:19 AM
To: 'Macey, Mike FD'; Christopher, Tom FD

Pls Comment Letters
Dated 6/28 - 7/24

Exhibit 18 Page 81 of 83

Cc: Pietig, John CM

Subject: RE: [Possible Spam] RE: voicemail - fire clearance at Athens site

Hello everyone,

Mike and I had a conversation last month re: the potential for fuel modification at the Driftwood Aliso Lots site and, at that time, you had indicated you did not plan to do any fuel mod the remainder of this year and would reassess after the first of the year. We have just heard from the Athen's Group representative that they have talked to the City and they are planning to do fuel mod this year. Please confirm whether or not you have asked the Driftwood Aliso Lots property owner to conduct fuel modification at the site and if so, the scope of work and methodology. Please let me know the status or if you would like to have a meeting or a conference call to discuss. I am in the Long Beach office today 562-590-5071

-----Original Message-----

From: Macey, Mike FD [mailto:mmacey@lagunabeachcity.net]

Sent: Monday, August 11, 2008 1:34 PM

To: Christopher, Tom FD

Cc: Sherilyn Sarb; Pietig, John CM

Subject: [Possible Spam] RE: voicemail - fire clearance at Athens site

Importance: Low

Tom:

I had a brief conversation with Sherilyn and Karl, and both are interested in being notified of future fuel modification plans for Zone 10 and Zone 11. I told Sherilyn that we would notify her or Karl once we have determined the plan of action and scope of work. Additionally, I let them know that you are working on establishing the basis for requiring the fuel modification.

Thank you,
Mike

From: Sherilyn Sarb [mailto:ssarb@coastal.ca.gov]

Sent: Monday, August 11, 2008 1:00 PM

To: Macey, Mike FD

Cc: Karl Schwing

Subject: voicemail - fire clearance at Athens site

Hi Mike,

I just left a voicemail asking if we could talk this afternoon re: any clearance of vegetation required at the Driftwood Estates site in Laguna Beach. Karl Schwing of the Long Beach office would also like to join in the conversation. Pls let us know if you are available this afternoon. My only time I am not available is 2:30 -3:30. Pls call or email to let me know when you might be able to talk. 619-767-2370 Thank you

December 5, 2008



Greg Vail
Director of Forward Planning and Sustained Development
The Athens Group
31106 Coast Highway Suite 44
Laguna Beach, CA 92651

Dear Greg:

The City has received complaints and concerns from neighbors adjacent to the property owned by Driftwood Properties, LLC in South Laguna. Their concerns are related to securing adequate defensible space between their homes and the open space. The City's Fire Marshal, Tom Christopher, has reviewed the area and agrees that enhanced fire and community safety will be obtained through re-establishing the defensible space last established in November 2007. The areas are delineated on the attached maps and are known as Fuel Modification Zone 10 (Portofino) and Fuel Modification Zone 11 (Driftwood).

Section 304.1.2 of the 2007 California Fire Code states: "Weeds, grass, vines or other growth that is capable of being ignited and endangering property, shall be cut down and removed by the owner or occupant of the premises." Therefore, the Laguna Beach Fire Department is issuing this notice to abate the hazard in the above mentioned properties (i.e., Zone 10 and Zone 11). The City of Laguna Beach will retain and use the regulatory services of Glenn Lukos Associates to complete the needed fuel modification.

Fire Marshal, Tom Christopher, will be the City's liaison on this project and he is prepared to assist in working with your staff throughout the mitigation process. The consultants from Glenn Lukos Associates will use the mitigation practices agreed to as a result of the on-site meeting that was held on December 2, 2008, and attended by Tom Christopher, Andrew Willis, and yourself. The biological oversight should maximize the opportunities to protect sensitive plant species while meeting the City's fuel modification objectives.

Our Fire Marshal, Tom Christopher, will be contacting you to determine a mutually agreeable schedule for abating this hazard.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Macey".

Mike Macey
Fire Chief

Attachments

Cc: Ken Frank, City Manager
Tom Christopher, Fire Marshal



CITY OF NEWPORT BEACH

CITY ATTORNEY'S OFFICE

Aaron C. Harp, City Attorney

Th11c

July 9, 2012

Via Electronic and Overnight Mail

Mary K. Shallenberger, Chair
Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 91405

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

Dear Chair Shallenberger and Members of the Commission:

The City of Newport Beach ("City") submits this letter specifically to address legal issues raised by the Staff Report on the City's proposed Sunset Ridge Park Project ("Project"). This letter is in addition to materials from Schmitz & Associates, Inc., which explain why the Project is fully consistent with the Coastal Act.

As the Coastal Commission ("Commission") is aware, the Project is the product of years of City and community planning efforts, and is designed to serve the community's critical need for active recreational facilities in the coastal zone while providing significant coastal access and substantial habitat enhancement. The recreational component of the City's Project includes a playground, picnic areas, a youth baseball field, two youth soccer fields, passive recreational amenities, pedestrian paths, an overlook area with a shade structure and seating, a one-story restroom and storage facility, landscaping and planting.

HISTORY OF THE SUNSET RIDGE PROPERTY

The City began investing and expending resources to plan, design, and obtain permits for the Sunset Ridge Park after Senate Bill 124 was passed in 2001 ("SB 124") (Reg. Session 2001). SB 124 was signed into law by Governor Davis thanks, in part, to the support of the Commission's legislative unit. In SB 124, the Legislature required that the Sunset Ridge Park property, which was then commonly referred to as the CalTrans West property, be transferred to the California Parks and Recreation

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Department upon the payment of \$1.3 million dollars by the City. SB 124 further contemplated that the City and the California Parks and Recreation Department would enter into an operating agreement whereby the City would construct, operate, and maintain an active park and its recreation improvements on the CalTrans West property.¹

During negotiations over the operating agreement, however, and likely due to economic conditions associated with the State budget, the City began conferring with CalTrans, the California Transportation Commission, the California Department of Parks and Recreation, Governor Schwarzenegger's administration, and the Department of General Services to have the City purchase the property, rather than enter into an operating agreement, so that the much-needed recreational facilities could be constructed and brought to fruition. All of the City's effort culminated in a 2006 Purchase Agreement whereby the State of California received over \$5.2 million dollars from the City and the City in turn received a Grant Deed from the State vesting title to the CalTrans West property with the City. Under the contract between the State and the City, the property acquisition was made subject to the following conditions: (1) the use of the property was restricted to active recreational land uses;² (2) there would be no right of the City to access West Coast Highway from the property; (3) the establishment of a 197,920 square foot scenic view and open space easement over a portion of the property in which the placement of pavement and permanent structures were prohibited; and (4) a 35'-wide storm drain easement and a 30'-wide sewer easement were conveyed by the State of California to the Newport Crest Homeowners Association in 1991.

After paying the State \$5.2 million, the City turned its attention and resources to planning, designing and entitling the Sunset Ridge Park to accommodate the above noted restrictions.

¹ It is worth noting that the supporters of SB 124 included the Orange County Coastkeeper, Orange County Coastal Coalition, California Park and Recreation Society, Endangered Habitats League, Surfrider Foundation, and the Newport Crest Home Owners Association.

² The Staff Report for Agenda Item 16a for the Commission's November 2011 meeting states that the "Open Space – Active" zoning designation was eliminated from the City's Zoning Code. However, this is of no import to effectiveness of the deed restriction, as the language of the deed sets forth a restriction which cannot be modified or amended by action of the City vis-à-vis a Zoning Ordinance amendment. If Commission Staff is suggesting that the State requirement for active recreation facilities has been eliminated, such suggestion is both legally unsupportable and factually incorrect.

HISTORY OF THE CITY'S COASTAL DEVELOPMENT APPLICATION

Twelve years after the enactment of SB 124, the City is now in the final stage of permitting the construction of Sunset Ridge Park by requesting that the Commission issue a Coastal Development Permit ("CDP") authorizing the recreational facilities. Given the long history of this Project, the Purchase Agreement and extraordinary payment made by the City to acquire the property, the Legislative intent for active recreational land uses on the property, and the amount of time and resources expended to date by the City and the community, the Commission Staff's recommendation to deny Application No. 5-11-302 is disappointing. In fact, it is disingenuous, since it appears to now be based on a Staff preference that the CalTrans West property be developed exclusively for passive park purposes in direct contravention of the legislative intent to provide active recreational facilities in the Coastal zone.

In the initial Staff Report prepared for the Commission's November 2011 meeting, Staff suggested two alternatives: (1) a passive park; or (2) an active park with alternative access. In an effort to address the Commission's concern, the City removed the planned access from West Coast Highway and submitted new Application No. 5-11-302. Surprisingly, Commission Staff now suggests that only a passive park should be approved, ignoring its earlier alternative of an active park with alternative access (i.e., the Project now proposed).

Specifically, the Staff Report now identifies four alternatives: (1) passive park; (2) reduced number of sports fields as suggested by the Banning Ranch Conservancy ("BRC"); (3) alternative site north of the Newport Crest Condominium complex; and, (4) "No Project." Of these suggestions, however, only a passive park is actually feasible. First, relocating the park to north of the Newport Crest Condominiums would require the City to acquire property from Newport Banning Ranch. It defies reason to now suggest that the City purchase other property when it has already expended millions of dollars in land acquisition and development costs and waited twelve years to build the park facilities on the CalTrans West property. Also, the "No Project" alternative is inconsistent with the legislative intent of SB 124, the Purchase Agreement and the Grant Deed. Finally, the BRC has presented Commission staff with two alternative designs that involve the relocation of ball fields away from the disturbed vegetation area. These include:

- Laying the soccer fields out length-wise along the northern portion of the land, right below the Newport Crest homeowners' decks and porches; and
- Not constructing any baseball or softball fields at Sunset Ridge Park; instead putting those facilities off until a decision is reached regarding the Newport Banning Ranch's final land use.

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Please forgive our gentle cynicism about the BRC's suggestions. These suggestions come late in the planning process, with little or no communication with the City and no evidence that BRC has have consulted with park planners qualified to make these suggested modifications. Also, the BRC has not provided any environmental analysis to support these suggestions – implying these are not serious proposals.

More specifically, as to the first suggestion, putting fields lengthwise (and adding the parents, siblings, referees and kids that come with each field) is a recipe for angry resident opposition. The BRC's plan maximizes the sound and visual impacts to the backyards, porches and decks of dozens of homes. Many people who reside in this same development are the core supporters of BRC's opposition to an active park at Sunset Ridge. It is not serious to assume these same residents will not balk (loudly) at this field layout.

As to the second suggestion, we would offer one observation. When the City proposed an active park in 2001, families were excited about the possibility of an active park at Sunset Ridge. The City told the boys and girls (ages 10-13) who might play at Sunset Ridge, "There will be ball fields – finally within walking distance of your home." Eleven years later, some of those same children are now in their mid-twenties and their baseball and soccer days are long gone. BRC is asking us to tell the next generation of youth – also now 10-13 years old – to wait again. How long? 5 years? 10 years? It doesn't matter. It means that hundreds more kids will grow up playing somewhere else; on a cramped field competing with other teams for limited recreational opportunities. Additionally, it is also irresponsible to suggest that the City should expend in excess of \$20 million in taxpayer funds to develop two soccer fields, and not build the other recreational opportunities, such as a baseball and softball field.

In sum, the City removed the planned access from West Coast Highway, which was the expressed concern of the Commission. Yet, Commission Staff continues to promote the notion that only a passive park should be approved by the Commission. Staff now bases its recommendation for denial on the acknowledged long standing practice of CalTrans and the City to mow the property for fire safety reasons. As we explain below, we believe that the Commission should approve the City's CDP application as it is consistent with the Coastal Act given the particular history and circumstance of the CalTrans West property.

COMMISSION STAFF'S RECOMMENDATION FOR DENIAL BASED ON MOWING ACTIVITIES

Commission staff has recommended denial of the Project based on an argument that the Project will eliminate a 3.3-acre patch of disturbed vegetation located on the southern half of the property.³ The Commission's staff biologist has opined that if the mowing is legal, the disturbed vegetation would not be ESHA; however, if the mowing is not legal, the area would be ESHA. (Memo, Jonna D. Engel to John Del Arroz dated September 22, 2011, p. 7.)⁴ In essence, Staff's position is that because Encelia scrub is a type of coastal sage scrub community that could serve as habitat for the federally threatened California gnatcatcher (but does not now), the City's application should be denied. The City submits that the record demonstrates that both the Project and the actions of both CalTrans and City to date are legal and consistent with the Coastal Act.

THE CITY'S ONGOING MAINTENANCE ACTIVITIES PRE-DATE THE COASTAL ACT AND, IN ANY EVENT, THE CITY HAS A VESTED RIGHT TO CONTINUE THAT ONGOING PRE-COASTAL ACT USE

The Staff Report acknowledges the site activities of the City as well as CalTrans pre-date the Coastal Act. Therefore, we contend that they are not subject to the permit requirements of the Act. The City has already provided the Commission with ample photographic documentation of the ongoing annual historic mowing and grading activities conducted by CalTrans since as far back as the 1960s, and continued by the City subsequent to its purchase of the property from the State of California. The photographic evidence documents that this site is not and has not been in its natural state for many years pre-dating the Coastal Act. Indeed, the property was graded by CalTrans to one day become an off-ramp for the 55 Freeway.

Further, the Grant Deed conveying the property to the City provided that the City was responsible for continuing the ongoing maintenance performed by CalTrans. The City has met this obligation annually, and in some cases more often, by periodic mowing. The City's continued mowing and related maintenance has occurred at least once a year, typically twice a year, starting in the spring of 2007 immediately after

³ In 2009, the City circulated and certified EIR No. 2009051036 which concluded that the impacted area consisted of disturbed vegetation, not ESHA. During the EIR review process, the City did not receive any comments from the Commission relating to the adequacy of EIR No. 2009051036 prior to certification. As a responsible agency, the Commission was required to advise the City, and pursue a court action, if necessary, if it believed that this ESHA determination made as part of the certification of the EIR, was inadequate. (See, Public Resources Code §§ 21083, 21080.4, 21002.1(d); 14 CCR §§ 15050, 15096.) This responsibility could not have been overlooked as concurrent with the receipt of the Sunset Ridge Park EIR in 2009, the Commission Staff forwarded comments on the Draft EIR for Marina Park.

⁴ As more fully set forth on page 9, the opinions of Dr. Engel as to the disturbed vegetation, its growth cycle, and clustered growth pattern fully support the determination of the City's Fire Department that the property must be regularly mowed for fire safety purposes.

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CalTrans transferred the property to the City. Thus, as far back as 1966, this particular property, in its entirety, has been continually mowed on at least an annual basis by both the State of California and the City.

The Staff Report's conclusion that the ongoing mowing activities constitute unpermitted development is based on Staff's opinion that the mowed vegetation could be utilized by the California gnatcatcher. Importantly, however, this is not based on any actual use by the gnatcatcher. Rather, staff reasons the disturbed vegetation is ESHA because "it is reasonable to infer" that the gnatcatcher utilizes the disturbed vegetation due to surveys that have identified gnatcatchers on adjacent habitat, and photographic evidence which Staff asserts shows that the vegetation meets the species habitat requirements. (Staff Report, p.19) Staff's conclusion that the disturbed vegetation is ESHA is based on its opinion that the disturbed vegetation "serves as habitat for a federally listed species and plays a special role in the ecosystem which could easily be degraded by human activity" (Staff Report, p. 26) – an assertion which, given the present and past state of the property, is simply unsupported by any facts. The disturbed vegetation has not supported the gnatcatcher and it has been continually mowed and maintained for fire safety reasons.

Based on staff's unsupported premise, the Staff Report deems the mowing unpermitted development requiring a permit unless the City has a vested right to mow the property. This misses the mark. This is not a case which involves a vested right, but rather a valid ongoing use that pre-dates the Coastal Act. Even assuming that this was not an ongoing use, however, the City plainly has a vested right to continue that use.

Specifically, it bears emphasis that this is not the situation where structures were commenced and partially constructed prior to the effective date of either the 1972 or 1976 Coastal Acts. (Former Pub. Res. Code, § 27404; Pub. Res. Code, § 30608.) In that instance, the question is whether the landowner has performed substantial work and incurred substantial liabilities such that a vested right exists to permit the development to be completed without the need to apply for a permit. (*Avco Community Developers Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785.) Instead, the property at issue is vacant land that has been mowed annually since as far back as 1966; an ongoing use established before the 1972 or 1976 Coastal Act.

The Attorney General addressed a similar vested rights issue under the 1972 Coastal Act. The Attorney General opined that no coastal permit was required for the conduct of continued operations, while a permit would be required for any new facilities or intensification of use. (56 Ops.Cal.Atty.Gen. 85 (1973) at 91-92.) Further, the Attorney General concluded that the Coastal Act permit requirement did not "in any sense prohibit the continued present management or use of existing structures or facilities" and was "not designed to stop present use or to allow present use to deteriorate." (*Monterey Sand Company, Inc. v. California Coastal Commission* (1987)

191 Cal.App.3d 169, 175 fn 3.) The Court of Appeal in *Monterey Sand* has referred to this as the "continuing use of a past allocation of coastal resources" theory. (*Id.*) Thus, no permit is required for the continuation of the ongoing mowing activities on the Sunset Ridge Park property. This is no different than a house completed prior to the effective date of the Coastal Act, or a commercial use established before the Act, or continued operations in an oil well field which does not include new facilities or an intensification of use. In none of these examples is a permit required or an effort by the property owner to go through the motions of seeking a vested rights determination from the Commission. Staff's apparent suggestion to the contrary would have sweeping implications for CalTrans, counties, cities, and special districts that, since well before the Coastal Act, have routinely performed exactly the same kind of maintenance as CalTrans and the City have consistently done here.

Even assuming this was properly cast as a vested rights issue, the requisite thresholds identified by Commission staff have been met. First, viewing this application as functionally a request for a vested rights determination, CalTrans' pre-Coastal Act mowing activities did not require a permit. Second, since 1966, there has been substantial work performed and substantial liabilities incurred in good faith reliance on CalTrans' approval of this activity. This includes but is not limited to: CalTrans' purchase of the property in 1966 for the never-built 55 Freeway off-ramp; major grading of the property undertaken thereafter by CalTrans; the removal of thousands of cubic yards of dirt from the property; regular annual maintenance of the property through mowing; and the City's continued mowing of the property. Finally, it bears emphasis again that the continued mowing of the City's property does not involve a development partially constructed or undertaken at the time either the 1972 or 1976 Coastal Act took effect. It concerns development ongoing at the time both Acts became effective and has been regularly performed since. Hence, even if this was a vested rights issue, the City plainly has a vested right to continue this use.

**THE CITY'S ON-GOING MAINTENANCE ACTIVITIES ARE LEGAL BECAUSE
THEY CONSTITUTE NUISANCE ABATEMENT WHICH IS NOT SUBJECT TO
COASTAL DEVELOPMENT PERMIT REQUIREMENT**

Mowing activities are also exempt from the permit requirements of the Coastal Act under the abatement exemption for vegetation/brush clearance in the coastal zone determined necessary by the local fire authority to abate a nuisance. This is not a new issue. The Commission has previously acknowledged that because the failure to comply with the directives to provide a defensible space results in a nuisance, a coastal

development permit is not required. This is based on Coastal Act Section 30005, which expressly provides:

"No provision of this division [the Coastal Act] is a limitation on any of the following: . . . (b) On the power of any city or county or city and county to declare, prohibit, and abate nuisances."

This has been the position of the Commission throughout the County and State. For instance, in March 2009, Commission staff wrote the Orange County Fire Authority, responding to an inquiry regarding vegetation/brush clearance related activities in the City of San Clemente's coastal canyons - all seven of which were deemed ESHA in the City's certified LUP. Staff advised:

"The course of action that OCFA requires of San Clemente coastal canyon property owners (i.e., provide a 'defensible space' on the canyonward portion of the property that meets the minimum fire safety standards) is consistent with the course of action that is statutorily mandated under Government Code Section 51182 and Public Resources Code 4291. Moreover, failure to comply with the statutory mandate in Government Code § 51182 'may be considered a nuisance pursuant to Section 38773' Cal. Government Code § 51187. Thus, the failure to comply is, in effect, declared a nuisance by the statutes. Because the Coastal Act expressly states that it does not create any limitation on 'the power of any city or county or city and county to declare, prohibit, and abate nuisances,' Cal. Public Resources Code § 30005(b), the recommendations in your notices to San Clemente canyon property owners are beyond the Commission's jurisdiction in this case." (See, Attachment No. 1, Letter from Liliana Roman, Coastal Program Analyst, CCC, to Bryan Healey, Assistant Fire Marshall OCFA, March 3, 2009 (emphasis added).)

Pursuant to Newport Beach Municipal Code (hereinafter "NBMC") Section 2.12.050, the City's Fire Department is mandated to identify and prevent hazards to life, health, property and the environment. The City's Fire Code is codified within Chapter 9.04 of the NBMC. The intent of Chapter 9.04 is to coordinate its requirements along with the International Fire Code ("IFC"), 2009 Edition, and the California Fire Code ("CFC"), 2010 Edition.⁵ As a result, the City's Fire Code incorporates by reference all of

⁵ During the hearing in November 2011 of this matter, it was suggested that the 1991 Edition of the IFC provided guidance or restrictions on the City's mowing activities. Specifically, Section 11.302(d) of the 1991 IFC reads: "Combustible Vegetation. Cut or uncut weeds, grass, vines and other vegetation shall be removed when determined by the chief to be a fire hazard. When the chief determines that the total removal of growth is impractical due to its size or environmental factors, approved fuel breaks shall be established." Thus, it was suggested that the Fire Official's determination to require more than 100 feet of brush clearance was subject to an analysis of environmental factors. However, the 1991 IFC cannot provide guidance as it is not the law in California. Rather, the 2009 Uniform Fire Code is applicable to the City and the State and that is relied upon in this analysis.

the provisions of the CFC and the 2009 IFC unless the City adopts specific amendments thereto.

Pertinent to the mowing of Sunset Ridge Park are the local amendments to Chapter 49 that have been adopted by the City, and which are set forth in NBMC Section 9.04.120. The City's local ordinance included Chapter 49 of the CFC and, in particular, Section 4903.2, which is a requirement for the clearance of shrubs and brushes located within 100 feet of any structures. The NBMC also includes Section 4903 of Chapter 49, which provides that the Fire Chief may require more than the 100 feet when the Fire Chief determines that conditions exist, which necessitate greater fire protection measures.

This is the case as to the Sunset Ridge Park property, and it is why the entire property was mowed on a regular basis by CalTrans and it is why the City has continued to do so. Specifically, the Fire Official has determined that the site specific conditions of the property warrant removal of more than 100 feet (from Newport Crest) of vegetation. The Fire Official's determination is based on the known accumulation of light flashy fuel that dries quickly during the summer months; the bowl shape of the property; the 30 foot embankments limiting emergency access; the history of fire and transient use; and, prevailing winds. (See, Attachment No. 2, Correspondence from City's Fire Department dated January 31, 2012 and June 8, 2012.) Specifically, the Fire Division Chief of the City's Fire Prevention Unit has advised that the light flashy fuels in this area could cause the structures in the adjacent condominium complex to ignite with either radiant or direct flame contact and the flowing embers could ignite other structures a few blocks in the development when the firebrands contact roofs, attic vents, decks or other combustible fuels in the fire's path. As a result, the City has eliminated this life safety and property hazard through weed abatement.

Notably, the Fire Chief's directives are fully supported by the Commission's biologist in that she acknowledges that the Encelia scrub is a fast growing shrub and that the disturbed vegetation would reach heights of two to three feet over one growing season. (Memo, Jonna D. Engel to John Del Arroz dated September 22, 2011, p. 7). Dr. Engel further states that but for the City's mowing, the disturbed vegetation would be closely spaced and include highly flammable and undesirable plant species, such as black mustard and thistle. Dr. Engel's description of the disturbed vegetation perfectly describes the target vegetation of both the local and State fire hazard reduction efforts. (See, Attachment No. 3, Vegetation Management Technical Design Guidelines, Undesirable Plant Species (Target Species), Orange County Fire Authority, January 1, 2011.) For instance, the California Department of Forestry and Fire Protection (CalFire) has concluded the following:

"If enough heat is present almost any plant will burn. The objective of fire resistive landscaping is to reduce the heat available and reduce the change of ignition. Fire resistive

landscaping combines natives or ornamental plants with proper placement and proper maintenance. The key is separating plants vertically and horizontally to prevent fire spread and extension." (See, Cal. Dept. of Forestry and Fire Protection, Structural Fire Prevention Field Guide for Mitigation of Wildland Fires, (April 2000) p. 55.)

The mowing activity by the City here has been for the sole purpose of conducting necessary weed abatement on a parcel that is difficult to access, adjacent to residences and without any irrigation system. As to CalTrans, this is and always has been an essential function in its maintenance of the State highway system and its adjacent properties, both within and outside the coastal zone. As to the City -- as those Commissioners who represent cities and counties well know, weed abatement is an essential municipal function, especially for unimproved properties with ruderal vegetation immediately adjacent to existing residential development, as here. This need is driven by safety concerns, such as minimizing fire potential by reducing vegetative biomass. Moreover, the necessity here for regular and ongoing weed abatement cannot be overstated. A vegetative fire actually occurred on the property in 1988 and spread to the adjacent condominiums causing significant damage to structures. (See, Attachment No. 4, Orange County Register article, July 11, 1988.)

As a result, the property has been subject to the City's weed abatement schedule for many years. Numerous complaints are received every summer advising the City of the vegetation growth, requesting mowing, and putting the City on notice of a perceived dangerous condition. (See, Attachment No. 5, Complaint Reports and related correspondence.) Given this notice, the City has continually maintained the property in an effort to help avoid risk to the health and safety of the City residents. Under Section 30005, so long as the scope of the City's activity is narrow and carefully tailored to address only the specific weed abatement nuisance on this property, that necessary municipal activity may continue without the need to obtain a CDP. (See, *Citizens for a Better Eureka v. California Coastal Com.* (2011) 196 Cal.App.4th 1577.)

That has been the case here, where the City's Fire Official has determined that the site specific conditions -- the known accumulation of light flashy fuel that dries quickly during the summer months; the bowl shape of the property; the 30 foot embankments limiting emergency access; and significant prevailing winds which blow inland from the ocean -- warrant removal of the vegetation on the property.

THE STAFF'S RECOMMENDATION WOULD WORK A "TAKING" AND A BREACH OF THE PURCHASE AGREEMENT BETWEEN THE STATE AND THE CITY

Finally, in recommending that the Sunset Ridge Park property be relegated to "passive park" and basically open space, the Staff Report would have the unfortunate effect of working a regulatory taking of the City's property. Under the circumstances,

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the Commission's decision would deny the City all reasonable use of its property and lack the "essential nexus" and "rough proportionality" required, in violation of *Nollan v. California Coastal Commission* (1987) 483 U.S. 825, and *Dolan v. City of Tigard* (1994) 512 U.S. 374.

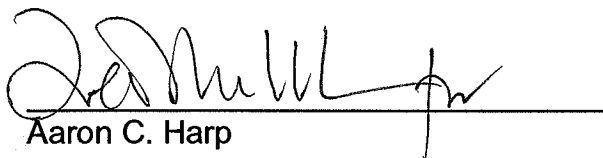
Further, as explained above, under the Purchase Agreement negotiated between the State of California and the City, the City acquired the property for active recreational purposes, consistent with the intent of the Legislature, and paid \$5.2 million of its precious taxpayer dollars for the right to undertake precisely that improvement of the property. If the Commission were to accept Staff's recommendation, it would unnecessarily place the State in breach of its contractual obligation. Having now modified the Project to respond to the concerns expressed by certain Commissioners last November, the City respectfully submits that the better, more prudent and fair course is for the Commission to approve the Project so that the significant public access, public recreation and habitat benefits resulting from the Sunset Ridge Park Project can now be realized.

Sunset Ridge Park is a wonderful and well-planned dream right now. The people in cities like Newport Beach – as lucky as we are to live, work, and play by the ocean – still need active parks, ball fields and soccer fields.

It was the people of Newport Beach who – in the 1970s when Ronald Reagan was Governor – looked at this same parcel and said it's too valuable to be cemented over for the 55 Freeway. It was the people of Newport Beach who – in the 1990s when Pete Wilson was Governor – fought to keep CalTrans from selling the property to the highest bidder, one who would put dozens of multi-family and single family homes all over the land, blocking and making private the beautiful views of Sunset Ridge. It was the people of Newport Beach who – in 2001 when Gray Davis was Governor – worked hard to wrest the land away from CalTrans using the California Constitution's special vision for coastal properties. Now, it is also the people of Newport Beach who are simply asking the Commission to allow us to finish the job by building a much-needed and long-awaited active community park on a site where a freeway or homes would have been, but for the determination of the people of Newport Beach

In conclusion, we beseech you to let us build the park – a simple park.

CITY ATTORNEY'S OFFICE



Aaron C. Harp

City Attorney
LM:emg

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cc: Dr. Charles Lester, Director
Sherilyn Sarb, Deputy Director
John Del Arroz, Coastal Program Analyst
Mayor and City Council
Dave Kiff, City Manager
Dana Smith, Assistant City Manager

[A10-00630

ATTACHMENT 1

STATE OF CALIFORNIA - NATURAL RESOURCES AGENCY

CALIFORNIA COASTAL COMMISSION

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

ARNOLD SCHWARZENEGGER, Governor



March 3, 2009

Bryan Healey, Assistant Fire Marshall OCFA
1 Fire Authority Road, Building A
Irvine, CA 92602

Dear Mr. Healey,

This letter is in response to your inquiry regarding the requirement for homeowners to obtain a coastal development permit (CDP) from the California Coastal Commission prior to vegetation/brush clearance and related activities in the City of San Clemente coastal canyons. The City has identified all seven of its coastal canyons as environmentally sensitive habitat in its certified Land Use Plan.

Pursuant to Section 30106 of the Coastal Act (Cal. Public Resources Code § 30106), except in certain situations relating to agriculture, kelp harvesting, and timber operations, "removal or harvesting of major vegetation" constitutes "development" for purposes of the Coastal Act, and thus requires a CDP unless exempt. However, a CDP is not required in the instance that OCFA finds that vegetation clearance is necessary to abate a nuisance.

The course of action that OCFA requires of San Clemente coastal canyon property owners (i.e., provide a "defensible space" on the canyonward portion of the property that meets the minimum fire safety standards) is consistent with the course of action that is statutorily mandated under Government Code Section 51182 and Public Resources Code 4291.¹ Moreover, failure to comply with the statutory mandate in Government Code § 51182 "may be considered a nuisance pursuant to Section 38773" Cal. Government Code § 51187. Thus, the failure to comply is, in effect, declared a nuisance by the statutes. Because the Coastal Act expressly states that it does not create any limitation on "the power of any city or county or city and county to declare, prohibit, and abate nuisances," Cal. Public Resources Code § 30005(b), the recommendations in your notices to San Clemente canyon property owners are beyond the Coastal Commission's jurisdiction in this case.

To ensure proper protection of the coastal canyon resources, homeowners should be encouraged to trim, prune, remove dead/dry plant litter and overall maintain vegetation on canyon slopes to avoid removal of major vegetation.

Sincerely,

Lillana Roman
Coastal Program Analyst

¹ Although we have not verified that the requirements are identical, they are clearly substantially the same.

ATTACHMENT 2



NEWPORT BEACH FIRE DEPARTMENT

P.O. Box 1768, 3300 NEWPORT BLVD., NEWPORT BEACH, CA 92658-8915

January 31, 2012

Owner

City of Newport Beach

3300 Newport Blvd

Newport Beach, CA 92663

Re: Property located at the NW corner of W. Coast Hwy and Superior Avenue

APN 424-041-10, 424-041-08

Dear Owner:

According to California Fire Code Section 305.5, "Ignition Sources" you are required to clear your premises of all weeds, grass, vines and other growth that is capable of being ignited and endangering property. This regulation is separate and distinct from the Hazard Reduction and Fuel Modification regulations enforced City wide by the designation of Special Fire Protection Areas in that Section 305.5 focus is on weed abatement as a general precaution against fires and not wildland fuels.

In accordance with this regulation, the Fire Department has identified this property as having a flammable vegetation hazard and has consistently included this property within the City's weed abatement program administered by the Fire Department. Such properties are required to be abated at least annually to protect nearby structures. In some extreme cases or when the amount of rainfall during the year has caused a growth increase of weeds and dry, light, and flashy fuel, weed abatement may be required to be removed bi-annually.

The above-referenced property consists of an undeveloped 13.6 acre parcel located on the north/west corner of West Coast Highway and Superior Avenue and is identified as having a flammable vegetation hazard. Historically, the flammable vegetation hazard on this parcel has been cleared annually since the 1970's and in some years even more frequently. This parcel is known to have an accumulation of light flashy fuel that dries quickly during the summer months.

It is the Fire Department's opinion that this fuel poses a serious threat to the Newport Crest Condominiums located directly to the north and abutting the parcel. . This bowl shaped open land is surrounded by 30 foot embankments off of West Coast Highway and access for emergency responders is limited to a gated maintenance road. Prevailing west winds would quickly send a fire originating from

this parcel towards the wood sided condominiums and unprotected open balconies causing a life safety hazard. As a result of these enumerated conditions, and pursuant to the authority of California Fire Code Section 4903, the Fire Department has determined that conditions exist, which necessitate greater fire protection measures. Specifically, these specified conditions require abatement of the entire undeveloped parcel because fire brands or embers created by unmaintained vegetation could ignite multiple homes prior to the Fire Department's arrival and limit its ability to attack the fire.

As owner of this property, please continue to maintain the property such that it is abated of weeds and flammable vegetation at least once a year to remove the threat of ignition to the adjacent structures.

A handwritten signature in black ink, appearing to read 'Ron Gamble', with a stylized, cursive script.

Ron Gamble
Newport Beach Fire Marshal



SCOTT L. POSTER
FIRE CHIEF

NEWPORT BEACH FIRE DEPARTMENT

P.O. BOX 1768, 3300 NEWPORT BLVD., NEWPORT BEACH, CA 92658-8915
PHONE: (949) 644-3104 FAX: (949) 644-3120 WEB: WWW.NBFD.NET

File: C-3449

June 8, 2012

Notice of Nuisance

Parcel Number: 424 041 10
Address: 4850 W Coast Hwy (Sunset Ridge Park property)
Newport Beach, CA

Dear Property Owner:

This notice is sent to inform you of the start of the City of Newport Beach 2012 Weed and Nuisance Abatement Program.

Based on the results of a recent weed and nuisance inspection conducted by the Newport Beach Fire Department, the referenced property is not in compliance with the City's guidelines as set forth in Newport Beach Municipal Code Chapter 10.48. Therefore, the property will need to be cleaned of all dry grass, stubble, brush, garden refuse, litter, or other flammable material that constitutes a fire hazard or that will when dry.

The field inspector provided the following narrative describing the nature and extent of the violation noted: Remove light, flashy fuels (weeds).

This notice of non-compliance requires you to abate the fire hazard. If the hazard is not abated, the City will take further action that can include:

- 1) The City, or its contractor, may enter upon the parcel of land and remove or otherwise eliminate or abate the hazard,
- 2) That upon completion of such work the cost thereof, including Nuisance Abatement Services, will be billed to the property owner and can become a special assessment against that parcel, and
- 3) That upon City Council confirmation of the assessment and recordation of that order, a lien may be attached to the parcel to be collected on the next regular property tax bill levied against the parcel.

A second weed and nuisance inspection will be conducted on or after July 9, 2012. If as a result of the second inspection it is determined that the property is still not in compliance with the guidelines, the property will be subject to cleaning by the City's contractor. Actual cleaning by the City's contractor will start on or after August 13, 2012.

June 8, 2012
Notice of Nuisance
Page 2

All property owners may appeal the decision requiring the abatement of the nuisance by sending a written appeal to the Fire Chief requesting a hearing with the City Manager within ten (10) days of this notice.

Thank you for your attention to this very important matter. If you have any questions or require further assistance, I can be reached at (949) 644-3108 or smichael@nbfed.net.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Michael", with a large, stylized loop at the end.

Steve Michael
Fire Inspector

ATTACHMENT 3

ORANGE COUNTY FIRE AUTHORITY

Planning & Development Services Section

1 Fire Authority Road, Building A, Irvine, CA 92602 714-573-6100 www.ocfa.org

Vegetation Management Technical Design Guideline



Approved and Authorized by

Guideline C-05

Laura Blaul
Fire Marshal / Assistant Chief

Date: January 1, 2011

Serving the Cities of: Aliso Viejo • Buena Park • Cypress • Dana Point • Irvine • Laguna Hills • Laguna Niguel • Laguna Woods • Lake Forest • La Palma • Los Alamitos • Mission Viejo • Placentia • Rancho Santa Margarita • San Clemente • San Juan Capistrano • Santa Ana • Seal Beach • Stanton • Tustin • Villa Park • Westminster • Yorba Linda • and Unincorporated Areas of Orange County

Attachment 7

UNDESIRABLE PLANT SPECIES (Target Species)

Certain plants are considered to be undesirable in the landscape due to characteristics that make them highly flammable. These characteristics can be either physical or chemical. Physical properties that would contribute to high flammability include large amounts of dead material retained within the plant, rough or peeling bark, and the production of copious amounts of litter. Chemical properties include the presence of volatile substances such as oils, resins, wax, and pitch. Certain native plants are notorious for containing these volatile substances.

Plants with these characteristics shall not be planted in any of the fuel modification zones. Should these species already exist within these areas, they shall be removed because of the potential threat they pose to any structures. They are referred to as target species since their complete removal is a critical part of hazard reduction. These fire-prone plant species include (but not limited to):

FIRE PRONE PLANT SPECIES (MANDATORY REMOVAL)

<u>Botanical Name</u>	<u>Common Name</u>
Cynara Cardunculus	Artichoke Thistle
Ricinus Communis	Castor Bean Plant
Cirsium Vulgare	Wild Artichoke
Brassica Nigra	Black Mustard
Silybum Marianum	Milk Thistle
Sacsola Austails	Russian Thistle/Tumblewood
Nicotiana Bigelevil	Indian Tobacco
Nicotiana Glauca	Tree Tobacco
Lactuca Serriola	Prickly Lettuce
Conyza Canadensis	Horseweed
Heterothaca Grandiflora	Telegraph Plant
Anthemix Cotula	Mayweed
Urtica Urens	Burning Nettle
Cardaria Draba	Noary Cress, Perennial Peppergrass
Brassica Rapa	Wild Turnip, Yellow Mustard, Field Mustard
Adenostoma Fasciculatum	Chamise
Adenostoma Sparsifolium	Red Shanks
Cortaderia Selloana	Pampas Grass
Artemisia Californica	California Sagebrush
Eriogonum Fasciculatum	Common Buckwheat
Salvia Mellifera	Black Sage
 Ornamental:	
Cortaderia	Pampas Grass
Cupressus sp	Cypress
Eucalyptus sp	Eucalyptus
Juniperus sp	Juniper
Pinus sp	Pine

ATTACHMENT 4

Firecrackers suspected in grass fire Newport blaze hits condo, causing \$50,000 damage

July 11, 1988

Byline: Jeff D. Opdyke

The Register

Firecrackers are believed to have caused a grass fire Sunday that spread to a \$270,000 condominium, officials said. Firefighters and police officials on the scene found four M-80 casings and the casing to what appeared to be a homemade firecracker in a field adjacent to the blackened condominium at No. 6 Landfall Court on the cliffs overlooking the Coast Highway.

"We are pretty sure this one was started by the firecrackers," said battalion chief Tom Arnold.

The fire caused an estimated \$50,000 damage and scorched the patio, kitchen and upstairs bedroom, fire officials said.

No injuries were reported, and the condominium owners were in Los Angeles, according to friends.

The fire was reported at 2 p.m. after condominium tenant Louis Vignes heard two firecrackers explode, then smelled smoke. It took firefighters about 1 1/2 hours to control the blaze.

"I was in my garage and I went outside to look around," Vignes said. "I, along with another neighbor, got some garden hoses and tried to fight the fire."

Vignes said they had the fire contained, but a gust of wind sent sparks into pampas grass bordering the condominium.

"That's all it took. After that it was history," Vignes said. "The pampas grass went up like a torch and set the balcony on fire. We couldn't do much from then on."

Arnold said the fire spread between the inner and outer walls of the condominium.

"That's what made it tough to get to. We had to tear down walls to find the fire," Arnold said.

Residents in neighboring condominiums were temporarily evacuated from their homes as a precaution.

"We're lucky it didn't spread to additional units," Arnold said.

The patio and bedroom suffered the most extensive damage. Both areas were completely burned.

Newport Crest resident Mike Lombardi said the field had been bulldozed last week to prevent such fires.

No arrests had been made Sunday in connection with the fire.

Story appeared in
METRO section

on page b05

ID: OCR118326

Illustration: BLACK
& WHITE PHOTO

Edition: EVENING

Correction:

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300-ton crane tips over in Orange
Feds: Pair pimped minor girls in Anaheim
Man hurt in roll-over crash near Disneyland
Lawyer for Torii Hunter's son: Girl has recanted

Info to go

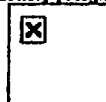
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Freedom Communications, Inc.

ATTACHMENT 5



NEWPORT BEACH FIRE DEPARTMENT

P.O. BOX 1768, NEWPORT BEACH, CA 92658-8915
(714) 644-3103

Timothy Riley
Fire Chief

Newport Crest
201 Intrepid St

September 12, 1996

Robert Mendoza
Department of Transportation
2501 Pullman Street
Santa Ana, CA 92705

Dear Mr. Mendoza,

Thank you for investigating the lots located adjacent to West Coast Highway and Superior. The parcel numbers are AP 424-041-07 and AP 424-041-03. As we discussed in our phone conversation these lots are overgrown with light grassy fuels which present a fire hazard to the homes located within Newport Crest. This fuel needs to be cut to a height of approximately three inches. The Newport Beach Fire and Marine Department appreciates the spirit of cooperation in mitigating this problem. If you need additional information please call me at (714) 644-3108.

Mike Macey
Deputy Fire Marshal

LOTS cleared
OCT. 1996
Macey

3300 Newport Boulevard, Newport Beach

Attachments to City of NB Letter dated 7/9/12

Exhibit 19 Page 26 of 36

NEWPORT BEACH FIRE AND MARINE DEPARTMENT
COMPLAINT REPORT

Company Assignment:
(if applicable)

Legal Description: 201 Intrepid

Location: _____

Owner/Tenant: Caltrans West

Complaint: overgrown, dead brush & weeds.
Concerned for the H/O's in the
Area who all have wood roofs.

Complainant Name: Georgia

Complainant Address: (H/O's Assoc.)

Complainant Phone #: 650-6720

☐ Remain Anonymous

Received by: Name: Nadine

Date: 5-7-97

Time: 1:10 pm

↓ LFT. MESSAGE
5-14-97

✓ TALKED TO
GEORGIA

Conditions Found: WEEDS

Disposition: FORWARDED TO ALAN KATO AT CALTRANS
724-2607

Inspection date: 5-14-97

Inspected by: 173



NEWPORT BEACH FIRE AND MARINE DEPARTMENT

June 24, 1997

Robert Mendoza

Caltrans

2501 Pullman Street R/W Bldg. C

Santa Ana, CA 92705

Mr. Mendoza,

The purpose of this letter is to serve as written documentation to our phone conversation held on June 24, 1997. During that conversation we discussed the parcel of land located near the intersection of Superior and East Coast Highway (see attached map). In the past, Caltrans has cleared the entire lot; however, this year a 20-foot firebreak was cut. The Newport Beach Fire and Marine Department request that the entire lot be cleared of all dry grass, stubble, brush, garden refuse, litter, or other flammable material which constitutes a fire hazard. This action will bring the lot into compliance with the requirements of the Municipal Code, Chapter 10.48. This parcel is especially sensitive due to the size of the lot and its proximity to the structures. The adjoining structures are condominium style residential units built of type V construction and contain wood shake roofs.

The Newport Beach Fire and Marine Department thanks you for your cooperation and expedient mitigation of this weed abatement issue. Please call me at 644-3108 if I can be of any assistance.

Sincerely,

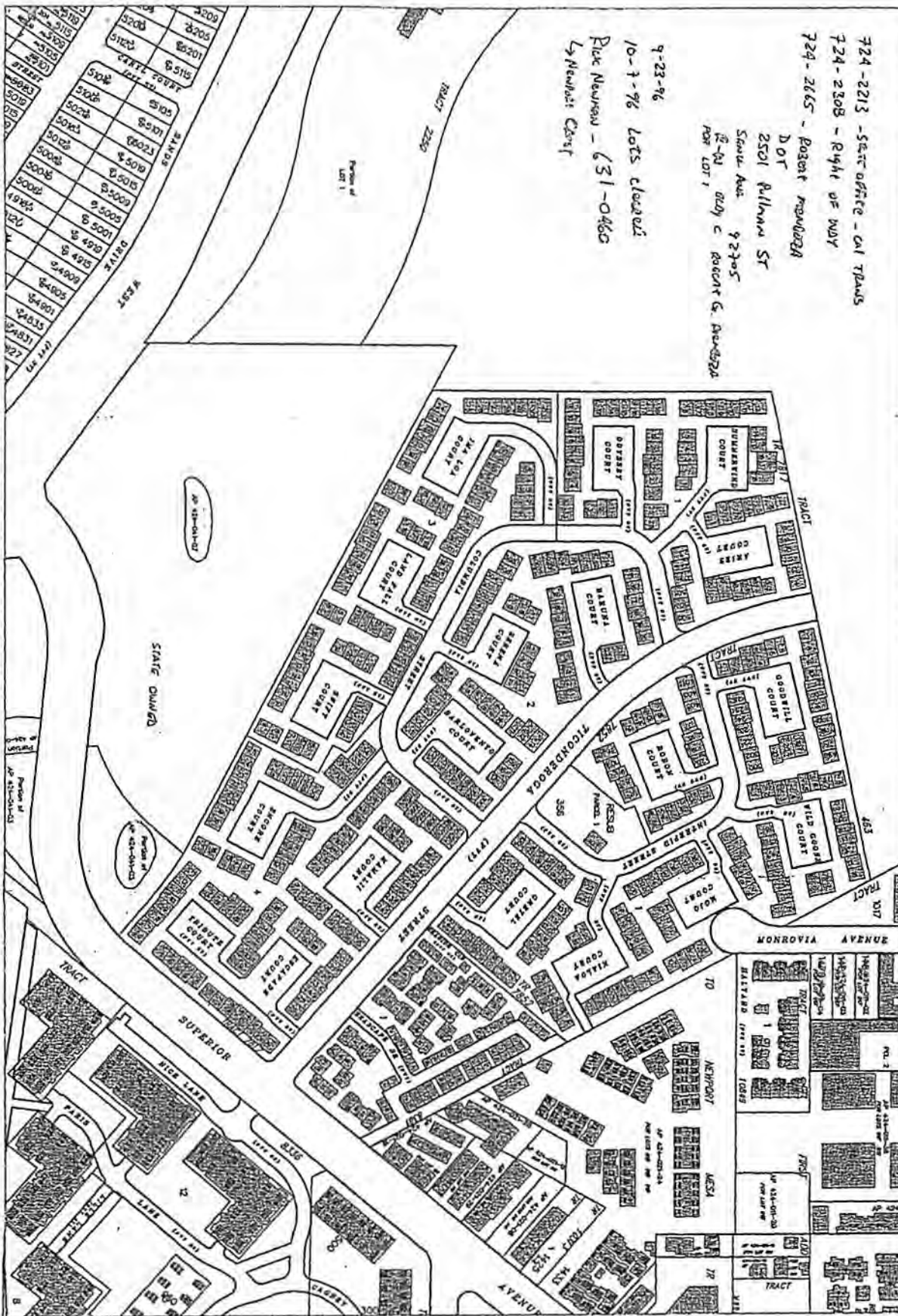
A handwritten signature in black ink, appearing to read "Mike Macey".

Mike Macey

Deputy Fire Marshal

DOT
2501 Pullman ST
St Louis, Mo 63105
10-21 only c ROBERT G. ANDERSON
FOR LOT 1

9-23-96
10-7-96 lots cleared
Rick Newman - 631-0460
↳ Newborn: Cassy



NEWPORT BEACH FIRE AND MARINE DEPARTMENT
COMPLAINT REPORT

Company Assignment:
(if applicable)

Legal Description: _____

Location: Coast Hwy / Superior

Owner/Tenant: CAL TRANS property.

Complaint: Caller feels the lot is a
fire hazard - high weeds present.
Believes the lot was cleared earlier this
year, but needs it again. Call her and
advise if this is not so

Complainant Name: Vivian Cellini

Complainant Address: 8 Tribute Ct.

Complainant Phone #: (949) 1645-6003

☐ Remain Anonymous

Received by: Name: Nadine

Date: 8-10-99

Time: 12:00

Conditions Found: Re-growth present -

Disposition: Spoke to Robert Mendoza (Cal Trans) He will visit
the site on Monday (8-16-99) & make appropriate contacts

9-2-99 site cleared

Inspection date: 8-12-99

Inspected by: 173



NEWPORT BEACH FIRE AND MARINE DEPARTMENT

June 23, 1998

Robert Mendoza
Cal Trans
2501 Pullman Street R/W Bldg. C
Santa Ana, CA 92705

(949)
→ 724-2665

Timothy Riley
Fire and Marine Chief

3300 Newport Blvd.
P.O. Box 1768
Newport Beach, CA 92658-8915

Dear Mr. Mendoza,

I am writing to address the issue of weed abatement on the "excess land" adjacent to the Newport Crest complex located in Newport Beach. This property is located in the area surrounded by West Coast Highway, Superior, and Ticonderoga. I ask that you please schedule this property for weed abatement and advise me of the projected completion date. This will allow me to notify the Homeowner's Association who will in turn notify the residence. In the past Cal Trans has used a disc to cut the field, thus meeting the City standard of three-inch weed height. If you have any questions or concerns please call me at 644-3108.

Sincerely,

Mike Macey
Deputy Fire Marshal

6-26-98 MR. MENDOZA STATED The lot will
be cleared prior to July 4th

7-1-98 called LFT. MSG. re: Follow up w/A

7-10-98 SLATER CALLED LEONARD ANDERSON to ABATE WEEDS
ON ARMSTRONG PETROLEUM PROPERTY & WE GAVE
HIM TILL 7/28 to ABATE (2 weeks) 631-1100 2244 WPC#200

g:/Mendoza-Cal Trans



NEWPORT BEACH FIRE AND MARINE DEPARTMENT

May 12, 1999

Robert Mendoza
Cal Trans
2501 Pullman Street R/W Bldg. C
Santa Ana, CA 92705

Dear Mr. Mendoza,

I am writing to address the issue of weed abatement on the "excess land" adjacent to the Newport Crest complex located in Newport Beach. This property is located in the area surrounded by West Coast Highway, Superior, and Ticonderoga. I ask that you please schedule this property for weed abatement and advise me of the projected completion date. This will allow me to notify the Homeowner's Association who will in turn notify the residence. In the past Cal Trans has used a disc to cut the field, thus meeting the City standard of three-inch weed height. If you have any questions or concerns please call me at 644-3108.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike Macey".

Mike Macey
Deputy Fire Marshal

g:/Mendoza-Cal Trans



NEWPORT BEACH FIRE AND MARINE DEPARTMENT

May 30, 2001

Robert Mendoza
Cal Trans
2501 Pullman Street R/W Bldg. C
Santa Ana, CA 92705

Subject: Assessor Parcel No. 424 041 08 and 424 041 10

The purpose of this letter is to serve as written documentation to our phone conversation held on May 18, 2001. During that conversation we discussed the parcel of land surrounding Coast Hwy. West, Superior Avenue, Ticonderoga Street, and Monrovia Avenue.

The Newport Beach Fire Department requests that this property be scheduled for weed abatement and inform our office of the projected completion date. The entire lot needs to be cleared of all dry grass, stubble, brush, garden refuse, litter, or other flammable material that constitutes a fire hazard. This action will bring the lot into compliance with the requirements of the Newport Beach Municipal Code Chapter 10.48.

The Newport Beach Fire Department thanks you for your cooperation and expedient mitigation of this weed abatement issue. If we can be of further assistance, please call (949) 644-3106.

Sincerely,

A handwritten signature in cursive script that reads "Nadine Morris".

Nadine Morris
Fire Inspector

W X
Y Z



4421

4520

4521

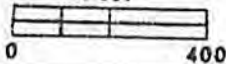
4522

4621

4521

NEWPORT

Feet



Jul/1996

#2

NEWPORT BEACH
IL FIELD

West Newport
Oil Co HQ

COAST HWY WEST

SUPERIOR

dashboard requests projects

home create new request case worker notices reports

QuestRequests

>> Admin Home

>> Print View

>> Recreate Request Type

Customer Information [hide detail](#)

Name: GARY GARBER

Phone #: 949-650-6661

Address: 8 LANDFALL COURT

Email: GARBERGARY@YAHOO.COM

[Share](#) (0)

NEWPORT BEACH, CA 92663

Request Details[enter edit mode](#)

reQuest: Fire Code Complaint - 8 Landfall Court, Newport B.

Type: Fire Code Complaint

Case #: 1010479610

Location Type: Address

Compl. Date: 6/8/2010

Location: 8 Landfall Court, Newport B.

Status: Completed [\[hist\]](#)[map it!](#)

Case Worker: Ronald Larson

Orig. Dept.: FALSE

Budget No:

Name of Caller: Gary Garber

Fault: --Select--

Phone: 949-650-6661

Division:

Complaint Date: 6/8/2010

Property Owner:

First Insp. Date: 6/8/2010

Tenant:

Re-Insp. Date:

Resolution Target:

Resolution Date: 6/8/2010

Citation Date:

Time Tracking[+ Time](#)

Date	Time In	Time Out	Crew	#	MH		
6/8/2010	09:00 AM	09:45 AM	Ron Larson	1	0.75	edit	delete

Total Manhours: 0.75

File Attachments[+ Attachment](#)

Add Comments:

Comments/History

By: Ronald Larson (cnb) 6/8/2010 10:14:59 AM

Visibility: Requestor

[edit](#) [delete](#)

Type: Comments

Met with complainant to discuss the fire danger of the rotten deck material. The structural members have been double joisted for support and the wood is not a fire hazard at this time.

By: Gary(user) 6/8/2010 7:29:26 AM

Visibility: Requestor

[edit](#) [delete](#)

Type: Details

This is a follow up to Mr. Larson's 9/17/09 inspection of my lower rear balcony, at 8 Landfall Court, for potential fire hazard. The inspection was due to my 9/16/09 Fire Code Complaint (Case# 385009092). The original complaint indicated my concern that dry rotted floor joists are not painted where damage is and appears to be highly flammable. I have repeatedly request that the Newport Crest Homeowner Association make necessary repairs. As of this date no repairs have been done and condition is worst then when you inspected the balcony on 9/17/09. As you can see from the photographs I submitted by email to Mr. Larson yesterday the floor joists directly under the balcony flooring are decomposing into kindling. We are entering the fire season and my property backs up to Sunset Ridge where the high grass and weeds are drying out. It only will take a small spark from a grill or cigarette to start a fire. With July 4th coming up there is additional concerns due to fireworks. During the last inspection it was indicated if the necessary repair work was not completed in a timely manner contact the Fire Department again. Please call me before any inspection. My phone number is 949-650-6661.

☒ Make Comments Private[Spell](#)[Add -->](#)

Search Tags:

Attachments to City of NB Letter dated 7/9/12

Exhibit 19 Page 35 of 36

Need Help? Call IT x3091

Michael, Steve

From: Kearns, Randy
Sent: Tuesday, May 19, 2009 8:25 AM
To: Michael, Steve
Subject: FW: Sunset Ridge Park fire abatement clearing

Southland has begun the fire abatement work at Sunset Ridge.

From: Michael, Steve
Sent: Monday, May 11, 2009 4:08 PM
To: Kearns, Randy
Subject: Sunset Park

Randy,

We received a complaint about the weeds in the upper section of Sunset Park from a caller that lives on Tribute Ct. I went out today and confirmed that the weeds are about four feet tall on city property, the callers name is Ken Larson (425-503-9582). Is that area on Barron's list to cut back? The attached picture shows the area in question.

Thanks, Steve

Steve Michael
Newport Beach Fire Department
Office 949-644-3108



CITY OF NEWPORT BEACH

CITY ATTORNEY'S OFFICE

Aaron C. Harp, City Attorney

Th11c

July 11, 2012

Via Electronic Mail

Mary K. Shallenberger, Chair
Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 91405

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

Dear Chair Shallenberger and Members of the Commission:

We note that the Addendum posted on July 11, 2012, for the above-referenced application references the Purchase and Sale Agreement – Real Property for DD 040733-01-01. However, the Addendum did not include a copy of the referenced document. We respectfully request that a copy of the Purchase and Sale Agreement, which is attached hereto, be included in the record of proceedings.

CITY ATTORNEY'S OFFICE

A handwritten signature in blue ink, appearing to read "Leonie Mulvihill", followed by a horizontal line.

Leonie Mulvihill
Assistant City Attorney

LM:emg
Enclosure

cc: Dr. Charles Lester, Director
Sherilyn Sarb, Deputy Director
John Del Arroz, Coastal Program Analyst

[A10-00630]

DEPARTMENT OF TRANSPORTATION**SOUTHERN RIGHT OF WAY REGION**21073 PATHFINDER ROAD, SUITE 100
DIAMOND BAR, CA 91765PHONE (909) 468-1500
FAX (909) 468-1501
TDD (800) 735-2929

December 5, 2006

Dave Kiff
City of Newport Managers Office
3300 Newport Blvd.
Newport Beach, CA 92663-3816

Dear Mr. Kiff:

Attached are the signed Purchase and Sale Agreement -Real Property for DD 040766-01-01 and a copy of the recorded Director's Deed. When the original Director's Deed is mailed back to me, I will send it to you.

If you have any questions please don't hesitate to call me at (909)444-0119 or e-mail me at Vince_Lundblad@dot.ca.gov.

VINCENT LUNDBLAD
Associate Right of Way Agent
Southern Right of Way Region
(909)444-0119

District 07 R/W Field Office
801 South Grand Ave., 17th Floor
Los Angeles, CA 90017
Phone: (213) 897-1773
Fax: (213) 897-6603

District 08 R/W Field Office
484 W. 4th Street, 12th Floor
San Bernardino, CA 92401
Phone: (909) 383-6211
Fax: (909) 383-6877

District 12 R/W Field Office
3337 Michelson Drive, Suite 380
Irvine, CA 92612-1692
Phone: (949) 724-2308
Fax: (949) 724-2411Letters from City of NPB
dated July 11, 2012

Exhibit 20 Page 2 of 13

PURCHASE AND SALE AGREEMENT – REAL PROPERTY DD040766-01-01

In this Agreement dated September 26, 2006 by and between CITY OF NEWPORT BEACH hereinafter known as "BUYER" and STATE OF CALIFORNIA, DEPARTMENT OF TRANSPORTATION, hereinafter known as "SELLER", the parties agree as follows:

For the sum of Five Million Dollars (\$5,000,000) and no cents, Buyer hereby agrees to purchase and Seller hereby agrees to sell the vacant and unimproved real property located in the City of Newport Beach, Orange County, California, and legally described in Director's Deed # 040766-01-01 (hereinafter referred to as the "property").

Subject to the following conditions:

I

Buyer agrees to pay for the said real property to State the principal sum of Five Million Dollars (\$5,000,000). A series of three payments shall be made to the State of California, Department of Transportation, and delivered to the State of California, Department of Transportation, Southern Right of Way Region, Excess Land Sales, 21073 Pathfinder Road, Suite 100, Diamond Bar, CA 91765. Interest will begin on January 1, 2007. Principal and interest to be due and payable in annual installments as follows:

1. Principal payment of \$2.0 million by December 31, 2006;
2. Principal payment of \$1.5 million plus interest of \$142,500 by December 31, 2007; and
3. Principal payment of \$1.5 million plus interest of \$71,250 by December 31, 2008.

(a) Each annual installment shall be credited first on interest then due and the remainder on principal so credited.

(b) Buyer may make additional payments on the principal at any time before final installment, and interest shall thereupon cease upon said principal so credited.

(c) If Buyer should default in the payment of any annual installment, or any part thereof, when due as herein provided, and such default should continue for thirty (30) days after notice thereof in writing to Buyer, the whole of said purchase price shall at the option of the State become forthwith due and payable.

(d) If the Buyer shall default on any of the payments, title, at the option of the State, will revert back to the State.

(e) It is understood and agreed that the term of this agreement shall end on December 31, 2008 and the buyer shall make payment in full including principal and interest by that date.

(f) The Deed shall record after receiving CTC approval and the 1st payment of \$2.0 million, no later than December 31, 2006.

II

All sales made subject to the approval of the California Transportation Commission. In the event that the California Transportation Commission fails to approve this sale, all monies heretofore paid by the Buyer will be refunded without interest. The CTC meeting is October 12th, 2006.

III

The Seller is willing to process this sale at no charge to the Buyer, except for the items set forth in paragraph IV below. Buyer, at his option, may open an escrow at its own expense. The Seller will pay no escrow fees.

PURCHASE AND SALE AGREEMENT – REAL PROPERTY DD040766-01-01

IV

The Buyer agrees to pay any and all recording fees, documentary transfer tax and monumentation fees chargeable by the County Recorder. At a later date, the Seller will request the fees forwarded, and buyer shall submit to the seller upon demand.

V

The Buyer expressly understands that the right, title and interest in the property to be conveyed shall not exceed that vested in the State of California and that the Seller will furnish no policy of title insurance. If a policy of title insurance is desired, the Seller will obtain one, upon request, at the Buyer's expense.

VI

The property is being sold "as is" and is being conveyed subject to any special assessments, restrictions, reservations or easements of record and subject to any reservations or restrictions contained in the Director's Deed. Buyer has read and understands other information the Seller has relative to these matters.

VII

In the event suit is brought by either party to enforce the terms and provisions of this Agreement or to secure the performance hereof, each party shall bear its own attorney's fees. The Buyer agrees that the title of the property being conveyed shall not pass until the Director's Deed has been recorded. The Buyer shall not take possession of the property until the director's Deed is recorded

VIII

Buyer shall defend, indemnify, and hold seller and seller's elected and appointed officers agents and employees free and harmless from and against any and all liabilities, damages, claims, costs and expenses (including without limitation, attorney's fees, legal expenses and consultant's fees, and investigation and remediation costs) arising in whole or in part from the existence of hazardous substance, or hazardous substance conditions. This indemnity is intended to address that liability for which seller may be responsible arising solely out of its mere ownership of said real property. This provision shall survive transfer of title of the said real property and any rescission of the said transfer.

"Hazardous Substance" shall mean any substance whose nature and / or quantity of existence, use, manufacture, disposal of effect, render it subject to federal, state or local regulation, investigation, remediation or removal as potentially injurious to public health or welfare, including the comprehensive Environmental Response Compensation and Liability Act or Resource Conservation and Recovery Acts as now in effect.

"Hazardous Substance Condition" shall mean the existence on or under, said property of a hazardous substance that requires remediation and / or removal and / or to be otherwise mitigated pursuant to applicable law.

STATE OF CALIFORNIA

DEPARTMENT OF TRANSPORTATION

PURCHASE AND SALE AGREEMENT - REAL PROPERTY DD040766-01-01

IX

This New Purchase Agreement supercedes and replaces any and all previous agreements of any kind.

The terms and conditions of the above agreement are hereby accepted, subject to the approval of the California Transportation Commission.

Please indicate exactly how the title should be vested:

City of Newport Beach, California

Buyer: 

MAYOR

(Signature)

Date: 11/16/06

DON WEBB

(Print Name)

Buyer: _____

(Signature)

Date: _____

(Print Name)

STATE OF CALIFORNIA

DEPARTMENT OF TRANSPORTATION

By: 

C. Paul LaMond, Acting Chief

Excess Land, Southern Right of Way Region

Date: 11/30/06



CITY OF NEWPORT BEACH

CITY ATTORNEY'S OFFICE

Aaron C. Harp, City Attorney

Th11c

July 11, 2012

*Rec'd at hearing
7/12/12
from L. Mulvihill*

Via Electronic Mail

Mary K. Shallenberger, Chair
Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 91405

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

Dear Chair Shallenberger and Members of the Commission:

The City received the Commission Staff's Addendum this afternoon. The City apologizes for the late letter, but we believe a response to the Addendum is required because it contains a number of factual and legal errors. In summary, the City believes the Sunset Ridge Park Project is fully consistent with the Coastal Act. We again respectfully ask that the Commission allow us to complete the job of building this much-needed and long-awaited active community park.

SB 124 and the Director's Deed

The Addendum argues neither SB 124 nor the Director's Deed that conveyed the Sunset Ridge Park property to the City evidences a legislative intent that the property be used for an active park. This is incorrect.

SB 124 stated in Section 2 that execution of the property transfer was contingent "upon the execution of an agreement between the Department of Parks and Recreation and the City of Newport Beach that requires the city to accept and perform all of the responsibilities relating to, and to assume the liability for, the construction, operation, and maintenance of the park and its improvements." (Emphasis added.)

It is abundantly from the Bill itself that it contemplated that the City assume the responsibilities relating to, and to assume the liability for, the construction, operation and maintenance of the park and its improvements. That language did not contemplate

a passive park or open space. Rather, it contemplated an active park, as the City now proposes.

While the Addendum asserts that there is no legislative intent which supports the City's interpretation of SB 124, the very committee reports that Staff has attached as Exhibit 16 to the Addendum make this legislative intent unmistakably clear. The report prepared for the Assembly Committee of Appropriations explained:

The City of Newport Beach intends to build baseball and soccer fields, restroom facilities and parking on the site and include walking/bike trails linked to the proposed 1000 acre Orange Coast River Park adjacent to the nearby Santa Ana River. (Exhibit 16, p. 3.)

This is repeated in the report prepared for the Senate Committee on Governmental Organization:

The City of Newport Beach intends to build baseball and soccer fields, restroom facilities and parking on the site and include walking/bike trails linked to the proposed 1000 acre Orange Coast River Park adjacent to the nearby Santa Ana River. (Exhibit 16, p. 5.)

This report, however, went further to explain:

The City of Newport Beach and Caltrans had been negotiating the city's purchase of the property, however, the city recently determined that because of budget constraints (the city's general fund annual expenditures for all capital projects is about \$ 4million), it could not pay market value (about \$4-6 million) for the 15-acre parcel and still commit \$5-6 million in additional funds for construction of a park on the property. (*Id.* (emphasis added).)

Therefore, the Addendum has not fairly or accurately represented the legislative intent underlying the Bill and the acquisition of the property by the City. The Legislature well understood that the whole point of this Bill, followed by the Director's Deed, was to commit this property to an active park.

As to the Director's Deed, the Addendum also incorrectly characterizes the language and intent embodied in the purchase and sale agreement between the State and the City. The Director's Deed provides:

Grantee's use of said easement area shall be limited to those "permitted" uses under Grantee's zoning designation open space – active as defined under Title 20 of Grantee's Zoning Code as it existed on October 12, 2006. (Exh. 14, p. 3 (emphasis added).)

The Addendum conspicuously omits the underscored language and states that the OS-A designation is no longer part of the City's zoning code, so presumably the City cannot rely upon it. That obviously is erroneous, and the Addendum's conclusion based on selectively omitting the controlling language. It says "as defined under Title 20 of the Grantees Zoning Code "as it existed on October 12, 2006."

The Addendum explains that in 2006, before the purchase, the Commission certified a land use plan amendment with the designation of the site going from Medium Density Residential to Open Space. However, the zoning for the property – as referred to in the Director's Deed – remained unchanged, and it remains unchanged today for one reason – there is no certified LCP, and therefore the change in designation in the land use plan not is not currently effective. The Addendum also erroneously states that "it is illogical that the City agreed to a condition in the purchase and sale agreement contrary to the existing zoning at the time." In fact, it was not contrary to the existing zoning at the time – and it is not contrary to the zoning currently in effect.

The Addendum further argues that Commission was not a party to the Purchase and Sale Agreement and is not bound by its terms. The State of California, however, is bound by the terms of the Agreement. The State of California negotiated the City's purchase of the Sunset Ridge Park property for \$5.2 million for purpose of creating a badly needed coastal active park. That said, the City does not contend that the Commission lacks authority to review the City's application under the Coastal Act. But, the Staff's recommendation that the application be denied, or that the property remain as passive park, or open space, does have consequences for the State, as noted in the City Attorney's July 9, 2012 letter to the Commission.

The Addendum further argues that the City's claim that it must build an active park fails because "parties to a contract may be excused from performing under the terms of the contract where the performance is prevented by operation of law." "Operation of law," however, does mean that the State or its agencies may renege on a contract and then label that as "impossible" and therefore that they need not comply with it. The applicable principle is estoppel, and that would be result of following the Staff recommendation.

Mowing as a Continuing Lawful Use

The Addendum mischaracterizes the City's position with respect to mowing and its continued lawful use. It asserts that a vested rights exemption is not available because no such exemption was applied for and, assuming it was, it would not be granted in any event.

The City's position is that the mowing of this property – a use which the Staff Report acknowledges pre-dates the Coastal Act – is a lawful ongoing use. This is not a case of a residence or a commercial or other structure or development in the process of being constructed when the law changes. That would involve a vested rights issue. By contrast, the ongoing mowing here is no different than a house completed prior to the effective date of the Coastal Act, or a commercial use established and ongoing before the Coastal Act, or continued operations in an oil well field which does not include new facilities or an intensification of use. The latter example comes from the Commission's counsel, the Attorney General, in a formal opinion (56 Ops. Cal.Atty.Gen. 85 (1973)), where the Attorney General rightly concluded that the permit requirements of the Coastal Act did not "in any sense prohibit the continued present management or use of existing structures or facilities" and was "not designed to stop present use or to allow present use to deteriorate. (*Id.*; *Monterey Sand Company, Inc. v. California Coastal Com.* (1987) 191 Cal.App.3d 169, 175, fn. 3.) *Monterey Sand Co.* referred to this as the "continuing use of a past allocation of coastal resources" theory. (*Id.*) The Addendum seeks to distinguish the latter case on the basis that, there, a vested rights exemption was sought. The real point, however, is the vast bulk of activities fully established or ongoing before the Coastal Act may continue without any need to apply to the Commission for a permit. If the residence is half-built when the Coastal Act became effective, then discussion of a vested right becomes relevant. That is not the case here.

The Addendum also erroneously states that *Monterey Sand Co.* is not applicable because there, "the State had approved a lease prior to enactment of the Coastal Act and the mining company had made significant investments in reliance on that lease," and the City here "has not identified any past promises by the state regarding the mowing activity nor has it identified any significant investments that it made in order to continue the mowing activity." In fact, the evidence is uncontradicted that Caltrans has mowed this property since at least 1965, that SB 124 required the "the city to accept and perform all of the responsibilities relating to, and to assume the liability for, the construction, operation, and maintenance of the park and its improvements," and that the Director's Deed required that the "Grantee shall be responsibility for all maintenance within the easement area." (Exhibits 14, 15.)

Simply put, the Addendum has stretched the concept of vested rights beyond its proper application. It does not apply here.

The Addendum further notes the City's position is that its mowing activities are maintenance activities which pre-date the Coastal Act; and that they also are exempt

ongoing maintenance. The Addendum argues that that the use of mechanized equipment "within an ESHA" does not qualify as exempt maintenance. The problem is that the area in question is not presently ESHA. The staff position is that if not maintained and mowed, *Encelia californica*, would recolonize and that additionally it would be used by the gnatcatcher. But that is not the current state of the property mowed. There is no mature *Encelia* that has colonized as ESHA and, moreover, there is no evidence of any use of this area by the gnatcatcher. In other words, the argument is "it could be," not that it currently is.

Lawful Nuisance Abatement Under Coastal Act Section 30005

The Addendum states that the Fire Marshal failed to include qualifying language as to the "reasonable probability" of a fire hazard. Indeed, the Fire Department's notices do not discuss the reasonable probability of a fire hazard. Rather, the Fire Department specifically identifies the property as a flammable vegetation hazard! (Exhibit 16, pp. 16-19.)

The Addendum further argues that if abatement exceeds more than 100 feet from any structure, it necessarily goes too far and requires a permit. The Addendum, however, completely ignores the provision which explains when and how the Fire Chief may determine that more than 100 feet is necessary. This was set forth in the City's recent letter to the Commission (Exhibit 16, p. 9), but was not addressed by the Addendum. The Newport Beach Municipal Codes includes Section 4903 of Chapter 49, which provides that the Fire Chief may require more than the 100 feet when the Fire Chief determines that conditions exist which necessitate greater fire protection measures." Specifically, that section states:

"Nothing contained in this Section shall be deemed to preclude the Fire Code official from requiring more than the minimum specific requirements set forth above when the Fire Code official determines that conditions exist which necessitate greater fire protection measures." (Emphasis added.)

As explained in the City Attorney's July 9, 2012 letter to the Commission (at page 9):

"Specifically, the Fire Official has determined that the site specific conditions of the property warrant removal of more than 100 feet (from Newport Crest) of vegetation. The Fire Official's determination is based on the known accumulation of light flashy fuel that dries quickly during the summer months; the bowl shape of the property; the 30 foot embankments limiting emergency access; the history or fire and transient use; and, prevailing winds (see Attachment

No. 2, Correspondence from City's Fire Department dated January 31, 2012 and June 8, 2012.) Specifically, the Fire Division Chief of the City's Fire Prevention Unit has advised that the light flashy fuels in this area could cause the structures in the adjacent condominium complex to ignite with either radiant or direct flame contact and the flowing embers could ignite other structures a few blocks in the development when the firebrands contact roofs, attic vents, decks or other combustible fuels in the fire's path. As a result, the City has eliminated this life safety and property hazard through weed abatement."

The Addendum suggests that the fire hazard is diminished by the classification of *Encelia californica* as fire resistant completely overlooks the point made by the City in its correspondence dated July 9, 2012, which is supported by the California Department of Forestry and Fire Protection. Specifically:

If enough heat is present almost any plant will burn. The objective of fire resistive landscaping is to reduce the heat available and reduce the change of ignition. Fire resistive landscaping combines natives or ornamental plants with proper placement and proper maintenance. The key is separating plants vertically and horizontally to prevent fire spread and extension. (See, Cal. Dept. of Forestry and Fire Protection, Structural Fire Prevention Field Guide for Mitigation of Wildland Fires, (April 2000) p. 55.)

In addition to missing this point, the Addendum also unfairly accuses the City of stating erroneous facts. This accusation fails to appreciate the statements actually included in the Staff Report. For instance, Commission staff has concluded:

[I]n the absence of 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. (Memo, Jonna D. Engel to John Del Arroz dated September 22, 2011, p. 7).

Dr. Engel also confirmed her observations that the mowed vegetation consists of closely spaced plants (Memo, Jonna D. Engel to John Del Arroz dated September 22, 2011, p. 8). Finally, the Commission's Staff Report states:

California Coastal Commission

July 11, 2012

Page: 7

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. (Staff Report, p. 18 (emphasis added).)

Both black mustard and thistle are included in the list of highly flammable plant species identified by the Orange County Fire Authority in the Vegetation Management Technical Design Guideline which was cited in the Addendum and relied upon by the City in its July 9, 2012, correspondence.

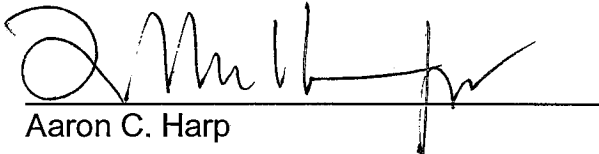
Thus, the opinions and conclusions of Commission staff do indeed support the Fire Department's prior determinations. More importantly, this is not an abstract issue. This property previously burned and resulted in significant fire damage to one of the adjacent condominiums.

Takings, Impairment of Contract, and Breach of Contract

In the City's correspondence dated July 9, 2012, we noted that the City acquired the property from the State of California for \$5.2 million for the purpose of constructing, operating and maintenance an active park. The Addendum suggests that when a charter city, like Newport, enters into a contract with the State, it may be breached and contract rights may be abrogated without consequences. For that reason, we noted that the Staff recommendation to deny the application, or to limit the property essentially to open space, raises a takings issue, a constitutional impairment of contracts issue, and a breach of contract issue.

We bring these issues to your attention just so that you are aware of the issues, but the City wishes to emphasize that we believe the project, as proposed, is fully consistent with the Coastal Act, and we ask for your approval.

CITY ATTORNEY'S OFFICE

A handwritten signature in black ink, appearing to read 'A. Harp', written over a horizontal line.

Aaron C. Harp

City Attorney
LM:emg

California Coastal Commission

July 11, 2012

Page: 8

cc: Dr. Charles Lester, Director
Sherilyn Sarb, Deputy Director
John Del Arroz, Coastal Program Analyst
Mayor and City Council
Dave Kiff, City Manager
Dana Smith, Assistant City Manager

[A10-00630



NEWPORT BEACH FIRE DEPARTMENT

P.O. Box 1768, 3300 NEWPORT BLVD., NEWPORT BEACH, CA 92658-8915
PHONE: (949) 644-3104 FAX: (949) 644-3120 WEB: WWW.NBFD.NET

SCOTT L. POSTER
FIRE CHIEF

Via Electronic and Overnight Mail

July 17, 2012

Mary K. Shallenberger, Chair
Honorable Commissioners
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 91405

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

Dear Chair Shallenberger and Members of the Commission:

On behalf of the City of Newport Beach Fire Department, we appreciate the opportunity to summarize our comments at the public hearing on July 12, 2012 relating to the above-referenced application.

Fire and the resulting products of combustion are a continual threat to the community. Preventing and minimizing the risk of uncontrolled fire protects public safety and is a core principal of a modern fire department. Whether property is developed or not, it is the responsibility of the Fire Chief to prevent and suppress fires. With appropriate planning, along with prudent and reasonable mitigation measures, buildings and surrounding areas can be made safer, regardless of the occupancy or other activities at and around the site. The primary focus of the requirements set forth in the fire code is public safety, such as preventing fire. The removal of heat, oxygen, and fuel are means by which fires can be prevented, or the impact reduced and lessened.

The 13.7 acres of vacant land in Newport Beach, which is commonly referred to as the Sunset Ridge Park property, presents several challenges from a fire and life safety perspective. The first challenge is life safety. Although a vegetation fire in the proposed park area may be confined to the parcel of origin, the products of combustion (smoke) will not. The smoke plume will travel with the wind and presents potentially critical life safety issues on a larger scale than one may assume from a 13.7 acre vegetation fire in a different area. Within close proximity of the Sunset Ridge Park property is Hoag Hospital, a regional asset and primary receiving hospital for Newport Beach and Costa Mesa. Also located on or adjacent to the Hoag campus and near Sunset Ridge Park, is a large child care facility, three surgery centers (in addition to the numerous surgical activities at Hoag) as well as a Cancer Center. There are also five elderly care facilities

in the immediate area. According to Hoag's staff, large volumes of smoke will cause all surgical activities to cease due to the requirement for clean, outside air. The two populations most at risk for exposure to smoke are the children and the elderly, both of whom are located within the immediate area of Sunset Ridge Park. (Attachment A).

The second challenge is firefighter access. The Sunset Ridge Park property is surrounded on three sides by steep and limited access; there is no direct manner for fire apparatus to access the site. All fire suppression activities would likely be conducted on foot thereby increasing the time and resources required to contain a fire. The hose lines used to fight fires from apparatus are 150 feet long and pre-connected, which would require time to extend and reach a fire that could be as far as 400 to 500 feet away. Water supplies to support suppression efforts are also limited with no onsite fire hydrants or irrigation, increasing the time and resources required to contain such an event. The north side of the parcel boundary is unincorporated county area, outside of the jurisdictional authority of the City of Newport Beach and provides no site or water access.

The third challenge is the proposed park's location adjacent to Pacific Coast Highway and directly adjacent to mass transit facilities. There is a high level of human activity in the area, and this directly translates into a higher probability of ignition sources as human activities and ignition sources are highly correlated. The 1988 Sunset Ridge Park incendiary fire caused over \$50,000.00 in property damage even with the strict vegetation management requirements in force. Recently, nearby on the County land, youths ignited a vacant structure causing a total loss.

To protect life and property is the Fire Chief's responsibility and requires good planning measures combined with common sense code enforcement designed to make buildings, premises, and surrounding areas safer for all occupants and the public. Appropriately, it should also be noted that the California State Health and Safety Codes mandates a higher level of protection for the elderly, those unable to assist themselves (surgical patients), and children relative to the general population.

Furthermore, the Fire Chief is authorized and is duty bound to enforce the provisions of the Fire Codes and has the authority to render interpretations of these codes, and to adopt policies, procedures, rules and regulations in order to clarify the application of its provisions. The City of Newport Beach has adopted the 2009 edition of the International Fire Code. A few of the applicable excerpts from this code are as follows:

Section 101.2.2 Scope:

The code establishes regulations affecting or relating to structures, processes, premises and safeguards regarding conditions, hazardous to life, property, or public welfare in the occupancy of structures or premises.

Section 101.3 Intent:

The purpose of this code is to establish the minimum requirements consistent with nationally recognized good practice for providing a reasonable level of life safety and property protection from the hazards of fire, explosion or dangerous conditions in new and existing buildings, structures, and premises and to provide safety to fire fighters and emergency responders during emergency operations.

Section 102.1.4 Applicability:

The construction and design provisions of this code shall apply to existing structures, facilities and conditions which, in the opinion of the fire code official, constitute a distinct hazard to life or property.

The prevention or lessening of the occurrence of fire and the production of smoke and the byproducts of combustion is focused on eliminating or minimizing the occurrence of heat sources, removing or eliminating fuel sources, and/or the removal of oxygen.

A careful and reasonable assessment of the fire and life safety profile of the area in and around the proposed Sunset Ridge Park project confirms that the removal of oxygen is not possible and that effective elimination of ignition sources is also difficult. Reducing the fuel source, however, is an industry best practice and has been, and continues to be, an achievable and highly effective interpretation of the locally adopted codes designed to reduce the occurrence and impacts of uncontrolled fires.

Furthermore, the policies, procedures, rules and regulations that the City of Newport Beach has implemented for this area are in the best interests of the community. These policies meet, and will continue to meet, a reasonable level of life safety and property protection from the hazards of fire, and dangerous conditions in new and existing buildings, structures and premises consistent with local and state adopted fire, and health and safety codes.

The Newport Beach Fire Department has required the 13.7 acres of vacant land on Sunset Ridge Park to be maintained with minimal flammable vegetation and has caused the area to be treated on an annual basis to mitigate the fire hazard. This area is not irrigated and during the winter and spring vegetation grows while water is abundant; summer comes and if untreated the vegetation will cure, turn brown with extremely low fuel moisture and become an explosive fuel bed with tons of flammable fuel. Therefore, until onsite conditions change, to protect safety and critical infrastructure I will continue to require the flammable vegetation by code or regulation to be treated until such time flammable vegetation does not exist on the site.

Sincerely,

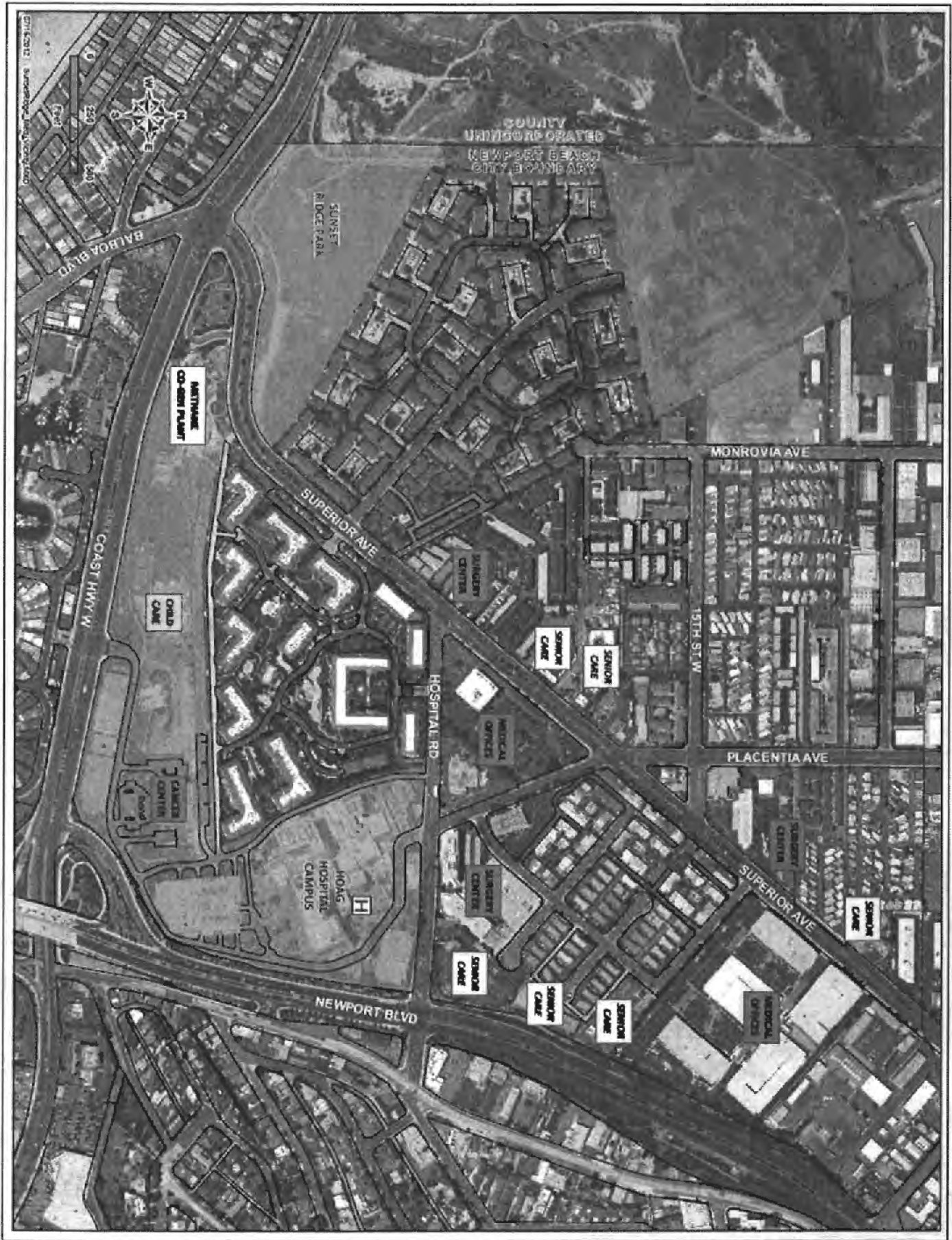
A handwritten signature in black ink, appearing to be "Scott L. Poster", with a long horizontal line extending to the right.

Scott L. Poster
Fire Chief

SLP:cg

Attachments: Attachment A

Attachment A





CITY OF NEWPORT BEACH

RECREATION & SENIOR SERVICES

July 20, 2012

RECEIVED
South Coast Region

JUL 24 2012

CALIFORNIA
COASTAL COMMISSION

Mr. John Del Arroz
California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

RE: Sunset Ridge Park – CDP Application No. 5-11-302

Dear Mr. Del Arroz:

This letter is in reference and response to the California Coastal Commission meeting held on Thursday, July 12 in Chula Vista. During the hearing on Sunset Ridge Park, discussion among the Commissioners ensued regarding the Superior parking lot and its usage during the 4th of July and summer months in general. The concern was that there would not be parking available to accommodate beach parking and the scheduled youth sports activities simultaneously.

The sports field allocation periods for youth sports groups run from the first week of February through mid June and from September to mid December. The majority of the leagues usage is completed by Memorial Day weekend and Thanksgiving weekend respectively. The sports field allocation periods naturally fall outside of the heavy summer beach usage eliminating any parking demand conflicts at the Superior parking lot. Additionally, it is our Department's policy to not allocate or rent any facilities on holidays leaving them open for general public usage on a year round basis.

Sincerely,

L.D.

Laura Detweiler, Director
Recreation and Senior Services
City of Newport Beach



CITY OF NEWPORT BEACH

July 23, 2012

Ms. Mary Shallenberger, Chair
California Coastal Commission
45 Fremont Street, Suite 2000
San Francisco, CA 94105-2219

RE: City of Newport Beach: Sunset Ridge Park – CDP Application # 5-11-302

Dear Chair Shallenberger and Commissioners:

Please allow me to thank you and your staff for the extensive amount of time you have put into reviewing our application for Sunset Ridge Park. Having sat there with you, we understand how challenging an issue this is for the Commission as a whole. Indeed, we very much respect the thought that has gone into your deliberations.

With respect to the present CDP Application, we have had several meetings, discussions, and written communications with staff between November 2011 and July 2012 (as recently as July 19, 2012) and worked to develop a strong and resource-protective park plan. I know that they have struggled with this project as we have, looking at it from a variety of angles out of respect for the City's public recreation goal, as well as the Coastal Act's resource protection policies. Ms. Sarb has been particularly accessible and helpful to me, and we have indeed discussed the project several times following the November 2011 CCC hearing on our previous project iteration. She has consistently said that the "mowing issue" remained the barrier for staff to move further into discussing Conditions of Approval, and we have respected that and striven to address it.

Given that we will again soon return to you with our proposed active park project, I did want to take this time to clear up some misconceptions you or the audience members may have about this project. We believe these clarifications and corrections are important, and are determinative of some of the issues over which the Commission has struggled. I will try to be as concise as possible.

CLUP Land Use Designation for Sunset Ridge Park

- The City's certified Coastal Land Use Plan (CLUP) land use designation for the property is Parks and Recreation (PR) not Open Space (OS) as suggested by Coastal staff during the hearing on July 12, 2012. The PR category includes active public or private recreational use. While permitted uses include both active and passive parks, this land use designation is separate and distinct from the CLUP's OS designation, which category is

intended to provide areas to protect and maintain natural resources. The permitted uses under the applicable PR designation include golf courses, tennis clubs and private recreation facilities. In summary, the Sunset Ridge Park is designated by the CLUP as PR, not OS, and is not a Deferred Certification Area.

Banning Ranch is a Deferred Certification Area Outside the City's Boundaries

- As you are aware, a Deferred Certification Area (DCA) refers to an area which has not incorporated into a land use plan. As noted above, the Sunset Ridge Park was included in the CLUP's land use designation and is not a Deferred Certification Area. However, the adjacent Banning Ranch property is a DCA. It is inaccurate to refer to the Sunset Ridge Park property as a DCA.
- In addition to being a DCA, Banning Ranch is outside of the City's jurisdictional boundaries and is part of the unincorporated territory of Orange County. Therefore, the City does not issue nuisance and abatement orders to the Banning Ranch property. In the past, the City has informally advised the owners of complaints when citizens contact the City advising of fire concerns related to Banning Ranch.

Mowing – photos, years missed, records.

- Coastal staff asked us to prove that we have mowed the area at least annually since we've owned the property. We did that, providing copies of our contractor receipts and photos since early 2007.
- As to the Caltrans' ownership period, you can imagine how difficult it is to venture into Caltrans' archives to find old maintenance records on one parcel in Newport Beach. We have made personal calls, tried to contact old acquaintances there, and have made a California Public Records Act request. A complicating factor for our records search is that during the 40+ years of Caltrans' ownership of the site, the Caltrans District that once encompassed Los Angeles and Orange Counties physically split into a separate Caltrans district for Orange County. Many years of records went one place, others went elsewhere. We have given staff all we have found. However, after producing aerial photographs for most of the years since the original freeway grading was done by the State, we feel confident that the record overwhelmingly supports that the vegetation on the site was continually and annually disc-ed or mowed.
- As to the resident who once resided in Newport Crest who said the property was not mowed every year because she didn't see it being mowed, I don't doubt her eyesight, but I do doubt her conclusion. During dry years, vegetation can be sparse. The mowing could have been at different times of the year. We only know what we know, and that is after months of trying to find more. We have not found or identified a period when the property was NOT mowed, nor has Coastal staff. Additionally, I believe you heard different public testimony at the November 2011 hearing on our original proposal from other long time residents of the condominiums to the north that said they witnessed the vegetation maintenance every year.

Use of Other Sports Fields

- In response to the person who said that Newport Beach should look first to having a "Joint Use Agreement" with our local school district (Newport-Mesa USD), we do have one and have had one since 1987. Even with the use of school properties, we still run far short on fields.
- The same person suggested it would be easy to go "1.5 miles" to Lions Park in neighboring Costa Mesa. For most places in West Newport Beach, it's double that. But more importantly, those are time-consuming miles trying to get to practice at 4:30 p.m. on an October afternoon, when this same park can be half an hour's carpool away.
- Moreover, Lions Park is in another city. We are not a place that shifts our park needs to other cities. Especially when our neighboring City of Costa Mesa faces even greater needs for additional fields to meet their community's demand for their children to play sports. It's unfair and infeasible to ask them to accommodate our shortfall.

Banning Ranch Conservancy (BRC)

- We recognize that the members of BRC are passionate people who very sincerely want the Newport Banning Ranch property preserved as passive open space and parkland. However, we believe that BRC sees Sunset Ridge Park as a dress rehearsal for Newport Banning Ranch's proposal.
- We feel like we have repeatedly gone the extra mile with BRC. First, they wanted the City to defer processing the Sunset Ridge Park project until after the Commission reviews the Banning Ranch project. If you recall, last year, they also proposed an alternative access road off PCH right through the disturbed *Encelia* that they now want staff to call ESHA. They also suggested we come up with a plan to provide parking across Superior Avenue to access the active park, which the Commission also preferred to see and is now before you for your approval. For our first application (CDP App. No. 5-10-168), by their own public testimony our proposed active park as presently configured was satisfactory to BRC (provided we eliminated the on-site access road and parking lot) - yet now it is not. Then they came up with their own alternative plan, which went to you with just an e-mail "cc" to us. We feel like Charlie Brown facing Lucy and her football each time we interact with them.
- We did a fairly extensive review of the BRC park alternative (see **Attachment B** for more of our comments). In short, their proposal to align two soccer fields lengthwise along the northerly side of the park makes us see Lucy again. The most vocal opposition to an active park at Sunset Ridge comes from some of the Newport Crest condominium residents - and BRC's proposal puts fields, parents, coaches, refs, chairs and whistles right below the maximum possible amount of Newport Crest porches.
- BRC's alternative ball fields proposal also eliminates a critical youth baseball field - instead, it puts this baseball field on the Newport Banning Ranch property - i.e. currently within a project BRC so strongly opposes. Is that ball field five years into the future? Ten? Will it ever happen? Eleven years ago, in 2001, we told community kids they'd soon have ballfields at Sunset Ridge. Those kids are out of college now.

- We currently have 4,000 kids listed on soccer, baseball and lacrosse rosters that are waiting in the wings to use Sunset Ridge Park in particular. Most go without much needed practice due to shortage of fields. These numbers do not include the moms, dads, siblings and grandparents that accompany these little athletes who will also enjoy sporting events and the more passive areas of the park that include the viewpoints, walkways, picnic facilities and playground. This park will achieve so much for so many and advance the important Coastal Act policy of providing low cost visitor-serving and recreational opportunities.

Landscape Design/Planting Plan

- Back when we were discussing options with Ms. Sarb and her staff (after the November 2011 CCC hearing), we talked about a variety of possible measures that could improve our application. At the suggestion of CCC staff, we re-worked the landscape/planting plan twice since our original submittal, so that it now is a predominately California-native plan, including increased areas of Coastal Sage Scrub (CSS). We also discussed planting additional CSS elsewhere off-site, not as mitigation, but just to be a good steward and help alleviate concerns. This planting could occur in degraded habitat along Upper Newport Bay or to replace the invasive species in Upper Buck Gully. I think all of those things seemed reasonable and beneficial to staff and Ms. Sarb; nevertheless, she would always politely and respectfully note that, "you still have to address the mowing issue first." **We remain very open and willing to do additional off-site plantings at a place agreeable to Coastal staff and the City.** We can easily identify sites, timelines, and planting plans in a Condition of Approval.
- We do have, and did submit, complete and detailed landscaping/planting plans as part of our pending application. You had it with you as you considered this item. As noted, we have modified it to address your staff's feedback/desires. Although we remain willing to consider further changes to it, we think it is quite good now.

Encelia californica

- To reiterate Dr. Dixon's clarification after the lunch break on July 12, 2012, *Encelia californica* is not an endangered or threatened species. *Encelia californica* can be part of a Coastal Sage Scrub community. A CSS community can potentially serve as host habitat for the endangered California Gnatcatcher (CAGN). We know of no protocol-surveyed CAGN sightings on the Sunset Ridge Park property.
- Comments from the audience and Commission staff noted that *Encelia californica* is a species appropriate for fire-sensitive areas. Indeed, we proposed planting it near the Newport Crest condominiums in an irrigated zone. *Encelia californica* is on the Fuel Modification Zone Plant List in OCFA's Vegetation Management Technical Design Guidelines, which states on page 6 of 37:

"New plant species introduced outside of the irrigated zones must be from Attachment 8 ... **All plants including species from Attachment 8 will burn given sufficient heat and low moisture content** (our emphasis added). Vegetative fire resistance may be enhanced through adequate irrigation rates or precipitation."

- Therefore, although *Encelia californica* is a fire resistive plant, there remains a fire hazard associated with it especially when there is no irrigation. You have seen photos of bright green *Encelia* in spring or late winter, shortly after (or during) a healthy rainy season. But it doesn't always look that way. Attachment A shows two photos of *Encelia californica* (some green, but some brown or grey, dry and quite brittle) in non-irrigated spots in central Orange County (one in the Coastal Zone, one about 500' away) from July 2012.

City of Newport Beach's Demonstrated Commitment to Advancing and Protecting Coastal Resources

I think it is important to share with you the following, in case you are unaware of it:

- In May 2012, the City (working with a State Parks grant) opened up 254 acres of coastal land via improvements to Upper Buck Gully, including an \$180,000 trail improvement (consistent with an approved Resource and Recreation Management Plan).
- Lower Buck Gully – following a \$2 million restoration project coordinated by the City – is seeing egrets and herons return (see attached web information – **Attachment C**).
- Our City Council has stepped up and dedicated upwards of \$7 million to dredge Lower Newport Bay - work that the Federal government is responsible for but will not fully fund. The current Lower Newport Bay Dredging project will restore navigability and water quality in the Lower Bay to the extent not seen in 30+ years.
- Other dredging work includes addressing the Santa Ana Regional Water Quality Control Board's #1 Water Quality "Toxic Hot Spot" in all of our Region, the Rhine Channel. \$4 million of City money later, the Rhine Channel is now clean.
- As to water quality:
 - In **Heal the Bay's** 2011-12 Annual Beach Report Card, we received "honor roll" status for five of our ocean and bay beaches. Newport Beach received all "A" and "A+" grades (and one "B") for every one of our ocean and bay beaches for the 2011 summer.
 - In the **Natural Resources Defense Council's** 2012 Beach Report, two of Newport's beaches were named NRDC "5-Star" beaches, a recognition limited to just 13 locations nationwide.

Neither of these designations is by chance – it is thanks to aggressive City educational and enforcement efforts that other governments have had to scale back during the recession.

- While we did not cause nor agree with the problem, we agreed to address Caltrans' contractor's problems in the Southeast Polygon near Sunset Ridge Park and have completed a \$47,000 habitat improvement project in John Wayne Gulch near Upper Newport Bay; and
- In possibly the best news I could ever give your staff, our City Council, in June 2012, approved funding via the City's FY 2012-13 Budget to complete our Implementation Plan (IP) to our Coastal Land Use Plan, the first time that the Council has ever allocated funds to complete our Local Coastal Plan.

In closing, given the time constraints associated with public hearings, I regret that we were unable to share more of this with you during the July 12 hearing, but we appreciate how the structure of your meetings does not allow people to pop up and down answering questions and responding to suggestions. Please know that there were about 10 of us in attendance from the City, ready and willing to clarify any questions or concerns you had. We anticipate having a similar group of representatives at the upcoming hearing and would welcome the opportunity to answer any questions you might have for us.

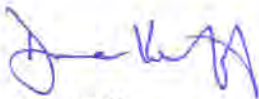
Forgive me to conclude with a more personal note, but we really struggle with the situation we find ourselves in. This land could easily be under yards of cement as the **Coast Freeway**. The City and community stopped that in the 1970s. Then we entered an era when Caltrans kept rejecting our offers to buy the property, as Caltrans tried to sell Sunset Ridge multiple times in the 1980s and 1990s to the highest bidder for **apartments** or **homes**. The City worked to stop that effort via State legislation (SB 124) in 2001.

Were we in the clear then? No. Because even as City and State Parks staff worked on language for an Operating Agreement allowing us to build and manage an active park here, the California Department of General Services (DGS) wasn't on board. DGS sponsored legislation to repeal SB 124 **without even telling us**. DGS did, however, tell State Parks to cease working on the park agreement with us (additionally, DGS told us we'd have to pay nearly \$800,000 annually in "rent" to have a park there – on top of our park construction and maintenance costs). With others here, we scrambled, fought DGS, and "won" by agreeing to buy the land outright at a **price nearly four (4) times** the price authorized under SB 124.

A six-lane freeway. Then homes. Or apartments. Now, finally a park. But yes, one with fields. This dream of an active park at Sunset Ridge has been through many twists and turns, and yet is still alive.

Please approve our project.

Sincerely,



Dave Kiff
City Manager
City of Newport Beach

Attachments: A – *Encelia* – July 18 and 21, 2012
B – Concerns with BRC's proposed park plan
C – Lower Buck Gully story in CDMtoday – July 20, 2012

cc: Coastal Commissioners
Charles Lester, Executive Director, CA Coastal Commission
Sherilyn Sarb, Deputy Director, CA Coastal Commission

Attachment A
Encelia – Coastal Orange County – July 18, 2012



Encelia – Coastal Orange County – July 21, 2012



Attachment B


Alternate SRP Design as proposed by Banning Ranch Conservancy

Upon review of the recently proposed alternate SRP design by BRC, City staff concluded that this alternate design does not meet the City's needs and objectives as described below:

1. Elimination of the proposed Pony baseball field is not acceptable. The City currently only has one Pony baseball field. The proposed Pony baseball field was identified by NHBA (Newport Beach and Costa Mesa) as their greatest need back in 2005.
2. No restrooms – a completely unworkable thought. Elimination of restrooms, picnic area, warm-up area, tot lot and pedestrian/bicycle path around park make the park significantly less desirable and attractive to the general public.
3. Lack required setback from existing disturbed *Encelia* scrub.
4. Increased noise level to Newport Crest residents due to close proximity of soccer fields.
5. No visitor access from Coast Hwy to park; vehicular or pedestrian. Existing vegetation must be removed to accommodate grading for walkway.
6. With the highly active fields, will not be able to monitor or keep kids/people out of the sensitive vegetation (cut pathways, build forts, chase balls, use it as a restroom) without putting a 6 foot fence around it. The fence itself becomes a hazard for ballfield users.
7. Existing sewer easement (approx. 10,500 SF) still exists across *Encelia* scrub zone
8. Existing storm drain easement (approx. 2,500 SF) still exists across *Encelia* scrub zone
9. If *Encelia* area is ESHA, soccer field construction may be restricted or near impossible to grade/fill for level fields and provide proper drainage, because doing so will impact *Encelia* area. Per Coastal staff, we are not allowed to grade in ESHA or buffer areas.
10. With the other constraints that have been imposed to protect existing vegetation on the slopes along Superior Ave, the closest pedestrian access point to the site would now be approximately 900 feet from the Superior Ave / Coast Hwy intersection where users would be crossing from the existing parking lot. Portions of Superior Ave are at 11% grade which makes this a non-accessible path of travel, especially when carrying sports gear to the fields.
11. Pedestrians from the existing parking lot entrance will be tempted to illegally and unsafely cross Superior Ave 900 feet from the Superior / Coast Hwy intersection to avoid having to walk down to the crosswalk and then back up the 11% grade. Having everyone walk down and then up Superior Ave in order to access the site creates a greater risk for accidents (i.e. kids, balls, etc. falling into vehicular travel path).
12. Having all of the program elements hidden between the natural vegetation area and Newport Crest could have impacts on Police visibility and safety for the fields.
13. The City has been conducting official public meetings since 2006 (approximately 8 meetings total) that have resulted in the originally submitted design. Much thought, discussion, time and funding have been put into the City's design. The plan also accomplished balancing the needs of the sports groups and the neighbors as evidenced by the Newport Crest HOA board voting to approve the plan that first went forward to the CCC back in October 2011.

Attachment C

Buck Gully Wildlife Returning to Normal

POSTED: JULY 20TH, 2012 11:33 AM |  [No Comments](#)



Baby egrets and herons were spotted Friday morning in Lower Buck Gully — a sight some say hasn't occurred in years and could be attributed to a recent restoration and erosion project.

"I haven't see egrets or herons before in Buck Gully, and I've been tromping around there for over five years," said Robert Stein, assistant city engineer, in an email.



Stein oversaw the Lower Buck Gully erosion project, which began in September 2011 and was completed early this year. The \$2 million project's goal was to slow water flowing toward the ocean by adding metal cages filled with rocks. The project also included removal of non-native vegetation and [trapping of non-native cowbirds](#). The cowbird trap was removed recently at the end of the nesting season, but no data was immediately available on the number of cowbirds caught and relocated.

Stein said a biologist would monitor the area for the next five years and would be quantifying the changes in birdlife.

"I expect/hope that next year when there is complete ground cover, raptors will find this a good place to hang out also," Stein said in an email.

The Coastal Commission, which granted approval of the erosion project in August 2011, issued a report that outlined the area's ecological history and the advantages of the project, [read our story here](#).



CITY OF NEWPORT BEACH

CITY ATTORNEY'S OFFICE

Aaron C. Harp, City Attorney

June 11, 2012

Via Overnight Mail and Electronic Mail
idelarroz@coastal.ca.gov

John Del Arroz
California Coastal Commission
200 OceanGate, 10th Floor
Long Beach, CA 90802

RE: City of Newport Beach – Sunset Ridge Park [CDP Application No. 5-11-302]
Matter No.: A10-00630

Dear Mr. Del Arroz:

We have reviewed Coastal Commission (CCC) Staff's report for CDP No. 5-11-302 that was made available on the CCC's website on Friday, June 1, 2012. The City of Newport Beach is timely requesting a postponement of this project's hearing pursuant to California Coastal Commission Regulations section 13073(a). This postponement is requested so that the City has adequate time to respond to the points raised in your staff report.

We note that CCC staff has indicated on the Staff Report for No. 5-11-302 that the subject application was deemed filed on December 16, 2011, which was the date that the subject CDP application was submitted to your office. You have incorrectly noted on the Staff Report that the "180th Day," for the purposes of the California Permit Streamlining Act, is June 13, 2012. This position is inconsistent with your letter dated January 18, 2012, entitled "Notice of Incomplete Application," a copy of which is attached hereto for your reference.

Please be advised that it is the City's position that pursuant to California Government Code section 65943(a), the application was deemed complete on Jan. 15, 2012 (i.e. 30 days after the CDP application was submitted on Dec. 16, 2011). As such, and pursuant to California Government Code Section 65952, the "180th Day" is July 13, 2012. Therefore, our request for a postponement to the Commission's July meeting pursuant to California Coastal Commission Regulations section 13073(a) provides sufficient time under the applicable deadlines for action on the application.

Sincerely,

CITY ATTORNEY'S OFFICE

Leonie Mulvihill
Assistant City Attorney

John Del Arroz
June 11, 2012
Page: 2

cc: Dave Kiff, City Manager
Aaron Harp, City Attorney
Dave Webb, Deputy Public Works Director
Don Schmitz
Mayor Nancy Gardener
City Council
Dr. Charles Lester, Executive Director
Sherilyn Sarb, Deputy Director
Karl Schwing, Supervisor

[A10-00630]

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Ocean Blvd., Suite 1000
Long Beach, CA 90802-4302
(562) 680-5071



1/18/2012

Schmitz & Associates, Inc.
Attn: Don Schmitz & Donna Tripp
5234 Chesebro Rd, Ste. 200
Agoura Hills, CA 91301

Re: NOTICE OF INCOMPLETE APPLICATION
Application No. 5-11-302 (Sunset Ridge Park)
Site Address: 4850 West Coast Highway, Newport Beach, Orange County

Dear Mr. Schmitz and Ms. Donna Tripp:

On December 19, 2011, our office received the subject coastal development permit application. The proposed project is the construction of an active recreational park. We have reviewed all of the materials you have submitted and have concluded that additional information needs to be submitted in order to complete your application and schedule it for a public hearing. Please accept this letter as notification that your application is incomplete pending receipt of additional information necessary for a thorough analysis of your project by Commission staff. In order to complete your application please submit the following:

- **Buffers.** Much of the discussion in the staff report and hearing for Permit 5-10-168 concerned the width of buffers on the site. Although the revised application, which was just submitted, has eliminated much of the interface between development and Environmentally Sensitive Habitat Area (ESHA) through the elimination of the access road, the project still involves development adjacent to ESHA.
- The width of buffers to ESHA varies depending on the proposed intensity of development and the sensitivity of the adjacent resource, but has typically required a minimum of 100 feet between development and gnatcatcher occupied ESHA. The biological memorandum by Dr. Jonna Engel for permit application 5-10-168 also recommends a buffer distance of 100 feet for areas on the western boundary of the City property. These buffers may also be required to be vegetated with appropriate native vegetation where necessary to protect habitat. In certain cases these buffers have been reduced to accommodate unusual circumstances on the project site; however it should be stressed that these reductions in buffers have been exceptions to the typically applied distance. In order to assure adequate protection to ESHA, projects should maximize the buffer width, and only request a reduction in buffer width where the maximum cannot be provided and where the buffer proposed will be amply protective of the resource.

The current project includes buffers between approximately 0 and 11 feet. Please submit an alternative plan showing a 100 foot buffer between ESHA areas and all development, including grading. The alternative plan should be consistent with requirements within the City of Newport Beach Land Use Plan. Please also submit a description of the effects on the proposed project that would result from usage of the alternative plan utilizing a 100 foot buffer on the subject site.

- **Preliminary Habitat Management Plan.** The project site includes areas of ESHA occupied by gnatcatchers and areas adjacent to gnatcatcher occupied ESHA. As described in the biological memorandum for Coastal Development Permit 5-10-168, development of a park at the project site may have impacts on adjacent ESHA. Therefore, please submit a preliminary Habitat Maintenance and Management Plan outlining the

Notice of Incomplete Application
Page 2 of 4

procedures that will be taken to ensure that native habitat stays healthy and robust in perpetuity for the preserved or restored areas on the site.

- **Proposed maintenance access road.** The project proposes to allow emergency and maintenance vehicles to access the park site through the NOV area on the lower portion of the subject site. The access road then continues north, and eventually reaches the boundary of the Newport Crest condominium complex. Please answer the following questions regarding the maintenance access road:
 - a. The NOV areas were declared as ESHA as a result of previous Commission action. What steps will be taken to ensure that maintenance and emergency vehicles do not result in impacts to ESHA? Please indicate such measures on the project plans.
 - b. Are any improvements proposed to the existing maintenance road between the NOV areas on the western boundary of the park site? What materials will compose the maintenance road there and at elsewhere on the site?
 - c. What is the purpose of the planned linkage between the Newport Crest condominium complex and the access road? Could the required emergency and maintenance vehicle access be handled through this proposed linkage instead of through the NOV area?
- **Fencing.** The submitted plans indicate that fencing is proposed on the western portion of the project site. Please submit a fencing plan indicating the proposed fencing design, whether measures are proposed to allow the crossing of wildlife to the park site, and an analysis by a qualified biologist on the effect that the proposed fencing plan will have on the circulation of wildlife in the area.
- **Landscaping.** Thank you for the submittal of the proposed landscaping plan. Please provide the following information required for a complete review of the proposed project:
 - a. The Commission has typically required that landscaping consist of native plants and/or non-native plants provided they are drought tolerant and non-invasive. The submitted plans include landscaping categories, but it is unclear what specific species are proposed for each landscaping area. Please provide a list of species for each landscaping category, and identify whether the species are: non-invasive, native, or drought tolerant.
 - b. On page 24 of the biological memo for permit application 5-10-168, the Commission's staff ecologist writes that irrigation practices can lead to the proliferation of invasive species, such as the Argentinian ant, a species that has been documented to predate gnatcatcher chicks. Please submit a written description of proposed irrigation practices, including proposed irrigation measures (such as sprinklers or driplines), frequency of irrigation, and measures that are proposed to ensure that only the required irrigation amounts are delivered.
 - c. The proposed landscaping plan would result in the elimination of areas composed of disturbed native habitat on the edges of the park site and their replacement with what appears to be ornamental vegetation. The California Coastal Gnatcatcher has been identified in some of these areas, and the areas likely provide foraging habitat for the gnatcatcher. Replacement of areas of disturbed native scrub vegetation with other non-scrub vegetation may result in a reduction of available foraging habitat for the gnatcatcher. Additionally, the development of the proposed project would result in an intensification of use at the site which may result in other impacts to ESHA areas. Therefore, please submit an alternative landscaping plan which provides

Notice of Incomplete Application
Page 3 of 4

expanded habitat suitable for use by gnatcatchers. Where possible, these areas should be contiguous with areas of ESHA.

Please note that the following is a comment that is advisory in nature, and is not a filing requirement: In the creation of the alternative landscaping plan, the City may wish to consider including the slopes along West Coast Highway and/or the slopes along Superior Avenue into the expanded habitat areas. The factors that staff views are in favor of expansion of habitat in this area include: expansion would not disturb the active recreational components of the park project, expansion would seem to fit with the more passive recreational opportunities provided by the proposed access paths to the park site, and expansion here would provide habitat contiguous with existing ESHA which would maximize habitat value.

- d. The proposed landscaping plan includes areas designated as 'not to be disturbed.' Please provide additional information regarding these areas. Specifically, please clarify the extent of activities proposed within these areas, what would be required to restore these areas, and the reasons these areas have been designated as 'not to be disturbed'.
- e. Please describe the purpose of the 'water infiltration area,' and state what substrata and vegetation species are planned in this area.

- **Biological Surveys.** A total of three years have passed since focused (protocol) surveys for California gnatcatcher and burrowing owls were last conducted on the project site. The site supports habitat suitable for both of these sensitive species that is immediately adjacent to or near identified environmentally sensitive habitat. Additionally, the site supports habitat suitable for raptor foraging, and a number of raptor species, including Cooper's Hawks, a species on the CDFG's watch list, were observed on the proposed project site in 2009. Therefore, please submit new focused, protocol, 2012 survey reports for California gnatcatcher and burrowing owls, and a 2012 raptor foraging survey report. Raptor foraging surveys must consist of a minimum of three sampling days that are designed (timing and duration) to best assess the foraging patterns/behavior of the raptor species known and expected to utilize the proposed project site.
- **Water Quality.** What are the proposed water quality measures for the proposed project and where would they be located? What changes are necessary for the preliminary water quality management plan submitted in the EIR? Have the water quality measures for the proposed site been adequately sized to address the impacts associated with construction of the park project?
- **Geologic Stability.** Please submit a letter by a qualified professional answering the following questions: a) Has the geologic stability of constructed slopes on the site been addressed? b) Do the constructed slopes meet the standard factor of safety? If not, why not?
- **Parking/Access.** The EIR for the project estimates a parking requirement of 96 spaces. The submitted application states that 64 spaces will be provided at the existing parking lot at Superior Avenue. Does the proposed project include adequate parking? Are shuttles or other parking management features proposed? What measures are proposed to ensure that the proposed use of the Superior Avenue does not conflict with visitors using the lot to access the beach during the peak summer period? What measures are proposed to improve pedestrian accessibility to the site from the Superior Avenue parking lot? Does the City wish to incorporate these improvements into the CDP application?

Notice of Incomplete Application
Page 4 of 4

- **Mowing Activities.** Commission staff is still reviewing the submitted information regarding vegetation clearing/mowing activities on the subject site and may have additional questions on this issue in the future.
- **Noticing.** Significant numbers of hearing notices were returned to the Commission's office for hearings for permit number 5-10-168. Some of the notices indicated that they were returned because the one year forwarding service with the US Postal Service has expired. To ensure that all interested parties, including owners and current occupants, receive notice of the project, please review the submitted mailing list to ensure that the mailing list is up to date.

Please do not limit your submittal to the above mentioned items. You may submit any information which you feel may help Commission staff gain a clear understanding of the scope of your project. Upon receipt of the requested materials we will proceed with determining the completeness of your application.

Thank you for your attention to these matters. If you wish to discuss the requirements above, I can be contacted at (562) 590-5071.

Sincerely,



John Del Arroz
Coastal Program Analyst

cc: Dave Webb and Andy Tran, City of Newport Beach



CITY OF NEWPORT BEACH

CITY ATTORNEY'S OFFICE

Aaron C. Harp, City Attorney

June 12, 2012

Via Overnight Mail and Electronic Mail

ldelarroz@coastal.ca.gov

John Del Arroz
California Coastal Commission
200 OceanGate, 10th Floor
Long Beach, CA 90802

**RE: City of Newport Beach – Sunset Ridge Park [CDP Application No. 5-11-302]
Matter No.: A10-00630**

Dear Mr. Del Arroz:

Pursuant to your request, please see the attached executed Agreement for Extension of Time For Decision on Coastal Development Permit ("Agreement"). Please return a copy of the Agreement executed by Coastal staff at your soonest convenience.

As you and I discussed yesterday, this has been executed notwithstanding the City's position that the Staff Report inaccurately references the 180th day as being June 13, 2012. Pursuant to the Permit Streamlining Act, and specifically California Government Code Sections 65943(a) and 65952, the "180th Day" is July 13, 2012, which entitles the City to a postponement of our application from June 13, 2012, to the Commission's July meeting pursuant to California Coastal Commission Regulations Section 13073(a).

Notwithstanding this reservation, we greatly appreciate your time yesterday to discuss this issue and thank you for your assistance.

Sincerely,

CITY ATTORNEY'S OFFICE

A handwritten signature in black ink, appearing to read "Leonie Mulvihill", is written over a horizontal line.

Leonie Mulvihill
Assistant City Attorney

Encl.

John Del Amoz
June 12, 2012
Page: 2

cc: Dave Kiff, City Manager
Aaron Harp, City Attorney
Dave Webb, Deputy Public Works Director
Don Schmitz
Mayor Nancy Gardener
City Council
Dr. Charles Lester, Executive Director
Sherilyn Sarb, Deputy Director
Karl Schwing, Supervisor

[A10-00630]

CALIFORNIA COASTAL COMMISSION

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



AGREEMENT FOR EXTENSION OF TIME
FOR DECISION ON COASTAL DEVELOPMENT PERMIT

Pursuant to Government Code Section 65957, the applicant and Coastal Commission staff hereby irrevocably agree that: 1) the time limits for a decision on permit application # 5-11-302 established by Government Code Section 65952 shall be extended by 90 days (extension request ordinarily to be 90 days, and in no event more than 90 days for a total period for Commission action not to exceed 270 days); and 2) the effective date of this extension is 6/13/12 [fill in 180 day deadline].

Accordingly, the deadline for Commission decision on this permit application is extended from 6/13/12 [insert 180th day deadline] to 9/11/12 [insert 270th day deadline].

6-11-12
Date

David Webb
☒ Applicant or ☐ Authorized Representative (Print)
(check one)

David Webb
Applicant or Authorized Representative (Signature)

6-12-12
Date

John DeArroz
CCC Staff Name (Print)

John DeArroz
CCC Staff Name (Signature)

Del Arroz, John@Coastal

From: Sarb, Sherilyn@Coastal
Sent: Tuesday, July 03, 2012 2:53 PM
To: Del Arroz, John@Coastal
Cc: Schwing, Karl@Coastal
Subject: FW: Schmitz re: Ex Parte for Sunset Ridge Park CDP 5-11-302
Attachments: 2012 June NB-SRP Ex Parte Dec for Mitchell.doc

For the file and addendum

Sherilyn Sarb, Deputy Director
California Coastal Commission
San Diego District (619)787-2370
South Coast District, Orange County (562)590-5071
ssarb@coastal.ca.gov

From: Miller, Vanessa@Coastal
Sent: Tuesday, July 03, 2012 2:49 PM
To: Staben, Jeff@Coastal; Sarb, Sherilyn@Coastal
Cc: Parker, Holly@Coastal
Subject: FW: Schmitz re: Ex Parte for Sunset Ridge Park CDP 5-11-302

From: Wendy Mitchell
Sent: Tuesday, July 03, 2012 2:43 PM
To: Miller, Vanessa@Coastal
Subject: FW: Schmitz re: Ex Parte for Sunset Ridge Park CDP 5-11-302

For the file.

All the Best,

Wendy Mitchell

From: Lauren Smith
To: Wendy Mitchell
Subject: FW: Schmitz re: Ex Parte for Sunset Ridge Park CDP 5-11-302

----- Forwarded Message

From: Kris Graves <kgraves@schmitzandassociates.net>
Date: Mon, 2 Jul 2012 18:20:55 -0500
To: Lauren Smith
Subject: Schmitz re: Ex Parte for Sunset Ridge Park CDP 5-11-302

Hi Lauren,

Please find attached the Ex Parte letter for Wendy's meeting with Don Schmitz regarding the Sunset Ridge Park CDP 5-11-302. Also, Don greatly appreciates the time she took to meet with him.

Ex-Parte

Please contact me at your convenience if you have any questions.

Have a great 4th of July.

Kris Graves

Schmitz & Associates, Inc.

5234 Chesebro Road Ste 200

Agoura Hills, CA 91301

Phone: 818-338-3636

Email: kgraves@schmitzandassociates.net <<mailto:kgraves@schmitzandassociates.net>>

----- End of Forwarded Message

Ex Parte
Page 2

California Coastal Commission
[CDP Application No. 5-11-302]

Applicant: City of Newport Beach

Agent: Schmitz & Associates, Inc.

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

Project Description: Sunset Ridge Park:

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

I, Commissioner Wendy Mitchell, had ex parte communication with Don Schmitz, agent for the above-referenced project, on June 27, 2012 at 1:30 pm in Sherman Oaks, CA. Mr. Schmitz reviewed with me the Park project as it has been revised from the previous iteration (per CDP 5-10-168), specifically the utilization of off-site existing parking and the elimination of any on-site parking and any visitor-serving access road to the Park site. Mr. Schmitz also reviewed with me the historical site disturbance of the property dating back to the 1960s when Caltrans owned the property, graded it down, and conducted regular site clearance/maintenance activities until 2006 when the City of Newport Beach acquired the property. Mr. Schmitz discussed with me the fact that the City continued Caltrans' annual weed abatement activity on site as required by the City Fire Department.

We also reviewed the April 2012 US Fish & Wildlife letter in which this federal agency concluded that the proposed project will have no impacts to CA gnatcatchers and will enhance habitat when the planting plan is implemented.

Commissioner Mitchell

Date

Ex-Parte
Page 3

FORM FOR DISCLOSURE
OF EX PARTE
COMMUNICATIONS

5.11.302

Received at Commission
Meeting

JUN 13 AM '12

Date and time of communication:

6/7/12 4pm

From:

Location of communication:

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

my office

Identity of person(s) initiating communication:

Steve Ray / Penny Elia

Identity of person(s) receiving communication:

D. Boock

Name or description of project:

Willc City of Newport Beach

Description of content of communication:

Sunset Ridge

(If communication included written material, attach a copy of the complete text of the written material.)

see attached

Date

6/7/12

Signature of Commissioner

If communication occurred seven (7) or more days in advance of the Commission hearing on the item that was the subject of the communication, complete this form and transmit it to the Executive Director **within** seven (7) days of the communication. If it is reasonable to believe that the completed form will not arrive by U.S. mail at the Commission's main office prior to the commencement of the meeting, other means of delivery should be used, such as facsimile, overnight mail, or personal delivery by the Commissioner to the Executive Director at the meeting prior to the time that the hearing on the matter commences.

If communication occurred within seven (7) days of the hearing, **complete** this form, provide the information **orally** on the record of the proceeding **and** provide the Executive Director with a copy of any written material that was part of the communication.

APPENDIX 2

Mr. Ray agrees with the staff report in denying the permit. His group has proferred the alternate sports field scenario. We talked about the previous meeting in which the application was withdrawn and how the present plan differed from that. We talked about the granite covered access road that goes through ESHA. He said that if it is used infrequently as an emergency road, it should be fine. But worried about the mention of its use "by shuttles" which could imply a much more intense use.

Del Arroz, John@Coastal

From: Kris Graves [kgraves@schmitzandassociates.net]
Sent: Wednesday, July 11, 2012 4:46 PM
To: Schwing, Karl@Coastal; Del Arroz, John@Coastal
Subject: Don Schmitz email to Commissioner Zimmer re: Sunset Ridge Park CDP 5-11-302

Good afternoon,

Following is the email Don Schmitz sent to Commissioner Jana Zimmer regarding Sunset Ridge Park CDP 5-11-302.

If you have any questions, please contact me at your convenience.

Best regards,

Kris Graves

Schmitz and Associates Inc.

From: Don Schmitz
Sent: Tuesday, July 10, 2012 4:41 PM
To: 'zimmerccc@gmail.com'
Cc: Don Schmitz

Good afternoon Jana;

I hope that you are feeling better.

I have included below a synopsis of what I had hoped to discuss with you on the phone yesterday. If you have any questions or comments please don't hesitate to contact me.

Sincerely;

Don



Donald W. Schmitz II / President / A.I.C.P.

Headquarters:

29350 West Pacific Coast Highway, Suite 12
 Malibu, CA 90265

Cell: (310) 617-0773 | Office: (310) 589-0773 | Fax: (310) 589-0353

Conjo Valley Office:

5234 Chesebro Road, Suite 200
 Agoura Hills, CA 91301

Cell: (310) 617-0773 | Office: (818) 338-3636 | Fax: (818) 338-3423

DonS@schmitzandassociates.net | www.schmitzandassociates.com | www.facebook.com

-
- Sunset Ridge Park is a much needed community/regional active park.
 - The Park was modified from its previous iteration (considered by the CCC in November 2011) to eliminate the on-site parking lot and access road off of West Coast Highway; Park visitors will now utilize an existing public parking lot across Superior Ave. The present project was a specific alternative that CCC staff referenced in their Nov. 2011 staff report as a superior alternative to the previous Park proposal.
 - The Park site was owned by Caltrans from the mid-1960s to late-2005. During that time, Caltrans graded down the property, stockpiled dirt on site, conducted regular vegetation clearance and weed abatement activities annually for 40 years. The City acquired the property in late-2006 and resumed the annual weed abatement activities commencing Spring 2007 to present. CCC Staff in its staff report does not dispute the fact that this property has been the subject of regular site

disturbance since the 1960s.

- CCC staff find in their staff report (pg. 19) the following:

5-11-302 (Sunset Ridge Park)

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

- The California gnatcatcher (CAGN) was designed as threatened by the US Fish & Wildlife Service (USFWS) in 1993; however, it was not until the year 2000 that USFWS published its "Unit 7" critical habitat for the CAGN map. Unit 7 principally encompasses the Newport Banning Ranch (NBR) property; due to its proximity to the NBR property, the Sunset Ridge Park site was included in the mapped area, despite the fact that no CAGN has historically been surveyed to occur on the Park site. Indeed, USFWS acknowledges that the critical habitat mapping process is done with broad paint strokes and did not entail site specific analysis at the time; please see below excerpt from their website:

[excerpts from a USFWS document on *Critical Habitat* (source:

http://www.fs.fed.us/r9/wildlife/tet/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 unwieldy (sic).

- Although the Park site was included in the USFWS critical habitat map, the California Coastal Commission did not raise issues with the property containing ESHA during any of the following opportunities:
 - In 2005 when CCC certified an updated LUP for the City of Newport Beach; this LUP included a land use designation of the Park site of RM-B which would have permitted up to 132 residential units on site.
 - In 2006 when CCC approved a LUP Amendment for the rezoning of the Park property from RM-B to open space active.
 - In 2009 when the City circulated its DEIR for an active park project and specifically referenced the annual weed abatement activity and noted no ESHA/no jurisdictional habitat on the City's Park property, CCC did not provide any comments on this DEIR.
- California Fire Code Section 1103.2.4 (Combustible Vegetation) requires "cut or uncut weeds, grass, vines and other vegetation shall be removed when determined by the chief to be a fire hazard. Designated areas shall be cleared of combustible vegetation to establish the fuel breaks." Moreover, Section 30005 of the Coastal Act provides: "No provision of this division [the Coastal Act] is a limitation on any of the following: . . . (b) On the power of any city or county or city and county to declare, prohibit, and abate nuisances." The City has Fire Department records and testimony that show that it directed Caltrans to conduct annual weed abatement of the Park site since the early 1970s.
- CCC staff's argument in support of a recommendation of denial (as laid out in its staff report) appears to go as follows:
 - According to Dr. Engel, if the mowing is legal, then it's not ESHA; if the mowing is illegal, then it's ESHA.
 - As such, despite the statement referenced above from Pg. 19 of the CDP staff report, due to the inclusion of the Park property as USFWS mapped critical habitat, CCC staff concludes that the annual weed abatement constitutes removal of major vegetation requiring a CDP. Since no CDP was ever obtained by Caltrans nor the City for the annual weed abatement, then the site disturbance must be treated as if it had never occurred, and thus it's ESHA.
 - The City's response to this is as follows: The historical significant site disturbance and annual weed abatement over 47 years constitutes a legal and vested activity which did not require a CDP. Despite the critical habitat mapping in 2000 by USFWS, no protocol survey spanning nearly three decades has yielded any CAGN occurrences on the Park property.

Thus, there is not nor has there ever been any ESHA on the property.

- In an April 2012 determination letter, USFWS concluded that the Park project will not have any impacts to CAGN and that the project will actually result in better and more habitat for CAGN once completed.

California Coastal Commission
[CDP Application No. 5-11-302]

Applicant: City of Newport Beach

Agent: Schmitz & Associates, Inc.

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

Project Description: Sunset Ridge Park:

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

I, Commissioner Brian Brennan, had ex parte communication with Don Schmitz, agent for the above-referenced project, on Tuesday, July 24, 2012 in Ventura, CA. Mr. Schmitz reiterated the City's position on the property's historical site disturbance and legality of the Fire Department-mandated annual weed abatement activity. Mr. Schmitz also advised me of the City's proposed off-site habitat enhancement proposal totaling 1.5 acres to be located within either John Wayne Gulch, Buck Gully of Big Canyon in the City of Newport Beach.



Commissioner Brennan

7/25/12

Date

Del Arroz, John@Coastal

From: Schwing, Karl@Coastal
Sent: Thursday, July 26, 2012 1:24 PM
To: Del Arroz, John@Coastal
Subject: FW: Schmitz re: Ex Parte for Sunset Ridge Park
Attachments: 2012 July 20 NB-SRP Ex Parte Dec for Mitchell.doc; ATT00001.htm
For the file, and attachment as exhibit to staff report

*Karl Schwing
California Coastal Commission
South Coast Area Office/Long Beach
KARL.SCHWING@COASTAL.CA.GOV*

From: Miller, Vanessa@Coastal
Sent: Thursday, July 26, 2012 1:05 PM
To: Sarb, Sherilyn@Coastal; Schwing, Karl@Coastal
Cc: Staben, Jeff@Coastal
Subject: FW: Schmitz re: Ex Parte for Sunset Ridge Park

From: Wendy Mitchell
Sent: Thursday, July 26, 2012 1:04 PM
To: Miller, Vanessa@Coastal
Subject: Fwd: Schmitz re: Ex Parte for Sunset Ridge Park

For the file.

Sent from my iPhone

Begin forwarded message:

From: Lauren Smith
Date: July 26, 2012 12:51:30 PM PDT
To: Wendy Mitchell
Subject: FW: Schmitz re: Ex Parte for Sunset Ridge Park

----- Forwarded Message

From: Kris Graves <kgraves@schmitzandassociates.net>
Date: Thu, 26 Jul 2012 10:55:28 -0500
To: Lauren Smith
Subject: Schmitz re: Ex Parte for Sunset Ridge Park

Hi Lauren,

I have attached Commissioner Mitchell's Ex Parte communication with Don Schmitz on July 20, 2012.

After your review should you have any questions, please contact me at your

California Coastal Commission
[CDP Application No. 5-11-302]

Applicant: City of Newport Beach

Agent: Schmitz & Associates, Inc.

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

Project Description: Sunset Ridge Park:

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

I, Commissioner Wendy Mitchell, had ex parte communication with Don Schmitz, agent for the above-referenced project, on Friday, July 20, 2012. Mr. Schmitz reiterated the City's position on the property's historical site disturbance and legality of the Fire Department-mandated annual weed abatement activity. Mr. Schmitz also advised me of the City's proposed off-site habitat enhancement proposal totaling 1.5 acres to be located within either John Wayne Gulch, Buck Gully of Big Canyon in the City of Newport Beach.

Commissioner Mitchell

Date

Exhibit 26
List of Potential Special Conditions of Approval

These potential special conditions of approval of the Sunset Ridge Park project were developed by Commission staff at the request of the Commission. However, the staff's denial recommendation of the proposed project remains unchanged. Should the Commission approve, or conditionally approve, the proposed project, revised findings will be subsequently prepared and adopted by the Commission.

1. Open Space Restriction

A. No development, as defined in section 30106 of the Coastal Act shall occur in Environmentally Sensitive Habitat Areas and 50-ft. buffers to Environmentally Sensitive Habitat Areas located on the subject site as described and depicted in the Memorandum by Dr. Jonna Engel attached as Exhibit 7 to the staff report dated July 27, 2012 except for the following development as described and shown on the final plans approved by the Executive Director pursuant to Special Condition 6:

1. Restoration activities, including removal of non-native vegetation, installation of native vegetation, installation and removal of temporary irrigation devices;
2. One-time and temporary grading activities within buffers necessary for the proposed construction of the water infiltration trench and underground drainage culvert;
3. Removal of non-native species, in accordance with Special Condition 2;
4. The one-time installation of gravel and low treated wooden curb to the existing maintenance access road, as shown on Exhibit 4 to the staff report dated July 27, 2012
5. The following development, if approved by the Coastal Commission as an amendment to this coastal development permit:

Activities necessary for restoration of native habitat, maintenance or repair of water quality management features or drainage devices, in-kind repair or replacement of existing maintenance access road, or construction of pedestrian paths.

B. PRIOR TO ISSUANCE BY THE EXECUTIVE DIRECTOR OF THE NOTICE OF INTENT TO ISSUE PERMIT (NOI) FOR THIS PERMIT, the permittee shall submit for the review and approval of the Executive Director, and upon such approval, for attachment as an Exhibit to the NOI, a formal legal description and graphic depiction of the portion of the subject property affected

by this condition, as generally described above and shown on Exhibit 7 attached to the staff report.

C. PRIOR TO ANY CONVEYANCE OF THE PROPERTY THAT IS THE SUBJECT OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall execute and record a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property (hereinafter referred to as the “Standard and Special Conditions”); and (2) imposing all Standard and Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The restriction shall include a legal description of the applicant’s entire parcel or parcels. It shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the Standard and Special Conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes – or any part, modification or amendment thereof - remains in existence on or with respect to the subject property.

2. Landscaping Plan.

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, in a form and content acceptable to the Executive Director, two (2) full size sets of revised final landscaping plans prepared by an appropriately licensed professional that meet the following requirements:

- (1) The plan shall demonstrate that:
 - (a) The revised final landscaping plans shall be in substantial conformance with the plan received in the Commission’s office on March 13, 2012, but shall have been modified to 1) Remove invasive species (e.g., *Cortaderia* sp., *Carpobrotus edulis*) from all areas on the subject site, including those areas outside the grading limits (i.e. those marked as Existing - Not to Be Disturbed on the landscaping plan attached to the staff report); 2) 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; 3) Remove non-native species from the planting list that have a propensity for dispersal (e.g., *Acacia* sp.); 4) Remove the area known as the Southeast Polygon, which was subject to Commission Cease and Desist Order CCC-11-CD-03 and Restoration Order CCC-11-RO-02, from the landscaping plan, as such landscaping has already been authorized by such orders. The applicant shall comply with the requirements of the Cease and Desist and Restoration Orders in those areas.

- (b) All planting shall provide 85 percent coverage within 90 days and shall be repeated if necessary to provide such coverage, unless the Executive Director determines that such a requirement would result in adverse impacts to areas of native habitat on the site and establishes a different coverage requirement.
- (c) All plantings shall be maintained in good growing condition throughout the life of the project, and whenever necessary, shall be replaced with new plant materials to ensure continued compliance with the landscape plan.
- (d) Each landscaped area on the site, except for the area designated as Turf Area on the landscaping plan submitted to the Commission's office on March 13, 2012, shall be suitable to provide foraging habitat for the California gnatcatcher. The majority of the species used shall be consistent with the Coastal Sage Scrub vegetation community type.
- (e) No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. With the exception of the proposed Turf Area, all plants shall be native to coastal Orange County and appropriate to the habitat type and be low water use plants as identified by California Department of Water Resources (See: <http://www.owue.water.ca.gov/docs/wucols00.pdf>). The Turf Area shall consist of either artificial turf or a species that minimizes the amount of irrigation required.
- (f) No irrigation, except for temporary irrigation necessary to establish plantings, shall occur within ESHA and 50 foot buffers to ESHA. Temporary irrigation lines within ESHA and buffers to ESHA shall be either removed or capped in place once plants have been established. Irrigation on areas of the site other than ESHA and buffers to ESHA shall be limited to the minimum amount necessary to maintain active growth of plant species while preventing creation of a severe fire hazard.

- (2) The plan shall include, at a minimum, the following components:
- (a) A map showing the type, size, quantity and location of all plant materials that will be on the developed site, the irrigation system, topography of the developed site, and all other landscape features
 - (b) A schedule for installation of plants.
- (3) The landscaping plan shall include the following requirements printed on the plans:
- (a) The permittee shall be responsible for ensuring that non-native landscaping within the park is maintained to prevent spill-over into ESHA or buffers to ESHA.
 - (b) The permittee shall be responsible for ensuring that no non-native or invasive species persist within ESHA or buffers to ESHA. Within the first 5 years since commencement of use of the park facility by the public, the permittee shall be authorized to remove non-native or invasive species from ESHA and buffers to ESHA. Such removal shall occur a minimum of once per year. After this period, the permittee shall submit an application for an amendment to this permit or for a new Coastal Development Permit for the removal of vegetation within ESHA.
 - (c) After 5 years since the public has been allowed access to park facilities, the removal or trimming of vegetation within buffers to ESHA or ESHA, including but not limited to removal or trimming for fire hazard management purposes, shall require an amendment to this coastal development permit or a new coastal development permit.
 - (d) No removal, pruning or other maintenance of vegetation, other than in the proposed "Turf" area, shall occur during the breeding season of the California gnatcatcher, which is between February 15 and August 31.
 - (e) Five years from since commencement of use of the park facility by the public the applicant shall submit for the review and approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified

in the landscaping plan approved pursuant to this permit, the applicant, or successors in interest, shall submit a revised or supplemental landscape plan for the review and approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or a qualified Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

- B.** The permittees shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. Parking Management Plan

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit, for the review and approval of the Executive Director, two (2) full sized copies of a Parking Management Plan. The plan shall be prepared by a qualified professional and shall include the following:
- (1) A schedule for management of games/use of the ball fields, to ensure that adequate parking is provided for the park use and for the existing uses of the public parking lot. Games shall be scheduled to avoid peak beach use periods such as summers and holidays to the extent possible as proposed in City of Newport Beach letter dated July 20, 2012, attached as Exhibit 22 to the staff report.
 - (2) Provision of a signage plan that shall include, at a minimum, the following components: a sample of each sign and/or stencil and a site plan depicting the location of each sign and/or stencil. Signage shall be posted that specifies allowable use of each parking space (including day and time of availability) and applicable restrictions.
 - (4) Provisions to limit the usage of the maintenance access road to only City maintenance vehicles and City operated shuttles as a reasonable accommodation for members of the public with impaired mobility consistent with applicable ADA requirements.
 - (5) Provisions to reduce the number of shuttle trips to the park site to the minimum necessary to allow members of the public with impaired mobility to access the park site.

- B. The permittees shall undertake development in accordance with the approved final plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan, including any change in the intensity of use of the access road, shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

4. Lighting

A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and approval of the Executive Director, revised plans to protect landscaped and habitat areas from light generated by the project. The lighting plan to be submitted to the Executive Director shall be accompanied by an analysis of the lighting plan prepared by a qualified biologist which documents that the lighting plan is effective at preventing lighting impacts upon adjacent environmentally sensitive habitat. The proposed lighting plan shall include, but not be limited to, the following elements: lighting on the site shall be limited to the minimum amount necessary to light accessways and for security and be designed to avoid impacts to native habitat areas on the site; lighting will be limited to 3.5 foot bollards within areas of walkways with cut-off louvers and will be positioned, directed or shielded so as to minimize artificial lighting from reflecting into native habitat; no skyward-casting lighting or portable light generators shall be used on the site; the lowest intensity lighting shall be used that is appropriate to the intended use of the lighting.

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Fencing and Signage Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a final fencing and signage plan showing the location, design, height and materials of all walls, fences, gates, safety devices and boundary treatments for the review and approval of the Executive Director. The fencing and signage plan shall incorporate the following requirements:

A. Fencing on the project site shall be located where it will not result in adverse impacts to ESHA.

B. To the maximum extent feasible, all fencing on the site shall be designed to allow the unimpeded ingress, egress and traversal of wildlife, including the coyote.

C. If state requirements regarding oil field security prevent traversal of wildlife, including the coyote, across the proposed Security Fence separating the park site from Newport Banning Ranch, the permittee shall enact measures to exclude nest predators from the subject site, specified in Special Condition 7.

D. The proposed Oil Field Security Fence between the park site and Newport Banning Ranch shall be removed at the time the fencing is no longer required by state law.

E. The fencing plan shall include provisions for signing and fencing to discourage human intrusion into ESHA and buffers to ESHA. The fencing shall be designed in a manner that creates a delineation between areas of native habitat and the public areas of the park.

F. Signs prohibiting entrance of the public into the native habitat areas and identifying their sensitive nature shall be posted at reasonable intervals and likely points of entry along the west side of the park. The plan shall include samples of such signage.

G. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- 6. Final Project Plans.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director, two (2) copies of final project plans. The final set of plans shall include:
- a) Final Grading and Site plans which are in substantial conformance with the plans received in the Commission's office on March 13, 2012, but which have been revised to comply with a 50 foot buffer from areas of ESHA which excludes grading activities, except in areas where the applicant has demonstrated to the Executive Director's satisfaction that such grading is necessary for the construction of the proposed water infiltration swale and undergrounded drainage culvert.
 - b) Final detailed planting plans, consistent with the requirements of Special Condition 2
 - c) All locations of utilities on the project site
 - d) Plans showing park improvements, such as the public restroom, benches, tables, walkways, ball field and associated structures
 - e) Drainage Plans, which show flow lines and the water quality management features required on the site, as required in Special Conditions 8
 - f) Fencing and Signage Plan, as required in Special Condition 5

- g) Plans showing areas subject to Open Space Restriction as required in Special Condition 1
- h) Construction Staging and Fencing Plans as required in Special Condition 10

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

7. Habitat Impact Management Plan

A. Avoidance of Listed Species. The permittee shall staff a qualified monitoring biologist on-site during all CSS clearing and any other project-related work with the potential to impact sensitive species. The biologist must be knowledgeable of the biology and ecology of sensitive species with the potential to occur on the project site and wetland ecology. The following measures shall be taken prior to and during construction:

- (1) Pre-construction surveys shall be conducted within 10 days of the start of construction by a qualified biologist to determine the presence of any sensitive species with the potential to occur on the project site.
- (2) A qualified biologist shall be present daily during construction in locations with the potential to support sensitive species, and to monitor for these species. The biologist will be authorized to stop work if threats to any sensitive species are identified during monitoring.
- (3) Construction shall be scheduled to avoid the breeding seasons of special status species that are found to be present in the construction area, including, but not limited to, the California gnatcatcher.
- (4) If any burrowing owls, cactus wrens, or other federally or state listed species are discovered on or near the project site, all work in the area shall cease and Fish and Wildlife and the Executive Director of the Commission shall be contacted to assess any potential risk of significant adverse effects to listed species and the possible need for further coordination. No construction shall continue until both Fish and Wildlife and the Executive Director of the Commission have determined that further coordination of construction activities are sufficient to avoid potential effects to listed species. If the Executive Director of the Commission determines that an amendment to this coastal development permit is legally required to address the potential risk of significant adverse effects to listed species, the permittee agrees, by acceptance of this permit, to comply with the

Executive Director's determination and apply for an amendment to this coastal development permit.

- (5) Prior to and during the clearing of any CSS or other suitable gnatcatcher habitats outside the gnatcatcher breeding season, the biologist shall locate any individual gnatcatchers on-site and direct clearing to begin in an area away from birds. In addition, the biologist shall walk ahead of clearing equipment to flush birds towards areas of habitat that will be avoided. It shall be the responsibility of the permittee to assure that gnatcatchers shall not be directly injured or killed by the clearing of CSS.
- (6) Prior to initiating clearing and/or project construction during the gnatcatcher breeding season, the biological monitor shall meet on-site with the construction manager and/or other individual(s) with oversight and management responsibility for the day-to-day activities on the construction site to discuss implementation of the relevant avoidance/minimization/mitigation measures for gnatcatcher. The biologist shall meet as needed with the construction manager (e.g., when new crews are employed) to discuss implementation of these measures.
- (7) The permittee shall submit weekly reports (including photographs of impact areas) to the Executive Director and the Wildlife Agencies during initial clearing of CSS and/or project construction within 100 feet of avoided CSS during the gnatcatcher breeding season. The weekly reports shall document that authorized CSS impacts were not exceeded, work did not occur within the 100-foot setback during the gnatcatcher breeding season except as approved by the Executive Director, and general compliance with all conditions. The reports shall also outline the duration of gnatcatcher monitoring, the location of construction activities, the type of construction which occurred, and equipment used. These reports shall specify numbers, locations, and sex of gnatcatchers (if present), observed gnatcatcher behavior (especially in relation to construction activities), and remedial measures employed to avoid, minimize, and mitigate impacts to gnatcatchers. Raw field notes shall be available upon request by the Executive Director. If the Executive Director of the Commission determines that the report indicates the construction activities are causing a potential risk of significant adverse effects on the environment and determines that an amendment to this coastal development permit is legally required to address these effects, the permittee agrees, by acceptance of this permit, to comply with the Executive Director's determinations and apply for an amendment to this coastal development permit.
- (8) 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.

B. Park Operations.

- 1) Trash cans located in the park shall contain closed lids sufficient to prevent trash from escaping due to wind or animal dispersion.
- 2) No human intrusion into habitat areas shall occur within the breeding season of the California gnatcatcher.
- 2) Access Road. No impacts to ESHA resulting from usage of the maintenance access road are authorized by this Coastal Development Permit. It is the City's responsibility to ensure that usage of the maintenance access road does not result in impacts to ESHA areas. The City shall monitor usage of the maintenance access road to ensure that no impacts occur as a result of usage of the access road. Upon discovery of any impacts to ESHA, the City shall submit an application for a new Coastal Development Permit or an amendment to this Coastal Development Permit for restoration of the affected area.
- 3) Special Events. The only development authorized by this permit is the use of the park for ball fields. Any other use of the park, such as the use of the park for temporary special events, may require a Coastal Development Permit. At least 180 days in advance of a temporary special event which is planned to occur on the site, the permittee shall submit a written letter with a description of the proposed temporary event to inquire whether a Coastal Development Permit is required.
- 4) No amplified speakers shall be allowed on the site.

D. Monitoring Plan. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the permittee shall develop, in consultation with the California Department of Fish and Game and U.S. Fish and Wildlife Service as appropriate, and submit for review and written approval of the Executive Director, a final monitoring plan which includes, but is not limited to, the following requirements:

- 1) During the first five years since commencement of use of the park facility by the public, human intrusion into habitat areas shall be assessed on a regular basis. If the sign and fencing plan approved by the Executive Director is not effective at preventing human intrusion into sensitive habitat areas, the permittee shall submit a request for amendment to this Coastal Development Permit proposing additional measures to prevent intrusion into sensitive areas. The amendment request shall include a report by a qualified biologist describing the assessments performed, the problems encountered, and whether the suggested strategies will be effective at preventing human intrusion. A copy of this report shall also be sent to the Carlsbad office of the US Fish and Wildlife Service. Six years after commencement of use of the park facility by the public, the permittee shall submit a summary of the assessments performed and a

record of their implementation to the Executive Director and the Carlsbad office of the US Fish and Wildlife Service.

- 2) Provisions for monitoring of the impact of predation by domestic pets on the California gnatcatcher. A qualified biologist shall monitor the presence of domestic and feral cats on the subject site, and submit annual monitoring reports for 5 years after completion of grading documenting the degree of usage of the site by domestic and feral cats.
- 3) Provisions for implementation of a Cowbird monitoring and eradication program. The site shall be surveyed annually for the presence of the brown-headed cowbird (*Molothrus ater*) on the project site.

E. Nest Predator Exclusion Program. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, a program for the removal of nest predators, including the brown-headed cowbird and domestic and feral cats from the project site shall be submitted for the review and approval of the Executive Director. A qualified biologist shall design the eradication program. The program shall be designed to reduce the prevalence of nest predators on the project site to reduce potential impacts to the California gnatcatcher. The program shall include, but shall not be limited to, provisions for trapping, public education, and installation of additional fencing, if consistent with the Fencing and Signage Condition, above. Any development, as defined in Section 30106 of the Coastal Act, which is required to enact the Nest Predator Exclusion Program shall require an amendment to this Coastal Development Permit, unless the executive director determines that no permit is required.

The Nest Predator Exclusion Program shall be enacted if either:

- 1) upon review of the final fencing plan, the Executive Director determines that fencing on the site will not allow wildlife, including the coyote, sufficient mobility to the park site, or:
- 2) Upon review of the reports from the monitoring program, the Executive Director determines that cowbirds or domestic or feral cats are posing a significant risk to the California gnatcatcher or other sensitive species on the project site

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. **Drainage And Polluted Runoff Control Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit for the review and approval of the Executive Director, two (2) copies of a final Drainage and Runoff Control Plan for the post-construction project site, prepared by a licensed civil engineer or qualified licensed professional. The Plan shall include detailed drainage and runoff control plans with supporting calculations. The plan shall incorporate Best Management Practices (BMPs) including site design, source control and treatment control measures designed to reduce, to the maximum extent practicable, the volume, velocity and pollutant load of stormwater and dry weather runoff leaving the developed site. The consulting licensed civil engineer or qualified licensed professional shall certify in writing that the final Drainage and Runoff Control Plan is in substantial conformance with the following minimum requirements:

- 1) The plan shall demonstrate the use of distributed small-scale controls or integrated Best Management Practices (BMPs) that serve to minimize alterations to the natural pre-development hydrologic characteristics and conditions of the site, and effectively address pollutants of concern.
- 2) Post-development peak runoff rate and average volume from the site shall be maintained at levels similar to pre-development conditions.
- 3) Selected BMPs shall consist, or primarily consist, of site design elements and/or landscape based systems or features that serve to maintain site permeability, avoid directly connected impervious area and/or retain, infiltrate, or filter runoff from rooftops and hardscape areas, where feasible. Examples of such features include but are not limited to porous pavement, pavers, vegetated swales, infiltration trenches,
- 4) Landscaping materials shall consist primarily of native or other low-maintenance plant selections which have low water and chemical treatment demands. An efficient irrigation system designed based on hydrozones and utilizing drip emitters or micro-sprays or other efficient design should be utilized for any landscaping requiring water application. To the maximum extent feasible, the irrigation system must be capable of matching the water demand of the vegetation with the quantity of water delivered to the vegetation.
- 5) All slopes should be stabilized in accordance with provisions contained in the Landscaping and/or Interim Erosion and Sediment Control Condition for this Coastal Development Permit.
- 6) Runoff shall be discharged from the developed site in a non-erosive manner. Energy dissipating measures shall be installed at the terminus of outflow drains where necessary.

- 7) Post-construction structural BMPs (or suites of BMPs) shall be designed to treat, infiltrate or filter the amount of stormwater runoff produced by all storms up to and including the 85th percentile, 24-hour storm event for volume-based BMPs, and/or the 85th percentile, 1-hour storm event, with an appropriate safety factor (i.e., 2 or greater), for flow-based BMPs.
- 8) All BMPs shall be operated, monitored, and maintained in accordance with manufacturer's specifications where applicable, or in accordance with well recognized technical specifications appropriate to the BMP for the life of the project and at a minimum, all structural BMPs shall be inspected, cleaned-out, and where necessary, repaired prior to the onset of the storm season (October 15th each year) and at regular intervals as necessary between October 15th and April 15th of each year. Debris and other water pollutants removed from structural BMP(s) during clean-out shall be contained and disposed of in a proper manner.
- 9) For projects located on a hillside, slope, or which may otherwise be prone to instability, final drainage planes should be approved by the project consulting geotechnical engineer.
- 10) Should any of the project's surface or subsurface drainage/filtration structures or other BMPs fail or result in increased erosion, the permittee /landowner or successor-in-interest shall be responsible for any necessary repairs to the drainage/filtration system or BMPs and restoration of the eroded area. Should repairs or restoration become necessary, prior to the commencement of such repair or restoration work, the permittee shall submit a repair and restoration plan to the Executive Director to determine if an amendment or new coastal development permit is required to authorize such work.
- 11) The final Drainage and Runoff Control Plans shall be in conformance with the site/development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans required by the consulting civil engineer/water quality professional or engineering geologist shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is legally required.

9. **Storage Of Construction Materials, Mechanized Equipment And Removal Of Construction Debris**

- A. The permittee shall comply with the following construction-related requirements:

- (1) No construction materials, debris, or waste shall be placed or stored where it may be subject to water, wind, rain, or dispersion;
- (2) Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project;
- (3) Construction debris and sediment shall be removed from construction areas each day that construction occurs to prevent the accumulation of sediment and other debris which may be discharged into coastal waters;
- (4) Erosion control/sedimentation Best Management Practices (BMP's) shall be used to control dust and sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
- (5) All construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

B. Best Management Practices (BMPs) designed to prevent spillage and/or runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the onset of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of the project. Such measures shall be used during construction:

- (1) The permittee shall ensure the proper handling, storage, and application of petroleum products and other construction materials. These shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. It shall be located as far away from the receiving waters and storm drain inlets as possible;
- (2) The permittee shall develop and implement spill prevention and control measures;
- (3) The permittee shall maintain and wash equipment and machinery in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems. Washout from concrete trucks shall be disposed of at a location not subject to runoff and more than 50-feet away from a storm drain, open ditch or surface water; and

- (4) The permittee shall provide adequate disposal facilities for solid waste, including excess concrete, produced during construction.

10. Construction Staging and Temporary Construction-Fencing Plan:

A. All construction plans and specifications for the project shall indicate that impacts to wetlands and environmentally sensitive habitats shall be avoided and that the California Coastal Commission has not authorized any impact to wetlands or other environmentally sensitive habitat. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit a final construction staging and fencing plan for the review and approval of the Executive Director which indicates that the construction in the construction zone, construction staging area(s) and construction corridor(s) shall avoid impacts to wetlands and other sensitive habitat consistent with this approval. The plan shall include the following requirements and elements:

1. Wetlands and any other environmentally sensitive habitats shall not be affected in any way, except as specifically authorized in this permit.
2. Prior to commencement of construction, temporary barriers shall be placed at the limits of grading adjacent to ESHA. The barriers shall be a minimum 8 feet tall and one-inch thick in those areas adjacent to occupied gnatcatcher habitat. Solid physical barriers shall be used at the limits of grading adjacent to all other ESHA. Barriers and other work area demarcations shall be inspected by a qualified biologist to assure that such barriers and/or demarcations are installed consistent with the requirements of this permit. All temporary barriers, staking, fencing shall be removed upon completion of construction.
3. No grading, stockpiling or earth moving with heavy equipment shall occur within ESHA, wetlands or their designated buffers, except as noted in the final habitat management plan approved by the Executive Director.
4. No construction materials, debris, or waste shall be placed or stored where it may enter sensitive upland habitat or wetlands, storm drain, receiving waters, or be subject to wind erosion and dispersion;
5. No construction equipment shall be stored within any ESHA, wetlands or their buffers.
6. The plan shall demonstrate that:
 - a. Construction equipment, materials or activity shall not occur outside the staging area and construction zone and corridors identified on the site plan required by this condition; and
 - b. Construction equipment, materials, or activity shall not be placed in any location which would result in impacts to wetlands or other sensitive habitat;
7. The plan shall include, at a minimum, the following components:
 - a. A site plan that depicts:

- i. limits of the staging area(s)
- ii. construction corridor(s)
- iii. construction site
- iv. location of construction fencing and temporary job trailers with respect to existing wetlands and sensitive habitat

B. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

11. Final Plans Conforming To Geotechnical Recommendations

A. All final design and construction plans shall be consistent with all recommendations contained in Geotechnical Study For The Proposed Sunset Ridge Park Project For The Environmental Impact Report (EIR), Superior Avenue And Pacific Coast Highway, City Of Newport Beach, California, dated August 19, 2009. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

B. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the Executive Director's review and approval, two full sets of plans with evidence that an appropriately licensed professional has reviewed and approved all final design and construction plans and certified that each of those final plans is consistent with all the recommendations specified in the above-referenced report.

C. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment unless the Executive Director determines that no amendment is legally required.

12. Assumption Of Risk, Waiver Of Liability And Indemnity. By acceptance of this permit, the permittee acknowledges and agrees (i) that the site may be subject to hazards from landslide, erosion, and earth movement; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees

incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards

- 13. Other Agency Approvals.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall provide to the Executive Director a copy of a permit, or letter of permission, or evidence that no permit or permission is required for the project by the following entities:; California Department of Fish and Game; U.S. Fish and Wildlife Service; Regional Water Quality Control Board, City of Newport Beach Fire Authority. The applicant shall comply with the recommendations provided by the USFWS in their April 27, 2012 letter. The permittee shall inform the Executive Director of any changes to the project required by the City of Newport Beach Fire Authority; California Department of Fish and Game; U.S. Fish and Wildlife Service; Regional Water Quality Control Board. Such changes shall not be incorporated into the project until the permittee obtains a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.
- 14. Future Development Restriction.** This permit is only for the development described in Coastal Development Permit No. 5-11-302. Pursuant to Title 14, California Code of Regulations, section 13253(b)(6), the exemptions otherwise provided in Public Resources Code, section 30610(b) shall not apply. Accordingly, any future improvements the proposed park access road, ball fields, grass warm-up field, landscaped areas, children's playground, restroom, and other structures described in this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code, section 30610(d) and Title 14, California Code of Regulations, sections 13252(a)- (b), or the intensification of use of the maintenance access road, shall require an amendment to Permit No. 5-11-302 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government, unless the Executive Director of the Commission determines that no amendment or new permit is required.
- 15. Proof of Legal Ability to Comply With Conditions.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall demonstrate the permittee's legal ability or authority to undertake development located on the adjacent property known as Newport Banning Ranch.
- 16. Liability for Costs and Attorneys Fees.** By acceptance of this permit, the Applicant/Permittee agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys fees -- including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys fees that the Coastal Commission may be required by a court to pay -- that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Applicant/Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or

issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.