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**Gnatcatcher Occurances 2006** 

5-10-168, Exhibit 12 64 of 72 Single

















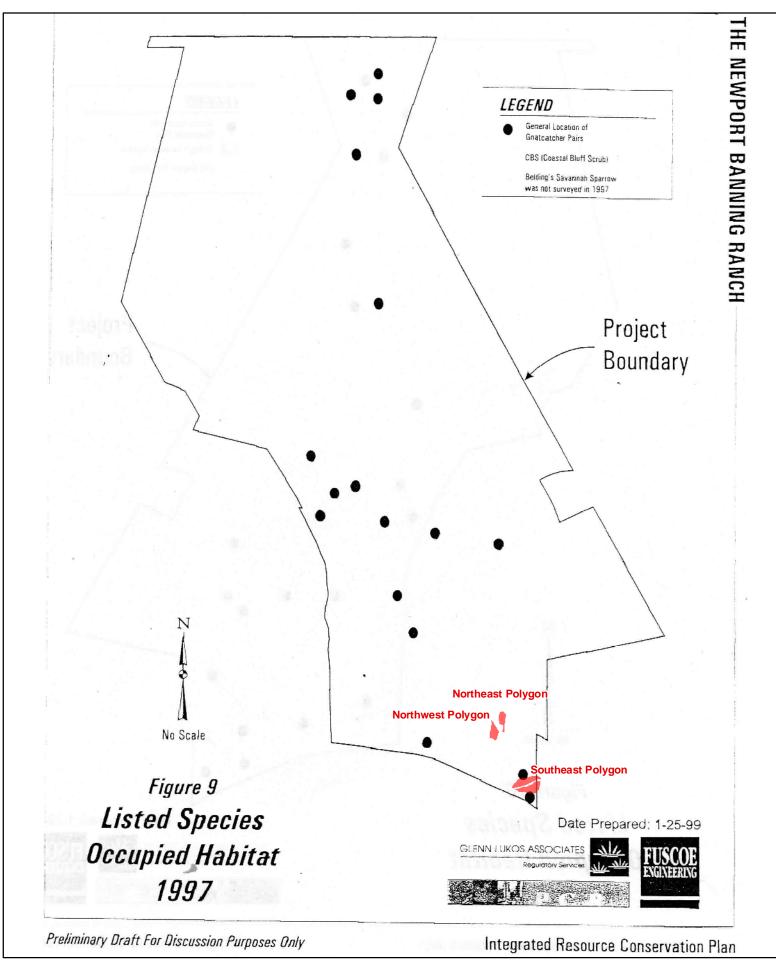








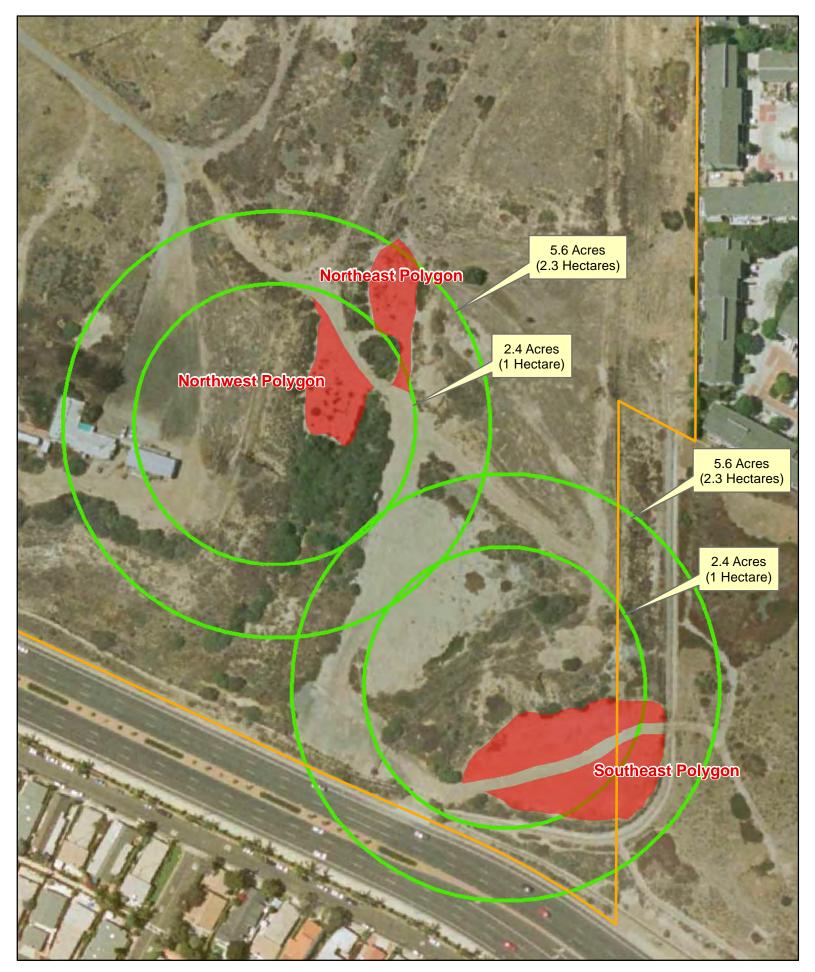


Figure 29c



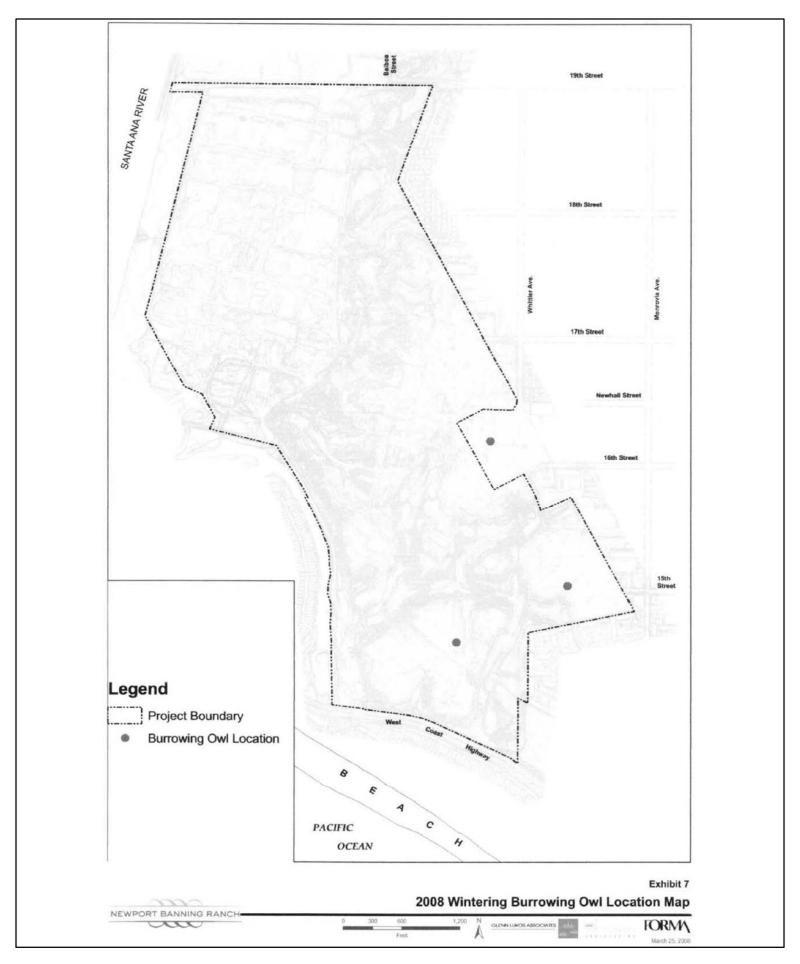
















# **CALIFORNIA COASTAL COMMISSION**

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W16a

Filed: 180th Day: 270th Day Staff: Staff Report: Hearing Date:

March 30, 2011 September 26, 2011 December 25, 2011 John Del Arroz - LB October 20, 2011 October 5-7, 2011



Commission Action:

STAFF REPORT: REGULAR CALENDAR

APPLICATION NUMBER: 5-10-168

APPLICANT: City of Newport Beach

**AGENT:** Don Schmitz + Associates

**PROJECT LOCATION:** Northwest Corner of the Intersection of Pacific Coast Highway and Superior Ave, Newport Beach, Orange County

PROJECT DESCRIPTION: Construction of an active recreational park of approximately 20 acres. The project site includes a 13.7 acre parcel owned by the City and an area owned by Newport Banning Ranch LLC subject to an access agreement with the City consisting of a 6.3 acre and a 4.1 acre area. The park would include a baseball diamond/soccer fields, pedestrian paths, viewpoint, children's playground, restroom, 111 space parking lot, a new access road and other associated improvements, landscaping and coastal bluff scrub and coastal sage scrub habitat restoration. Grading consists of approximately 100,000 cubic yards of cut, and 98,000 cubic yards of fill. The proposed development would occur on two parcels of land. The active park portion of the project would be located on a 13.7 acre parcel owned by the City of Newport Beach (formerly owned by CalTrans). The access road to the park, a portion of a parking lot, and landscaping and habitat restoration would be located on a 6.3 acre portion, and a fill deposition site would be located on a 4.1 acre portion, of an approximately 500 acre parcel known locally as "Banning Ranch", which is managed by Newport Banning Ranch, LLC (NBR).

**LOCAL APPROVALS:** City of Newport Beach Approval in Concept No. AIC 2010 043 dated July 13, 2010

SUBSTANTIVE FILE DOCUMENTS: City of Newport Beach certified Land Use Plan Access Agreement between the City of Newport Beach and Banning Ranch LLC

#### **SUMMARY OF STAFF RECOMMENDATION:**

Staff recommends that the Commission **DENY** the proposed active recreational park and proposed access road.

The appropriate motion and resolution can be found on Page 7.

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#### **Staff Note:**

The City submitted a letter with attachments on October 19, 2011, responding to the issues raised in the staff report for the October hearing (Exhibit 13). Insufficient time was available for Staff to address the City's response in this Staff Report. A response to the City's letter will be included in the addendum to the Staff Report.

# **Executive Summary:**

The City of Newport Beach is requesting a coastal development permit to construct an approximately 20 acre active recreational public park, which includes a parking lot and access road for the park, on vacant land that contains coastal sage scrub (CSS) habitat occupied by California gnatcatcher, as well as wetlands. As part of its 20 acre active park proposal, the City secured an access agreement with the adjacent landowner, Newport Banning Ranch, LLC (NBR), from which it received permission to build most of the access road and a portion of the parking lot on NBR's property. The term 'NBR parcel' will refer to the portion of the Newport Banning Ranch property that is subject to the access agreement. The term 'City parcel' will refer to the parcel owned by the City. The term 'Project Site' will refer to both the City parcel and the NBR parcel. The gnatcatcher occupied CSS has been identified by the Commission's biologist as environmentally sensitive habitat area (ESHA). Section 30240 of the Coastal Act provides that ESHA shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed in those areas. Also, development adjacent to ESHA shall be sited and designed to prevent impacts which would significantly degrade those areas and be compatible with the continuance of the habitat.

The new road, as proposed to access the City parcel on the adjacent property not owned by the City, has been the central issue of contention. The general alignment of the access road proposed by the applicant would pass through areas identified as gnatcatcher occupied CSS/ESHA. The threshold issues have been: 1) will the presence of a road in this area be a significant disruption to the suitability of the surrounding ESHA to continue to support gnatcatcher use; and, if not, 2) is there a road alignment and size that would avoid the direct removal of gnatcatcher occupied CSS/ESHA, provide adequate buffers, and allow for the continuance of the surrounding habitat value? Commission staff in consultation with the staff biologist has concluded that a narrow road, with a low intensity of use, could potentially be considered in the proposed revised alignment so long as: a) the use of the road were restricted in perpetuity such that its intensity of use would never increase (i.e. the road will remain a park road, and nothing more); b) the new road alignment would avoid existing native vegetation occupied by gnatcatcher; c) the areas immediately adjacent to the road, some of which may be disturbed by construction/grading, are fully restored to high quality CSS suitable for use by gnatcatcher; and d) the restored areas, as well as the avoided CSS/ESHA areas that would need to be enhanced/expanded, are conserved in perpetuity as habitat and open space through appropriate legal instruments. However, only a park road proposal that incorporates those elements would result in a final design that promotes the continued use of the surrounding habitat areas by gnatcatchers.

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Several iterations of a park access road design have been submitted by the City in conjunction with the application. The initial access road designs submitted would have caused direct impacts on gnatcatcher occupied CSS/ESHA. After working with the applicant, an access road design was identified that would avoid direct removal of habitat known at this time to be gnatcatcher occupied CSS/ESHA. That design would necessitate some grading within ESHA buffers, which represents a significant departure from the Commission's typical requirement to avoid such grading in buffers. However, Commission staff was prepared to recommend approval, with agreement by the City and/or the underlying landowner to the restrictions that would prevent use of the road for anything other than a low-intensity park road (i.e. which would foreclose the option of expanding the road to a major arterial road), restore habitat within the ESHA buffers, and secure the buffers and surrounding habitat as open space. At this time, the landowner is not willing to agree to set aside portions of its property for this purpose. In the absence of agreement on the fundamental, threshold question related to the size and intensity of use of the road, as well as a variety of other issues that haven't been fully resolved, Commission staff is recommending DENIAL of the proposed development for the following reasons.

The subject site is located at the northeast corner of the intersection of West Coast Highway and Superior Avenue, in western Newport Beach. The park would include a baseball diamond/soccer fields, pedestrian paths, viewpoint, children's playground, restroom, 111 space parking lot, a new access road and other associated improvements, landscaping and coastal bluff scrub and coastal sage scrub habitat restoration. The proposed development would occur on two parcels of land. The active park portion of the project would be located on a parcel formerly owned by CalTrans and currently owned by the City of Newport Beach (referenced in the staff report as the 'City parcel'). The access road to the park, a portion of a parking lot, and landscaping and some habitat restoration would be located on a 6.3 acre portion of an approximately 500 acre parcel known locally as "Banning Ranch", which is managed by Newport Banning Ranch, LLC (NBR), and owned by Cherokee Newport Beach, LLC and Aera Energy, LLC. The City has an access agreement with NBR to construct the park access road and other improvements on NBR property. The area subject to the access agreement is referenced in the staff report as the 'NBR parcel.' The park access road extends approximately 550 feet north of West Coast Highway, and then turns east and south to reach the City parcel.

In a separate action on September 9th, the City of Newport Beach and NBR released a Draft Environmental Impact Report (DEIR) for NBR's development plans for the remainder of the Banning Ranch. Those plans include 1,300+ residential dwelling units, 75,000 sq. ft. of commercial space, a 75-room resort inn, parks and trails. As discussed more fully below, those plans have implications on the use and potential future expansion of the proposed 'park access road'.

California gnatcatcher (*Polioptila californica californica*), a bird species listed as federally threatened by the U.S. Fish and Wildlife Service (USFWS) and by the State of California as a California Species of Special Concern, is present on the subject site. In 2007, the USFWS designated all of the City parcel and all of Newport Banning Ranch as critical habitat for California gnatcatchers. The Commission's biologist has determined that areas

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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. The project site supports a significant cover of coastal sage scrub vegetation, much of it is used by and is suitable for California gnatcatchers, thus, those areas have been identified as ESHA. There are also 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. Other wildlife, including raptor bird species, coyote, and possibly borrowing owls, utilize the project site and need to be addressed as well.

In her review of biological information currently submitted, Dr. Jonna Engel delineated two areas of ESHA within the project site, located mostly on the NBR parcel. One area, which she identifies as "ESHA West", is west of the proposed park access road. The other area, "ESHA East", is east of the proposed park access road. A third area on the City parcel, mapped as "disturbed encelia scrub", would be ESHA unless it is legally mowed, as discussed further below.

The construction of a new road between two blocks of ESHA will divide the area by development and introduce a greater intensity of use in that area. Currently, that area is infrequently disturbed by vehicles (perhaps a few vehicular passages a day). The new access road for the park is anticipated to have 173 vehicle trips per day. 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. The presence of additional improved habitat in and around the newly disturbed area would further serve to offset the increased level of activity in the area. While an increase from a few vehicle trips per day to 173 trips per day is significant, the Commission's biologist, in consultation with other experts, has concluded that the increase would be within the tolerance levels of the California gnatcatcher, if: a) the road elevation is below the habitat on either side, b) the road is a two lane, narrow road with a low number of vehicle trips per day, and c) the area on each side of the road is restored to high quality coastal sage scrub habitat. However, an increase above the proposed 173 vehicle trips per day, would have a significant adverse impact on the gnatcatchers use of the habitat area. Thus, Commission staff has concluded that 1) the access road must remain narrow; 2) the areas on each side of the road must be restored with habitat appropriate to the California gnatcatcher; 3) the quality of existing habitat must be improved, and expanded where feasible; and 4) legal restrictions must be in place to assure the road remains just a park road (no increase to the intensity of use) and the surrounding habitat areas are preserved in perpetuity. However, in this case, as stated above, Commission staff has learned that the applicant and underlying landowner will not agree to comply with these criteria.

Upon review of the content of the access agreement between the City and NBR, regarding the City's use of NBR land for the proposed access road, and review of the recently released Draft Environmental Impact Report (DEIR) for the Banning Ranch project, it is clear that agreeing to the conditions outlined above would significantly impact future

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implementation of the Banning Ranch project as it is currently envisioned under the DEIR. To implement the Banning Ranch project, the proposed 'park access road' would need to be expanded by several lanes, as it would serve as the main entryway to the Banning Ranch development. Furthermore, the road would need to accommodate thousands of vehicle trips per day. Based on preliminary plans in the DEIR, expansion of the road would require direct impacts on areas identified as ESHA in conjunction with this park proposal. Additional ESHA likely exists that hasn't yet been identified that would also be impacted by the expanded road. Furthermore, the increased width and intensity of use of the road would very likely exceed gnatcatcher tolerance for disturbance, rendering much of the habitat in that area unusable by the California gnatcatcher.

Several other key issues remain to be resolved as well, described in greater detail below. These include the size of the required buffers between development and gnatcatcher CSS/ESHA; the kinds of activities allowed in that buffer (e.g. grading); the size of buffers between development and existing degraded wetlands located on site (mostly along Superior Avenue); whether or not vernal pools exist in an area the City proposes to deposit soil exported from grading operations; whether fencing proposed to separate the park site from the remainder of NBR will adversely impact the circulation of large mammals that play an important predation role within the CSS/gnatcatcher ecosystem; and 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.

From the time the Commission began recognizing coastal scrub habitat occupied by gnatcatchers as ESHA, many of the Commission's past permit actions have required 100 foot buffers between gnatcatcher ESHA and development to adequately protect gnatcatchers and their habitat from human disturbance. In some cases a reduced buffer. usually no less than 50 feet at select locations, has been authorized based on site specific circumstances. Significant grading within those buffers is usually prohibited. Some temporary grading has been allowed, but only in cases where the graded areas would be fully restored with appropriate habitat, and where the grading itself wouldn't have adverse impacts on the ESHA. In this case, the applicant is proposing a 50 foot wide buffer between the edge of the road (and other development like the parking lot and children's play area) and existing CSS/ESHA. But, in order to construct the park access road alignment as proposed, grading would be required inside the proposed 50 foot buffer. Again, graded buffers have only been allowed where the buffer would be fully restored. In this case, the applicant has declined to restore those graded buffer areas with native vegetation appropriate to support gnatcatchers and instead insists the area be replanted with non-native, ornamental vegetation. The City asserts that replanting with native vegetation is inconsistent with the 'agreement' it has with NBR, which owns the land where the City has proposed to build most of the access road for this project.

The project site contains wetland habitat in several locations. One is seeps along a slope next to Superior Avenue. Vegetation within the seeps is hydrophytic, but generally non-native. The City's initial plans included grading out this area, but the project has been revised to avoid grading directly in that habitat. Nevertheless, grading occurs within 50

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feet of the wetland, and generally the Commission requires 100 foot buffers from wetlands. Another wetland feature is located to the west of the proposed access road, within an area designated as CSS/ESHA. Grading, again, would be within 50 feet of that wetland feature. Last, it has been alleged that vernal pools exist in an area on the NBR parcel, to the north of the proposed access road, where the City plans to dispose of graded soils. Some preliminary, but inconclusive analysis has been done to address whether such vernal pools exist. Commission staff's biologist believes additional surveys, consistent with scientific protocols, are required.

State law requires fencing around oil field operations like those occurring on NBR. Presently, that fencing envelops both the NBR and City owned lands. With implementation of the project, the City proposes fencing to separate the project site from the remainder of the larger Newport Banning Ranch property. That fencing will isolate ESHA that is presently inside the fencing. Once fenced, the circulation of large mammals that play an important predation role within the CSS/gnatcatcher ecosystem would be severely curtailed, and perhaps eliminated. The loss of those predators could impact that long term health of the CSS/ESHA. Without large predators, like coyote, that prey on smaller mammals, like feral cats and opossums, those smaller mammals will consume gnatcatcher eggs and young, causing the loss of gnatcatcher fecundity.

Last is the issue regarding the mowed encelia scrub. Mowing occurs on both the City and NBR parcels. The mowing is purportedly for fire hazard and weed control. The Commission's biologist has determined that were it not mowed, the encelia scrub would qualify as ESHA, as California encelia is strongly associated with California gnatcatcher use. The City and NBR have alleged that the mowing has occurred for decades, and began prior to the passage of the Coastal Initiative (i.e. Prop 20) and the Coastal Act. However, although requested on many occasions, neither the City nor NBR have attempted to document that claim. Unless a vested rights claim is reviewed and approved by the Commission, the legality of that mowing remains an issue, particularly since, if it is not legally mowed, the area would be considered ESHA, and all of the requirements of Section 30240 of the Coastal Act would apply. A substantial redesign of the park would be required to avoid that ESHA.

To summarize, staff has been working earnestly with the City to identify a project that could be approved pursuant to modifications and special conditions to bring it into compliance with the Coastal Act. However, after further review, and after further communication with the City and with Newport Banning Ranch, LLC, it has become clear that they cannot address the threshold issue of foreclosing future expansion of the park access road, so that ESHA, buffers, and the California gnatcatcher that relies on them, are permanently protected in conjunction with this project, which is creating the impact. Compromises on the widths and kinds of uses within buffers would also be required, that could only be offset by revegetating the buffers with CSS suitable for use by gnatcatchers, and permanently preserving those areas. Certain issues remain unresolved related to vernal pools and the legality of mowing habitat that would otherwise be ESHA. Therefore, in our final analysis based on the information now before us, staff determined that the proposed project is not consistent with the Coastal Act, and the proposed project must be

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denied. If the City and underlying land owner anticipate a larger road than that proposed to serve the park will be proposed to serve future development on the Banning Ranch property, all impacts associated with a road in this location should be reviewed in the context of the larger development it will ultimately serve. Approval of a smaller road and its associated impacts is premature at this time.

#### **LIST OF EXHIBITS:**

- 1. Vicinity Map
- 2. Reference Plan
- 3. Planting Plan
- 4. Grading Plan
- 5. Site Plan
- 6. Ex-parte forms on file
- 7. Letters in opposition of the project
- 8. Letters of support for the project
- 9. Supplemental letter from Schmitz + Associates
- 10. Dry Season Fairy Shrimp Survey
- 11. Access Alternative Analysis by Tom Brohard and Associates
- 12. Biological Memorandum from Dr. Jonna Engel, Staff Ecologist
- 13. Response Letter from the City of Newport Beach

# STAFF RECOMMENDATION:

# I. STAFF RECOMMENDATION OF DENIAL

Staff recommends that the Commission **DENY** the Coastal Development Permit application by voting **NO** on the following motion and adopting the following resolution.

#### A. MOTION

I move that the Commission approve Coastal Development Permit No. 5-10-168 for the development proposed by the applicant.

# B. STAFF RECOMMENDATION OF DENIAL

Staff recommends a <u>NO</u> 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.

#### C. RESOLUTION TO DENY THE PERMIT

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

Click on the links at left to go to the exhibits.

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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

# **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 13.7 acres of property owned by the City of Newport Beach (the 'City parcel'), and 6.3 acres for the access road and 4.1 acres for the fill deposition site in unincorporated Orange County owned by Newport Banning Ranch, LLC (the 'NBR parcel')(Exhibit 2). The City has entered into an access agreement with Newport Banning Ranch LLC to use a portion of its property for vehicular access to the project site. A letter inviting the owners of the NBR parcel to be coapplicants for the project was sent on September 15, 2011 and was declined.

The City parcel is zoned as Parks and Recreation and has a land use designation of Parks and Recreation. The NBR property is located in unincorporated Orange County and does not have a City zoning designation, but in the City's General Plan the site is designated as Open Space as the primary use and Residential Village as an alternative use. The NBR parcel is designated in the City's certified Land Use Plan as an area of deferred certification.

Residential uses are located adjacent to the northeast of the site, 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 further to the east of the site, and adjacent to the west is the Newport Banning Ranch property. Further to the west is the Semeniuk Slough.

#### History & Current Planning

The project site was historically occupied by a mesa which extended continuously across the site. However, excavation and use of the site as a borrow area has significantly modified the site. The majority of the City parcel now lies at a lowered elevation of approximately 44 feet, with the remnant portions of the mesa on the north eastern corner of the City parcel, and in the eastern portion of the NBR at the historical elevation of 76 feet above sea level. The EIR for the project states that the City parcel and portions of the NBR parcel are subject to regular maintenance activities for fuel modification and weed abatement.

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The City parcel 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, multifamily residential, and single family residential use on the site. In 1998, the City adopted a general plan amendment, which designated the City parcel 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 City parcel. Terms of the sale included a restriction to those uses on the City parcel 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 the 4.5 acre portion of the City parcel adjacent to Coast Highway which prohibits permanent structures or pavement.

The proposed access road to the park is located on a portion of the project site owned by Newport Banning Ranch, LLC. The City's certified Land Use Plan does not include the Banning Ranch Property, but instead designated it as an Area of Deferred Certification due to unresolved land use and resource protection issues. The LUP describes Banning Ranch as follows:

Banning Ranch consists of 505 acres located north of the Semeniuk Slough and Coast Highway West and east of the Santa Ana River. Nearly all of Banning Ranch (454 acres) is located within the City's sphere of influence in unincorporated Orange County. Oil and gas operations are conducted throughout the County portion of the property (West Newport Oil Field) pursuant to California Coastal Commission Exemption E-144. These operations consist of 483 producing, idle, injection, and abandoned well sites and related service roads, pipelines, storage, and other facilities. The property contains a number of sensitive habitat types, including southern coastal bluff scrub, alkali meadow, southern coastal salt marsh, southern black willow forest, coastal brackish marsh, and vernal pools. The property also contains steep coastal bluffs along the southern and western edges of the mesa. The bluff faces have been eroded in some areas to form a number of gullies and ravines. Future land uses for Banning Ranch are currently under review as part of a comprehensive update of the City of Newport Beach General Plan.

Banning Ranch shall remain a deferred certification area until such time as the future land uses for the property are resolved and policies are adopted to address the future of the oil and gas operations, public access, and the protection of the coastal resources on the property.

Active oil operations occur on the larger Newport Banning Ranch property, and have occurred on a portion of the subject site as well. The area of Newport Banning Ranch subject to the access agreement has four abandoned well sites, two near West Coast Highway, and two in the vicinity of the fill deposition site. Oil operations on the Project Site have ceased, and the NBR parcel is currently used for access to the larger Newport Banning Ranch property from Coast Highway.

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The Draft Environmental Impact Report for development of commercial and residential uses on Newport Banning Ranch was released on September 9, 2011, and is in the public review phase. 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, and would require a Coastal Development Permit.

The DEIR for Newport Banning Ranch indicates that the project would include the widening of the access road proposed for Sunset Ridge Park. The access road proposed for the park, with two 14 foot wide lanes, does not meet the Commission's typically applied requirement of 50 to 100 feet wide buffers from ESHA with no grading or permanent development allowed. Widening of the proposed access road for Sunset Ridge Park would result in elimination or significant degradation of buffers to ESHA or direct impacts to ESHA. A reduction in buffers would result in a significant reduction of the ability of the buffer to reduce the impacts to adjacent ESHA. Therefore, widening of the proposed access road for future development would result in significant deleterious impacts to ESHA, which would be inconsistent with Coastal Act Section 30240 regarding preservation of Environmentally Sensitive Habitat Areas.

# Past Commission Action

The Project Site includes the sites where a violation of the Coastal Act occurred between April and October of 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 violation occurred on three 'polygons' on the Project Site, located primarily on the NBR parcel with a small portion of one polygon located on the City parcel (Figure 3 of Exhibit 12). On April 14, 2011 the Commission issued Consent order CCC-11-CD-03 and Restoration order CCC-11-RO-02. imposing monetary penalties for violation of the Coastal Act, and requiring removal of unpermitted development, restoration of the northwest and southeast polygons with coastal sage scrub for use of the California gnatcatcher, and mitigation offsetting the temporal loss of habitat that resulted from the violation. The Commission found that the Southeast and Northwest polygons are considered to be ESHA at the time the development took place, and required the two polygons to be restored to support the California Coastal Gnatcatcher. Therefore, these two polygons are considered to be ESHA.

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 City parcel from Planned Community (a residential land use) to Open Space. LUP Amendment NPB-MAJ-1-06 Part B states in part:

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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 biological resources and the potential for substantial landform alteration.

# **Description of Project:**

The proposed project is the creation of an active recreational park. A baseball diamond which overlaps in area with two soccer fields would be created on the western portion of the City parcel. Passive elements for the park 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 City parcel. A children's playground is proposed at the western portion of the City parcel, south of the proposed 111 space parking lot, and 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 parking lot and the ball fields. Adjacent to the residential complex at the northern boundary of the project site, the applicant 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.

The applicant proposes building a two lane access road to the City parcel on NBR's parcel. The entrance to the proposed park from West Coast Highway would be 54 feet wide, with a 24 foot wide, two lane exit lane, a 12 foot wide median, and an 18 foot wide entrance lane. The entrance then expands to 80 feet wide to allow for a wide turning radius for drivers which enter the park entranceway when the access road is closed. The access road then narrows to a 28 foot wide access road with two 14 foot wide lanes, and extends approximately 550 feet north of West Coast Highway, and then turns east and south to reach the City parcel and the proposed parking lot. The NBR parcel also contains a 1.2 acre area of Coastal Bluff Scrub and Coastal Sage Scrub which will be restored as part of the park project. Also proposed is the widening of Coast Highway to create a right turn entrance lane into the park, elimination of the median on Coast Highway to accommodate

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a left turn lane, and installation of crosswalks and a traffic signal. Installation of both native and non-native landscaping is proposed (Exhibit 3). 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 creation of the access road and contouring of slopes will result in 109,963 cubic yards of cut. 101,698 cubic yards of fill would be placed on the Newport Banning Ranch property to the north of the access road at an existing artificial canyon created as a result of a roadcut. A total of 8,265 cubic yards of soil would be exported to a fill site located outside of the Coastal Zone.

The applicant proposes the installation of a rock drainage device adjacent to the access road and a vegetated swale adjacent to the parking lot to collect runoff. The existing concrete V-ditch located just north of West Coast Highway, and just south of the Southeast NOV polygon would be removed and replaced with an underground drainage pipe and a treatment and flow control water quality structure. These areas would drain into an existing box culvert which drains to Semeniouk Slough. An existing drainage ditch located near the western boundary of the City parcel is proposed to be removed, the water diverted to an underground drainage pipe, and a public sidewalk leading from West Coast Highway to the sports fields installed.

#### B. BIOLOGICAL RESOURCES

Coastal Act Section 30107.5 states:

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

#### Coastal Act Section 30240 states:

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

The City's certified Land Use Plan Section 4.1.1 states the following policies regarding Environmentally Sensitive Habitat Areas:

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

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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.

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- **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.

The two properties that comprise the proposed Sunset Ridge Park site support a number of important and sensitive habitats and plant and animal species. 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. Also, there are several small wetland seeps along the slope bordering Superior Avenue. All of the native plant communities on the project site are invaded by non-native plants to a greater or lesser degree.

California gnatcatcher (*Polioptila californica californica*), a bird species listed as federally threatened by the U.S. Fish and Wildlife Service (USFWS) and by the State of California as a California Species of Special Concern, is present on the subject site.

# 1. Designation of Environmentally Sensitive Habitat Areas

Coastal sage scrub" 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

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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." It is probably universally accepted among specialists that CSS is easily degraded and in fact has been destroyed by development over large areas of the state. About 2.5% of California's land area was once occupied by CSS. In 1981, it was estimated that 85% to 90% of the habitat type had been destroyed state-wide and, in 1991, it was estimated that San Diego, Orange, and Riverside counties had lost 66% of their CSS. Current losses in these counties are higher and losses in the coastal zone have undoubtedly been much higher. Compared to its natural distribution and abundance, CSS is in decline and it is in decline because it has been destroyed by human activities.

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

Aside from being a rare habitat in and of itself, coastal bluff scrub on the project site is associated with the coastal California gnatcatcher, a sensitive species listed as 'threatened' under the Federal Endangered Species Act. A stand of coastal sage scrub provides an especially valuable ecosystem when occupied by the coastal California gnatcatcher. As Dr. Engel, staff ecologist notes, while surveys on the project site have recorded sitings of the coastal California gnatcatcher, "it s 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, [the site] is considered 'occupied'." Therefore, if a stand of coastal sage scrub is habitat to listed species, the presumption should generally be that the habitat is ESHA in the absence of compelling evidence to the contrary.

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It is evident that California 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. However, in this context, it is important to remember that the meaning of the word "ecosystem" does not contain any guidance as to the portion of the biosphere included. An ecosystem is simply the combination of a biotic community and its environment. It is up to the practitioner to define the boundary of any "ecosystem" under consideration. It could encompass the world or only the locally important area. 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, which has always been the Commission's approach.

The Commission's staff ecologist, Dr. Jonna Engel, visited the project site on September 15, 2010, December 15, 2010, and June 7, 2011, and has written a Memorandum (Exhibit 12) regarding the site which states that the site contains ESHA:

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. In general, relatively pristine coastal sage scrub, scrub vegetation with significant coastal California gnatcatcher use, and appropriate gnatcatcher habitat in "occupied" areas 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.

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#### **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).

...

<sup>&</sup>lt;sup>1</sup> 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.

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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; from 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; from 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; from 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 22a and 22b; from 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; from 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; from 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; from Exhibit 3, September 24, 2009 Glenn Lukos Associates memorandum - and 25b; from 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

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27; from 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; from 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" 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; from 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; from Figure 5, December 9, 2010 LSA memorandum). In 1997 PCR Services mapped a gnatcatcher use area that covers the entire bluff (Figure 29a; from 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; from 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; from Glenn Lukos Associates map submitted by the Newport Banning Ranch Conservancy).

In 2000, a gnatcatcher use area was mapped on the bluff (Figure 24; from 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; from 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

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one to the northeast in mulefat near the proposed parking lot (Figure 30; from 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; from 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)<sup>2,3</sup> (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". 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 has determined that the areas designated as ESHA West and ESHA East on Figure 12 of Exhibit 12 qualify as ESHA. The Commission finds that the areas of ESHA West and ESHA East rise to the level of ESHA because they provide an especially valuable ecosystem service by providing critical habitat that is 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.

# 2. Intensity of Use

The existing Project Site is currently vacant, with little human activity or disturbance. Currently, the disturbance on the site includes occasional truck trips, pedestrian and vehicle use on the adjacent roadways, and the clearing activities which occur on the site. The proposed development would result in the creation of an active park, with an estimated 173 daily vehicle trips. This represents a significant increase in the intensity of use on the site. In other words, the development would result in a higher level of human activity on the site and a corresponding increase in the impacts associated with such

<sup>&</sup>lt;sup>2</sup> Atwood et al. (1998) op. cit.

<sup>&</sup>lt;sup>3</sup> Preston et. al. (1998) op. cit.

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activity. The proposed project would result in a significant increase in effects associated with the use of the site by people, many of which are associated with the urban/native interface. Examples of these impacts include noise from vehicular traffic and the active sports fields (i.e. cheering, game whistles), pollutants such as trash, alteration of habitat types, and the impacts from passage through and around habitat areas.

The proposed access road would result in fragmentation of the two areas of ESHA. Vehicles using the road introduce noise to the site, and the vehicles and the road itself create obstacles to the movement of gnatcatchers between the two ESHA areas on the site. Small habitat fragments can only support small populations of plants and animals and small populations are more vulnerable to extinction. Minor fluctuations in resources, climate, or other factors that would be trivial in large populations can be catastrophic in small, isolated populations. Habitat fragmentation is an important cause of species extinction<sup>4</sup> and given the importance of the Project Site to the survival of California gnatcatchers, habitat fragmentation must be avoided to the greatest extent possible.

Development on the site will lead to an increase in the levels of trash (i.e. plastic, paper, and food debris) on the site. Due to wind and animal dispersion, some amount of this trash will end up in sensitive habitat areas. Trash may also be used as a food source for species not appropriate to the habitat type, such as crows, seagulls, and rodents, which may increase the prevalence of non-native species on the site. 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. Introduction of these species has the potential to displace native species from the site due to elimination of foraging material on the adjacent disturbed grasslands and competition with the introduced species. Irrigation associated with the sports fields and landscaping encourages invasive ants which prefer wetter soil conditions. Argentine ants are documented predators on gnatcatcher nestlings and their presence can also alter the native arthropod community by reducing their diversity and abundance, potentially reducing or altering the food source of a Federally threatened species.

The increase in the amount of people using the site would result in an increase of people who, for one reason or another, enter or pass through sensitive habitat areas. Use of sensitive habitat areas or buffers to sensitive habitat areas by humans or domestic pets has the potential to flush wildlife from habitat areas and disrupt breeding and foraging activities. Additionally, sustained levels of disturbance would result in elimination of vegetation, compaction of soils, and creation of trails, which eliminate habitat for native species and make the disturbed habitat vulnerable to colonization by non-native or invasive species.

In order to address the impacts associated with the development and ensure the long term preservation of habitat, a project on the site would require a variety of mitigation measures. Development of the park entrance road will further fragment the two patches of ESHA on

<sup>&</sup>lt;sup>4</sup> Rosenzweig, M. L. 1995. Species Diversity in Space and Time. Cambridge, Cambridge University Press.

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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.

The Project Site (both the City parcel and NBR easement parcel) has been identified by the USFWS as critical habitat for the California gnatcatcher 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 project. The available scientific literature states that the minimum territory required for a gnatcatcher pair during the breeding season is 2.5 acres. The required acreage increases when the breeding territory contains degraded vegetation. During the non-breeding season, gnatcatcher territories expand by as much as 80 percent. In order to ensure that three gnatcatcher pairs are able to persist on the site, the site must 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. In addition, to ensure that the 7.5 acres is able to support three breeding pairs, 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. To ensure that the created habitat areas persist on the site for the long term preservation of the gnatcatcher, ESHA areas, ESHA buffer areas, and areas of created habitat must be preserved in perpetuity with an appropriate legal instrument (i.e. an open space deed restriction or an offer to dedicate).

A habitat maintenance and management plan designed to ensure that the coastal sage scrub habitat remains healthy and robust in perpetuity should be developed. The habitat management plan should include measures 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. Park monitoring plans should include cowbird monitoring and provisions for implementation of a cowbird trapping program.

The construction of a new road between two blocks of ESHA will divide the area by development and introduce a greater intensity of use in that area. Currently, that area is infrequently disturbed by vehicles (perhaps a few vehicular passages a day). The new access road for the park is anticipated to have 173 vehicle trips per day. 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. The presence of additional improved habitat in and around the newly disturbed area would further serve to offset the increased level of activity in the area.

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While an increase from a few vehicle trips per day to 173 trips per day is significant, the Commission's biologist, in consultation with other experts, has concluded that the increase would be within the tolerance levels of the California gnatcatcher, if: a) the road elevation is below the habitat on either side, b) the road is a two lane, narrow road with a low number of vehicle trips per day, and c) the area on each side of the road is restored to high quality coastal sage scrub habitat. However, an increase above the proposed 173 vehicle trips per day would have a significant adverse impact on the gnatcatchers use of the habitat area. Thus, it is important that 1) the access road remain narrow; 2) the areas on each side of the road must be restored with habitat appropriate to the California gnatcatcher; 3) the quality of existing habitat be improved, and expanded where feasible; and 4) legal restrictions must be in place to assure the road remains just a park road (no increase to the intensity of use) and the surrounding habitat areas are preserved in perpetuity. However, in this case, as is discussed more fully below, the applicant and underlying landowner will not agree to comply with these criteria. Therefore, the proposed project would result in impacts to ESHA areas, and, without appropriate mitigation, is inconsistent with Coastal Act Section 30240 regarding protection of ESHA from disruption that will degrade the resource and protection of ESHA from adjacent

# 3. <u>Inadequate buffers.</u>

development.

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. 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. 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.

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The proposed project includes permanent and temporary impacts in close vicinity to ESHA. The Project Site has been designated as critical habitat for the gnatcatcher and therefore protective ESHA buffers are essential. The Commission's staff ecologist, Dr. Jonna Engel, recommends 100 foot buffers between the eastern boundary of "ESHA East" and the proposed parking lot and children's playground in order to best protect gnatcatchers from human disturbance. The proposed project doesn't comply with this requirement. However, Dr. Engel, did find that a 50 foot minimum buffer between the park entrance road and the "ESHA West" and "ESHA East" areas would be appropriate, so long as the buffer areas are restored with habitat acceptable for use by gnatcatchers, and the areas permanently preserved. The memorandum states:

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. ..... My 50 foot buffer recommendation for the road is contingent on the entirety of all the buffers and the adjoining ESHA being revegetated 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.

As proposed, the access road meets a 50 foot buffer to permanent development, such as pavement or structures, with a few exceptions, such as a rock drainage device adjacent to the proposed access road within 30 feet of ESHA, and a point on the western area of the access road where the proposed road would come within 47 feet of ESHA. However, buffers for the proposed project would include grading within the buffers, in contrast with the Commission's typically applied requirements.

In order to construct the park access road alignment as proposed, significant grading within the buffer would be required. Near the intersection of the access road and West Coast Highway, the ground would be lowered between six to twelve feet within nine feet of ESHA East. In other areas, grading is proposed within the buffers where such grading in close proximity to ESHA could be easily avoided, such as grading consisting of between 0 and 6 feet of cut within one or two feet of ESHA at the northern boundary of ESHA East. Regarding grading the Commission's staff ecologist states:

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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 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.

Therefore, grading within buffers could be allowed based on the specific circumstances on the project site, but only if adequate mitigation measures to reduce the effects of the grading were allowed. Specifically, planting of Coastal Sage Scrub within buffer areas to increase the effectiveness of the buffer would be required in order to mitigate for the impacts of development on the site. However, the access agreement which allows the City to install an access road on Newport Banning Ranch property does not allow native vegetation to be placed adjacent to the proposed access road. Rather, the proposed project includes the installation of non-native species within buffers.

Although a non-native species may be considered non-invasive, non-native species will still propagate into new areas. Non-native species can replace native species, resulting in elimination of native habitat. Therefore, the proposed project would not result in the restoration of buffers with native habitat. Instead, the proposed project would result in the introduction of non-native, non-invasive, drought tolerant species into buffer areas, which would result in the degradation of ESHA located directly adjacent to the 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

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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.

The proposed project does not include a plan for conservation of ESHA and buffers, and the City has stated that the landowner would not agree to preserve these habitat areas 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. The proposed buffers can only be found to be consistent with Coastal Act Section 30240 if the buffers are vegetated with Coastal Sage Scrub and at least 50-100 feet in width, and with a low intensity of use on the road. A change in the width, vegetation types, or intensity of use of the access road would result in an altered buffer requirement. Without adequate protection, future development on the site may result in inadequate buffer widths and degradation to adjacent ESHA. Therefore, the proposed project would not provide adequate buffers between areas of proposed development and ESHA. The project would therefore not be able to ensure that the proposed development does not result in impacts to adjacent Environmentally Sensitive Habitat Areas. Therefore, the project can not be found consistent with Coastal Act Section 30240 regarding protection of ESHA from adjacent development and the Coastal Development Permit must be denied.

# 4. Development Within ESHA

The proposed development would include permanent development within ESHA. A concrete sidewalk which leads from West Coast Highway to the park site is proposed within ESHA East. The Commission has approved interpretive public access trails and pathways in ESHA as resource-dependent developments where they do not result in impacts to ESHA (CDP 2-07-018 (Sonoma County Regional Parks – multi-use path consisting of crushed rock, located in coastal scrub habitat containing sensitive plant species); CDP A-3-SLO-04-035 (PG&E Spent Fuel Storage – unpaved paths through coastal terrace prairie habitat); CDP A-1-MEN-06-052 (Redwood Coast Public Access Improvements – unpaved paths through rare plant habitat and riparian habitat). These trails are usually composed of dirt or decomposed granite, and offer natural settings and recreational opportunities for visitors. However, the proposed sidewalk would be a primary, paved walkway to access the park, rather than a public interpretive or recreational trail and could be located outside of ESHA. The level of improvements to the pathway. and the areas to which that pathway lead (i.e. children's playground and soccer/baseball fields, indicate a high intensity of use by individuals and groups of pedestrians, and perhaps bicyclists. Additionally, the proposed plans include grading and removal of vegetation within an area of ESHA. The presence of this development will significantly disrupt habitat values. Furthermore, the purpose of the pathway is not for observation and enjoyment of the habitat, but as a throughway to the active park areas. Thus, the pathway is not dependent on the presence of the resource. Therefore, the proposed sidewalk is incompatible with Coastal Act Section 30240 regarding protection of ESHA due to the disruption of habitat values and introduction of uses not allowed within ESHA.

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#### 5. Mobility of Wildlife

The access agreement between the City and Newport Banning Ranch requires the placement of a security fence along the edge of the project site to separate the project site from the rest of the Newport Banning Ranch property. The City states that California Code of Regulations, Title 14, Division 2, Chapter 4, Section 1778, regarding Development, Regulation, Conservation of Oil and Gas Resources requires the active oil operations on the Newport Banning Ranch property to be surrounded by chain-link, 5 foot high fencing which has "no aperture below the fence large enough to permit any child to crawl under".

However, the installation of fencing which prohibits human passage would also prevent mobility of terrestrial wildlife. Mobility of wildlife to the project site is important for the health of the ecosystem on the site, not just for the continuance of the usage of the site as habitat for larger mammals. Species that dwell off-site but periodically visit the site are important to maintaining the current balance of wildlife on the site. For instance, the EIR notes that coyote are present on the project site. Larger predators, such as the coyote, are important in controlling the presence of smaller predators that prey on avian species, such as cats, skunks, and opossums. In order for any of the natural habitats to maintain their existing biodiversity, it is important to maintain coyotes in the system. In the absence of coyotes, these habitats would be subject to heavy predation from domestic and feral cats and other small predators causing avian diversity to plummet<sup>5</sup>. The proposed fencing would therefore result in significant degradation to Coastal Sage Scrub habitat which supports the California gnatcatcher. Therefore, the proposed project cannot be found consistent with Coastal Act Section 30240 requiring the protection of environmentally sensitive habitat areas from any significant disruption of habitat values.

# 6. <u>Inability to ensure compliance with Special Conditions</u>

### Coastal Act Section 30601.5 states:

Where the applicant for a coastal development permit is not the owner of a fee interest in the property on which a proposed development is to be located, but can demonstrate a legal right, interest, or other entitlement to use the property for the proposed development, the commission shall not require the holder or owner of any superior interest in the property to join the applicant as coapplicant. All holders or owners of any other interests of record in the affected property shall be notified in writing of the permit application and invited to join as coapplicant. In addition, prior to the issuance of a coastal development permit, the applicant shall demonstrate the authority to comply with all conditions of approval.

The Commission's staff ecologist has reviewed the habitat on the park site, and has reviewed the available biological information. If appropriate mitigation were proposed, and if the habitat and the buffers for the project were sufficiently protected to ensure the continuance of the habitat, a low-

<sup>&</sup>lt;sup>5</sup> Crooks, K.R. and M.E. Soulé. 1999. Mesopredator release and avifaunal extinctions in a fragmented system.

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impact park access road could be consistent with the continuance of the adjacent ESHA. However, the access road agreement which gives the City the authority to undertake development on land owned by Newport Banning Ranch also gives the landowner discretion over the types of mitigation which would be required by a regulatory agency, such as restoration of habitat adjacent to the proposed access road. The landowner, however, has unequivocally expressed that it is unwilling to set aside portions of its land for the staff-suggested mitigation purposes. Without the requisite mitigation, the project is also not consistent with the City's certified LUP, which states:

- **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.

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. 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.

Therefore, the project is not consistent with the City's certified Land Use Plan, and is not consistent with the Commission's typically applied requirement for protection of ESHA from adjacent development. Inconsistency of the project with the certified Land Use Plan would serve as precedent when the City applies for certification of the Land Use Plan for Newport Banning Ranch. Therefore, the proposed project may prejudice the certification of the Land Use Plan for Newport Banning Ranch.

Coastal Act Section 30601.5 requires the applicant to provide proof of the applicant's ability to carry out the conditions of a Coastal Development Permit prior to the issuance of a coastal development permit. The City has stated in their September 12, 2011 letter that the owner of the adjacent property would not agree to a condition requiring restriction of buffer areas. Furthermore, the applicant is unable to ensure that the adjacent landowner would agree to the Commission's typically applied requirement for a deed restriction which informs future property owners of the requirements of the Special Conditions placed upon the use of the property. Although the Coastal Development Permit and the restrictions contained therein transfers along with the property, without a deed restriction future owners of the property may claim that they were unaware of the restrictions placed on the property. Therefore, the applicant will be unable to carry out the conditions of the permit required to ensure consistency with the habitat protection policies of the Coastal Act and unable to ensure adequate protection of Environmentally Sensitive Habitat Areas

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on the site. Without such protection, the ESHA on site may be subject to future degradation. Therefore, the project cannot be found consistent with Coastal Act Sections 30501.5, and 30240.

#### C. DEVELOPMENT

## 1. Mowing

Coastal Act section 30106 defines the term "development" as:

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

#### Section 30608 of the Coastal Act states:

No person who has obtained a vested right in a development prior to the effective date of this division or who has obtained a permit from the California Coastal Zone Conservation Commission pursuant to the California Coastal Act of 1972 (commencing with Section 27000) shall be required to secure approval for the development pursuant to this division; provided, however, that no substantial change may be made in any such development without prior approval having been obtained under this division.

The applicant states that mowing of vegetation for fuel modification and weed abatement purposes has occurred regularly on the City parcel since the parcel was obtained by Caltrans in the 1960s, and has been continued since the City purchased the property in 2006. The mowed area includes an area mapped by Bon Terra as "Disturbed Encelia Scrub." 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.

Sawyer & Keeler-Wolf (1995) divide coastal sage scrub communities into series including California sunflower (*Encelia californica*), California buckwheat (*Eriogonum fasciculatum*), and coast prickly-pear (*Opuntia litteralis*) series<sup>6</sup>. California sunflower scrub ("Encelia scrub") is a coastal sage scrub series dominated by California sunflower. California quatcatcher are often associated with California sunflower. The Commission's staff

<sup>&</sup>lt;sup>6</sup> Sawyer, J. and T. Keeler-Wolf. 1995. A manual of California vegetation. California Native Plant Society.

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ecologist has reviewed the "disturbed encelia scrub" on the site, and has determined that although the area appears to be regularly mowed, it would rebound relatively quickly and would provide habitat and foraging material for the gnatcatcher. The biological memorandum regarding the project states:

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

California sunflower is one of the dominant native scrub species found in the coastal scrub communities on the City and Newport Banning Ranch property. Weaver (1998) found that gnatcatcher densities in northern San Diego County were highest in areas where California sunflower or California buckwheat were co-dominate with sagebrush<sup>7</sup>. 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

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.

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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 disturbed encelia scrub would be used as foraging and potentially breeding habitat by the California Gnatcatcher if mowing of the vegetation were not occurring. The area of Disturbed Encelia Scrub would provide important natural resources and provide necessary ecological services for the California gnatcatcher if mowing of vegetation were not to occur. Based on this finding of biological significance, the "Disturbed Encelia Scrub" is major vegetation.

Coastal Act Section 30106 states that development, including the removal of major vegetation, requires a Coastal Development Permit and Coastal Act Section 30600 states that development within the Coastal Zone requires a Coastal Development Permit. No Coastal Development Permit has been issued for the regular mowing 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.

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 feet landward of the mean high tideline, then that property is subject to the permit requirements of Proposition 20. (former Pub. Res. Code, Section 27104) From aerial images, it appears that the subject parcel may have been subject to Proposition 20's permitting requirements when it became effective on February 2, 1973. 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.

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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. If the Commission finds that the claimant has a vested right for a specific development, the 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 the claimant does not have a vested right for the particular development, then the development is not exempt from CDP requirements.

There has been no Coastal Development Permit issued for the mowing on the site, the applicant has not submitted a vested rights claim for the mowing of major vegetation on the site, and the Commission has not found that the City has a valid vested rights claim for mowing of vegetation. Therefore, until such time that a vested right claim has been found to exist at the site, the regular mowing of major vegetation on the 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.4<sup>th</sup> 770, 796-797.) 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. Additionally, if the mowing on the site is considered as unpermitted development, the mowed Encelia would qualify as ESHA. The proposed project would result in the elimination of the mowed Encelia Scrub on the site, and its replacement with a sports field, sidewalk, and ornamental vegetation. Therefore, development of the project site would potentially result in the development of ESHA. The proposed project is therefore inconsistent with Coastal Act Section 30240 regarding preservation of environmentally sensitive habitat areas.

# 2. Access Road – Alternatives

The proposed project includes an access road to the City parcel on property owned by Newport Banning Ranch. The access road would go north from west coast highway, and then come back south to reach the parking lot, and would support an estimated 173 car trips per day.

According to the applicant, there are significant constraints associated with an entrance road for the project site. These include: 1) A scenic easement which prohibits pavement on 4.5 acres of the City parcel adjacent to Coast Highway (Exhibit 2); 2) an intersection of two major streets adjacent to the site; 3) Environmentally Sensitive Habitat Areas on West Coast Highway on the NBR parcel and a portion of the City parcel; 4) a wetland on the slopes of the property adjacent to Superior Avenue; 5) Steeply sloping, curved Superior

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Avenue; and 6) a large difference in elevation between adjacent roadways and average elevation of project site.

The City has submitted an analysis of alternatives to the proposed access road. The alternatives considered include: an access road from Superior Avenue, access from West Coast Highway directly onto City property, and pedestrian access from the City parking lot located on the east side of Superior Avenue. No alternative was considered to access the site from the residential development located on the north side of the project site as the streets in that development are not public, but privately owned by the residents of that community. The City's analysis found that the alternative access locations they did consider do not present feasible alternatives due to a) traffic constraints, including inadequate line of sight, deceleration distances, and existing turn and merging lanes; b) reduction in park space; c) dramatic increases in grading amounts and project costs; and d) conflicts with pedestrian safety or walking distances required to access the park.

The City's alternatives analysis indicates that an access road from Superior Avenue is not feasible due to inadequate deceleration distances, line of sight, and stacking distances. The proposed alternative provides a deceleration distance of 208 feet, instead of the 480 feet that the City determined is required for the measured average speed of 46 miles per hour. The descending and curving Superior Avenue and the adjacent condominium complex also reduce the visibility of an entrance to the park, creating a hazard for drivers entering or leaving the park. Finally, the analysis indicates an access from Superior Avenue would not provide a sufficient distance for vehicle stacking during peak periods.

The City's alternatives analysis indicates that access from West Coast Highway on the City parcel is not feasible due to restrictions on the use of the property, the adjacent intersection, and inadequate deceleration distance. The City parcel was transferred to the City along with a restriction that prohibited pavement or structures within a scenic easement area that was imposed by CalTrans located along West Coast Highway. The City has argued that removal of the restriction would result in re-assesment of the value of the property and potentially require additional payment to the state if the property is re-assessed at a higher value. The City has also argued that traffic constraints create a safety hazard with an entrance from Superior Avenue. The City has stated that an entrance road from West Coast Highway would conflict with the two existing right turn lanes leading from Superior Avenue onto West Coast Highway, and a merge lane where West Coast Highway narrows to three lanes. The City parcel is 350 feet long, and would therefore not be able to meet a stopping distance of 500 feet, which the City states is necessary in order to ensure traffic safety.

Finally, the City considered usage of a parcel owned by the City on the east side of Superior Avenue. There is a parking lot on Superior which was required to mitigate for the loss of parking along West Coast Highway in a highway expansion. The City didn't consider using the existing parking lot as they say such usage wouldn't be consistent with the purpose of that parking lot. Instead, the City considered an alternative that would install a new parking garage on the east side of Superior Avenue to the north of the existing parking lot, and would create a raised pedestrian bridge over Superior Avenue to

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create a direct connection between the new parking structure and the park. Constraints associated with this alternative include a walking distance of 0.24 miles to reach the main area of the park, obstruction of ocean views for drivers descending Superior Avenue, and additional costs. The alternative would also require the creation of a road onto Superior Avenue for emergency and maintenance vehicles.

The Commission has also received a review of potential park access roads from the Banning Ranch Conservancy dated September 16, 2011, prepared by Mr. Tom Brohard, a licensed traffic engineer. The analysis contradicts the City's analysis, and states that an accessway on the City's property on West Coast Highway would meet the required safety standards. Specifically, Mr. Brohard states that an alternative accessway on West Coast Highway on the City's parcel would meet required stopping distances. It remains that the proposed alternative would not be consistent with the scenic easement/deed restriction imposed by CalTrans on the City parcel which prohibits pavement. The Banning Ranch Conservancy argues that the City could likely successfully petition CalTrans to modify that easement/restriction in a way that wouldn't change the value of the property. However, the analysis does indicate that the traffic safety constraints on the property are less severe than initially indicated. Therefore, there may be alternative park designs or access road locations which may provide an active park on the subject site but with fewer impacts to coastal resources.

# 3. Growth Inducing Development

The proposed project would result in the expansion of a roadway, a public works facility, into a new area. Therefore, Section 30254 is applicable. Section 30254 of the Coastal Act states in part:

New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted consistent with the provisions of this division;

Coastal Act Section 30254 states that new public works facilities shall not create capacity above and beyond what is required to support the development, to avoid encouraging further development in the future. Opponents to the project have argued that the proposed access road would result in further development of the larger Newport Banning Ranch property. In conversations with staff, the City has repeatedly emphasized that the proposed access road for the park is not a precursor for future development on the Newport Banning Ranch property. However, the documentation which is available at this time does not support that conclusion. The City's access agreement with Newport Banning Ranch specifies, by reference to NBR's development proposal, that the originally submitted design for the access road would serve as two of the four lanes necessary for a four-lane arterial road. A four lane arterial road leading from West Coast Highway, roughly in the location of the proposed access road, is the listed preferred alternative in the Draft Environmental Impact Report which was released on September 9, 2011 for the Newport Banning Ranch development. Furthermore, as discussed above, the applicant is unwilling or unable to ensure that buffers and ESHA adjacent to the road are preserved to ensure

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protection of habitat, or to ensure that the proposed park access road remains a park road. Therefore, it appears that although the City states that the proposed park access road is the minimum required for the proposed park, the owner of the land on which the proposed access road is located is fully intending to expand the access road in the future. Therefore, the proposed access road would result in development which would facilitate development of an access road for the larger Newport Banning Ranch development. The project is therefore inconsistent with Coastal Act Section 30254 regarding growth inducing impacts.

#### D. 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 primarily ESHA and visual resources. 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, access road, and fill site would result in significant disruption of habitat values within ESHA and are not uses that are dependent on the resource, which makes them inconsistent with Section 30240 of the Coastal Act and the applicable ESHA protection policies of the LUP, used by the Commission as guidance.

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. Active recreational park revised to ensure habitat protection

A project that was designed to protect and enhance gnatcatcher use on the site to mitigate for impacts resulting from intensification of use could be compatible with the resource protection policies of the Coastal Act. Components of such a project might include protection and restoration of ESHA, long-term protection of ESHA with buffers which include native habitat through the imposition of open space restrictions, expansion of Coastal Sage Scrub to enhance habitat, mitigation for loss of grasslands, and restoration of areas of unpermitted development.

## b. <u>Lesser Intensity of Use</u>

Reducing the intensity of use on the site would reduce the impacts on adjacent ESHA, and the amount of mitigation necessary to offset the impacts of development. Projects with lesser intensity on the site could include a passive park or an active park with a smaller amount of active uses. A Passive park would include trails, benches, and picnic areas, but would not include active sports fields. An active sports park with a reduced number of sports fields would be redesigned to reduce the number of active sports fields on the site and increase the amount of

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passive use. Either the passive or reduced active alternative would reduce required parking amounts, and may be able to utilize existing parking resources and not require construction of an access road. A park with increased amount of passive uses could also include resources which would serve to enhance wildlife habitat, such as additional forage and nesting areas for the California gnatcatcher, to offset impacts associated with the development.

## c. Active park with alternative access

There may be park design or vehicular access improvements which would result in lesser impacts to sensitive habitat on the site. For instance, a park with an access road on-site would not result in adverse impacts to sensitive habitat on the property owned by Newport Banning Ranch, such as ESHA East and ESHA West. Elimination of the access road on the Newport Banning Ranch property would also eliminate the need for a security fence on the property, and would ensure the continued access of larger mammals such as the coyote to California gnatcatcher occupied habitat. Elimination of improvements located outside of City property would ensure the City's ability to carry out the Special Conditions of a Coastal Development Permit, and increase the types of mitigation measures which could be carried out. The alternative access analysis submitted by the Banning Ranch Conservancy state that there may be less constraints regarding traffic safety on the site than originally thought, which may mean that there are feasible alternatives for access with fewer impacts to coastal resources.

#### Conclusion

In sum, feasible alternatives exist to accommodate development while minimizing impacts to biological resources. The Commission could approve a variety of alternatives (e.g. passive park, a park with an alternative accessway, or a park with a lesser intensity of use) that lessen or avoid significant adverse effects on coastal resources.

To conclude, the proposed development does not protect ESHA from significant disruption of habitat values. There are project alternatives that could reduce adverse impacts. Therefore, the proposed development is inconsistent with Sections 30230, 30233, 30240, and 30254 of the Coastal Act. and must be denied.

#### E. 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...

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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 109,963 cubic yards of cut, 101,698 cubic yards of fill, and 8,265 cubic yards of soil exported off-site. The grading amounts are shown in the following chart, and a grading map can be found at Exhibit 4.

	CUT	FILL	EXPORT	IMPORT
ENTRY	52,148	4,432	47,716	0
PARK	57,627	27,951	29,676	0
FILL SITE	188	69,315	0	69,127
TOTAL	109,963	101,698	8,265	0

Grading on the City parcel would primarily result from cut to create gentler slopes on the property, particularly at the northeast of the site to create a more gradual slope between the northeastern and middle sections of the property. Fill on the City parcel would be placed at the northern edge of the property to create a retaining wall and raised buffer between the project site and the condominium project to the north.

Grading on the NBR parcel would primarily result from cut required for creation of the proposed access road. The initial design for the road was more aligned with the topography on the site and required approximately 9500 cubic yards of grading less than the proposed road. Once the plans were changed to ensure that the access road would not result in direct impacts to ESHA the required grading amounts increased. Some fill will be placed on the NBR parcel to create a berm between the park and the condominium complex, however most of the cut generated from the entry road would be placed at the fill deposition site, which is located approximately 0.2 miles north of West Coast Highway, or approximately 400 feet north of the northern edge of the access road. The fill placed at the deposition site would result in the filling of an artificial canyon that was created due to grading which previously occurred on the site.

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.

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#### F. 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:
  - (I) 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.

#### 5-10-168-(Sunset Ridge Park) Regular Calendar Page 38 of 46

(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. Vernal Pools

Section 30233 prohibits the dredging, diking, or fill of wetlands. Section 30240 of the Coastal Act states that environmentally sensitive habitat areas (ESHAs) shall be protected and that only uses dependent upon such resources shall be allowed in such areas. Section 30240 also requires that development in areas adjacent to ESHA shall be sited and designed to prevent impacts that would significantly degrade such areas. ESHAs are defined as 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 and developments.

Vernal pools are shallow ponds which contain rainwater for a portion of the year, and therefore qualify as wetlands. Vernal pools may also qualify as wetlands due to the presence of wetland indicator species or hydric soils. Vernal pools also often qualify as ESHA, as vernal pools are rare and valuable habitats in Orange County.

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. The Conservancy has 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). 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 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.8" Regarding the Banning Ranch Conservancy's powerpoint presentation BonTerra states "The BRC PowerPoint does not utilize any appropriate vernal pool identification

<sup>&</sup>lt;sup>8</sup> 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.

#### 5-10-168-(Sunset Ridge Park) Regular Calendar Page 39 of 46

protocol for this resource issue, as it does not document ponding duration, soil types present, plant indicator species, invertebrate activity, and other necessary parameters.<sup>9</sup>"

Commission staff 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 the property owner. In the absence of an onsite survey, USFWS biologist Christine Medak reviewed the powerpoint submitted by the Banning Ranch Conservancy and provided a detailed review via an email sent to Commission Staff ecologist Jonna Engel 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.

The Commission's staff ecologist has reviewed BonTerra's vernal pool analyses and the Banning Ranch Conservancy powerpoint, and found that both are inconclusive regarding the existence or non-existence of vernal pools. Comprehensive vernal pool protocol surveys require two full wet season 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 of vernal pools on the proposed Sunset Ridge Park site. Furthermore, based on the photographs of ponded water on the site, and a report by the applicant that states that both upland and facultative wetland plants exist on the site, the alleged vernal pool areas could qualify as wetlands. However, there has not been

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<sup>&</sup>lt;sup>9</sup> Ibid.

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adequate analysis of whether wetlands exist on the subject site, including tests for the presence of hydric soils, or whether there is sufficient wetland vegetation on the site.

Therefore, based on the available evidence, there is the potential for vernal pools to exist on site, but there is currently inadequate information to conclude whether the alleged features qualify as vernal pools. Furthermore, although there is evidence that the alleged vernal pools could contain fairy shrimp, there is inadequate information to tell whether the vernal pools would qualify as ESHA. Finally, although there is some evidence that the alleged vernal pools may qualify as wetlands, there is inadequate evidence to determine whether wetlands exist at the fill site. Therefore, the proposed project must be denied to ensure that the project does not result in impacts to ESHA, as required by Coastal Act Section 30240, and to ensure that degradation of wetlands does not occur, as required by Coastal Act Section 30230, nor fill for a non-permitted use as required by 30233.

# 2. Wetlands and Wetland Buffers

Aside from the potential vernal pools, two wetlands are located on the property. An area with riparian vegetation and hydric soils is located within ESHA West, and has been mapped by Bon Terra as containing 'Willow Scrub' vegetation. The second wetland is located on the slope of the City parcel adjacent to Superior Avenue. The biological memorandum regarding the project states:

There are several areas on the slope along Superior Drive with water seeps. Several of the plants associated with these seeps are wetland species including narrowleaf cattail (*Typha angustifolia*), spike-rush (*Eleocharis* sp.) growing in mud and standing water, spike bentgrass (Agrostis exarata), rabbitfoot grass (Polypogon monspeliensis), marsh fleabane (Pluchea odorata), and seaside heliotrope (Heliotropium curassavicum). In addition, Mediterranean tamarisk (Tamarix ramosissima), a non-native species with wetland plant status, also occurs in this area. Pampas grass, another non-native species, is abundant in this area. While the federal government has yet to assign pampas grass a wetland indicator status, this species grows in damp soils along river margins in its native range in South America<sup>10</sup>. In coastal California it is an insidious invader colonizing disturbed areas including moist slopes in urban centers. Robb Hamilton reports that examination of 82 records of Pampas Grass in California showed that 32 percent were from wetlands<sup>11</sup>. 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".

<sup>&</sup>lt;sup>10</sup> Connor, H.E. and D. Charlesworth. 1989. Genetics of male-sterility in gynodioecious *Cortaderia* (Gramineae). Heredity, Vol. 63: 373–382.

<sup>&</sup>lt;sup>11</sup> Hamilton, R. (December 10, 2009) op. cit.

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In many areas the soils in these moist areas have a salt crust and/or what appear to be oxidation stains. BonTerra dug two soil pits in the seep areas and in both cases found hydric soils (Figure 8; BonTerra Exhibit 1, Detailed vegetation types and other areas, soil sample sites). BonTerra has maintained that the seep areas are not wetlands for numerous reasons including their determination that the water source is artificial 12, the presence of non-native species, and that the seeps are "small areas of low function/value hydrophytic vegetation".

I disagree with this conclusion. In fact, the small seeps and surroundings supporting a preponderance of hydrophytic plants, or hydric soils, or wetland hydrology meet the definition of wetlands in the Coastal act and the Commission's regulations. Whether or not wetland plants are non-native, or wetlands are degraded, or residential development contributes to wetland hydrology is not germane.

The Commission has typically required buffers of at least 100 feet for development adjacent to wetlands. The proposed project would not meet the Commission's typically applied buffer requirement of 100 feet. The wetland within ESHA West would be within approximately 30 feet of grading limits for the road, and within approximately 55 feet of the proposed access road. The wetland located along Superior Avenue would be located approximately 40 feet from the edge of grading. The hydrological changes to the wetlands that would occur as a result of the grading were not identified by the applicant. The proposed buffers may not be adequate to protect the wetlands adjacent from impacts associated with the development. Therefore, further investigations on the hydrological and resource impacts associated with development of the park need to be considered.

Therefore, the project cannot be found to be consistent with Coastal Act Section 30230 regarding maintenance of marine resources, Coastal Act Section 30231 regarding maintenance of biological productivity, Section 302333 regarding the filling, diking and/or dredging of wetlands, and Coastal Act Section 30240 regarding protection of Environmentally Sensitive Habitat Areas and the project must be denied.

# 3. Water Quality

Runoff from the proposed project would be routed to an assortment of water quality features, a concrete box culvert, and ultimately flow to Semeniouk Slough. Semeniouk Slough is designated as an Environmentally Sensitive Area in the City's certified Land Use Plan. The proposed project would result in approximately 3 acres of impermeable surfaces on the site. The addition of new impermeable surfaces may result in a potential

<sup>&</sup>lt;sup>12</sup> 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".

## 5-10-168-(Sunset Ridge Park) Regular Calendar Page 42 of 46

increase in polluted runoff to nearby coastal waters due to the resultant decrease in stormwater infiltration. Pollutants commonly found in runoff associated with the proposed use include petroleum hydrocarbons including oil and grease from vehicles; heavy metals; synthetic organic chemicals; dirt and vegetation; litter; fertilizers, herbicides, and pesticides. These pollutants would have deleterious effects on the Semeniouk Slough. The proposed project would include water quality measures to mitigate for the addition of impermeable surfaces on the site. The proposed water quality measures would address both flow and treatment of runoff through the use of vegetated swales, interceptor drains, flow basins, detention systems, gravel subdrains, and an underground filter facility. However, it is unclear from the submitted information whether the proposed measures would ensure an adequate treatment of runoff. If the water quality measures proposed were sized to ensure that runoff from the site would be adequately treated prior to discharge into the Semeniouk Slough, the project would not result in degradation of water quality in the adjacent Semeniouk Slough. However, as described above, the project must be denied due to conflicts with other resource protection policies in the Coastal Act.

#### G. PUBLIC ACCESS / RECREATION

Section 30210 of the Coastal Act states:

In carrying out the requirement of <u>Section 4 of Article X of the California</u> <u>Constitution</u>, 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

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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. A project located on the site should make provisions to ensure that maximum access, in accordance with Coastal Act Section 30210, is provided on the site; therefore the proposed hours may need to be revisited. 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. Therefore, if modified to address the above concerns, the proposed project would 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.

#### H. 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. Nevertheless, some of the existing slopes do not meet the industry standard factor of safety of 1.1 for seismic conditions, and it is possible that they would fail during a major earthquake. The report states that the preliminary grading plan indicates that these slopes would be graded to a flatter gradient and that the factor of safety would likely increase, but this has not been demonstrated. Depending on land use, it may not be necessary or appropriate to require industry-standard stability in an active park such as that proposed, however, slope stability should be further evaluated in any revised project. 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

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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. Therefore, with conditions, 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.

#### I. ARCHEOLOGY

Coastal Act Section 30244 states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The EIR for the project states that three known archeological sites are known on the site: CA-ORA-1600, containing lithic fragments, CA-ORA-1601H and CA-ORA-1602H, containing 20<sup>th</sup> century trash fragments, and CA-ORA-1610H, which contained a gun emplacement during World War II, which has since been removed. Archaeological testing was conducted on the three known sites by Bon Terra Consulting, who determined that there are no known significant historical resources on the site. The gun emplacement site (CA-ORA-1610H) has been removed from its former location by grading of the mesa top on which it stood. CA-ORA-1600, CA-ORA-1601H and CA-ORA-1602H were tested and determined to not be significant or eligible for listing on the National Register of Historic Places or the California Register of Historic Resources. However, historical and archaeological sites are known to exist in the City. Therefore, there is a potential for disturbance of undiscovered resources during grading activities.

Given the level of soil disturbance which is planned for the site, the project should include provisions for a grading monitor to ensure the protection of cultural and paleontological resources which may occur on site. If archeological or paleontological resources were discovered on site during grading, all efforts should be made to avoid further disturbance, where feasible. Recovery of the resources should only be considered after all in-situ preservation options are exhausted. If development on the site is appropriately monitored, and resources encountered appropriately addressed, the project could be found to be consistent with Coastal Act Section 30244. However, as described above, the project must be denied due to conflicts with other resource protection policies in the Coastal Act.

#### J. 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.

#### 5-10-168-(Sunset Ridge Park) Regular Calendar Page 45 of 46

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).

#### K. 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, Cultural and Paleontological Resources, Geology and Soils, Hazards and Hazardous Materials, Hydrology and Water Quality, Public Services and Utilities,

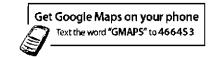
Significant effects which were found to not be sufficiently mitigated include air quality and noise impacts, which indicates that there are significant negative impacts which result from the project which can not be completely mitigated.

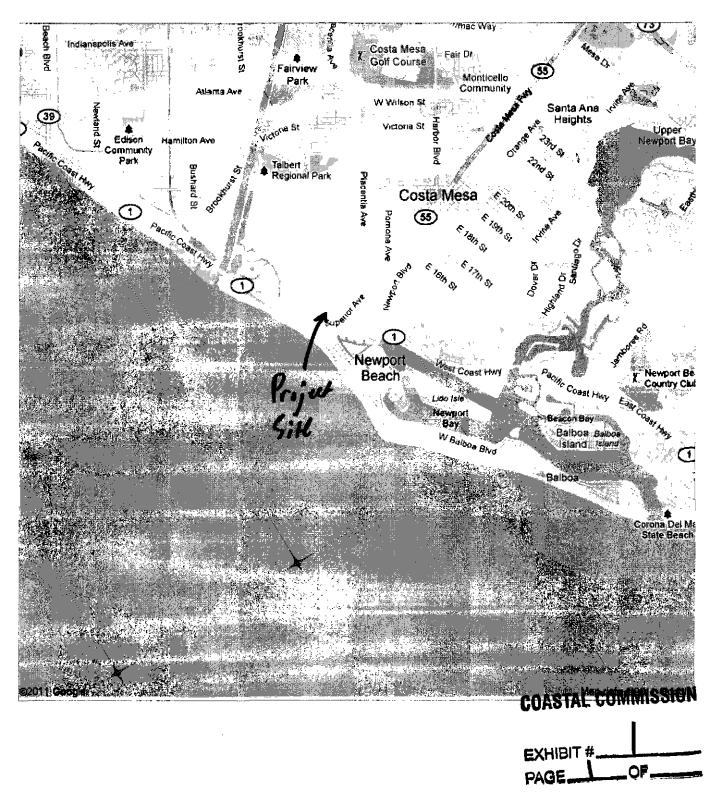
While the City of Newport Beach found that the development, with mitigation measures, could be found consistent with CEQA, the Commission, pursuant to its certified regulatory program under CEQA, the Coastal Act, has found the proposed development would have adverse environmental impacts. There are feasible alternatives or mitigation measures available, such as alternative park and road designs. Therefore, the proposed project is

5-10-168-(Sunset Ridge Park) Regular Calendar Page 46 of 46

not consistent with CEQA or 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.

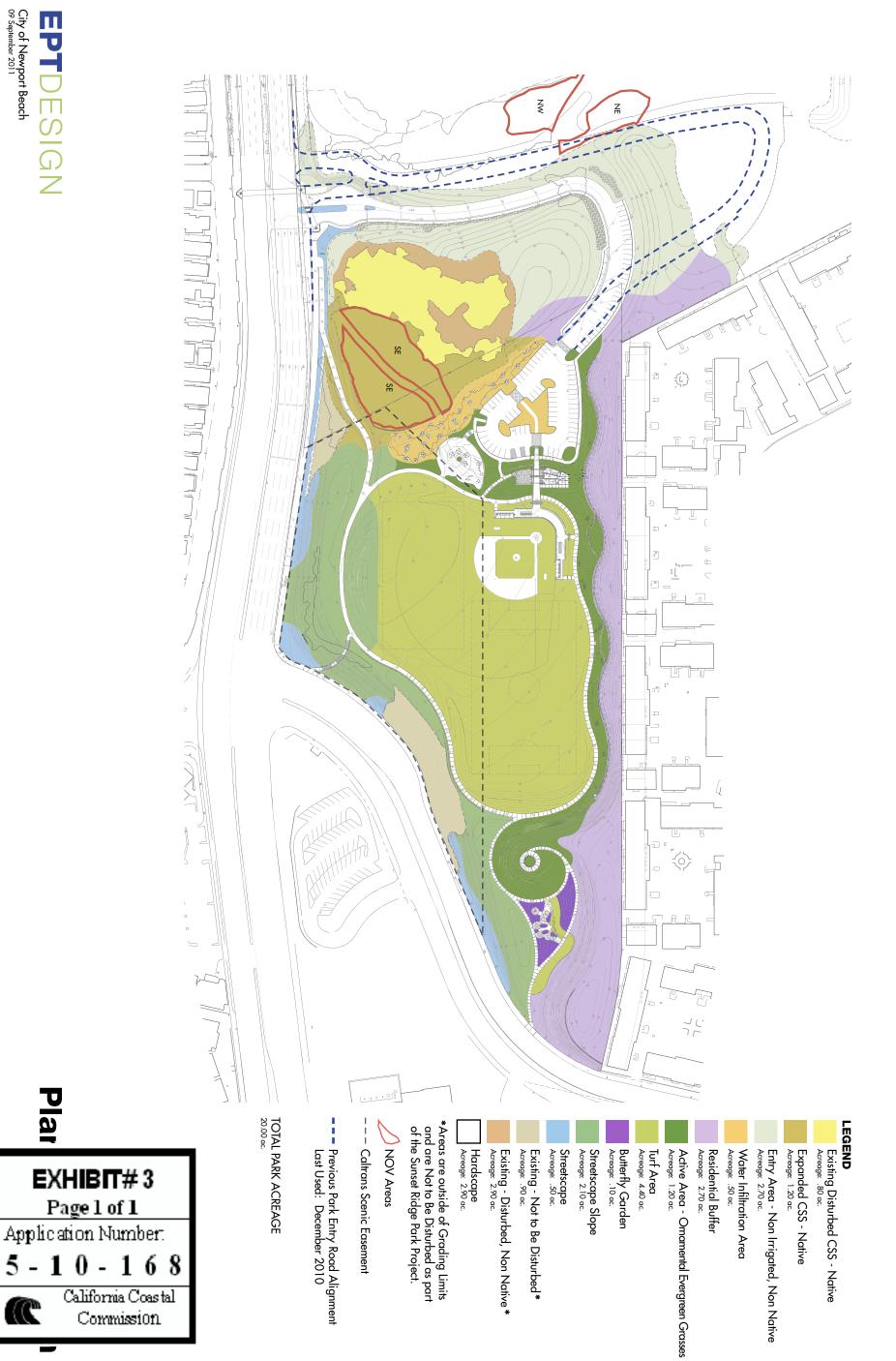
# Google maps





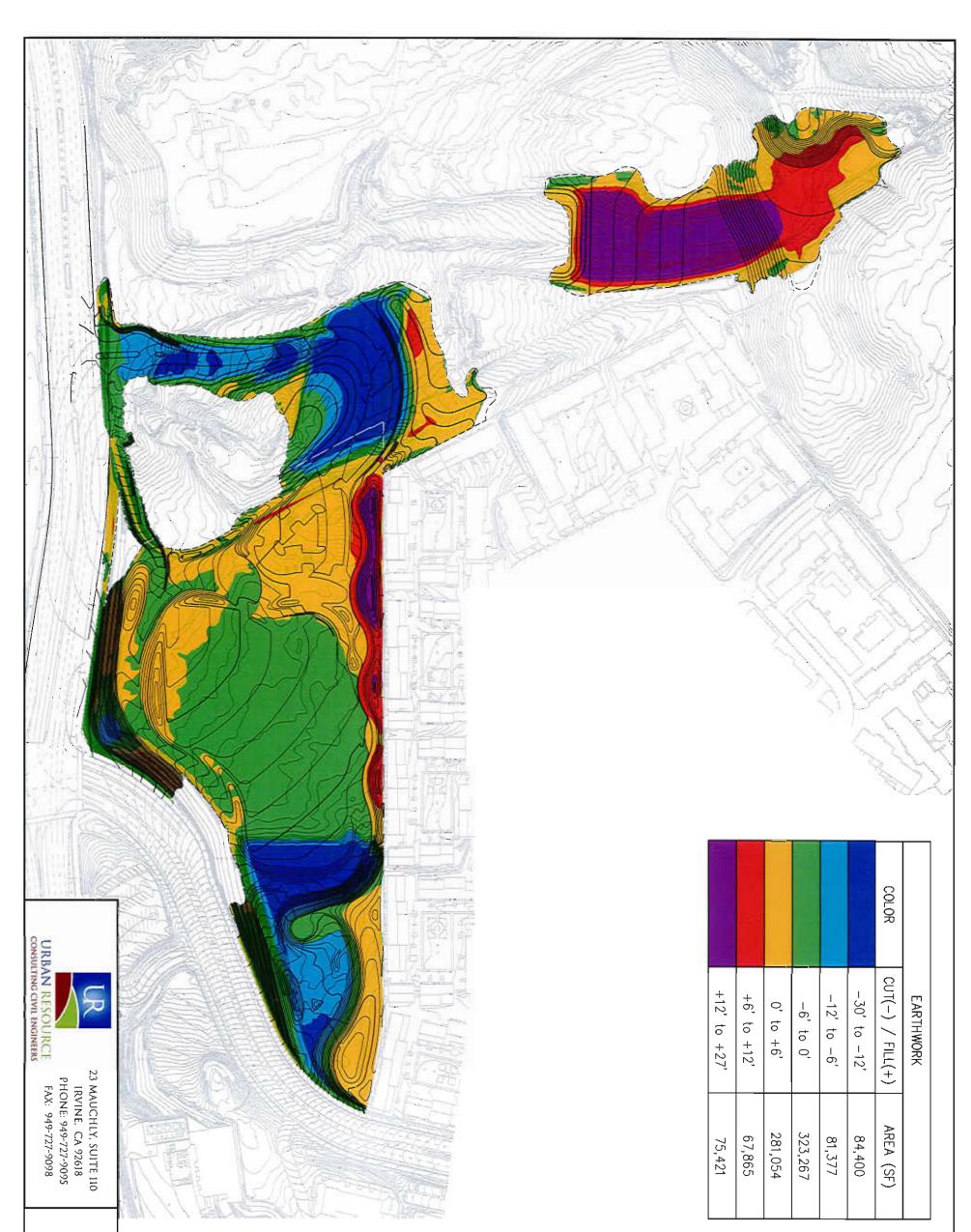
9/22/2011 4:41 PM

\* All locations see other exhibits for further information COASTAL COMMISSION EXHIBIT # Z
PAGE OF OF arcel ESHA West Newport Crest Access W. Coast Hwy ESHA Road Superior Ave East -Existing Parking Lot



Sunset Ridge Park Planting Concept

 $\mathbf{0}$ 



\*EXPANSION INDEX = 0

IMPORT

188 CY 69,315 CY 69,127 CY

TOTAL EARTHWORK QUANTITY

\*EXPANSION INDEX = 0

**EXPORT** 

109,963 CY 101,698 CY 8,265 CY

SUNSET RIDGE PARK EARTHWORKS EXHIBIT

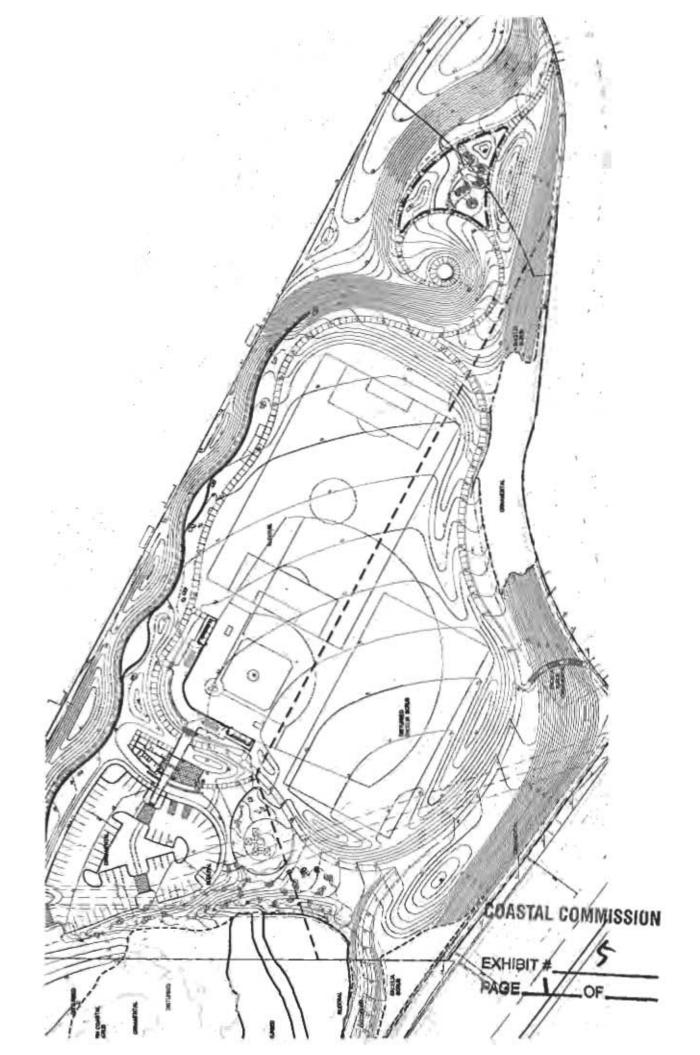
AUGUST 31, 2011

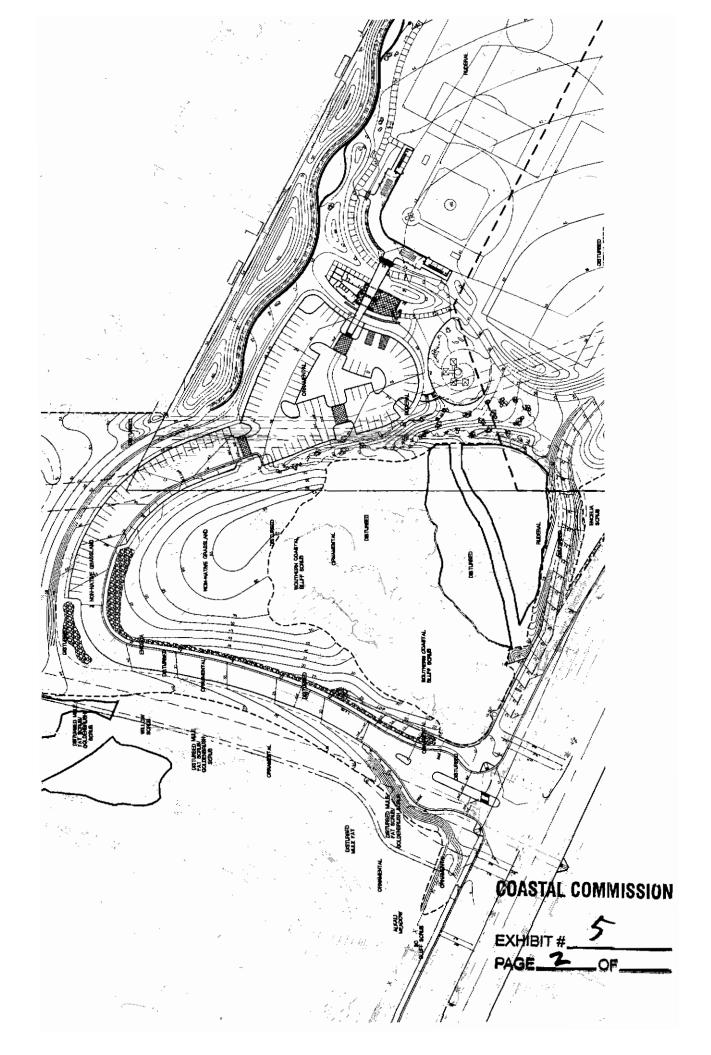
\*EXPANSION INDEX = 0 PARK SITE EARTHWORK QUANTITY CUT FILL EXPORT **EXPORT** ENTRY EARTHWORK QUANTITY FIL 57,627 CY 27,951 CY 29,676 CY 52,148 CY 4,432 CY 47,716 CY

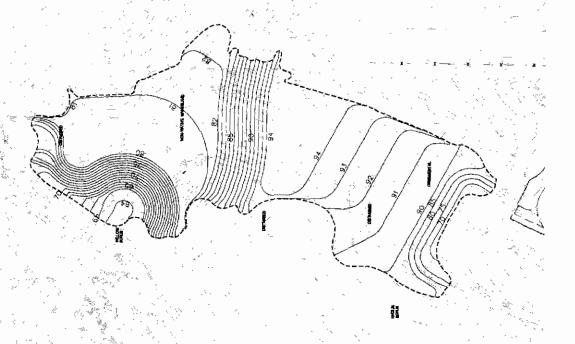
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FILL SITE EARTHWORK QUANTITY

CUT







# COASTAL COMMISSION

# California Coastal Commission [CDP Application No. 5-10-168]

Applicant: City of Newport Beach Agent: Schmitz & Associates, Inc.

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

Project Description: Sunset Ridge Park:

- O Youth baseball field and two youth soccer fields
- O Playground ("tot lot") and picnic areas
- O Memorial garden, pedestrian paths, overlook area with shade structure and seating
- O 1300 s.f. one-story restroom and storage facility (20 ft. max height)
- O 111 public parking spaces
- O Habitat enhancement plan

Exhibit 6 1 of 20

I, Commissioner Steve Kinsey, had ex parte communication with Mike Sinacori of the Newport Beach and Don Schmitz, agent for the above-referenced project on the project site on October 6, 2011. Mr. Schmitz provided a walking tour of the project site, including the area of the proposed Park access road. Mr. Schmitz reviewed with me the historical use and disturbance of the Park access road area and the proposed setbacks of the proposed Park road from Dr. Jonna Engel's delineated ESHA.

Mr. Schmitz discussed with me the proposed public park project and its benefits, the extensive biological analysis conducted by the applicant, and the detailed alternatives analyses (including alternative access plans for access off of Superior Ave) and plan revisions that the City of Newport Beach has undertaken to address Banning Ranch Conservancy's and Coastal Staff's potential resource impact concerns. Additionally, we reviewed how and why access off of West Coast Highway directly on to the City's property was infeasible.

We discussed the fact that Coastal staff originally advised the City that it was recommending approval. We also discussed the constraints the applicant faces with the staff-proposed special conditions of requiring the creation of ESHA and/or an open space deed restriction on the adjacent private property across which the Park project's access road is proposed.

Commissioner Date 10 12 11

#### **EX-PARTE COMMUNICATIONS DISCLOSURE**

Person(s) initiating communication:

Penny Elia - Sierra Club

Person(s) receiving communication:

Commissioner Shallenberger

Location of communication:

Telephone

Time/Date of communication:

September 29, 2011 - 3 PM

Type of communication:

Meeting

Name or description of the project(s)/topics of discussion:

Th9a. Application No. 5-10-168 (City of Newport Beach) Application of City of Newport Beach to construct, on vacant land, an active recreational park (Sunset Ridge Park) of approximately 18 acres at northwest comer of intersection of West Coast Highway and Superior Ave, including access road, parking lot, public restroom, playground, sports fields, paths, viewpoint, retaining wall, landscaping, and coastal sage scrub habitat enhancement. Grading consists of approximately 110,000 cu.yds. of cut, and 102,000 cu.yds. of fill, at 4850 West Coallighway and on portion of Banning Ranch, Newport Beach, Orange County, (JDA-LB)

- The planned Sunset Ridge Park entrance road encroaches upon Environmentally Sensitive Habitat Area (ESHA).
- The planned Sunset Ridge Park entrance road, built on the adjacent Banning Ranch, is intimately connected to the planned Banning Ranch development.
- · Alternatives to the planned Sunset Ridge Park entrance road exist.
- Support staff recommendation for denial.
- Access Agreement provided

Many Shalleaberger

09/27/2011 11:19

RECEIVED South Coast Region

SEP 2 7 2011

# FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

CALIFORNIA COASTAL COMMISSION

Name or description of project, LCP, etc.:

Th. 9a Application No. 5-10-168

(City of Newport Beach)

Date and time of receipt of communication:

9/22/11 3:00 pm

Location of communication:

Board of Supervisor's Office, Santa

Cruz, CA

Type of communication:

Teleconference

Person(s) initiating communication:

Don Schmitz

Person(s) receiving communication:

Mark Stone

Exhibit 6 3 of 20

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

I received a briefing from a representative of the city. He said that the project is a greendesigned park with ball fields and he took me through the project based on the landscaping plan. He noted that he was not sure if they would be getting staff approval. He cited the concern as the fact that the access goes through the Banning Ranch property adjacent. He explained that they looked at alternatives to the proposed access, but they were not acceptable. He also said that staff had indicated that they may want a conservation easement on the parcel where the access is to be provided and habitat to be planted right next to the road. He objects because that would bring nat catcher habitat right up to the road and on the Banning Ranch property. He could not agree because of the relationship with the owner of the Banning Ranch property and he feels that the city cannot ask the property owner for these concessions.

Signature of Commissioner:

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

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

09/27/2011 8314543262

> 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 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.

4 of 20

# California Coastal Commission [CDP Application No. 5-10-168]

Applicant: City of Newport Beach Agent: Schmitz & Associates, Inc.

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

Project Description: Sunset Ridge Park:

- O Youth baseball field and two youth soccer fields
- O Playground ("tot lot") and picnic areas
- O Memorial garden, pedestrian paths, overlook area with shade structure and seating

Exhibit 6

- O 1300 s.f. one-story restroom and storage facility [20 ft. max height]
- O 97 public parking spaces
- O Habitat enhancement plan

I, Commissioner Brian Brennan, had ex parte communication with Dave Webb of the Sof 20 of Newport Beach, and Don Schmitz, agent for the above-referenced project September 09, 2011. During our discussion, we generally reviewed the proposed public park project components, the additional analysis and plan revisions that the City of Newport Beach has undertaken to address Banning Ranch Conservancy's and Coastal Staff's potential resource impact concerns, and the issues with alternative access off of Superior Avenue and with an off-site garage and bridge proposal.

<u>Brian Brennan</u> 9/19/ 2011 Commissioner Date

# FORM FOR DISCLOSURE OF EX PARTE COMMUNICATIONS

Date and time of communication: 1130pm - 2:15
Location of communication: Met office
(If communication was sent by mail or
facsimile, indicate the means of transmission.)
Identity of person(s) initiating communication: Stive Ray Do Terry Welsh
Identity of person(s) receiving communication:
Name or description of project: Banning Ranch
Description of content of communication:
(If communication included written material, attach a copy of the complete text of the written material)
•
appllants Lear the City of Newport 6 of 20
Beach is going to build a 4 lane Road
as an autiquay into Sunset Redge
Park They Claim there is a deal WP
Banning Ranch oceners that this road-
way, when will be paid for by the
city, the well benefit the ourse
in their planned development of Branch
9/1/4 Modeep
Date 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.

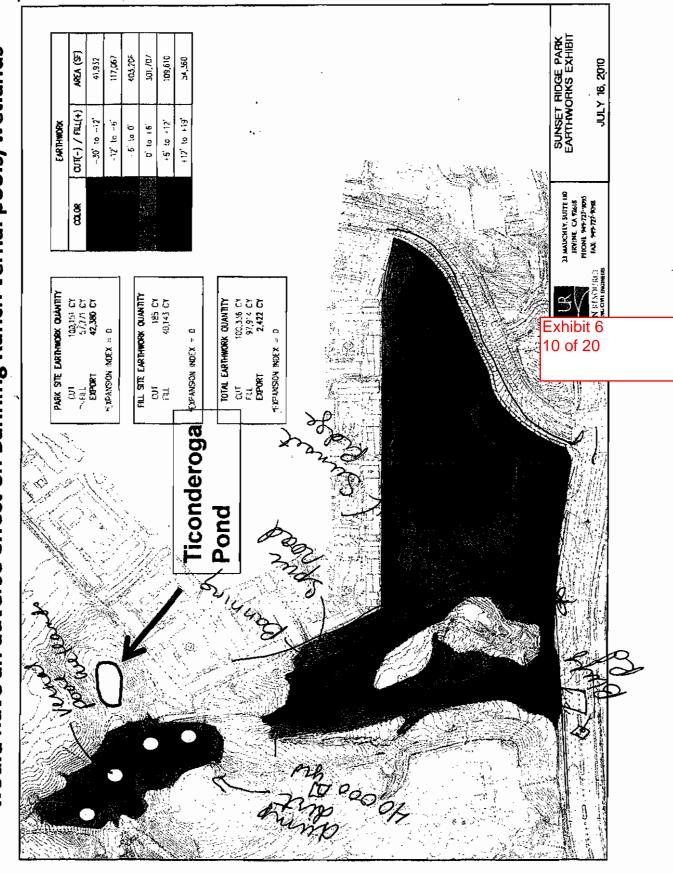
We went over several maps and they showed me the Site for at last 40,000 Tyds. of dut from the road grades. They also are hoping that Banning Ranch Conservancy Ca Exhibit 6
raise the funds to keep it a 7 of 20
a park, She Ranca has the Reglest Cesting of environmental resources even greater than Bolsa Chica. Cal hans has a significant Interest in the transaction since they sold the Ridge to MB as palkland. Dhe park wey accomodate ~ 144 can suday The road will accomodate = 34,000 - 57,000 car per day

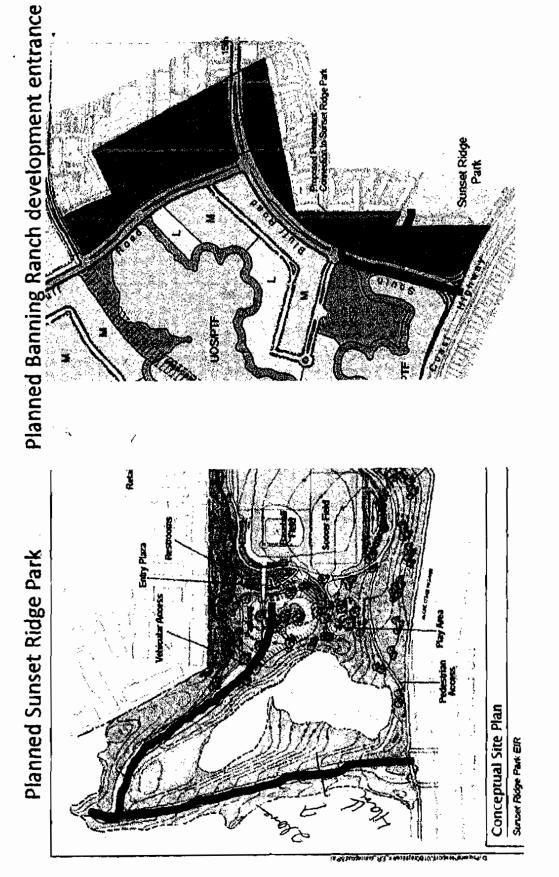
main roadway through planned development Bluff Road is feet commercial space Clefferred Corlege Proposed Banning Ranch development "white here" - Coasta Luch (Newport out has Luch 375 home development with 70,000 s

Ban = oil /leoys Abandoned SR-Caltians was given to build fury. - Offiams to NBrack It is Teluffer Newport B bought to be a park. Scence easement in deed. His July support pack (they proposed it) Cal Trans wouldn't approve major enlevents So now 4 lane entry to Banning (Buff Rd) 34,000 cars a day. 174 cars in park plan /day Heare > 2 lane > agreement exists that
BR will build thur "aligned lanes" City to pay for all road costs. 2006-General Plan > open space unles - Couldn't be acquired. - Owners then applied for develop BR Conservancy - raise funds to buy, restre to maintain as Stark.

Measure M- metigation & to environ BR got highest record of environ resources (even greater that Boloa Chica)

40,000 cubic yards of dirt from Sunset Ridge Park to be dumped on Banning Ranch would have an adverse effect on Banning Ranch vernal pools/wetlands





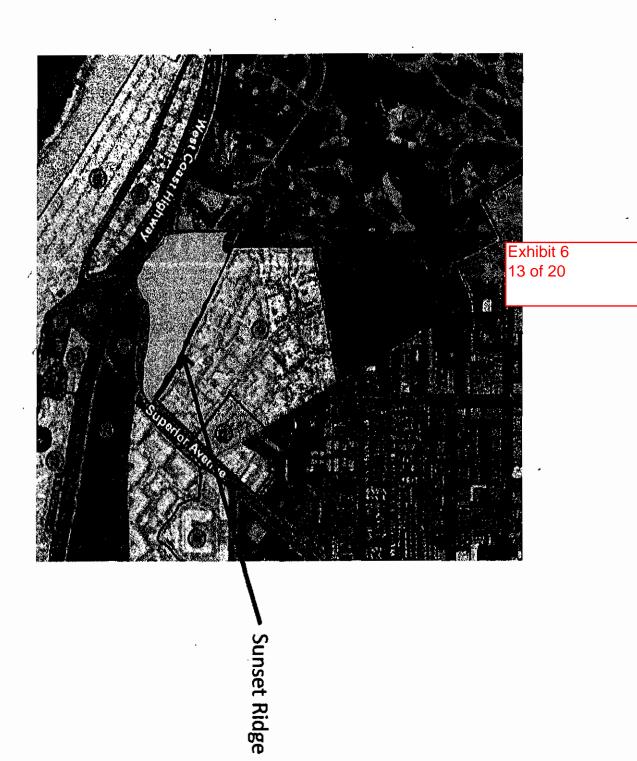
ch development and is The planned entrance road for Sunset Ridge Park is actually the planned entrance road for the Bannin referred to as "Bluff Road".

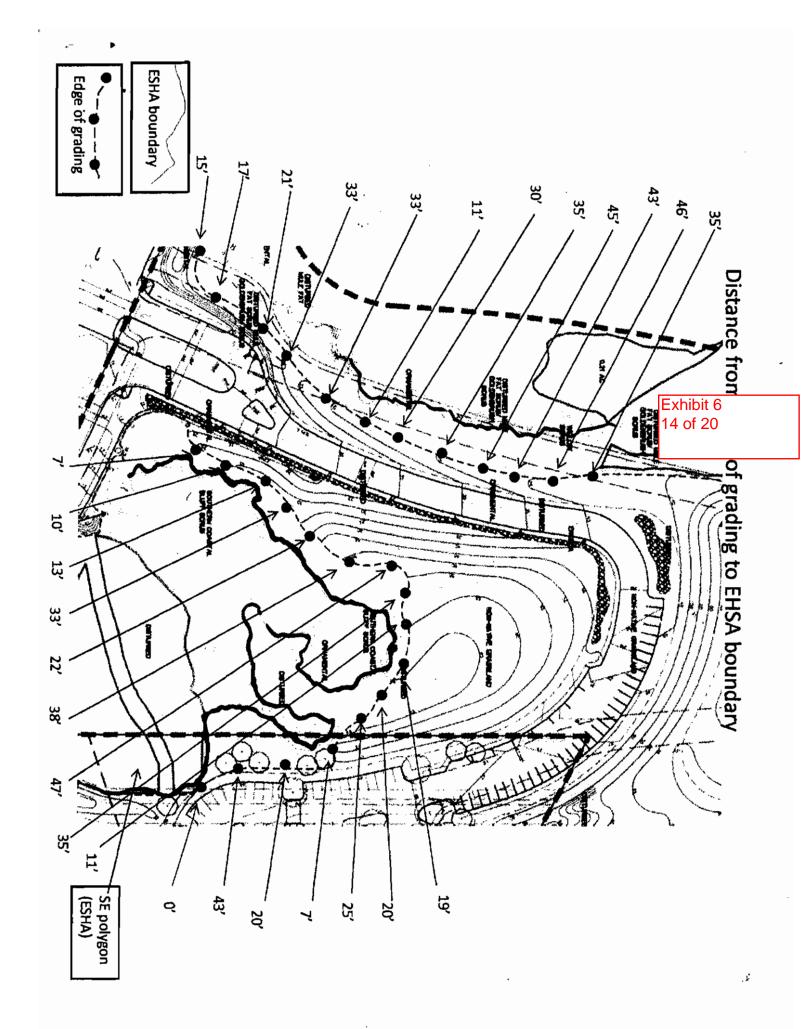
## Development 6 12 of 20

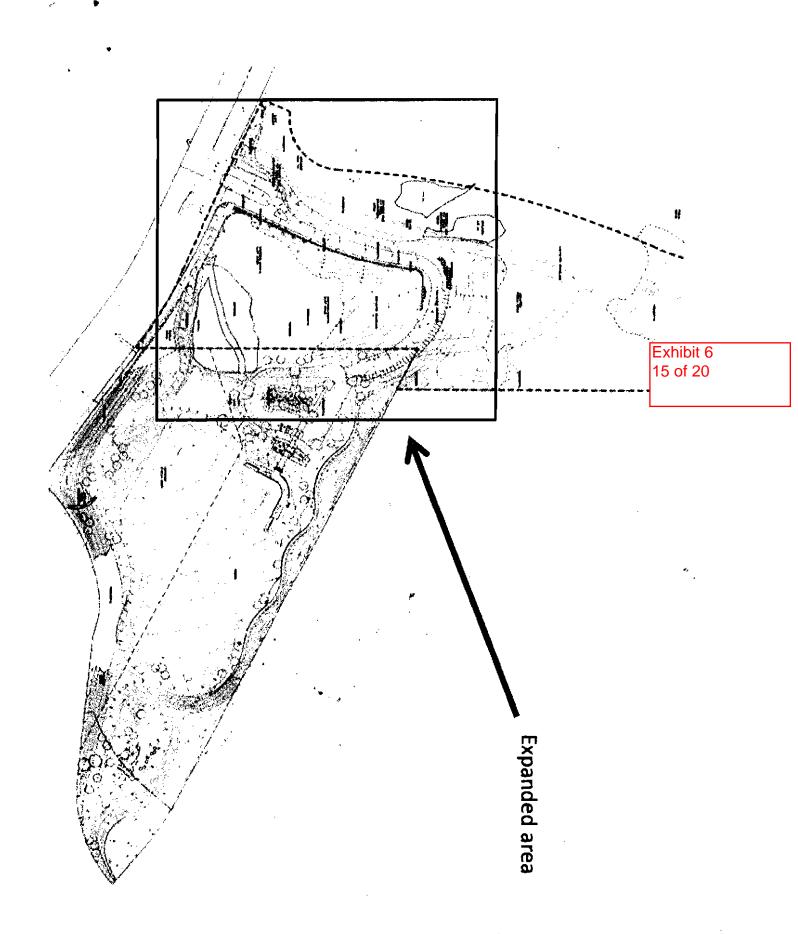
## last large coastal properties of Orange County's

Site	Acres	Acres Residential Units
Marblehead (San Clemente)	248	313
Dana Point Headlands (Dana Point) 121	121	118
Bolsa Chica (Huntington Beach)	2000	379
Crystal Cove (Newport Beach)	980	635
Castaways (Newport Beach)	133	119
Banning Ranch (proposed)	412	1375

# Beach and planned to be a park Sunset Ridge (15 acres) is owned by City of Newport









Date and time of communication: July 29 - August 5, 2011

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

Identity of person(s) initiating communication: James Birch, Lisa Cutting, Patricia Dowling, Lorraine Todd, George Wolfberg, Samuel Bayer, Barbara, Kleinman, Cindi Banks, Johni and David Levene, Mark Fishman, Marilou Taylor, Sharon Kilbride, Rosemary Miano, Judi Jensen, Helen Hill, Diane Duarte, Dian Lenkin, Marlow Fisher. Morgan Gendel, Andrew Bogen, Debra Gendel, Doug Suisman, Moye Thompson, Gordon Davidson, BOCA neighborhood association, Micheal Duggan, Judith Davidson and Ear and Carol Fisher

Identity of person(s) receiving communication: Commissioner McClure

Exhibit 6 16 of 20

#### Description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material.) All letters were in opposition of application #5-11-125, 160 Ocean Way, Santa Monica, CA and in opposition to the hearing location.

Date August 5, 2011

Signature of Commissioner Clus

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.

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

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

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

Identity of person(s) receiving communication: Commissioner McClure

#### Description of content of communication:

(If communication included written material, attach a copy of the complete text of the written Exhibit 6 I spoke with Steve on two primary issues concerning Banning Ranch/ Sunset Ridge Park. 1. The History of Banning Ranch including size, cultural significance, local initiatives, farming and oil the land 2. Discussion of the project which included scope, ingress and egress, possible encouragement of development if entrance is on the Banning Ranch site, development being beyond need, alternatives to access locations and possible lack of adequate environmental review.

Date

Signature of Commissioner

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

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

Identity of person(s) initiating communication Don Schmitz

Identity of person(s) receiving communication: Commissioner McClure

Description of content of communication:

(If communication included written material, attach a copy of the complete text of the written material California Coastal Commission

Exhibit 6

18 of 20

[CDP Application No. 5-10-168]

Applicant: City of Newport Beach

Agent Schmitz & Associates, Inc.

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

Project Description: Sunset Ridge Park:

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

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

Date

Signature of Commissioner

Date and time of receipt of communication:  8/11/11	1 approx 12:30
100110 00 000 01001000 100100	
Location of communication:	resile City Hol
Type of communication (letter, facsimile, etc.)	ing !
Person(s) initiating communication:	Ray
Person(s) receiving communication:  May	Shallinbuga
Detailed substantive description of content of communication (Attach a copy of the complete text of any written materia)	
	Exhibit 6
nee attached	19 of 20

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

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

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

Aug 12, 20011 @ approx 12:30 PM

Watsonville City Hall

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

He gave me a brief history of the Banning Ranch

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

Exhibit 6 20 of 20

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

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

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

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

RECEIVED South Coast Region

To:

Coastal Commissioners

DEC 1 5 2010

From: Christy Flesvig

Date: December 12, 2010

CALIFORNIA COASTAL COMMISSION

Re:

**Banning Ranch and Wildlife Observations** 

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

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

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

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

Sincerely,

9 Landfall Ct.

Newport Beach, CA 92663

Cell: 949-295-9089

OPPOSED **COASTAL COMMISSION** 

<b>EXHIBIT</b>	# <u> </u>
PAGE	OF

RECEIVED

South Coast Region

AUG 4 2011

Members of the California Coastal Commission Coastal Commission Staff 45 Fremont St. Suite 2000 San Francisco, CA 94105 July 28, 2011

Re: Coastal Development Permit for Sunset Ridge Park, No. 5-10-168

CALIFORNIA COASTAL COMMISSION

Dear Honorable California Coastal Commissioners and Commission staff.

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

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

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

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

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

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

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

Thank you.

Sincerely,

COASTAL COMMISSION

**EXHIBIT#** PAGE 2

RE: Sunset Ridge Park Project

#### Introduction:

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

#### 1. Standard of Review:

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

#### 2. ESHA Determination and Data Requirements:

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

EXHIBIT #_	7	
PAGE_3	OF	

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

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

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

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

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

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

EXHIBIT #_	<u> </u>
PAGE 4	OF

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

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

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

**COASTAL COMMISSION** 

EXHIBIT	#_	7	
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The CDP application for Sunset Ridge Park must be considered incomplete until all field data from the 2002, 2006, 2007 and 2009 studies is produced. Additionally, the more recent data from the 2010 and 2011 studies must be provided and considered. The doctoring of the 2002 map cannot be allowed to stand.

#### 3. ESHA Protection:

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

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

#### 4. Grading:

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

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

#### 5. Buffers Defined:

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

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

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

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

COASTAL COMMISSIO		ĺ																								١							,								,																į							١											١				ł								Į	ļ	ļ	l			,	,											l		ļ			I										•										١			1	)					ĺ					•		
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EXHIBIT	#	<u> ገ</u>	
PAGE_	<u>6</u>	_OF_	W

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

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

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

#### 6. Coastal Act Precedent on Buffers:

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

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

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

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

In accordance with the legal and Coastal Act requirements for ESHA "but EDASTAL	COMMISSION
keeping with precedent-setting permitting decisions of the Coastal Commission on	

EXHIBIT	ˈ# <u></u>
PAGE_	<b>7</b> _OF

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

#### 7. Grading in Buffers and Restoration:

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

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

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

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

8.			
			h Road:

**COASTAL COMMISSION** 

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

#### 9. Alternative Roadway:

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

#### 10. Vernal Pool/Wetlands:

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

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

EXHIBIT	#	7	
PAGE	9	OF	

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

#### Summary:

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

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

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

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

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PAGE_	10	OF	

					COASTAL CON	IMISSION
website	at www.banning	unan.com. or vi granchconservar	a phone at 310 icy.org. Thank	-961-7610. 16 gou.	u may also visit our	

#### August 23, 2011



California Coastal Commission

Attn: Mr. John Del Arroz, Coastal Program Analyst; & Mr. Karl Schwikig இupenyjsor,

Planning & Regulation

200 Oceangate, 10<sup>th</sup> Floor Long Beach, CA 90802-4302 CALIFORNIA COASTAL COMMISSION

Subject:

Sunset Ridge Park Vehicle Access

Response to 8/12/11 Letter from Newport Crest HOA Board of Directors

Dear Mr. Del Arroz & Mr. Schwing:

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

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

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

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

Respectfully,

Concerned residents of Newport Crest (signatures attached)

cc: Newport Crest Homeowners Association Board of Directors

ce. Newport crest nomeowners Association board of birectors

Attachments (2)

**COASTAL COMMISSION** 

EXHIBIT # 7
PAGE 12 OF \_\_\_\_

Re: Sunset Ridge Park Vehicle Access

Signature	Address	#U3 & n 2011
Helen Nodel		COASTÁL
Richard F. Cruck	17 SWIF	T COURT NPB 9266
Swanne forti	8 Summe	round Court
May dee	7 Summe	erwind court
allen Toute	8 Summery	and Court
Refat ana	17 Su	ift Ct, nuget B
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Dave Sutherland		marriad
Napolie Sv Kelan		metward
Bill Beat	10 01	DYSSEY CT "
Christ Shrift.	11 Sum	mercial of
Salableaffuy	9 Suprae	COASTAL COMMISSION
Mike Federat +	•	EXHIBIT #

Agenda Item: Th9a (October 7, 2011) Application Number: 5-10-168

My name: MOSHER Position: DENY CDP

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

Attn: John Del Arroz (for distribution to the Commissioners)

Dear Commissioners.

I urge you to DENY the Coastal Development Permit for the proposed Sunset Ridge park, although for somewhat different reasons from those cited by Commission staff.

The proposed lighted active sports park at Sunset Ridge would be developed on 18 acres of relatively unspoiled City-owned coastal view land which are contiguous with and indistinguishable from the adjacent 401 acres of Coastal Zone property known as Banning Ranch. As noted in your staff report those 401 acres are also the subject of imminent development for which a Draft Environmental Improposed access road to Sunset Ridge Park was selected not just to accommodate the rather minimatineeds of the Sunset Ridge users, but also to accommodate the larger development, should it be approved.

The problem and coastal issue I see before you is that the proposal for the remaining 401 acres (as illustrated in Exhibit 4.8-3 to the Newport Banning Ranch DEIR) includes a second 16 acre lighted active sports park ("North Community Park") less than a quarter mile north on an extension of the same road with three full sized soccer/Little League/softball fields, as well as basketball and tennis courts and 174 parking spaces.

One of the primary questions before the Commission, I believe, is whether it serves the public interest to convert so much of the last undeveloped coastal land (and current or potentially restorable habitat) in this area to active sports uses that communities might equally well place outside the Coastal Zone. If irreplaceable coastal land is to be sacrificed for non-coastal sports uses, then the Commission needs to ask which of these choices is best. Since the Banning Ranch developers have described their land as having been degraded by years of oil field operations, it seems to me the public interest would be best served by modifying their already degraded land and preserving the relatively unspoiled Sunset Ridge as a passive park restored to its natural unmowed state. But a thoughtful decision on this, and the other matters staff highlights, requires considering the two projects in their totality, and cannot be made at present.

Alternatively, if the Commission chooses to consider Sunset Ridge Park separately, then Sunset Ridge must be made to stand on its own merits, and I concur with staff's recommendation that to do so the access road must be restricted in perpetuity to that necessary to serve the strictly limited purposes of the proposed park.

Yours sincerely,

James M. Mosher, PhD (physics) 2210 Private Road Newport Beach, CA. 92660



#### Lido Sands Community Association

Post Office Box 1373, Newport Beach, CA 92659

October 5, 2011

California Coastal Commission
Sherilyn Sarb, Deputy Director
Teresa Henry, District Manager
John Del Arroz, Program Analyst
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416
(562) 590-5071 phone
(562) 590-5084 fax

RECEIVED
South Coast Region

OCT 0 5 2011

CALIFORNIA COASTAL COMMISSION

Subject: Sunset Ridge Park, Application No. 5-10-168, Newport Beach

Dear Coastal Commission,

The Lido Sands Community Association (LSCA) is located directly across Pacific Coast Highway from the proposed Sunset Ridge Park. As a community we have great concerns about the proposed access road and location of that road to the park.

We would like to be on record that although we do support the park we are vehemently opposed to any new traffic signal on PCH. Additionally, unless the proposed access road can be guaranteed to be a small "park road" in perpetuity we are opposed to its location on neighboring Banning Ranch Property. We are encouraging the City of Newport Beach to review alternative access to the park.

Respectativy,

Mcolai Glazer, President

Lido Sands Community Association

Exhibit 7 15 of 47



October 4, 2011

California Coastal Commission

200 Oceangate, 10th Floor

Long Beach, CA 90802 FAX (562) 590-5084

Re: Application No. 5-10-168 (City of Newport Beach)

Exhibit 7 16 of 47

#### Dear Members of the Coastal Commission:

I am writing to you on behalf of Sea and Sage Audubon Society requesting that you deny the application for the proposed access road to Sunset Ridge Park, Newport Beach. Sea and Sage Audubon is an Orange County chapter of the National Audubon Society with 3,000 local members, dedicated to protecting our natural resources, including birds and their habitats, through education and conservation.

The Environmentally Sensitive Habitat Areas (ESHA) in, and near, the proposed Sunset Ridge Park contain the Federally Listed California Gnatcatcher, among many other native birds. Their habitat and breeding territories at the park have been only briefly studied in preparation for this application. The work that has been done has only produced a partial record of their presence and breeding. It has in no way provided an adequate understanding of this isolated population, and in no way has there been enough data to delineate their Coastal Sage Scrub (CSS) habitat.

We hope you will agree that the ESHA designation must be met with the utmost consideration for the resources. A park in this area is certainly capable of providing a public benefit, but it should be able to meet multiple goals, and can easily be alerted to allow for improving the natural areas and include access that does not require a road through ESHA. Given the highly urbanized characteristics of the surrounding area, a protected and perhaps even improved wildlife area, will provide much needed public benefit, in addition to other park facilities. But this can't be accomplished if the area is bisected and impacted by the proposed road.

A smaller road than what is requested, would also have unjustified impacts to the ESHA, and could become the staging point for an expanded road later. Impacts and deterioration of the habitat caused by a road would surely push gnatcatchers and other birds back away at the very least, thereby potentially facilitating the approval process for future expansion. Please don't allow this to be stage 1 of a larger road later.

The attempt in this application to parse out sections of the CSS into disparate sub-habitats, all of which are important to the long term survival of this CA Gnatcatcher population, has become a common tool to help development interests divide and conquer. CSS is naturally diverse and somewhat full of different characteristics, which support each other. Foraging area, pathways, even small open spaces, as well as high quality CSS are all critical to these birds. Building a well conceived park, without a road through ESHA could help improve the habitat and clean up some of the dumping areas. But the introduction of a road, with hopes of performing restoration afterwards is not the best plan and will likely result in the diminishment of this population. We hope you will deny this application and require that any road, if needed at all, will not impact ESHA.

Thank you for your consideration,

Exhibit 7 17 of 47

Age.

Scott Thomas

Conservation Director, Sea and Sage Audubon

September 28, 2011

Vallejo

Via facsimile: 562-590-5084

Via US Mail to Constal Commissions

California Coastal Commission c/o Sherilyn Sarb 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

Application 5-10-168 Marilyn Beck Opposed

> RECEIVED South Coast Region

> > SEP 2 9 2011

CALIFORNIA COASTAL COMMISSION

RE: Opposition to Sunset Ridge Park entrance road on Banning Ranch

Dear Commissioners.

I support the Banning Ranch Conservancy, and ask that an alternative be fou Exhibit 7 Ridge Park entrance road so that is does not negatively impact Banning Ranc 18 of 47

Banning Ranch is an environmentally sensitive habitat, protected by the Coas Please deny this application.

Sincerely

Marilyn Beck

September 28, 2011

Via facsimile: 562-590-5084

Via US Mail to Coastal Commissions

Application 5-10-168 Joseph and Lisa Vallejo Opposed

> RECEIVED South Coast Region

> > SEP 2 8 2011

California Coastal Commission c/o Sherilyn Sarb 200 Oceangate, 10<sup>th</sup> Floor Long Beach, CA 90802-4416

CALIFORNIA COASTAL COMMISSION

RE: Opposition to Sunset Ridge Park entrance road on Banning Ranch

Dear Commissioners,

We support the Banning Ranch Conservancy, and ask that an alternative be t Sunset Ridge Park entrance road so that is does not negatively impact Bannin 18 of 47 natural habitat, protected by the Coastal Act. Please deny this application.

Sincerely

Joseph and Lisa Vallejo

Agenda Item Th9a

September 27, 2011

Deborah Koken 1778 Kenwood Place Costa Mesa, CA 92627

Sherilyn Sarb
Deputy Director
South Coast District
200 Oceangate 10th Floor
Long Beach, CA 90802

Attention: John Del Arroz

Subject: Sunset Ridge Park Coastal Development Application

The plan for Sunset Ridge Park includes a controversial entrance road on adjacent Bann Ranch. The owners of Banning Ranch are allowing Newport Beach to build the entrance for Sunset Ridge Park provided the road will be able to be used as the entrance road for proposed Banning Ranch development which is a huge residential/commercial mixed development on one of the largest remaining coastal sites in California. This portion of the Sunset Ridge proposal links it with the Banning Ranch ElR which was recently issued. The two projects should be treated as one under the same EIR. Separating them into two separate EIRs is a violation of CEQA.

The City of Newport Beach and the owners of Banning Ranch have openly stated that this road will be the first leg of Bluff Road. The City of Newport Beach plans to eventually extend Bluff Road across the entire Banning Ranch mesa and connect it to 19th Street in Costa Mesa, traversing coastal zone wetlands, gnatcatcher habitat, burrowing owl habitat, federally-declared critical habitat for the San Diego fairy shrimp and other Environmentally Sensitive Habitat Areas (ESHA). Not only would Bluff Road serve the proposed Banning Ranch development, Bluff Road is planned as a primary 4-lane road which would carry heavy commuter traffic and noise through the local neighborhoods (up to 50,000 cars per day).

A more rational alternative for access to Sunset Ridge Park is a much shorter road entering directly off PCH. The park is expected to generate well under 200 car trips per day.

I respectfully request that the Coastal Commission deny the project, in accordance with the recommendations of staff. Please transmit this letter to all the Commissioners.

Sincerely,

Deborah Koken



SEP 2 9 2011

COASTAL COMMISSION

Permit (application) # 5-10-168

Agenda (item) # TH9a

Gerard Proccacino

I am strongly opposed to the

proposed Major intersection

for Sunset Ridge Park, Jam in

favor of a more passive Park.

9/26/2011 -

Dear California Coastal Commission members,

Exhibit 7 20 of 47

I am a proud resident of Lido Sands, Newport Beach Ca. The proposed signaled entrance intersection for Sunset Ridge Park will be right in front of my home of years. I am extremely concerned that this major signaled intersection will adversely afform only my quality of life but that of most West Newport Beach residents and the life of the rare habitant of Banning Ranch.

The added grid lock and environment impact will make a hornets nest of what is already a traffic nightmare area. Cal Trans has been public of their disapproval due to the intersections unacceptable close proximity to Superior Ave. The park entrance road, which is proposed to be built on borrowed land from Banning Ranch owners, is exactly in the boulevard entrance footprint of their proposed mega development. I still question how this was included in the Park EIR when it is a separate property. The rare habitant in the path of the road has already been recently violated by a contractor construction staging area. There is no need for a road and intersection for the community to enjoy the park. The City of Newport Beach claims they have no other plans nor are there any other ways but for the road and major intersection to be built, I disagree. I have not seen any documented evidence that the City of Newport Beach has investigated all engineering possibilities to avert the access road. We West Newport Beach residents have recently spent hundreds of thousands of dollars of tax money to complete a "traffic calming" project for River Ave. which run less then 100 yards parallel to West Coast PCH. The major signalized intersection proposed on PCH will greatly negate that effort. We individually spent thousands of dollars of our own money to underground utilities. And now we are looking to possibly driving into Lido Sands Court seeing ugly bare steel poles with hanging black

light boxes, seems a contradiction to me. There is a parking lot directly across from the proposed park on Superior Ave that is lightly used. A pedestrian over pass could be erected or the existing crosswalk modified to get people across. The lot could also be enlarged if necessary. The road, intersection and proposed 75 car, plus, parking lot in the park could all be eliminated. The parking lot space and the part of the road on park land could be put to much better use, another playing field, swimming pool etc. I urge you, please, to strongly encourage the City of Newport Beach to deliberately and sincerely investigate this and other alternatives. If, God forbid, the road gets built the signaled intersection is not There are safe and signaled U turns just blocks from the proposed entrance which would require only a right turn in, right turn out from the park. I have heard, read about the road/ intersection making it convenient for the park patrons. It is only making it convenient for motor vehicles. Accommodating cars again, where does it stop? It must stop here. How many more are going to be greatly Exhibit 7 inconvenienced by the negative impact of the road and intersecti 21 of 47 The people are going to a park, not work. A little walking to g there should only entice the experience.

Please, please, no road and major signaled intersection on West Coast Highway. No road, no major intersection, no motor vehicles, more Park! Please do not Los Angelize Newport Beach.

I strongly support The Banning Ranch Conservancy professional stance on this issue.

Respectfully submitted and thank you for your consideration.

Gerard Proccacino

5105 Lido Sands Drive

Newport Beach, CA 92663

714-914-5078

Gravytrain1@roadrunner.com

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

RECEIVED

South Coast Region

SEP 2 6 2011

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

CAUPORNIA COASTAL COMMISSION

Exhibit 7 22 of 47

September 23, 2011

Permit No: 5-10-168 Item No: TH9A

John Del Arroz Costal Program Analyst, South Coast District Office California Coastal Commission 200 Oceangate, 10<sup>th</sup> Floor Long Beach, CA 90802-4416

RE: Public Hearing, Coastal Permit Application, for Sunset Ridge Park, Newport Beach, CA. on Thursday, October 6, 2011 at 9:00 AM at Huntington Beach City Hall.

Item No: TH9A

Dear Coastal Commissioner's:

In response to your September 16, 2011 Public Hearing Notice you mailed to he on September 20<sup>th</sup> the following represents my comments regarding potential General Habitat Loss and Wildlife Loss at the proposed Sunset Ridge Park in Newport Beach.

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, Banning Ranch, 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. In my opinion the loss of habitat would be an adverse impact and would reduce wildlife populations below self-sustaining levels in the region.

As of this date I have not seen any 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?

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 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 darken 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 wholes.

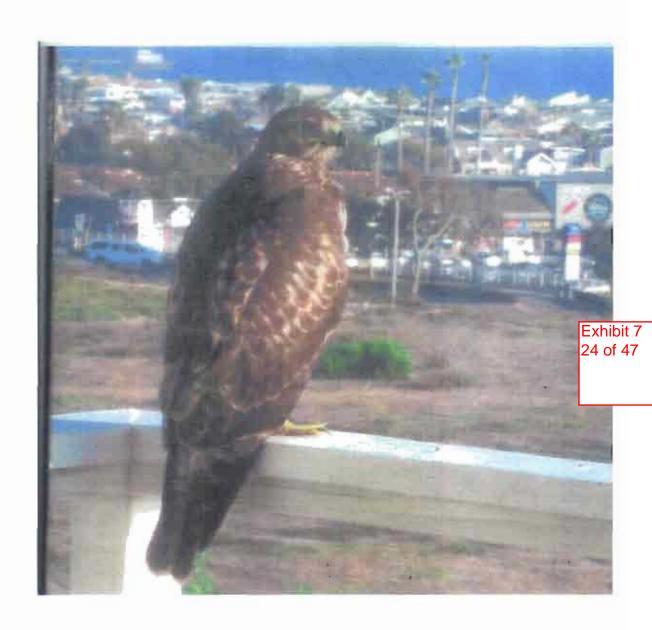
Implementation of the Project would result in the loss of approximately 0.41 acres of coastal sage scrub habitat. Permanent impacts on coastal sage scrub vegetation must be mitigated at a two-to-one (2:1) ration on the Project site or in suitable off-site locations in the Newport Beach/Costa Mesa area. No one has identified 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?

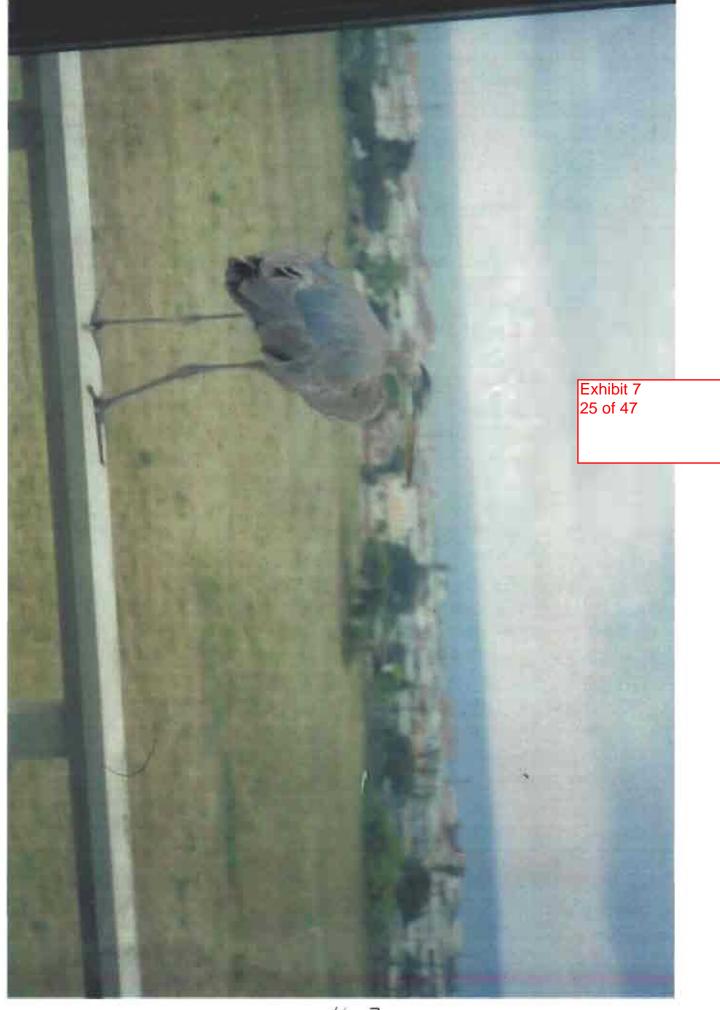
All of the above issues are a major valuation concern since Newport Crest front line unit owners paid a premium for their units to be close to nature and watch the wonders of wildlife from their balconies. I have brought up many of the above issues with Newport Beach City Council and the previous City Manager. I seriously object to the approval of this project in its present form.

Sincerely,

Gary A. Garber

Attachments





4.77

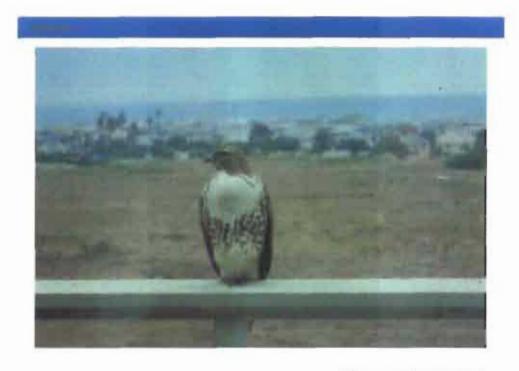


Exhibit 7 26 of 47





8 0)7

To the California Coastal Commission (Coastal Development Permit Application No. 5-10-168):

It is the considered opinion of the Banning Ranch Conservancy that the California Coastal Commission should deny the Sunset Ridge Park project for the following legal reason:

Based on the California Coastal Commission's responsibility to assure adequate environmental review of the Sunset Ridge Park project and having been provided the pleadings submitted in Banning Ranch Conservancy v. City of Newport Beach, the Commission is persuaded that the CEQA analysis conducted by the City is deficient because it (1) segments the Banning Ranch property between two EIR's and fails to consider the environmental impacts from the overlapping proposed Sunset Ridge Park/Newport Banning Ranch project site(s), (2) fails to adequately consider the project's biological impacts, including impacts to the gnatcatcher and ESHA, (3) fails to adequately consider environmentally superior alternatives, such as alternative roadway access to the project off of PCH or a redesign of the park from active sports fie Exhibit 7 passive uses, as proposed by the Banning Ranch Conservancy, (4) fails to adequately and cumulative impacts of the segmented Sunset Ridge Park/Newport Banning Ranch project. Specifically analyze the growth inducing impacts of the Sunset Ridge Park's publish Road intersection and roadway on the proposed Newport Banning Ranch project. Upon this basis, the Commission is be compelled to deny the project.

Were the Commission to act otherwise, the agency could be abrogating its legal responsibility

The Banning Ranch Conservancy is submitting the following documents to be part of the addendum for the Sunset Ridge Park Project (Coastal Development Permit Application No. 5-10-168)

- 1. Summary of important issues involved in Sunset Ridge Park
- 2. Email dated 1/28/09 from City employee Mike Sinacori complaining how the City is doing the work of putting in the road for the Banning Ranch developers.
- 3. Email, dated 9/13/11, from Caltrans confirming that, despite having been planning the Sunset Ridge Park project for years, the City has never approached Caltrans to discuss re-visiting the scenic easement.

- 4. Public Records request (un-met as of 9/28/11) for any communication between Caltrans and the City
- 5. Request (un-met as of 9/28/11) made to City employee Dave Webb by Tom Brohard asking for information on communications between Caltrans and the City.
- 6. US Fish and Wildlife Service guidelines for evaluation of vernal pools for fairy shrimp
- 7. Discussion of pedestrian bridge across Superior Ave. alternative
- 8. Letter from Audubon Society
- 9. Letter from California Native Plant Society
- 10. Letter from City of Newport Beach to Banning Ranch Conservancy, denying request for Gnatcatcher data

Exhibit 7 31 of 47

#### Introduction

Currently before the Commission is Coastal Development Permit Application No. 5-10-168 brought by Applicant, the City of Newport Beach, to authorize the Sunset Ridge Park Project. The Project site is 18.9 acres. Approximately 13.7 acres of the site is owned by the City of Newport Beach, while approximately 5.2 acres lie on the neighboring Banning Ranch property owned by Newport Banning Ranch, LLC (NBR).

## II. The planned Sunset Ridge Park entrance road encroaches upon Environmentally Sensitive Habitat Area (ESHA) Exhibit 7

- A. The southeast corner of Banning Ranch (the site of the planned entra road) is one of the areas of highest California Gnatcatcher activity on Banning Ranch. Nesting season surveys have consistently documented California Gnatcatcher presence in the southeast corner of Banning Ranch since 1992.
- B. Banning Ranch is an Area of Deferred Certification, and the standard of review is the Coastal Act. Under the Coastal Act, the precedent recommendation for California Gnatcatcher ESHA buffers at the Marblehead development in San Clemente is 100 feet (with a minimum of 50 feet), and specifically excludes grading in the buffer. Any road and grading in the southeast corner of Banning Ranch would either traverse through California Gnatcatcher ESHA, or violate even the 50 foot minimum buffer zone. Section 30240 prohibits impacts to ESHA and requires that development adjacent to ESHA be set aside a sufficient distance (buffer) to prevent disruption of the habitat values.
- C. Banning Ranch has vernal pools known to contain the endangered San Diego Fairy Shrimp. Four areas of documented ponding of water are present in site where the City plans to dump 40,000 cubic yards of excavated dirt produced during construction of Sunset Ridge Park. These four areas of ponding water have not been subjected to full protocol studies to evaluate for San Diego fairy shrimp. Should fairy shrimp, or other wetland indicators be present, these areas would meet the definition of wetlands and the fill of these areas is not consistent with Section 30233 of the Coastal Act.

# m. The planned Sunset Ridge Park entrance road, built on the adjacent Banning Ranch, is intimately connected to the planned Banning Ranch development

- A. The Access Agreement between the City of Newport Beach and NBR dictates the Sunset Ridge Park entrance road shall follow the route of planned Bluff Road. The planned Bluff Road would not only serve as the proposed Banning Ranch development's connection to Pacific Coast Highway, but would serve as the main road through this development.
- B. NBR will have the ability to control access to the Sunset Ridge Park entrance road during the planned construction for their proposed development on Banning Ranch.
- C. While the Sunset Ridge Park entrance road is a two-lane road, the grad and road-bed being prepared for the Sunset Ridge Park project could e the Sunset Ridge Park's entrance road's expansion into the four-lane Bran Road (a primary road) that is part of the proposed Banning Ranch development. The draft EIR for the proposed Banning Ranch development was released September 9, 2011.
- D. The Sunset Ridge Park project also includes a planned widening of Pacific Coast Highway, and a grand divided and landscaped entrance off Pacific Coast Highway. This is much more than is required for a small park with a traffic expectation of 174 cars/day. In fact, these two features are designed to accommodate a planned stop-lighted intersection for the larger traffic expectations of Bluff Road.
- E. While the planned stop-lighted intersection has currently been removed from the Sunset Ridge Park project, the City will eventually take control over this stretch of Pacific Coast Highway under the terms of AB 344, and will be able to construct a stop-lighted intersection despite Caltrans' stated concerns on traffic flow.
- F. The above mentioned site where the City plans to dump 40,000 cubic yards of excavated dirt was chosen based on its convenience to the owners of Banning Ranch's development plans.

### IV. Alternatives to the planned Sunset Ridge Park entrance road exist.

- A. Access directly from Pacific Coast Highway to Sunset Ridge Park could occur should the City of Newport Beach renegotiate the deed restrictions placed by Caltrans when the Sunset Ridge property was purchased. There is no evidence the City of Newport Beach has seriously discussed this with Caltrans.
- B. Parking is available across Superior Avenue in an existing under-utilized beach parking lot. The distance from this parking lot to Sunset Ridge Park is less than the distance from the same parking lot to the beach. Should more parking spaces be needed, there is adequate City-owned space immediately up-hill to expand the existing parking lot.

  Exhibit 7

  34 of 47
- C. A pedestrian bridge, similar to the bridge at near-by Fairview Park, coubuilt for as little as \$579,000.00. Such a bridge could accommodate ut and emergency vehicles weighing up to five tons.
- D. As the site is zoned "Open Space-Active", Sunset Ridge Park could be a passive park without vehicular access. The City of Newport Beach is already planning 22-acres of sports fields as part of the proposed Banning Ranch development. Should Banning Ranch be preserved as open space, the City of Newport Beach's General Plan still calls for active sports park on Banning Ranch.

Email dated 1/28/09, from Newport Beach employee Mike Sinacori, complaining to Sun Park EIR consultant Dana Privitt. This email describes the relationship between the parentrance road and the entrance road for the planned Banning Ranch development.

Exhibit 7 35 of 47

#### Dana,

Banning Ranch needs to pick up all the cost on this. My humble opinion. We are going through a lot of pain to get their road in at their grades. Paying these incidental cost increases is above and beyond our tolerance level right now. Same reaction with all the other focus studies (except for the owl survey).

Michael J. Sinacori

Hello Terry Welsh,

At this time, the only way Caltrans District 12 Office of Right of Way would entertain a discussion about removing any property right owned by the Department would be through a process called "Request for Decertification". This process would start with a requirement of a non-refundable \$25,000 deposit to be used for a feasibility study.

Exhibit 7 36 of 47

At this time, no one from the City has requested this process.

Thanks

Ricky Rodriguez, Office Chief Office of Right of Way District 12 (949) 724-2386

Terry Welsh
<terrymwelsh@hotm
ail.com> To
<ricky\_rodriguez@dot.ca.gov>
09/13/2011 04:31 cc
PM
Subject
Sunset Ridge

September 23, 2011

City Clerk
City of Newport Beach
3300 Newport Boulevard
Newport Beach, CA 92658-8915

Re: California Public Records Act Request

Served Personally and Via Email

Dear Newport Beach City Clerk:

This request for records is pursuant to the provisions of the California Public Records Act (Government Code 6250 et seq).

On behalf of Banning Ranch Conservancy, a California non-profit corporation, I request copies of all records prepared, owned, used, received or retained by the City of Newport Beach dating from September 1, 2011 to the present relating to any meetings, correspondence, and/or communication by and/or between the California Department of Transportation, also known as "Caltrans", and the City of Newport Beach regarding the design, configuration, layout and/or composition of the proposed Sunset Ridge Park project including, but not limited to, any roadway entrance or exit to and/or from any public highway or street and the proposed Sunset Ridge Park, whether the roadway is/was proposed, considered, analyzed or discussed.

This request includes all records regardless of form, including but not limited to all forms of correspondence, reports, plans, applications, permits, blueprints, maps, charts, drawings, memoranda, meeting notes, calendars, telephone logs, email messages and all information held in cyberspace and on any media including but not limited to photographs, audio tape, film and videotape.

This request reasonably describes identifiable records or information produced therefrom and I believe no express provision of law exists exempting the requested records from disclosure. Should you find any portion of any requested record exempt from release, I ask that you

Exhibit 7 37 of 47 exercise your discretionary authority to release the requested record in its entirety. If you decide against exercising your authority to release non-segregated copies of all requested records, Government Code 6257 requires that you release all reasonably segregable portions of the requested records.

If you decide to withhold any portion of any requested record, I ask that you provide me a list identifying what you have withheld. I also ask that you cite the specific exemption(s) being relied upon to withhold information. In addition, if you deny all or part of this request, Government Code 6256.2 requires that you provide the name and title or position of each person responsible for the denial of this request. Should you decide to withhold any information, Government Code 6256 requires that you notify me of the reasons for this determination no later than 10 days after receipt of this request. Government Code 6256.2 prohibits the use of the 10-day period, or any provisions of the Public Records Act "to delay access for purposes of inspecting public records."

In order to help you determine my status for the purpose of assessing fee, you should know that I am an individual representing a non-profit organization, seeking information for use of behalf of the public interest, and not for commercial use. I request a waiver of fees for this request because disclosure of the requested information to me is in the public interest as it is like Exhibit 7 contribute significantly to the public understanding of the activities of the City of Newport will assist with protection of the environment and is not in any way for commercial interest.

38 of 47 will assist with protection of the environment and is not in any way for commercial interest. However, I am willing to pay fees for this request up to a maximum of \$100. If you estimates will exceed this limit, please inform me first.

Please contact me at 310-961-7610 when the records are available and I will be happy to pick them up. Please do not hesitate to contact me at the same number should you have any questions concerning the above. Thank you for your assistance and cooperation with this matter.

Very truly yours,

Steve Ray Executive Director

Banning Ranch Conservancy P.O. Box 16071 Newport Beach, CA 92659-6071 310-961-7610

CC: J. Del Arroz, California Coastal Commission K. Schwing, California Coastal Commission

**From:** Tom Brohard [mailto:tbrohard@earthlink.net] **Sent:** Monday, September 26, 2011 12:24 PM

**To:** Webb, Dave (Public Works) **Subject:** Document Exchange

Dave -

I have discussed your request to obtain a copy of my September 16 report regarding alternative to Sunset Ridge Park with my client, the Banning Ranch Conservancy, and suggest that we exchainformation.

Exhibit 7 39 of 47

We understand that the City met with Caltrans about two weeks ago to discuss park driveway access to West Coast Highway. We also understand that the City presented certain documents to Caltrans at that meeting. Last Friday, September 23, the Banning Ranch Conservancy filed a Public Records Act Request at the City to obtain a copy of those documents provided to Caltrans.

To expedite the exchange of information, I will email my report to you upon receipt of an email from you providing the documents that the City gave to Caltrans at the recent meeting.

Thanks. Tom

The following is from a USFWS memo titled:

"Interim Survey Guidelines to Permittees for Recovery Permits under Section 10(a)(1)(A) of the Endangered Species Act for the

**Listed Vernal Pool Branchiopods**"

Exhibit 7 40 of 47

- c. A complete survey consists of sampling for either:
- 1. two full wet season surveys done within a 5-year period; or
- 2. 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).

#### 9/27/11

Dear California Coastal Commissioners:

This Summer at a groundbreaking ceremony for some wetlands/riparian habitat in Fairview Park in Costa Mesa, I spoke to an engineer from the City of Costa Mesa named Bart Mejia <a href="mailto:b.mejia@ci.costa-meas.ca.us">b.mejia@ci.costa-meas.ca.us</a> Bart was very involved in the Fairview Park pedestrian bridge

Exhibit 7

Bart confirmed the cost of the bridge at 579,000.00. I learned that it didn't cost the City Costa Mesa this much, as that 579,000.00 was largely paid for by grants. This is significal less than the cost of 5 million quoted by the City of Newport Beach for a similar bridge at Superior.

The bridge is much more aesthetically pleasing than the conceptual drawings of a pedestrian bridge provided by the City of Newport Beach.

The bridge was built as a single piece elsewhere, then transported to Costa Mesa and installed. Hence, the bridge is structurally very strong and could withstand an earthquake.

Most importantly, the bridge is designed to carry vehicles up to 5 tons. This would be enough for a type II ambulance. The bridge could also be used by utility vehicles to drop off equipment, or to assist elderly or disabled citizens.

Such a bridge could span Superior Avenue (which is roughly the same width as Placentia Ave in Fairview Park in Costa Mesa). There is actually a pedestrian path that continues along the edge of the bluff on the other side (east side) of Superior, so this bridge could connect this pedestrian path with Sunset Ridge Park. If the bridge is situated downhill from the top of Superior, the potential to block views of the ocean would be decreased.

As mentioned before, there is an existing parking lot on the east side of Superior Avenue. Though intended for beach goers, this parking lot is rarely, if ever, full. Personally I have *never* seen it more than 10% full (even the photo of this parking lot in the conceptual drawings provided by the City of Newport Beach shows the typical many vacant parking spaces). Some local residents claim the parking lot does fill on the busiest weekends during the peak summer beach season, but this would not be expected to interfere with AYSO soccer in Newport Beach, for which the season runs from March to May.

If additional parking is needed, there is enough space to build an additional parking lot on City of Newport Beach-owned land directly above the current Superior Avenue lot.

It should also be added that the distance from the Superior Avenue parking to the beach is roughly 1000 feet and involves crossing Pacific Coast Highway. The distance from the same parking lot to Sunset Ridge Park (which would not involve crossing Pacific Coast Highway) is roughly 150 feet to the closest portion of Sunset Ridge Park, and about 650 feet to the furthest corner of Sunset Ridge Park.

By using the existing parking lot on Superior Avenue, and, if necessary, building an additional parking lot on Superior Avenue, the useable area of Sunset Ridge Park would be increased, as no parking lot would have to be built on Sunset Ridge Park.

It is noted that the current plans submitted by the City of Newport Beach not only have a Exhibit 7 parking lot built on Sunset Ridge Park, but that the grading for this parking lot is located against the southeast polygon ESHA, with zero buffer.

Finally, the use of parking on the east side of Superior Avenue, with the construction of a pedestrian bridge would eliminate the rationale for building the currently planned controversial entrance road on the adjacent Banning Ranch property (a road which encroaches upon Gnatcatcher ESHA in the southeast corner of Banning Ranch and a road for which the City of Newport Beach and the owners of Banning Ranch have plans to expand to a 4-lane primary roadway that would serve not only as the entrance/main roadway for the proposed Banning Ranch development, but would traverse important wildlife habitat on the Banning Ranch mesa).

Terry Welsh President, Banning Ranch Conservancy

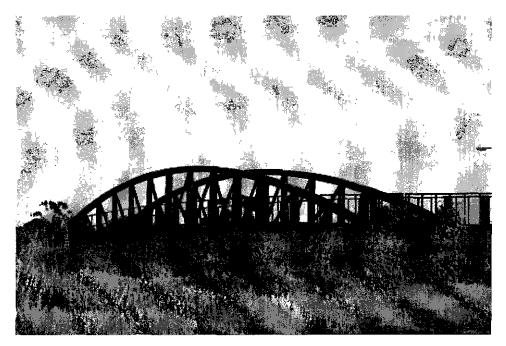


Exhibit 7 43 of 47



COSTA MESA: Bridge spanning Placentia Ave. to Fairview Park. The nearly \$579,000 bridge links the two sides of Fairview Park and enable visitors to cross Placentia Avenue without waiting for a traffic light. The bridge is suitable for pedestrians, bicycles and light-duty maintenance and emergency vehicles. The span of this bridge is roughly equal to the span necessary to cross Superior Ave.

Tel: (323) 876-0202, (888) 522-7428 Fax: (323) 876-7609 Website: www.LAAudubon.org E-mail: LAAS@LAAudubon.org

October 1, 2011

Mr. Jack Ainsworth
Deputy Director
California Coastal Commission
Attn: South Coast District
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

FAX (562) 590-5084

Re: Application No. 5-10-168 (City of Newport Beach)

Dear Deputy Director Ainsworth:

Los Angeles Audubon is a California 501(c)(3) non-profit corporation. The mission of the Los Angeles Audubon Society is to promote the enjoyment and protection of birds and other wildlife through recreation, education, conservation and restoration.

Thank you for the opportunity to comment on the above mentioned application.

We concur with the findings and the recommendations of Staff in the above referenced matter, and ask the Commission to deny the permit application for a city park and an access road as inconsistent with the Coastal Act.

Our opposition is based on the impacts of the proposed park project and access road on California coastal sage scrub habitat and California gnatcatcher (*Polioptila californica*), a threatened species protected by the Endangered Species Act. As the staff report notes, the habitat of the proposed project is designated under the Endangered Species Act as critical habitat for the recovery of California gnatcatcher (*Polioptila californica*, in the Coastal Zone, in or adjacent to Environmentally Sensitive Habitat Area (ESHA) as defined by the Coastal Act, within the boundary of a state and local NCCP, and is especially valuable as one of the few patches of sage scrub that is actually on the coast and not further inland.

In our concern regarding the proposed access road, we note that the staff report reveals that "The DEIR for Newport Banning Ranch indicates that the project would include the widening of the access road proposed for Sunset Ridge Park."

Exhibit 7 44 of 47 Permitting the widening of this current road is clearly a slippery slope, or should we say a widening road that is growth inducing by facilitating further development.

We fail to see why lands that are designated critical habitat for the recovery of a threatened species under the Endangered Species Act, lands that are ESHA under the Coastal Act, and lands that are subject to an NCCP should bear the impacts of development of a park and an access road, especially when other alternatives for an access road that are environmentally superior are available, such as through existing developed lands.

We also fail to see why the Commission should permit a park that includes only active recreation and supports destruction of rare habitat rather than accommodation of passive recreation or appreciation and restoration of the uniquely Californian natural resources of endemic rare plants and animals on the 18 acres of the proposed park site. We urge the City of Newport Beach to consider the value of these resources in park planning, and we submit a 2006 USFW Survey finding that:

"Wildlife watching is one of the most popular types of outdoor recreation in the United Exhibit 7 Nearly a third of the U.S. population, 71 million people, enjoyed closely observing, feed 45 of 47 photographing wildlife in 2006. Wildlife watching around the home and on trips is an in and growing form of recreation. Eight percent more people participated in 2006 than in

In addition to contributing significantly to people's enjoyment of the outdoors, wildlife watching has a substantial impact on the nation's and states' economies. The \$45.7 billion spent on wildlife equipment and trips in 2006 contributed substantially to federal and state tax revenues, jobs, earnings, and economic output". 1

We concur with staff that permitting a park and an access road with deleterious impacts on ESHA and other coastal resources and that is growth inducing is inconsistent with the Coastal Act.

We ask the Commission to follow Staff recommendations and deny the permit application before you.

Sincerely,

Garry George Conservation Chair

Los Angeles Audubon Society

<sup>1</sup> Wildlife Watching in the U.S.: The Economic Impacts on National and State Economies in 2006 Addendum to the 2006 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation Report 2006-1, U.S. Fish & Wildlife Service, July, 2008



### California Native Plant Society

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60 Acres -000

TRANGE COUNTY CHAPTER

September 20, 2011

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

OCCNYS focuses that mission on the native plants and remaining areas of natural vegetation in Urange County and adjacent Southern California. Commissioners, California Coastal Commission 200 Oceangate, 10th Floor Long Beach, CA 90802-4416

RE: Coastal Development Permit Application No. 5-10-168, Sunset Ridge Park Project

#### Commissioners:

Exhibit 7

The Orange County Chapter of the California Native Plant Socient 46 of 47 the proposed Sunset Ridge Park Project does not adequately progressources on the site. Further, this inadequatry makes the Permi incomplete and sets precedents that violate the letter and intent

- Grading for the proposed entrance road is planned to be from 0' to 47 may from ESHA that is known to host Greatcarchers. These distances do not conform with the minimum 50' buffer ground ESHA set by Commission permitting decisions at Marblehead, a comparable Orange County project. If this lack of appropriate buffers is permitted, it will set a precedent for inadequate ESHA protection all along California's coastline.
- 2. At least four potential wemal pools/wetlands exist at the project's proposed champ sites. The proposed plan calls for at least 37,000 c.y. of dirt, estravated from the roadway and the park itself, to be demped on the sites. This would destroy the wetlands. These wetlands do not appear to be mentioned in the tent or indicated on any of the maps in Section 4.6. Biological Resources, or Section 4.10. Hydrology and Water Quality, of the FEIR. Vernal pools that contain the endangered San Diego Fairy Shrimp are known on the adjacent Banning Ranch, so it is possible that the shrimp also exist at these areas. Even if no shrump are present, it is probable that the sites will meet the Coastal Act definition of wetlands and require protection. There is no indication that protocol studies have been conducted of these potential wetlands. Such studies must be done and made available for Commission review.

OCCNPS requests that the Commission require the applicant to correct these deficiencies in Coastal Development Permit Application No. 5-10-168 before the application can be approved.

Respectfully.

Celia Kuscher Conservation Chast

#### #10

#### CITY OF NEWPORT BEACH

OFFICE OF THE CITY ATTORNEY

Aaron C. Harp, City Attorney

September 23, 2011

Via Email

Mr. Terry Welsh

terrymwelsh@hotmail.com

RE: RESPONSE TO PUBLIC RECORDS ACT REQUEST DATED SEPTEMBER 8,

2011 NOTICE OF DETERMINATION Matter No.: A11-00991

Dear Mr. Welsh:

The City of Newport Beach ("City") has received and reviewed your California Public Records Act request dated September 1, 2011. This response will serve as the City's notice of determination as to whether the request in whole or part seeks the production of non-exempt, non-privileged, disclosable public records in the possession of the City, pursuant to the California Public Records Act ("Act") (Govt. Code §§ 6250 et seq.). Based on your request for "the 'field data' used in the Gnatcatcher surveys performed on the Banning Ranch portion of the Sunset Ridge Park project", there are no documents responsive to your request due to the exemption in accordance with the Act for preliminary notes that are not retained by the City in the ordinary course of business. (Govt. Code Section 6254(a).)

Exhibit 7 47 of 47

As you know, the City retained BonTerra Consulting to prepare a Biological Technical Report in support of the Environmental Impact Report (EIR) for the Sunset Ridge Park project ("Report"). The Report was prepared in accordance with the accepted scientific and technical standards that are consistent with the requirements of the U.S. Fish and Wildlife Service (USFWS), the California Department of Fish and Game (CDFG) and the Natural Communities Conservation Plan/Habitat Conservation Plan (NCCP/HCP) for the Central/Coastal Subregion. The EIR was certified by the City in 2010 and the Report is available for public review. Any "field data" consisted of preliminary notes for the Report and are not documents retained by the City in the ordinary course of business. Even if retained, these notes would reflect only the subjective impressions of the note taker that were relied upon in preparation of the Report. The Report was prepared in accordance with the accepted protocols, and has been finalized; therefore the public's interest in withholding the subjective impressions that were used to prepare the Report would outweigh disclosure.

3300 Newport Boulevard • Post Office Box 1768 • Newport Beach. California 92658-8015 Telephone: (949)644-3131 -Fax: (949) 644-3139 www.newportbeachca.gov

Mr. Terry Welsh

September 23, 2011

Page 2

Please contact the undersigned should you have any questions regarding this determination.

Sincerely.

OFFICE OF THE CITY ATTORNEY

Leonie Mulvihill

Assistant City Attorney

LM/np

A11-00991/NOD Letter re Welsh 09.01.11

### RECEIVED South Coast Region

JUL 1 4 2011

California Coastal Commission c/o Karl Schwing and John Del Arroz 200 Oceangate, 10<sup>th</sup> Floor Long Beach, CA 90802-4416 July 12, 2011

CALIFORNIA COASTAL COMMISSION

SUBJECT:

City of Newport Beach – Sunset Ridge Park Project

Coastal Development Permit Application # 5-10-168

Dear Coastal Commissioners:

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

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

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

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

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

Sincerely,

COASTAL COMMISSION

Paul A. Bopp Resident

Newport Beach, CA



RECEIVED
South Coast Region

AUG 1 7 2011

CALIFORNIA COASTAL COMMISSION

August 12, 2011

CALIFORNIA COASTAL COMMISSION

Attention: Mr John Del Arroz, Coastal Program Analyst

Mr Karl Schwing, Supervisor, Planning and Regulation

200 Oceangate, 10<sup>th</sup> Floor Long Beach, CA 90802-4302

Subject: Sunset Ridge Park Vehicle Access

Statement of Preference from Newport Crest Homeowners Association's Board

of Directors

Dear Mr Del Arroz and Mr Schwing,

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

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

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

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

Sincerely,

**COASTAL COMMISSION** 

Newport Crest HOA Board of Directors

Mark Gonzalez, Steve Porter, Ginny Lombardi, Mike Rosenthal, Sharon Boles

EXHIBIT #\_

Cc: Mike Sinacori, City of Newport Beach Assistant City Engineer (Publication) 2

Dave Kiff, City of Newport Beach City Manager

\_OF\_\_\_\_

HOMEOWNERS ASSOCIATION

#### August 8, 2011

AUG 2 9 2011



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

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

Dear Coastal Commissioners,

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

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

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

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

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

to Bon

Thank You.

Ted Barry

Fields Manager AYSO Region 97 **COASTAL COMMISSION** 

August 8, 2011

RECEIVED
South Coast Region

AUG I 1 2011

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

CALIFORNIA COASTAL COMMISSION

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

Dear Coastal Commissioners.

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

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

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

Thank You.

Alex Kassouf

**Assistant Regional Commissioner** 

AYSO Region 97

**CDASTAL COMMISSION** 

PAGE OF

RECEIVED
South Coast Region

AUG 1 1 2011

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

CALIFORNIA COASTAL COMMISSION

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

Dear Coastal Commissioners,

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

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

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

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

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

Thank you.

Sincerely.

Preston Kenney

AYSO Region 97 Board Member

**COASTAL COMMISSION** 



JUN 2 9 2011

CALIFORNIA COASTAL COMMISSION



# playNHBA.com

June 27, 2011

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

SUBJECT:

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

#### Dear Coastal Commissioners:

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

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

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

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

Sincerely,

Lantz Bell President

Newport Harbor Baseball Association

COASTAL COMMISSION

EXHIBIT#

RECEIVED
South Coast Region

JUL 7 - 2011

CALIFORNIA COASTAL COMMISSION

June 30<sup>th</sup>, 2011

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

SUBJECT: City of Newport Beach - Sunset Ridge Park Project:

Coastal Development Permit Application # 5-10-168

Dear Coastal Commissioners:

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

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

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

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

Thank you.

Sincerely,

Scott Liolog

Parent, Resident and Business Owner

Newport Beach, CA.

COMUTAL COMMISSION

EXHIBIT# 8

October 7, 2011

Dr. Charles Lester, Executive Director

California Coastal Commission

45 Fremont Street, Suite 2000

San Francisco, CA 94105-2219

<u>Subject: Sunset Ridge Park</u>

During Public Comments, late Thursday afternoon on October 6<sup>th</sup>, my Sunset Ridge Park talk was cut short due to the 3 minute limit. I am attaching my talk's outline because important points on the second page were not discussed.

Also not discussed on Thursday is the constant threat of an earthquake/tsu 8 of 18 to West Newport. Recently, the City of Newport Beach installed a 30 foot

Tsunami Alarm in the West Newport Park across the street from my house as well as some other Tsunami Alarms along the coast. If these alarms are ever sounded in a genuine emergency, many of us lowlanders will have to resort to our feet to escape to high ground due to the real possibility of vehicular gridlock developing because of our limited street escape routes.

After watching the "60 Minutes" program last Sunday and a recent PBS Nova program interviewing the survivors of the destruction caused by the Japanese earthquake/tsunami disaster, there is a resulting sense of urgency to build the Sunset Ridge Park as soon as possible as a safe refuge due to its accessibility. Currently, this park land as well as Banning Ranch is fenced from public access.

Thank you for this additional opportunity to stress why Sunset Ridge Park should be considered a separate project from the Banning Ranch development and built as soon as possible. Please forward this letter to the Commissioners.

Mike Johnson, 5803 Seashore Drive, Newport Beach, CA 92663, 949-642-3125

Sunset Ridge Park

**CALIFORNIA Coastal Commission Meeting** 

Thursday, October 6, 2011

9 A.M., Huntington Beach City Hall Council Chambers

My name is Mike Johnson, 5803 Seashore Drive. Next April will mark 50 years since I moved my wife and 3 young children to West Newport.

In addition to establishing a successful Insurance Brokerage Busi Exhibit 8 have served: 17 years on the Lido Sands Community Association

8 years on the Villa Balboa Apartments Board,

6 years on the Newport Beach City's Parks, Beaches and Recreation Commission,

3 years on the Citizens' Advisory Committee to update the City's General Plan,

10 years on the Orange Coast River Park Committee, and

I co-founded the 45 year old "West Newport Beach Assoc. (WNBA)" where I currently serve on the 15 Member Board as "Historian". I have been actively involved in 2 City Park Bond Elections to build more parks and to purchase the Backbay "Castaways" and "Newporter North" properties from the Irvine Company in order to provide for open space.

My years of dedication to more local parks and open space are well known. I respect the goal of the Banning Ranch Conservancy to retain this unique property as open space. I disagree with their strategy to

stop or modify the development of the Sunset Ridge Park as planned by the City due to the potential building of Bluff Road.

The WNBA has endorsed the Sunset Ridge Park Plan as modified for a more direct one lane drive to and from the Parking Lot. The only concern is to delay the entry signal until proven necessary for safety.

I believe the owners' gift of the additional adjacent 6.3 acres of Banning Ranch property for a 33% Park expansion is critical to move the Park's PCH entrance a Caltrans acceptable 800 feet west from one of the City's busiest intersections, provide adequate parking, as well as permit needed space for the City Plan's balanced activity/passive park us(Exhibit 8 10 of 18

In the past, Caltrans, as owner, attempted several times to sell this property, but never received any bids due to the serious development egress/ingress problems with just the 13 acres.

This long-awaited Community Park will be popular for local residents and visitors of all ages. It will address the serious shortage of youth soccer and baseball fields, is within walking distance of nearby Retirement and Convalescent Facilities as well as the residential communities of Newport Crest and Villa Balboa/Versailles.

Sunset Ridge Park should be reviewed now by the California Coastal Commission as a separate Project, and not connected with the Banning Ranch Development plans. Soon enough, Your Commission will have plenty to say about any proposed Bluff Road Plan design. I don't want this "Shovel Ready" needed Park to be long delayed by Banning Ranch development environmental concerns as happened at nearby Bolsa Chica.

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

SUBJECT:

City of Newport Beach - Sunset Ridge Park Project:

Coastal Development Permit Application # 5-10-168

Dear Coastal Commissioners:

We are very disappointed that California Coastal Commission Staff has recommended denial of the City of Newport Beach's Sunset Ridge Park proposal. We are writing to voice our strong support for this park project as proposed by the City.

OCT 1 2 2011

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It is our understanding that Staff was originally proposing to recommend approval but has changed their position based on the recent release of Newport Banning Ranch's (NBR's) DEIR and representations by NBR that specific special conditions for approval were not acceptable to Although we understand Staff has concerns about NBR's project which has yet to even be through the City, we do not understand how and why this has any bearing on the City's Paproject currently pending before the Commission. As we were involved in some of the initial community meetings during the planning phase of the Park project, we know that the City of listened to the community and balanced the issues well in creating this outstanding, resource sensitive park project.

We are also pleased that ample on-site parking has been provided for safe and convenient loading and unloading of children. We understand that there are unsubstantiated claims by a few that parking for the Park project should be located in a garage off of Superior Avenue; as this would be located a substantial distance from the Park and would require a bridge that spans Superior Avenue, this is not only inconvenient for Park visitors with disabilities or with children or for youth athletes carrying their equipment, but would actually deter people from using the Park Similarly access directly off of Superior Avenue would create severe traffic hazards and is not supported.

As a resident of Harbor View for 20 years, we can state with certainty that this Park project is well-designed and much needed in our community. Having adequate facilities for practices and garries for our kids is critical. The youth baseball field and two soccer fields proposed as part of the Sunset Ridge Park project are desired and much-needed in this region and will benefit kids beyond the City's boundaries. Additionally, the Park would offer a playground for younger children and beautiful grounds for walking and enjoying the unparalleled ocean views. The location of this park off of West Coast Highway is both convenient for visitors and unique in the truly extraordinary vistas it offers. We understand that the Coastal Act advocates low cost visitor serving and recreational facilities. Finally, this Park would provide new, more and high quality habitat beyond that which presently exists.

The City of Newport Beach has designed and proposed a thoughtful, beautiful and much reeded public park. We urge you to approve the Sunset Ridge Park project. Thank you.

Sincerely.

Steve Beyrooty

 October 4, 2011

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

RE:

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

Dear Coastal Commissioners:

We are very disappointed that California Coastal Commission Staff has recommended denial of the City of Newport Beach's Sunset Ridge Park proposal. We are writing to voice our strong support for this park project as proposed by the City.

South Coast Region

OCT - 5 2011

It is our understanding that Staff was originally proposing to recommend approval but has changed their position based on the recent release of Newport Banning Ranch's (NBR's) DEIR and representations by NBR that specific special conditions for approval were not acceptable to them. Although we up Exhibit 8 Staff has concerns about NBR's project which has yet to even be vetted through the City, we described understand how and why this has any bearing on the City's Park project currently pending before Commission. AS we were involved in some of the initial community meetings during the plann of the Park project, we know that the City carefully listened to the community and balanced the well in creating this outstanding, resource-sensitive part project.

We are also pleased that ample on-site parking has been provided for safe and convenient loading and unloading of children. We understand that there are unsubstantiated claims by a few that parking for the Park project should be located in a garage off of Superior Avenue; as this would be located a substantial distance from the Park and would require a bridge that spans Superior Avenue, this is not only inconvenient for Park visitors with disabilities or with children or for youth athletes carrying their equipment, but would actually deter people from using the Park. Similarly, access directly off of Superior Avenue would create severe traffic hazards and is not supported.

As a resident of Newport Beach for 45 years, we can state with certainty that this Park project is well-designed and much needed in our community. Having adequate facilities for practices and games for our kids is critical. The youth baseball field and two soccer fields proposed as part of the Sunset Ridge Park project are desired and much-needed in this region and will benefit kids beyond the City's boundaries. Additionally, the Park would offer a playground for younger children and beautiful grounds for walking and enjoying the unparalleled ocean views. The location of the park off of West Coast Highway is both convenient for visitors and unique in the truly extraordinary vistas it offers. We understand that the Coastal Act advocates low cost visitor serving and recreational facilities. Finally, this Park would provide new, more and high quality habitat beyond that which presently exists.

The City of Newport Beach has designed and proposed a thoughtful, beautiful and much-needed public park. We urge you to approve the Sunset Ridge Park project.

Thank you.

Sincerely,

Why Amilton

Kathy Hamilton

Parks, Beach & Recreation Commissioner

Newport Beach

23 Form Letters Submittell

#### John Del Arroz

From: Robert Keilch [robert@metcomcorp.com]

Sent: Friday, September 30, 2011 9:25 AM

To: John Del Arroz

Dear Mr. Del Arroz,

I am writing to voice my strong support for the City of Newport Beach's Sunset Ridge Park project as proposed by the City. As a resident of Newport Beach for 19 years, I can state with certainty that this Park project is well-designed and much needed in our community.

Having adequate facilities for practices and games for our kids is critical. The youth baseball field and two soccer fields proposed as part of the Sunset Ridge Park project are desired and much-needed in this region and will benefit kids beyond the City's boundaries. Additionally, the Park would offer a playground for younger children and beautiful grounds for walking and enjoying the unparalleled ocean views. The location of this park off of West Coast Highway is both convenient for visitors and unique in the truly extraordinary vistas it offers.

Exhibit 8 13 of 18

The City of Newport Beach has designed and proposed a beautiful and much-needed public park. We urge you to approve the Sunset Ridge Park project..

Thank you.

Sincerely, Robert Keilch

Robert Keilch Bristol Metro, LLC Met-Com Realty Corp. 227 20th Street, #100 Newport Beach, CA 92663 949-644-6000, x15 949-644-6886 fax



#### CITY OF COSTA MESA

P.O. BOX 1200, CALIFORNIA 92628-1200

FROM THE OFFICE OF THE CITY MANAGER



OCI 1 0 200

September 30, 2011



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

SUBJECT:

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

Exhibit 8 14 of 18

Dear Coastal Commissioners:

The City of Costa Mesa had the opportunity to review the proposed Sunset Ridge F\_\_\_\_\_project. We feel the project is well-designed and provides additional opportunities for outdoor sports activities in both the Costa Mesa and Newport Beach communities.

Having adequate sports facilities for practices and games for our community's youth is critical. The youth baseball field and two soccer fields proposed as part of the Sunset Ridge Park project are highly desired and will benefit the non-profit youth sports organizations in both communities. Additionally, this project offers a playground for younger children and open space for walking.

The environmental document prepared for the project was reviewed by Costa Mesa staff and all concerns with the Sunset Ridge Park project have been adequately addressed. The City of Costa Mesa looks forward to a successful implementation of the Sunset Ridge Park project.

If you have any questions relative to the City's support of this project, please contact Ernesto Munoz, Interim Public Services Department Director, at 714-754-5173.

Sincerely,

Thomas R. Hatch Chief Executive Officer

c: City Council

Peter Naghavi, Interim Assistant CEO Ernesto Munoz, Interim Public Services Director

## VILLA BALBOA

September 28, 2011

OCT - 5 2011

COASTAL COMMISSIO

California Coastal Commission c/o Dr. Charles Lester, Executive Director 45 Fremont Street, Suite 2000 San Francisco, CA 94105-2219

SUBJECT:

City of Newport Beach – Sunset Ridge Park Project:

Coastal Development Permit Application # 5-10-168

Dear Coastal Commissionaires,

On behalf of the Villa Balboa Homeowner Association which represents 449 resider Exhibit 8 units with over 1000 residents immediately to the east of the subject project, we are writing this letter in support of the City's proposed Sunset Ridge Park with the curre City proposed vehicle access entrance on PCH. We are very disappointed that Calif Coastal Commission Staff has recommended denial of the City of Newport Beach's Sunset Ridge Park proposal. We are writing to voice our strong support for this park project as proposed by the City.

It is our understanding that Staff was originally proposing to recommend approval but has changed their position based on the recent release of Newport Banning Ranch's EIR and suggests that this park project be analyzed in total with that development. This would cause years of delays on a park project that is shovel ready today on property the City bought from the Caltrans in 2006. Whatever is the outcome of the Newport Banning Ranch Development, we do not see the need to wait for our Sunset Ridge Park that has NO impact on the environment and provides for the needed park space in West Newport.

Council Member Steven Rosansky along with Assistant City Engineering Michael Sinacori made a presentation regarding the status of the Sunset Ridge Park to the Villa Balboa community at its monthly Board of Directors meeting on July 19, 2011. The City has developed a plan over the past several years that provide a balanced park project with passive and active uses. We are excited about the project and only wish the park improvements could extend to the east side of Superior Avenue. We understand, due to funding and need for more public input, that this part of the project has been deferred.

During the presentation, the City reviewed the submitted an Alternative Access analysis that includes an entry from Superior or a potential pedestrian bridge/parking structure alternative off of Superior. We understand that detailed analysis was requested by your Staff. We would strongly oppose any option that would create vehicle access to the Park from Superior Avenue, and any option that would block public views traveling on Superior Avenue. We also would strongly oppose any suggestion that the area east of

Managing Agent: Villageway Management, Inc.

P.O. Wwayfs\Projects\Yilla Balboa 019\Administrative\Admin Corresp\2011\Yilla Balboa SRP Coastal Commission LetterBarping Ranch\(\frac{1}{2}\)\doc{1}{2} \doc{1}{2} \docd{1}{2} \docd{1} \docd{1} \docd{1} \docd

Superior below Villa Balboa be used for a parking lot or parking structure to serve the main park on the opposite side of the street. Our residents are looking forward to their view park the east side of Superior Avenue and any plan to the contrary will generate a great public outcry from our association.

Please note that our Board of Directors consists of 7 elected Members from the community. The approval to send this letter of support of the proposed Sunset Ridge Park was unanimous. It was also unanimous to oppose any alternative access from Superior Avenue or parking lot/parking structure/bridge alternative on Superior Avenue.

Please see a way to recommend approval for this project rather than denial.

Sincerely

Phil Bias President

Villa Balboa Homeowners Association

Exhibit 8 16 of 18

Cc: Sherilyn Sarb, South Coast Deputy Director, Coastal Commission Dave Kiff, City Manager

Council Member Steve Rosansky

STATE CAPITOL ROOM 3070 SACRAMENTO. CA 95814 TEL 19161 651-4035 FAX 19161 445-9263

DISTRICT OFFICE 950 SOUTH COAST DRIVE SUITE 240 COSTA MESA, CA 92626 TEL 1714 1 957-4555 FAX 1714 1 957-4560

### California State Senate

### SENATOR TOM HARMAN SENATE MINORITY WHIP

THIRTY-FIFTH SENATE DISTRICT

September 28, 2011

Ms. Mary Shallenberger Chair, California Coastal Commission 45 Fremont St., Ste. 2000 San Francisco, CA 94105-2219 901 - 3 2011

SUBJECT: SUPPORT -- Sunset Ridge Park Project, City of Newport Beach

Coastal Development Permit Application #5-10-168

Dear Chair Shallenberger:

I am pleased to offer my strong support for the Sunset Ridge Park project as proposed City of Newport Beach. Having represented this area in the legislature for a number of 3 am well aware that public demand for youth sports fields and other recreational opport

far exceeds the current capacity. The proposed baseball diamond, as well as the accompanying playground, restrooms and picnic facilities will be well received by visitors and residents of the entire region.

I was disappointed to learn that the Commission staff is recommending that the project <u>not</u> be approved. Last month, the Ocean View Little League team, located in my district, won the Little League World Series Championship. Their success was only possible through hard work, dedication, team-building, and good sportsmanship, all traits that team members learned at public youth sports facilities like the one proposed by the City of Newport Beach. After hearing the testimony in support of the proposed park, I encourage you to do the right thing and vote to approve the City of Newport Beach's development application.

In your efforts to review and process coastal development applications within the coastal zone, it is important not only to protect coastal resources, but also to encourage and provide for access that allows the public to utilize and enjoy these assets. The proposed Sunset Ridge Park is a great example of a public development that achieves this end. Thank you for your favorable consideration of this project.

Specerely,

cc:

Senator, 35th District

Members, California Coastal Commission

Dr. Charles Lester, Executive Director
Shoribus Sarb, Orange County Doputy Director

Sherilyn Sarb, Orange County Deputy Director Teresa Henry, Orange County District Manager Exhibit 8 17 of 18

COMMITTEES

GOVERNMENTAL ORGANIZATION VICE CHAIR

JUDICIARY

BANKING, FINANCE

& INSURANCE

BUDGET & FISCAL REVIEW

BUDGET & FISCAL REVIEW SUBCOMMITTEE NO. 4 TRANSPORTATION & HOUSING



President: Crare Builey Absentee Owners Liaison 949/293-4630

Vice President Sharon Boles Superior Ave. Liaison 949645-4752

Secretary/Membership. Chris Garber West Oceanfront 949/466-0605

Treasurer. Barhara Thibault Newport Shores 949/642-5843

Historian Mike Johnson West Oceanfront 949/642-3125

Directors: Ken Bryant Numbered Streets 949/644-6266

Mary Bryant Numbered Streets 949/644-6266

Jerry Cohb West Oceanfront 909/337-2045

Mary Error Seashore Drive 949:887-0554

Nicolai Glazer Lido Sands 949/306-8339

Jim Miller Newport Island 949/933-9827

Ann O'Flynn Balboa Coves 949/645-8233

Everette Phillips Newport Shores 949-650-7528

Robert Rush River:Neptune 949/645-2977

George Schroeder Numbered Streets 949/646-2628

#### WEST NEWPORT BEACH ASSOCIATION P.O. BOX 1471 **NEWPORT BEACH, CALIFORNIA 92659** www.westnewport.org

September 23, 2011 South Coast Region

SEP 2 6 2011

CAUFORNIA COASTAL COMMISSION

California Coastal Commission

Attention: Mr John Del Arroz, Coastal Program Analyst

200 Oceangate, 10th Floor Long Beach, CA 90802-4302

Subject:

Letter of Support for Sunset Ridge Park Project

CDP Application No. 5-10-168

Dear Mr. Del Arroz.

The West Newport Beach Association ("WNBA") represents several areas of West Newport Beach as identified on the left side of this letter. The mission of WNBA is to represent the residents, homeowners, homeowners associations and business owners, to s Exhibit 8 voice, to collect information, formulate policy, and to act on those issues that aff economic interest of West Newport Beach. WNBA has several hundred due 18 of 18 The area we serve is approximately 15,000 residents and business owners.

One such project that meets the goals of WNBA is the proposed Sunset Rid under review by your offices. We understand that the project has been delayed from a September hearing in Crescent City and will now be heard in October in Huntington Beach. We are writing this letter in full support of the park project.

On May 25, 2011, the City of Newport Beach at your request, presented the Alternative Access Analysis for the Sunset Ridge Park which considered two access driveways off Superior Avenue along with a parking structure/pedestrian bridge alternative. We are completely opposed to any access from Superior Avenue. Direct access from the road into the park on a blind curve would create safety issues for all that travel the road. The Bridge/Parking Structure would block public ocean views for the motoring public traveling south on Superior Avenue. Most residents of West Newport travel that road and look forward to the stunning view of the pacific as you descend down the hill past Villa Balboa and Newport Crest Condominiums. Placing a bridge and parking structure that would hinder any part of that experience would be met with great opposition from our membership.

WNBA considers the Sunset Ridge Park essential for the West Newport area that is sorely lacking in open spaces and has NO active sports park. The City has developed a project which has considered public-need and the environment.

Please note that our Board of Directors voted unanimously on August 31, 2011 to send this letter of support. That assumes that a traffic signal would not be included in the final approved project.

WNBA Board of Directors

M. Sinacori CC:

D. Kiff

WNBA Board of Directors

September 12, 2011

#### Via Hand Delivery

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

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

Dear Karl and John:

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

- 1. Park Plan (reduced copy attached; full-size copy was delivered to your office on August 12, 2011 and digital copy was emailed to you on August 25, 2011) This plan was revised to reflect our discussions and, in particular, the following design changes and staff suggestions:
  - a. The reduction in width of the Park access road entrance at West Coast Highway from 85 ft. to 54 ft. — i.e. an approximately 36% reduction.
  - b. The narrowing of the median near the Park access road entrance from 33 ft. down to 12 ft. i.e. an approximately 63% reduction.
  - c. The relocation of the proposed Park parking lot and "tot lot" to be further setback from the "southeast polygons."
- Updated Existing Vegetation Exhibit: (reduced copy attached; full-size copy was delivered to your office on August 12, 2011) The content of the project vegetation plan has <u>not</u> been revised, but only updated to correspond with the aforementioned revised Park plan.
- 3. Revised Planting Diagram: (reduced and full-size copies) The planting diagram was updated to correspond with the scope of the aforementioned revised Park plan.
- Revised Grading Plan Exhibit: (reduced and full size copies) This
   exhibit was prepared to correspond with the scope of the aforementioned
   revised Park plan.

  CDASTAL COMMISSION

EXHIBIT # \_\_\_\_OF\_\_\_\_

SCHMITZ & ASSOCIATES, INC.

HEADOLARTERS - MALIBU OFFICE 19350 PACIFIC COAST HWY , SUITE 12 MALIST CA 90769

MALIBU, CA 90789 AGOUSA HILLS CA 91061 Telus 10 689.0773 Fax: 010 689.0363 Telus 18.308 2036 Faz: 218 338 3422 Eward informasorbuttardaesociates net Website Wow Schoolerdaesociates com

REGIONAL - CONTRO VALLEY CAFFICE

5234 CHESTORU NEWS, SUIT 1296

- 5. Supplemental Biological Report prepared by BonTerra: Please find enclosed a report prepared by project consulting biologist Ann Johnston of BonTerra dated September 9, 2011. Please be advised that this report contains additional information to address specific points and concerns raised by CCC staff such as those related to alleged vernal pools and supersedes Ms. Johnston's reports dated June 29, 2011 and July 15, 2011. This September 9, 2011 report addresses the following items:
  - Banning Ranch Conservancy's vernal pools claims are unsubstantiated by professional biological assessments. Nevertheless, the applicant commissioned its consulting biologists who also enlisted the services of a recognized vernal pool expert to once again assess the four alleged vernal pools in the Park project's proposed spoils site. The enclosed report includes analysis and findings prepared through established and recognized professional protocol from established experts in the assessment of vernal pools. It is their collective conclusion that there are no vernal pools located within the Sunset Ridge Park project proposal, and specifically the subject spoils site.
  - Delineation of certain native vegetation boundaries along the Western and Eastern portions of the project site in the park entrance road area and assessment of the setback of the proposed project limits from these boundaries. It should be noted that this delineation is being provided in support of the City's project and its proposed areas of development. As such, this information is qualified as to the City's project only and has no application to areas beyond the boundary of the City's project boundary with the exception of a 50-foot buffer from any areas of proposed development;
  - Delineation of encelia scrub within the northwestern and southern portions of the project site that do <u>not</u> support any possible determinations of ESHA; and
  - Delineation of the location of native vegetation at the intersection of Pacific Coast Highway and Superior Avenue that do <u>not</u> support any possible determination of ESHA.
- 6. Shapefiles: As you know, on June 30<sup>th</sup>, we previously submitted on disc the requested CCC identified supposed native vegetation lines in AutoCAD format that were requested by Dr. Engel on the June 7, 2011 site visit. Pursuant to Mr. Del Arroz's email request dated August 11, 2011, please find enclosed a disc with BonTerra's GPS coordinates in a shapefile format. We have included Dr. Engel's identified native vegetation lines as well as the BonTerra identified westerly native vegetation line. As noted in the September 9, 2011 letter from BonTerra, BonTerra believes the western native vegetation line is further vegetation line identified by Dr. Engel.

EXHIBIT #	9
PAGE 2	_OF

- 7. Raw Data: The City's project biologist received an emailed request from Dr. Jonna Engel dated July 6, 2011 and a second request on August 22, 2011 for "the individual /pair sighting data underlying (that was compiled to create) your gnatcatcher survey single point observations." The City's policy is to not release this information as they are not public records.
  - As you know, there is no professional protocol on the recordation of data gathered in the field and therefore the interpretation of said notes is appropriately made by the note taker her/himself. As you are also aware, the City has retained professionals to prepare technical biological documents for this project and said documents reflect the independent professional judgment of the consulting biologists, which is appropriately reviewed and considered by the California Coastal Commission (CCC) in its biological assessment of the project. If CCC Staff has specific questions about the findings in any of these reports, we can make our consulting biologists available at your convenience to review and discuss their conclusions with your office.
- 8. Open Space Deed Restriction Request: During our discussions, CCC staff suggested that an Open Space Deed restriction be imposed on the property adjacent to the access road as a special condition. As you know, this property is not owned by the City and therefore the City has no legal ability to consent to such a special condition. We understand that the owner of this property has not been contacted by CCC staff to discuss the matter. Further, based on our discussion with the property owner, we believe they will not agree to such a restriction. Given the Park project's scope of development and the limitations on the City's ability to impose restrictive covenants on privately-owned property, we believe this suggested special condition is unreasonable, disproportionate, and inappropriate.
- 9. Areas Beyond the Project Boundary: As noted above, certain data is being provided to you in support of the City's application, in response to CCC's staff request for additional information, and presumably to support CCC staff's recommendations on the City's Park project. As you know, in 2010, the City entered into an "Access Agreement Between the City of Newport Beach and Newport Banning Ranch, LLC Regarding Sunset Ridge Park", which facilitates the City's development of the Sunset Ridge Park by permitting the City to construct certain improvements within a designated easement area located on property owned by Newport Banning Ranch, LLC. Given the limited area in which the City's development is authorized, it is our position that, to the extent that the data requested references areas beyond the City's project area, such information is irrelevant, unqualified and cannot be used to support any findings for the City's application. One exception to this limitation, and

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

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

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

Sincerely, SCHMITZ & ASSOCIATES, INC.

Donna Tripp

Regional Manager

Some other Topp

CC: Michael J. Sinacori, PE, City of Newport Beach

Ann Johnston, BonTerra

Teresa Henry, District Manager, CCC Sharilyn Sarb, Deputy Director, CCC Dr. Jonna Engel, Ecologist, CCC

Attachments:

Revised Site Plan (Aerial & Topographic formats, reduced size)

Revised Site Plan with Existing Vegetation Shown (Aerial & Topographic formats, reduced size) Revised Planting Diagram (reduced and full size)

Revised Earthwork Exhibit - Dated September 1, 2011 (reduced and

full size)

BonTerra Supplemental Biological Resource letter dated September 9, 2011 (this letter replaces and supersedes the pevious letters submitted by Bonterra's Ann Johnston dated June 29, 2011 and July 15, 2011)

Disc containing requested shapefiles.

Disc containing digital copies of today's submittal.

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7: [714] 444-9199 F (714) 444-9599 ] 151 Kalmus Brive, Suite F-200 www.BonTengConsulting.com | Costa Meta, CA 92626

September 9, 2011

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

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

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

Dear Mr. Sinacori:

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

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

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

#### CCC Western Native and Non-Native Vegetation

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

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

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

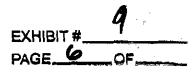
The finished road edge will be 47 feet from the CCC western native vegetation boundary at its closest point. The remainder of the road edge will be on average 69 feet from this CCC western native vegetation boundary. In addition, the road will on average be 7 feet lower in elevation than the western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

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

#### BonTerra Western Native and Non-Native Vegetation and Fragments

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

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



#### BonTerra Eastern Native Vegetation

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

#### **CCC Eastern Native Vegetation**

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

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

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

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

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

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#### 0.08-Acre Encelia Scrub - Northwestern Patch

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

#### 0.10-Acre Encella Scrub - Southern Patch

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

#### 0.09-Acre Encella Scrub/Ornamental Patch

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

#### Vernal Pool Habitat

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

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

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

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

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

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

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

#### Conclusions

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

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

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

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

Sincerely.

**BONTERRA CONSULTING** 

Ann M. Johnston

Principal

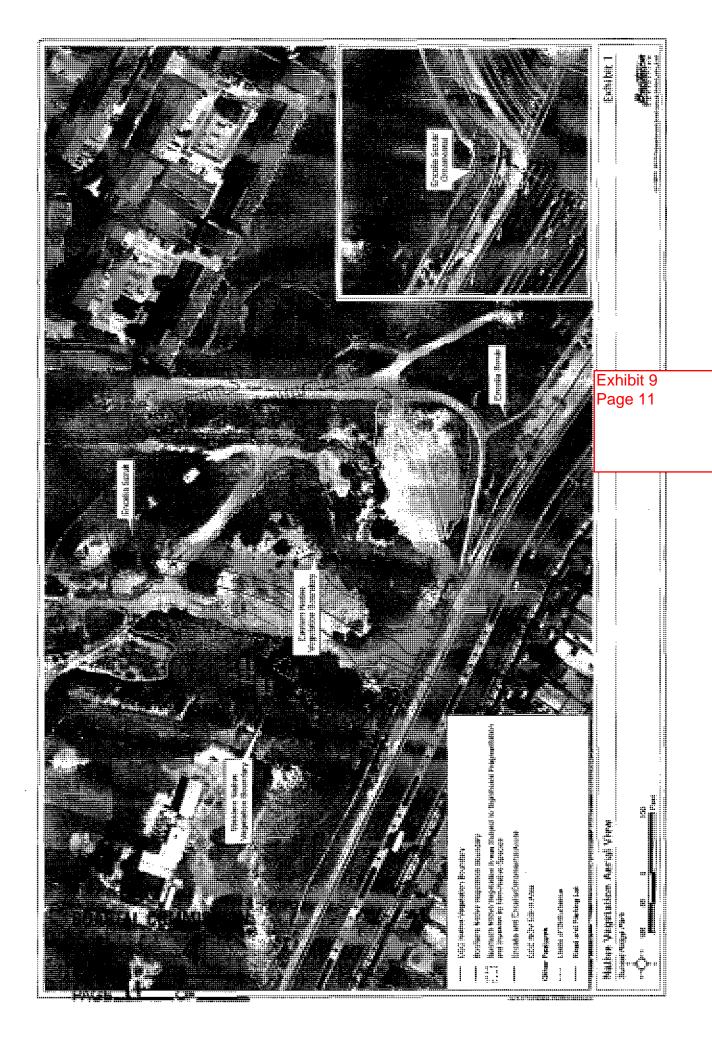
Attachments: Exhibit 1

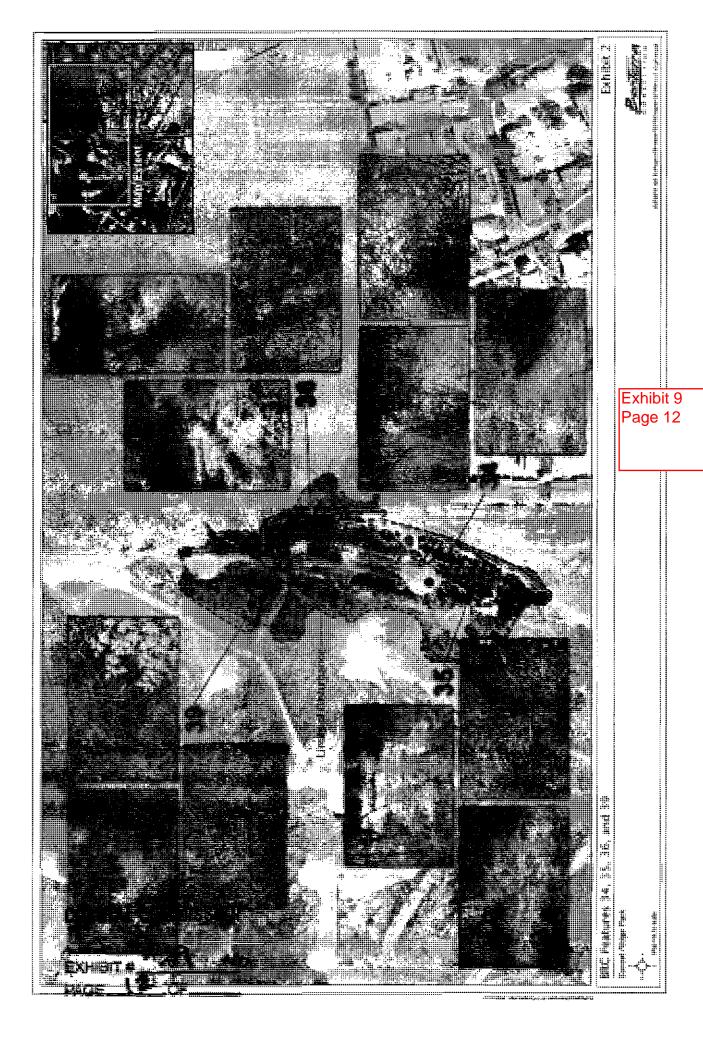
Exhibit 2

Attachment A - Glen Lukos Associates Memorandum Attachment B - Biological Resource Mitigation Measures

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### ATTACHMENT A GLEN LUKOS ASSOCIATES MEMORANDUM

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**COASTAL COMMISSION** 

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#### MEMORANDUM

## GLENN LUKOS ASSOCIATES Regulatory Services

PROJECT NUMBER:

04720008BANN

TO:

Christine Medak

FROM:

Tony Bomkamp

DATE:

June 14, 2011

SUBJECT:

Clarification Regarding CAGN Mapping from 2002 Protocol Surveys

Conducted by Glenn Lukos Associates for West Newport Oil

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

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

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

29 Orchard Telephone: (949) 837-0404 Lake Forest

California 92630-8300 Facsimile: (949) **COMMISSION** 

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

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

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

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

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

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

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

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

- a. On-site avoidance of habitat that would constitute Incidental Take of gnatcatcher habitat or
- b. Mitigation of Incidental Take through a Section 7 or Section 10 process.

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

- All activities involving the removal of gnatcatcher/coastal sage scrub habitat shall be prohibited during the breeding and nesting season (February 15 to July 15) unless otherwise directed by the USFWS.
- The use of any large construction equipment during site grading shall be prohibited within 200 feet of an active gnatcatcher nest during the breeding and nesting season of these species (February 15 to July 15) unless otherwise directed by the USFWS.
- All areas containing habitat suitable for occupation by the gnatcatcher adjacent to the impact area shall be delineated by the use of orange snow fencing or the use of lath and repes/flagging.
- 4. All grubbing operations shall be monitored by a qualified Biologist. The monitoring Biologist shall ensure that only the amount of coastal sage scrub habitat approved for removal by the USFWS will be removed.
- 5. The monitoring Biologist shall flush gnatcatchers from occupied habitat areas immediately prior to brush-clearing and earth-moving activities. It shall be the responsibility of the monitoring Biologist to assure that gnatcatchers shall not be directly impacted by brush-clearing and earth-moving equipment in a manner that also allows for construction activities on a timely basis.
- 6. If construction occurs during the nesting season, a summary of construction monitoring activities shall be provided to the USFWS and the CDFG following completion of construction.

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

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

The restoration plan shall contain the following items.

- 1. Responsibilities and qualifications of the personnel to implement and supervise the plan. The responsibilities of the landowner, specialists, and maintenance personnel that shall supervise and implement the plan shall be specified.
- 2. Site selection. The site shall be located in a dedicated open space area and shall be contiguous with other natural open space areas.
- Site preparation and planting implementation, including protection of existing native species; trash and weed removal; native species salvage and reuse (i.e., duff); soil treatments (i.e., imprinting, decompacting); erosion control measures (i.e., rice or willow wattles); and seed mix application.
- 4. Schedule. Establishment of restoration/revegetation sites shall be conducted between October and January 30. Seeding and planting of container plants shall take place immediately after preparation of the restoration sites.
- Maintenance plan/guidelines. The maintenance plan shall include weed control; herbivory control; trash removal; irrigation system maintenance; maintenance training; and replacement planting.
- 6. Monitoring Plan. The monitoring plan shall be conducted for three years, depending upon the performance of the mitigation site, and shall include qualitative monitoring (i.e., photographs and general observations); quantitative monitoring (i.e., randomly placed transects); performance criteria; and monthly reports for the first year, bimonthly reports thereafter and annual reports for all three years.
- 7. Long-term preservation. Long-term preservation of the site shall be outlined in the conceptual mitigation plan to ensure the mitigation site is not impacted by future development. A conservation easement and a performance bond shall be secured prior to implementation of the site.
- 8. Identification of performance standards for the revegetation of coastal sage scrub.

  Restoration shall be considered successful at three years if the percent cover and species diversity of the restored and/or created habitat areas are similar to percent cover and species diversity of adjacent existing habitats, as determined by quantitative testing of existing, restored, and created habitat areas.

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

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September 19, 2011

**COASTAL COMMISSION** 

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

EXHIBIT#	
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SUBJECT:

Results of Dry-Season Survey for Listed Fairy Shrimp for a Single Feature at the

412.5-acre Newport Banning Ranch Property, City of Newport Beach and

Unincorporated Orange County, Orange County, California

Dear Ms. McCarthy:

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

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

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

COASTAL COMMISSION

29 Orchard Telephone: (949) 837-0404

Lake Forest

California 92630-9900 Facsimile (949) 837-5834 Erin McCarthy U.S. Fish and Wildlife Service September 19, 2011 Page 2

#### **METHODS**

#### Soil Collection

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

#### Soil Analysis

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

#### RESULTS OF THE 2011 DRY-SEASON STUDY

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

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Erin McCarthy U.S. Fish and Wildlife Service September 19, 2011 Page 3

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

#### DISCUSSION

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

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

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Erin McCarthy U.S. Fish and Wildlife Service September 19, 2011 Page 4

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

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

GLENN LUKOS ASSOCIATES, INC.

TE-084606-1

9/19/2011

David F. Moskovitz Biologist

Paul 7. May

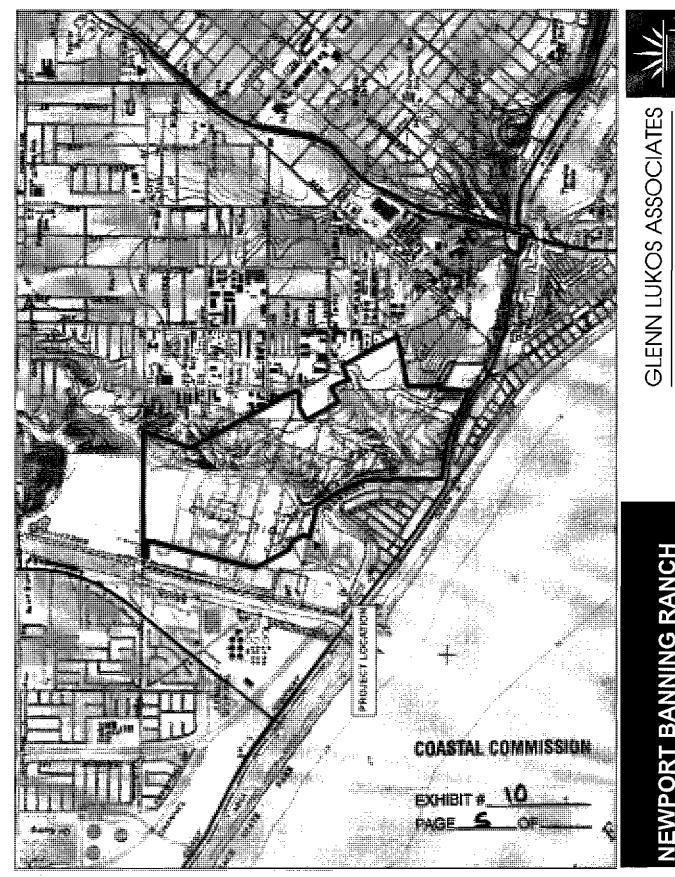
Permit#

Date

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

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PAGE 4	OF



Adapted from USGS Newport Beach, CA quadrangle

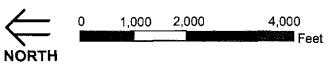
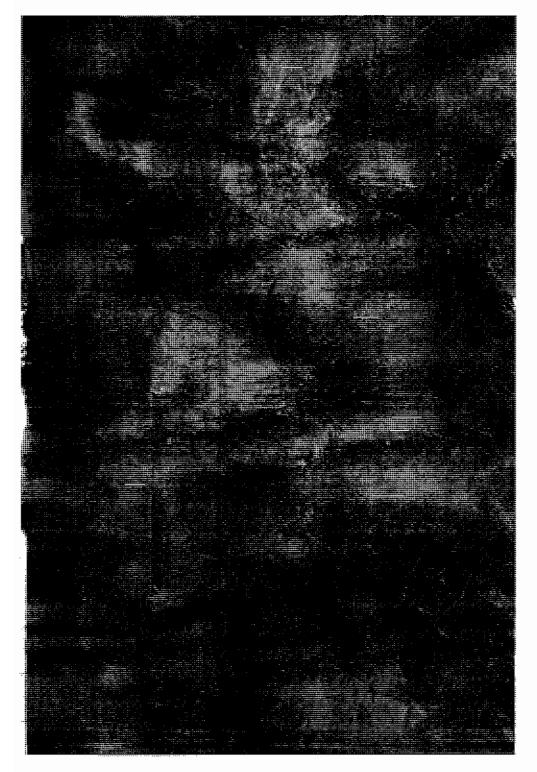


Exhibit 1



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

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# Tom Brohard and Associates

September 16, 2011

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

SUBJECT: Sunset Ridge Park - Access Review and Safety Evaluation

Dear Mr. Ray:

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

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

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

#### Education and Experience

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

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81905 Mountain View I ane, Lp Quem. Carfornia 92313-7611 Phone (760) 398-8885 Fax (760) 398-8897

Essail throhard@earthlink.net

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

#### Trip Generation of Proposed Project

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

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

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

- Field 1 game ends at 5:00 PM; next Field 1 game warm up begins at 5:30 PM
  - 7 outbound vehicles depart between 5:00 PM and 5:15 PM
  - 15 inbound vehicles arrive between 5:15 PM and 5:30 PM
- Field 2 game ends at 5:30 PM; next Field 2 game warm up begins at 6:00 PM
  - 6 outbound vehicles depart between 5:30 PM and 5:45 PM
  - 14 inbound vehicles arrive between 5:45 PM and 6:00 PM

#### Staggering of Ending and Starting Times for Games

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

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

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

#### Queuing (Stacking) of Traffic at Project Driveway

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

#### Right Turn Deceleration Lane

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

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

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

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EXHIBIT # 1

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

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

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

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

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

#### OCTA Bus Stop on West Coast Highway

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

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

#### Geometry at West Coast Highway Park Access

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

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

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

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

#### Sight Distance at West Coast Highway Park Access

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

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

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

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

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

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

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

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

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

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

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# Mr. Steve Ray Sunset Ridge Park – Access Review and Safety Evaluation September 16, 2011

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

# Design Considerations for Park Access Roadway and Parking

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

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

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

# Summary of Access Review and Safety Evaluation

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

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# Mr. Steve Ray Sunset Ridge Park – Access Review and Safety Evaluation September 16, 2011

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

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

Respectfully submitted,

Tom Brohard and Associates

Tom Brohard, PE Principal

Tom Brokend

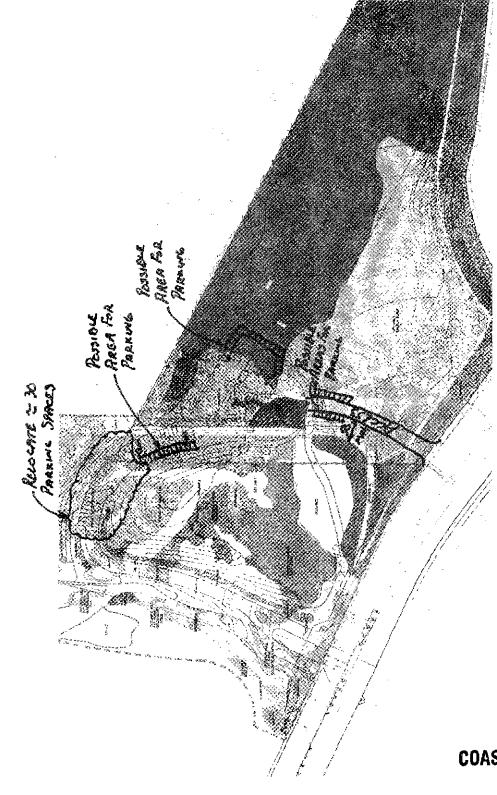
Enclosures

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CONCEPTUAL DRAWING



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# Land Use: 488 Soccer Complex

# Description

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

# Additional Data

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

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

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

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

#### Source Numbers

377, 519, 565

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# Warrants for Right-Turn Bays

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

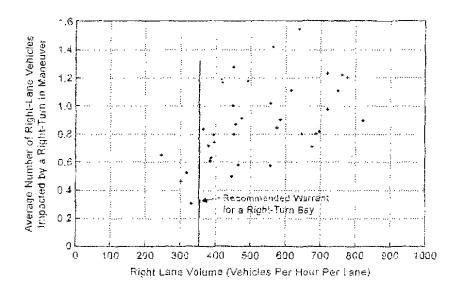


Figure 5-25. Suggested Warrant for Right-Turn Bays

Source: Unpublished information from NCHRP Project 3-52.

# Right-Turn Bay Length

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

COASTAL COMMISSION

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# CHAPTER 200 GEOMETRIC DESIGN AND STRUCTURE STANDARDS

# Topic 201 - Sight Distance

#### Index 201.1 - General

Sight distance is the continuous length of highway ahead visible to the driver. Four types of sight distance are considered here: passing, stopping, decision, and corner. Passing sight distance is used where use of an opposing lane can provide passing opportunities (see Index 201.2). Stopping sight distance is the minimum sight distance to be provided on multilane highways and on 2-lane roads when passing sight distance is not economically obtainable. Stopping sight distance also is to be provided for all elements of interchanges and intersections at grade, including private road connections (see Topic 504, Index 405.1, & Figure 405.7). Decision sight distance is used at major decision points (see Indexes 201.7 and 504.2). Corner sight distance is used at intersections (see Index 405.1, Figure 405.7, and Figure 504.31).

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

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

#### 201.2 Passing Sight Distance

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

Table 201.1
Sight Distance Standards

Design Speed <sup>(1)</sup> (mph)	Stopping (2) (ft)	Passing (ft)
20	125	<b>3</b> 00
25	150	950
30	200	1.100
35	250	1,300
40	300	1,500
45	360	1,650
50	430	1,800
55	500	1,950
60	580	2,100
65	660	2,300
70	750	2,500
75	840	2,600
80	930	2,700

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

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

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

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

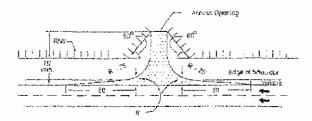
# **COASTAL COMMISSION**

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

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

# Figure 205.1 Access Openings on Expressways



# RECESSED OPENING

#### NOTES:

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

#### 205.2 Private Road Connections

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

#### 205.3 Urban Driveways

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

Details for driveway construction are shown on the Standard Plans. Corner sight distance requirements

are not applied to urban driveways. See Index 405.1(2) for further information.

- (1) Correlation with Local Standards. Where there is a local requirement regulating driveway construction, the higher standard will normally govern.
- (2) Driveway Width. The width of driveways for both residential and commercial usage is measured at the throat, exclusive of any flares. ("W" as shown in Standard Plan A87A).
- (3) Residential Driveways. The width of single residential driveways should be 12 feet minimum and 20 feet maximum. The width of a double residential driveway such as used for multiple dwellings should be 20 feet minimum and 30 feet maximum. The width selected should be based on an analysis of the anticipated volume, type and speed of traffic. location of buildings and garages, width of street, etc.
- (4) Commercial Driveways. Commercial driveways should be limited to the following maximum widths:
  - (a) When the driveway is used for one-way traffic, the maximum width should be 25 feet. If the driveway serves a large parcel, where large volumes of vehicles or large vehicles are expected, the entrance maximum width should be 40 feet and the exit maximum width should be 35 feet.
  - (b) When the driveway is used for two-way traffic, the maximum width should be 35 feet. If the driveway serves a large parcel, where large volumes of vehicles or large vehicles are expected, then the maximum width should be 45 feet.
  - (c) When only one driveway serves a given property, in no case should the width of the driveway including the side slope distances exceed the property frontage.
  - (d) When more than one driveway is to serve a given property, the total width of all driveways should not exceed 70 percent of the frontage where such a frontage is 100 feet or less. Where the frontage is more than 100 feet, the total driveway COASTAL COMMISSION

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# Tom Brohard, PE

Licenses: 1975 / Professional Engineer / California – Civil, No. 24577

1977 / Professional Engineer / California – Traffic, No. 724 2006 / Professional Engineer / Hawaii – Civil, No. 12321

Education: 1969 / BSE / Civil Engineering / Duke University

**Experience:** 40+ Years

Memberships: 1977 / Institute of Transportation Engineers – Fellow, Life

1978 / Orange County Traffic Engineers Council - Chair 1982-1983

1981 / American Public Works Association - Member

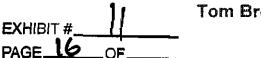
Tom is a recognized expert in the field of traffic engineering and transportation planning. His background also includes responsibility for leading and managing the delivery of various contract services to numerous cities in Southern California.

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

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

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

# COASTAL COMMISSION



**Tom Brohard and Associates** 

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

- Oversaw preparation and adoption of the Circulation Element Update of the General Plan including development of Year 2035 buildout traffic volumes, revised and simplified arterial roadway cross sections, and reduction in acceptable Level of Service criteria under certain constraints. Reviewed Riverside County's updated traffic model for consistency with the adopted City of Indio Circulation Plan.
- Oversaw preparation of fact sheets/design exceptions to reduce shoulder widths on Jackson Street over !-10 as well as justifications for protected-permissive left turn phasing at !-10 on-ramps, the first such installation in Caltrans District 8 in Riverside County; reviewed plans and provided assistance during construction of a \$1.5 million project to install traffic signals and widen three of four ramps at the !-10/Jackson Street Interchange under a Caltrans encroachment permit.
- Oversaw preparation of fact sheets/design exceptions to reduce shoulder widths on Monroe Street over I-10 as well as striping plans to install left turn lanes on Monroe Street at the I-10 Interchange under a Caltrans encroachment permit; reviewed plans to install traffic signals and widen three of four ramps at the I-10/Monroe Street Interchange.
- ❖ Reviewed traffic impact analyses for Project Study Reports evaluating different alternatives for buildout improvement of the I-10 Interchanges at Jefferson Street, Monroe Street, Jackson Street and Golf Center Parkway.
- Oversaw preparation of plans, specifications, and contract documents and provided construction assistance for over 40 traffic signal installations and modifications.
- Reviewed and approved over 600 work area traffic control plans as well as signing and striping plans for all City and developer funded roadway improvement projects.
- Oversaw preparation of a City wide traffic safety study of conditions at all schools.
- Prepared over 500 work orders directing City forces to install, modify, and/or remove traffic signs, pavement and curb markings, and roadway striping.
- Oversaw preparation of engineering and traffic surveys to establish enforceable speed limits on over 200 street segments.
- Reviewed and approved traffic impact studies for more than 25 major developments.
- ❖ Developed the Golf Cart Transportation Program and administrative procedures; implemented routes forming the initial baseline system.

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

COASTAL COMMISSION

EXHIBIT #\_\_\_\_\_OF\_\_\_\_

Tom Brohard and Associates

# CALIFORNIA COASTAL COMMISSION

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



# MEMORANDUM

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

TO: John Del Arroz, Coastal Analyst

SUBJECT: Sunset Ridge Park ESHA Determination, Buffer Dimension

Recommendation, and other Considerations

DATE: September 22, 2011

**Documents Reviewed:** 

- Johnston, A.M. (BonTerra). September 9, 2011. Supplemental Biological Resource Information for the Sunset Ridge Park Project. Letter to Michael Sinacori, Public Works Department, City of Newport Beach.
- Johnston, A.M. (BonTerra). July 15, 2011. Supplemental Biological Resource Information for the Sunset Ridge Park Project Regarding Vernal Pool Habitat and Buffers for Gnatcatcher Habitat. Letter to Michael Sinacori, Public Works Department, City of Newport Beach.
- Johnston, A.M. (BonTerra). June 29, 2011. Supplemental Biological Resource Information for the Sunset Ridge Park Project. Letter to Michael Sinacori, Public Works Department, City of Newport Beach.
- Meideiros, G.A. (BonTerra). June 29, 2011. Response to California Coastal Commission Staff Email Dated June 8, 2011 Regarding CDP Application No. 5010-168 (City of Newport Beach Sunset Ridge Park), Specifically Jurisdictional Delineation of Slope Areas Along Superior Avenue. Letter to Michael Sinacori, Public Works Department, City of Newport Beach.
- Bomkamp, T. (Glenn Lukos Associates). June 14, 2011. Clarification Regarding CAGN Mapping from 2002 Protocol Surveys Conducted by Glenn Lukos Associates for West Newport Oil. Memorandum to Christine Medak, USFWS.
- Meideiros, G.A. (BonTerra). February 11, 2011. Response to California Coastal Commission Correspondence Dated September 1, 2010 Regarding CDP Application No. 5010-168 (City of Newport Beach Sunset Ridge Park). Letter to Michael Sinacori, Public Works Department, City of Newport Beach.

- Hamilton, Robb (Hamilton Biological). December 14, 2010. Reply to LSA Memorandum; Bluff Road/Sunset Ridge Park Entrance. Memorandum from Hamilton Biological to Jonna Engel, California Coastal Commission.
- Hamilton, Robb (Hamilton Biological). December 11, 2010. Review of ESHA Issues; Bluff Road/Sunset Ridge Park Entrance. Memorandum from Hamilton Biological to Jonna Engel, California Coastal Commission.
- LSA Associates. December 9, 2010. California Gnatcatcher Issues at the Sunset Ridge Park/Newport Banning Ranch Site. Memorandum from Art Homrighausen and Richard Erickson, LSA Associates, to Mike Sinacori, City of Newport Beach, Department of Public Works. This memorandum includes LSA's 1991 vegetation map and LSA's annual gnatcatcher survey maps from 1992 through 1996.
- Ahrens, Jeff. (Glenn Lukos Associates) October 13, 2010. California Gnatcatcher Use of Polygons Addressed in Notice of Violation. Memorandum to Jonna Engel, CCC.
- Bomkamp, Tony. (Glenn Lukos Associates) August 26, 2010. Response to Coastal Commission Notice of Violation dated May 14, 2010 for Vegetation Removal on Portions of Newport Banning Ranch and City of Newport Beach Properties. Memorandum to Michael Mohler, Newport Banning Ranch, LLC.
- Hamilton, Robb (Hamilton Biological). December 10, 2009. Review of Biological Resource Issues, Sunset Ridge Draft EIR. Memorandum from Hamilton Biological to Janet Johnson Brown, City of Newport Beach.
- BonTerra Consulting. October 2009. Draft Environmental Impact Report: Sunset Ridge Park Project. SCH No. 2009051036. Vol I & II. Prepared for the City of Newport Beach.
- Glenn Lukos Associates. September 24, 2009. Habitat Characterization for Areas Affected by Alleged Clearing near Southeast Corner of Banning Ranch Referenced in July 29, 2009 Letter from California Coastal Commission. Memorandum to Andrew Willis, CCC.
- BonTerra Consulting. June 25, 2009. Results of Coastal California Gnatcatcher Surveys for Newport Banning Ranch Project Site, Orange County, California. Letter addressed to Ms. Sandy Marquez, USFWS.
- Bartel, Jim A. (Field Supervisor, USFWS). April 2, 2009. Formal Section 7 Consultation for Montebello Hills Development and Conservation Project, City of Montebello, Los Angeles County, California. Montebello Biological Opinion. To: Colonel Thomas H. Magness, IV District Engineer, U.S. Army Corps of Engineers

- Glenn Lukos Associates. August 2008. The Newport Banning Ranch Biological Technical Report. Report prepared for Mike Mohler, Newport Banning Ranch, LLC.
- Glenn Lukos Associates. July 19, 2007. Submittal of 45-Day Report for coastal California gnatcatcher Surveys for the 412.5 Newport Banning Ranch Property, City of Newport Beach and Unincorporated Orange County, Orange County, California. Survey report from Glenn Lukos Associates Biologist Ingrid Chlup to Sandra Marquez, USFWS.
- Glenn Lukos Associates. July 25, 2006. Submittal of 45-Day Report for Coastal California Gnatcatcher Presence/Absence Surveys for the 412.5 Newport Banning Ranch Property, City of Newport Beach and Unincorporated Orange County, Orange County, California. Survey report from Glenn Lukos Associates Biologist Jeff Ahrens to Daniel Marquez, USFWS.
- Glenn Lukos Associates. October 14, 2002. Protocol Surveys for the Coastal California Gnatcatcher; West Newport Oil Property, Orange County California. Survey report from Glenn Lukos Associates Biologist Tony Bompkamp to Leonard Anderson, West Newport Oil Property.
- Gnatcatcher survey map. 2000. Unknown source (we believe the source is PCR Services).
- PCR Services. 1998. Gnatcatcher survey map.
- PCR Services. 1997. Gnatcatcher survey map.
- LSA. 1996. Spring 1996 California Gnatcatcher Survey. Survey report from LSA Biologist Richard Erickson to Leonard Anderson.
- LSA. 1995. Spring 1995 California Gnatcatcher Survey. Survey report from LSA Biologist Richard Erickson to Leonard Anderson.
- LSA. 1994. Results of 1994 Gnatcatcher and Wren Surveys. Survey report from LSA Biologists Robb Hamilton and Richard Erickson to Leonard Anderson, West Newport Oil Company.

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

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

On September 15, 2010, I accompanied several other Coastal Commission staff on a site visit to observe and study the biological resources on the proposed park property, in particular, at and around three disturbed areas referred to as the southeast, northwest, and northeast polygons that were the subject of a violation on Newport Banning Ranch that will be resolved once compliance with the Commission's Consent Order is fully carried out<sup>1</sup> (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

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<sup>&</sup>lt;sup>1</sup> CCC-11-CD-03 and CCC-11-RO-02 issued by the Commission on April 14, 2011.

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

# **ESHA** Definition

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

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

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

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

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

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

# **Habitats - Plant Communities**

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

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

# Coastal Sage Scrub

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

# Coastal Bluff Scrub

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

# Maritime Succulent Scrub

Maritime succulent scrub, also identified as a rare plant community in CDFG's Natural Diversity Data Base, is a low growing, open (25% - 75% ground cover) scrub community dominated by drought deciduous, semi-woody shrubs that grow on rocky or sandy soils of coastal headlands and bluffs<sup>7</sup>. 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*)<sup>8</sup>. 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.

<sup>6</sup> Ibid.

<sup>&</sup>lt;sup>2</sup> Holland, R.F. 1986. Preliminary Descriptions of the Terrestrial Natural Communities of California. State of California, The Resources Agency, Department of Fish and Game.

<sup>&</sup>lt;sup>3</sup> Sawyer, J. and T. Keeler-Wolf. 1995. A manual of California vegetation. California Native Plant Society.

<sup>&</sup>lt;sup>4</sup> Holland (1986) op cit.

<sup>&</sup>lt;sup>5</sup> Ibid.

<sup>&</sup>lt;sup>7</sup> Ibid.

<sup>&</sup>lt;sup>8</sup> Ibid.

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

# Encelia Scrub

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

California sunflower is one of the dominant native scrub species found in the coastal scrub communities on the City and Newport Banning Ranch property. Weaver (1998) found that gnatcatcher densities in northern San Diego County were highest in areas where California sunflower or California buckwheat were co-dominate with sagebrush<sup>9</sup>. 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.

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<sup>&</sup>lt;sup>9</sup> 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 Redtailed 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)" 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

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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

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

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

In many areas the soils in these moist areas have a salt crust and/or what appear to be oxidation stains. BonTerra dug two soil pits in the seep areas and in both cases found hydric soils (Figure 8; BonTerra Exhibit 1, Detailed vegetation types and other areas, soil sample sites). BonTerra has maintained that the seep areas are not wetlands for numerous reasons including their determination that the water source is artificial<sup>13</sup>, 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

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<sup>&</sup>lt;sup>11</sup> Connor, H.E. and D. Charlesworth. 1989. Genetics of male-sterility in gynodioecious *Cortaderia* (Gramineae). Heredity, Vol. 63: 373–382.

<sup>&</sup>lt;sup>12</sup> Hamilton, R. (December 10, 2009) op. cit.

<sup>&</sup>lt;sup>13</sup> 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. 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. <sup>15</sup>"

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

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<sup>&</sup>lt;sup>14</sup> 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.

<sup>&</sup>lt;sup>15</sup> Ibid.

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

# California Gnatcatcher

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

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

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

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.

<sup>18</sup> Ibid

<sup>&</sup>lt;sup>19</sup> Weaver (1998) op. cit.

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

<sup>&</sup>lt;sup>21</sup> Ibid.

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

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

<sup>&</sup>lt;sup>22</sup> 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).

<sup>&</sup>lt;sup>23</sup> Westman (1981) op. cit.

<sup>&</sup>lt;sup>24</sup> Michael Brandman Associates. 1991. Unpubl. Report. A rangewide assessment of the California Gnatcacher (Polioptila californica). Prepared for Building Industry Assoc. of Southern California; July 23.

<sup>&</sup>lt;sup>25</sup> 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).

<sup>&</sup>lt;sup>27</sup> Ibid. See also Exhibit 13, Banning Ranch DEIR.

<sup>&</sup>lt;sup>28</sup> 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<sup>29,30</sup>, with a mean territory size generally greater for inland populations than coastal populations<sup>31</sup>. Nesting territories typically have greater than 50 percent shrub cover and an average shrub height that exceeds 2.3 ft; nests are most often at 3 feet above the ground<sup>32</sup>. The relative density of shrub cover influences gnatcatcher territory size, with territory size increasing as shrub cover decreases presumably as a result of limited resources. In a 1989 to 1992 study of two sites in San Diego County, breeding season territories averaged 20 acres; non-breeding season territories were larger<sup>33</sup>. In studies by Bontrager (1991)<sup>34</sup> and Preston et al. (1998)<sup>35</sup>, territory size during the nonbreeding season increased 82 percent and 78 percent, respectively. Increase in nonbreeding 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<sup>36,37</sup>. All surveys must take

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<sup>&</sup>lt;sup>29</sup>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.

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

<sup>31</sup> Ibid.

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

<sup>&</sup>lt;sup>33</sup> Atwood and Bontrager (2001) op. cit.

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

<sup>&</sup>lt;sup>35</sup> Preston et. al. (1998) op. cit.

<sup>&</sup>lt;sup>36</sup> U.S. Fish and Wildlife (USFWS). 1997a (February 28). Coastal California Gnatcatcher (Polioptila californica californica) Presence/Absence Survey Protocol. Washington, D.C.:USFWS.

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

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

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

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

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

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<sup>&</sup>lt;sup>37</sup> U.S. Fish and Wildlife (USFWS). 1997b (July 28). Coastal California Gnatcatcher (Polioptila californica californica) Presence/Absence Survey Protocol. Washington, D.C.:USFWS.

<sup>&</sup>lt;sup>38</sup> 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.<sup>39</sup>

PCR conducted surveys in 1997, 1998, and 2000<sup>40</sup>. 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.

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<sup>&</sup>lt;sup>39</sup> 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

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

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

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

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

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

# **ESHA Determination**

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

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

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

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 <sup>&</sup>lt;sup>41</sup> 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.
 <sup>42</sup> Glenn Lukos Associates, Inc. August 2008. Draft Biological Technical Report for the Newport Banning Ranch.

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)<sup>43,44</sup> (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

<sup>&</sup>lt;sup>43</sup> Atwood et al. (1998) op. cit.

<sup>&</sup>lt;sup>44</sup> Preston et. al. (1998) op. cit.

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

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

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

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<sup>&</sup>lt;sup>45</sup> 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 <sup>46,47</sup>. A combination of factors is thought to be behind this conversion including competitive displacement by European annual grasses, increased fire frequency, nitrogen deposition due to air pollution, high silt, and high pH<sup>48</sup>. Loss and type conversion of coastal sage scrub habitats in southern California is another reason that improving and restoring all the appropriate areas on the proposed Sunset Ridge Park site that are not slated for formal development is essential.

In addition to loss and type conversion of coastal sage scrub habitats, invasive animals are also a threat to California gnatcatchers. Invasive ants such as the Argentine ant (*Linepithema humile*) can be abundant in landscaped areas and can move up to 1400 feet toward native habitat from an urban or urban/rural boundary<sup>49</sup>. Irrigation encourages invasive ants which prefer wetter soil conditions. Argentine ants are documented predators on gnatcatcher nestlings and their presence can also alter the native arthropod community by reducing their diversity and abundance<sup>50</sup>. 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

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<sup>48</sup> 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.

<sup>49</sup> 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

<sup>&</sup>lt;sup>46</sup> 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.). 2<sup>nd</sup> Interface Between Ecology and Land Development in California. U.S. Geological Survey Open File Report 00-62.

<sup>&</sup>lt;sup>47</sup> 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.

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

host chicks usually perish. In areas where cowbirds have invaded California gnatcatcher breeding territories, gnatcatcher fitness has decreased<sup>51</sup>. 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<sup>52,53</sup>. 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, nestpredator species such as corvids and raptors do well in urban and urban/rural areas.

One way to minimize gnatcatcher predation is to encourage coyote foraging on the property. Coyotes are known to reduce gnatcatcher predator populations and to decrease the intensity of gnatcatcher predation<sup>54</sup>. Property fencing must include adequate covote access. If covote 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

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.

<sup>&</sup>lt;sup>52</sup> 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.

<sup>&</sup>lt;sup>53</sup> 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.

<sup>&</sup>lt;sup>54</sup> 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

Christine Medak@fws.gov From:

Sent: Tuesday, September 13, 2011 1:41 PM

To: Jonna Engel

Cc: 'Basye GL (George) at Aera'; Sinacori, Mike; Michael Mohler

Review of vernal pools on Sunset Ridge Project Site Subject:

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.q., 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

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

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

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

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

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

06/15/2011 01:34 PM

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

Subject Banning Ranch Site Visit

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

The first area we stopped at (east of the apartment housing, north of territory #2)[LOCATION A ON EXHIBIT 1] was an area not documented as supporting a gnatcatcher

territory; however, a family group was foraging in the depression, mapped as disturbed scrub on your vegetation map. Prior to conducting any mowing through this canyon, additional monitoring for the gnatcatcher should be conducted in this location to ensure the mowing is not impacting habitat supporting gnatcatcher foraging.

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

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

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

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

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

Christine L. Medak
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From: Christine\_Medak@fws.gov [mailto:Christine\_Medak@fws.gov]

Sent: Monday, July 11, 2011 4:13 PM

To: Jonna Engel

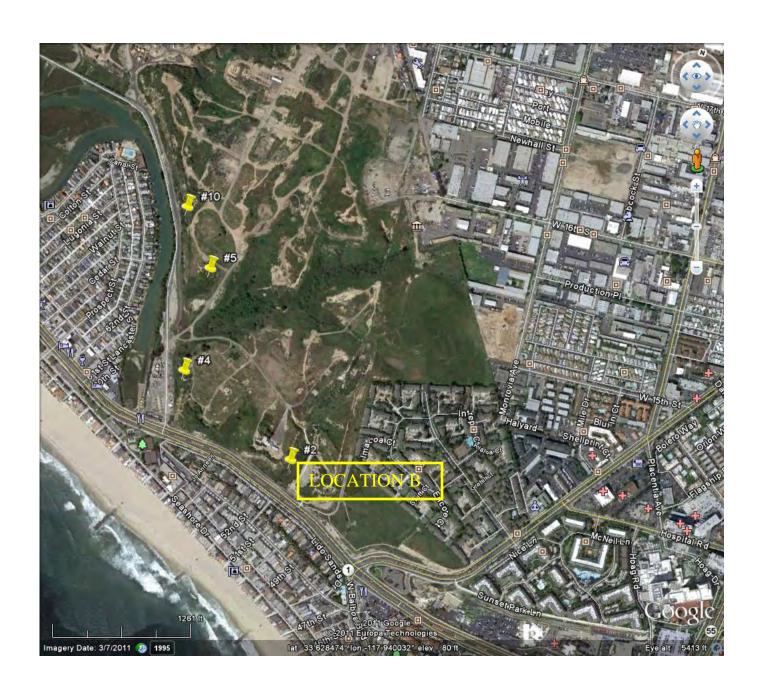
Subject: Fw: Banning Ranch Site Visit

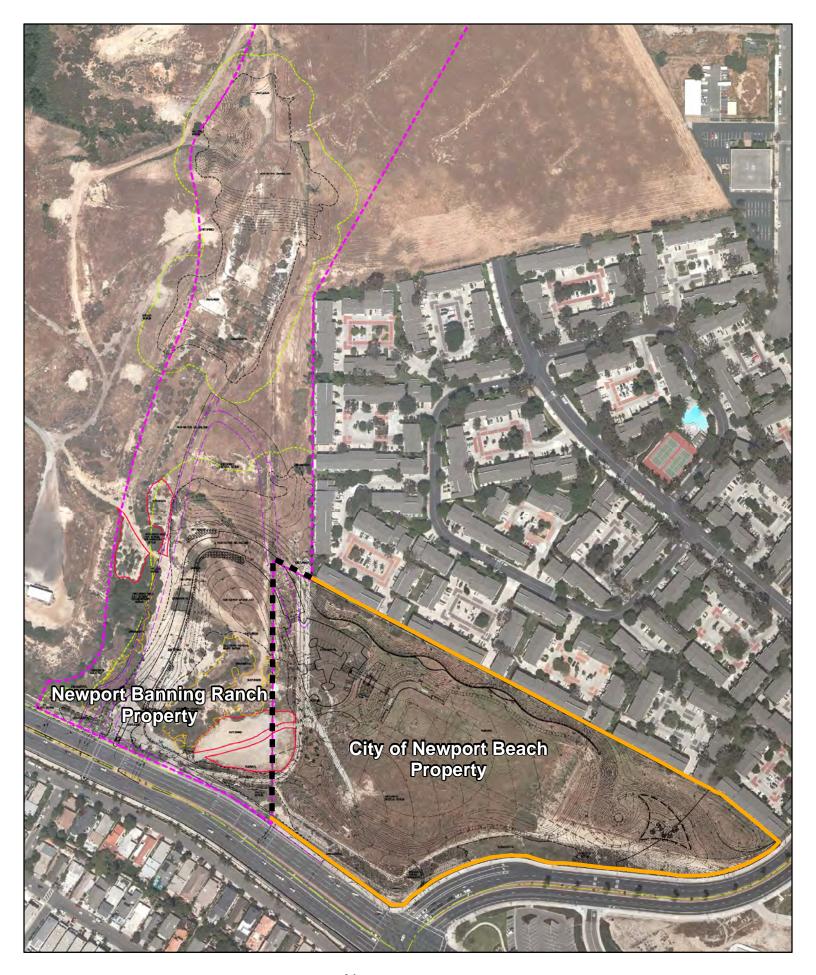
Jonna,

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.







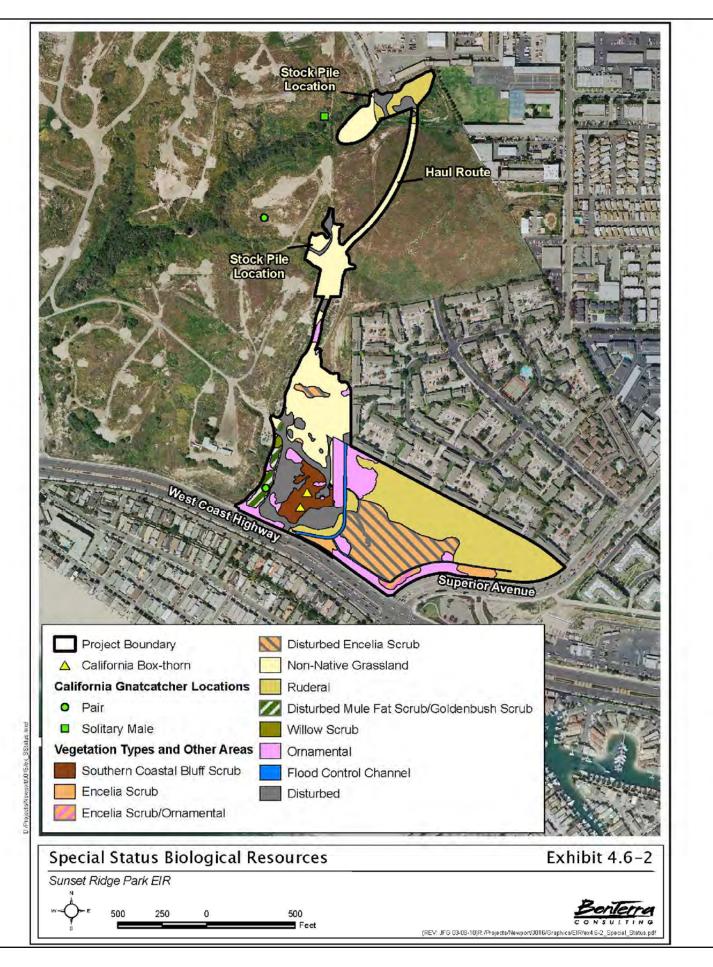






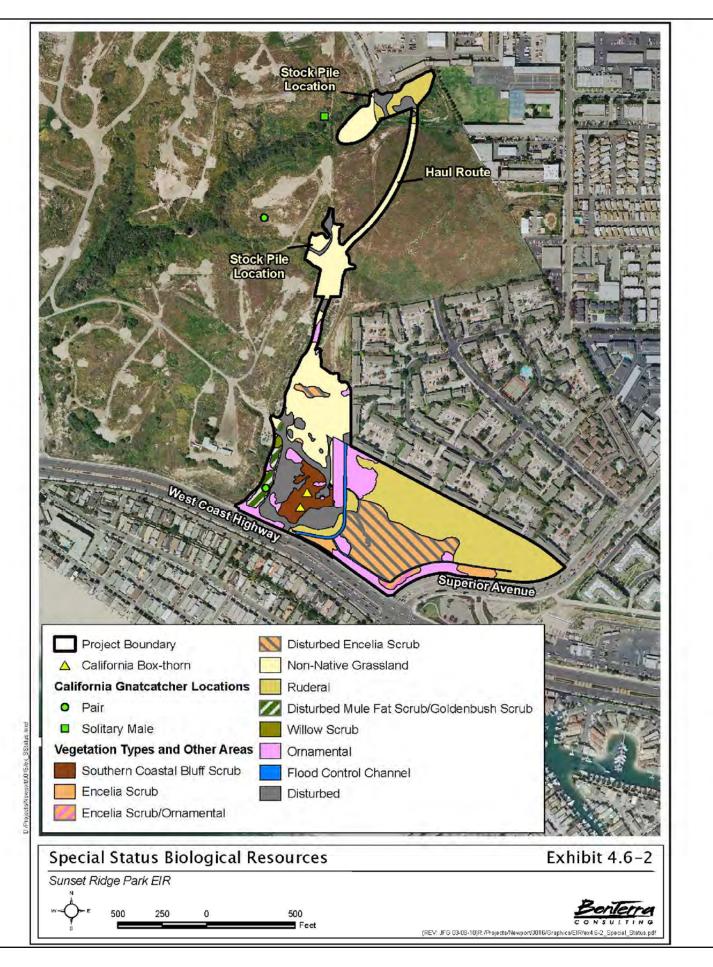






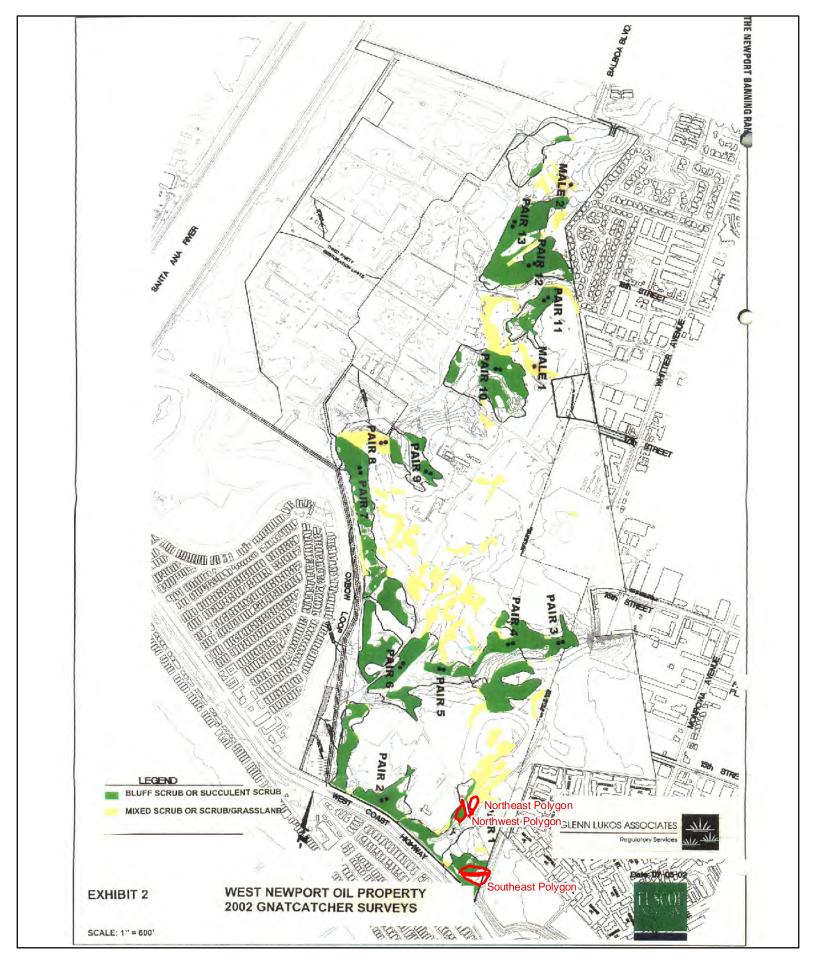








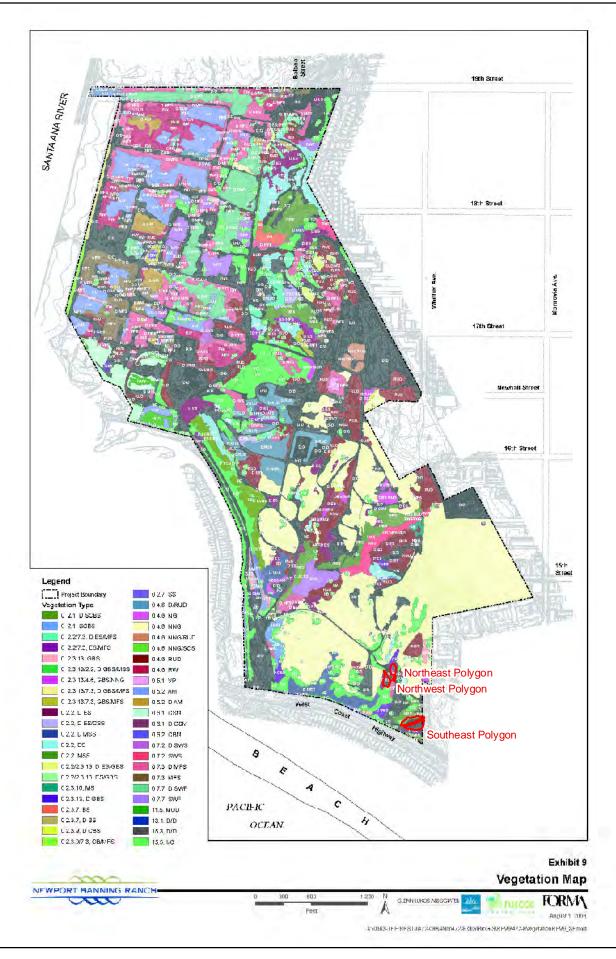








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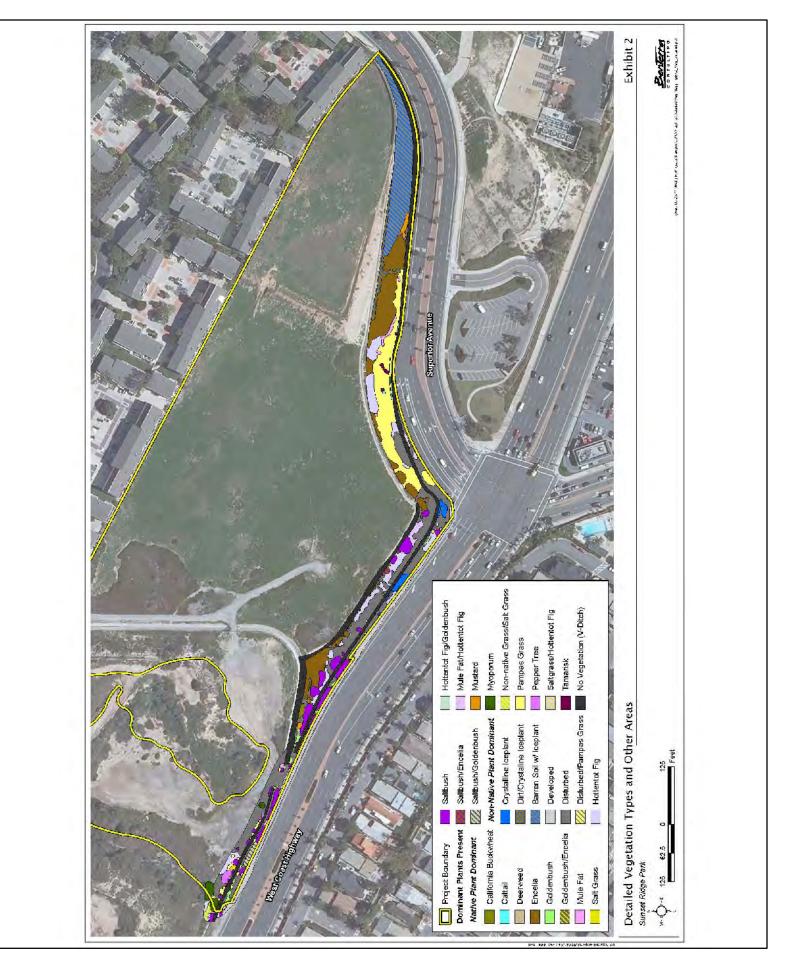






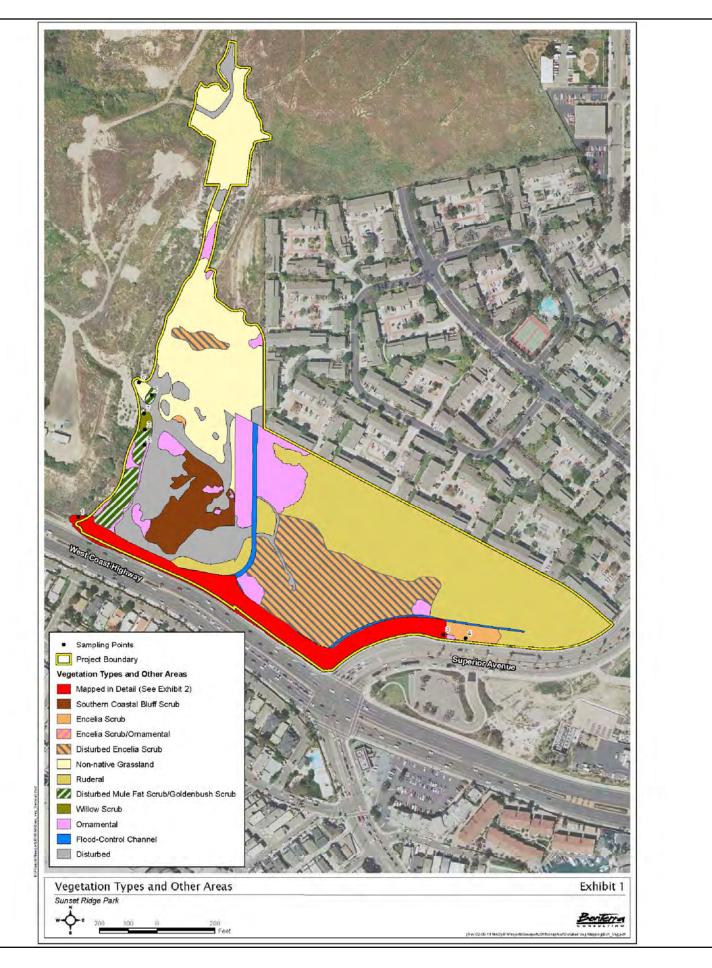
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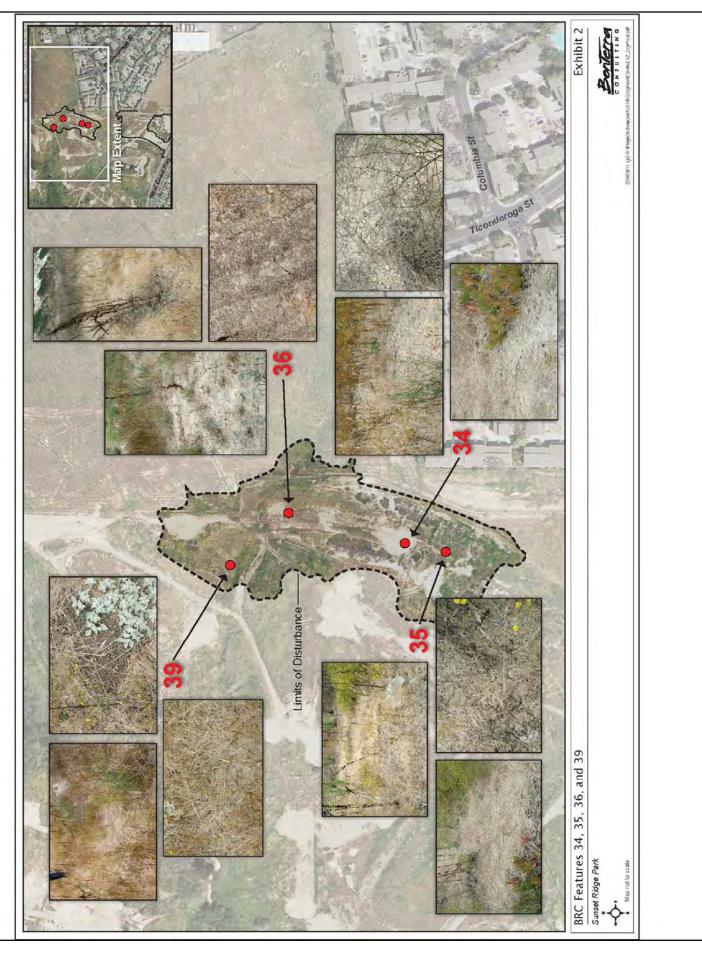






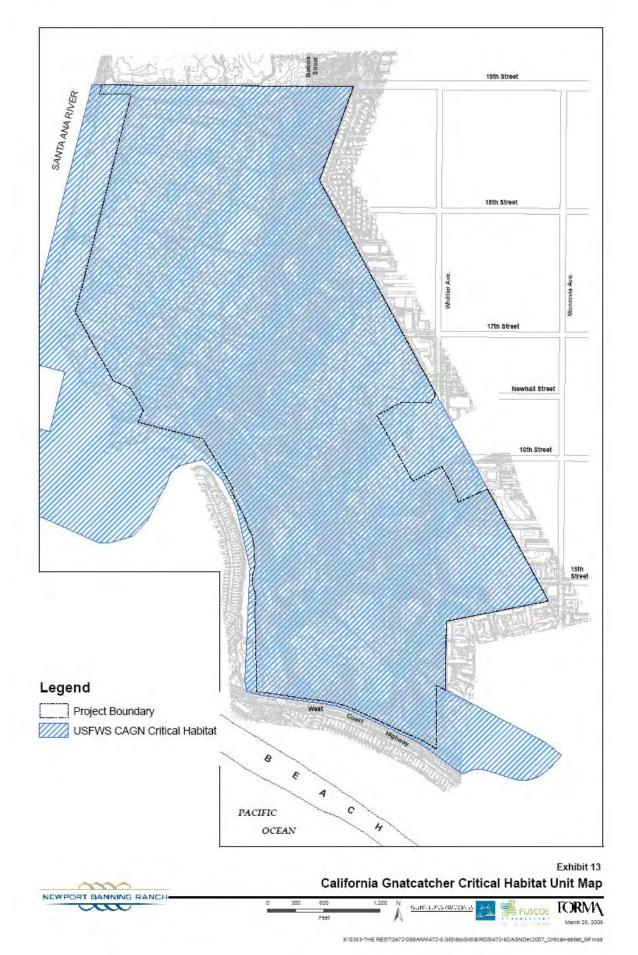


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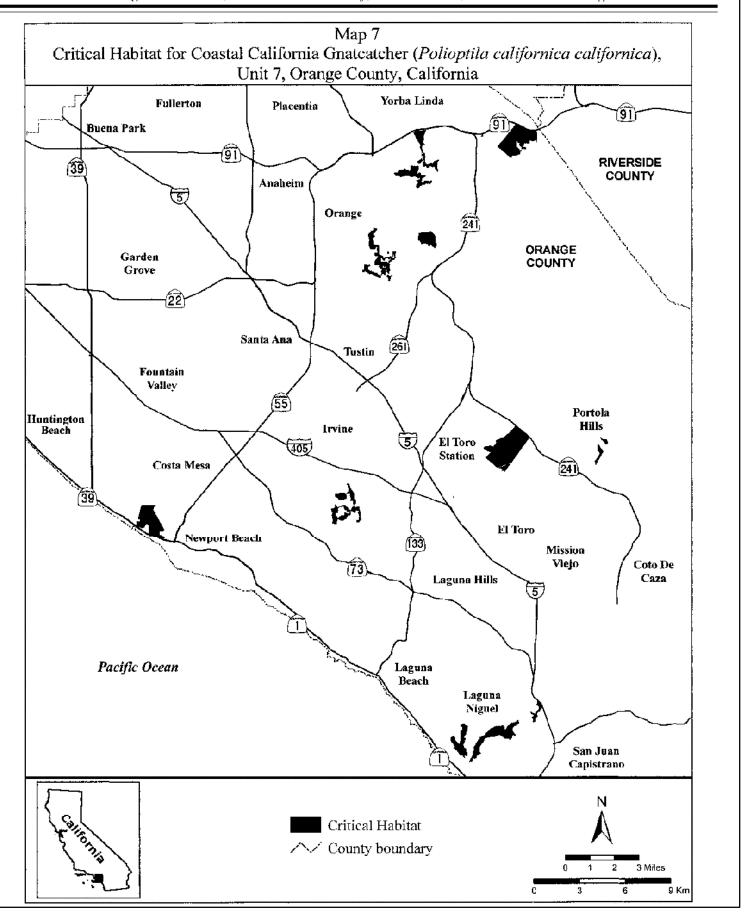








All Locations Approximate.
For Illustrative Purposes Only.
Source: Glenn Lukos Associates.







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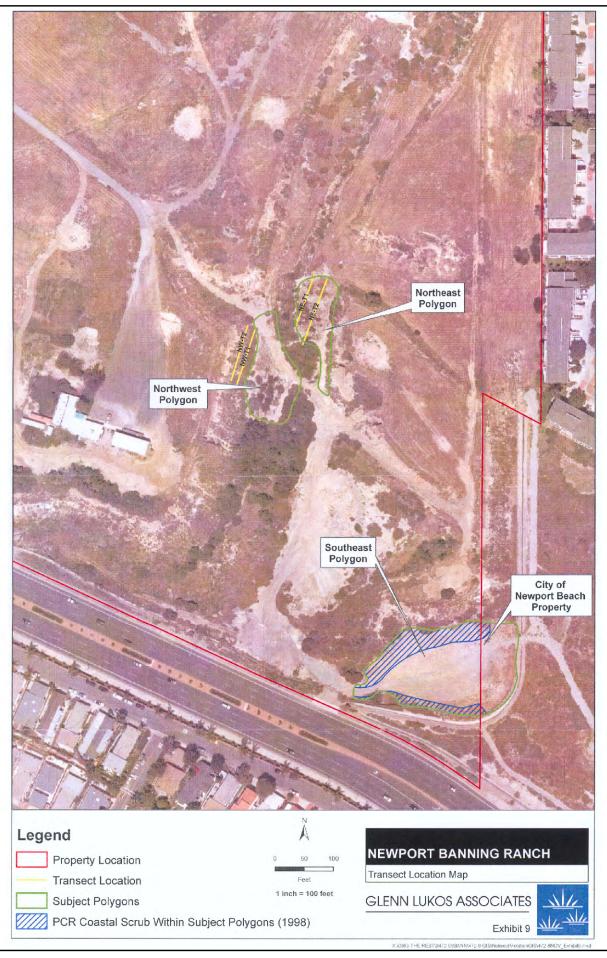


Not To Scale. All Locations Approximate. For Illustrative Purposes Only. Sources: LSA, 1991. Coastal Bluff Scrub (CBS) Mixed AG/CBS

Disturbed Coastal Bluff Scrub (CBSD)

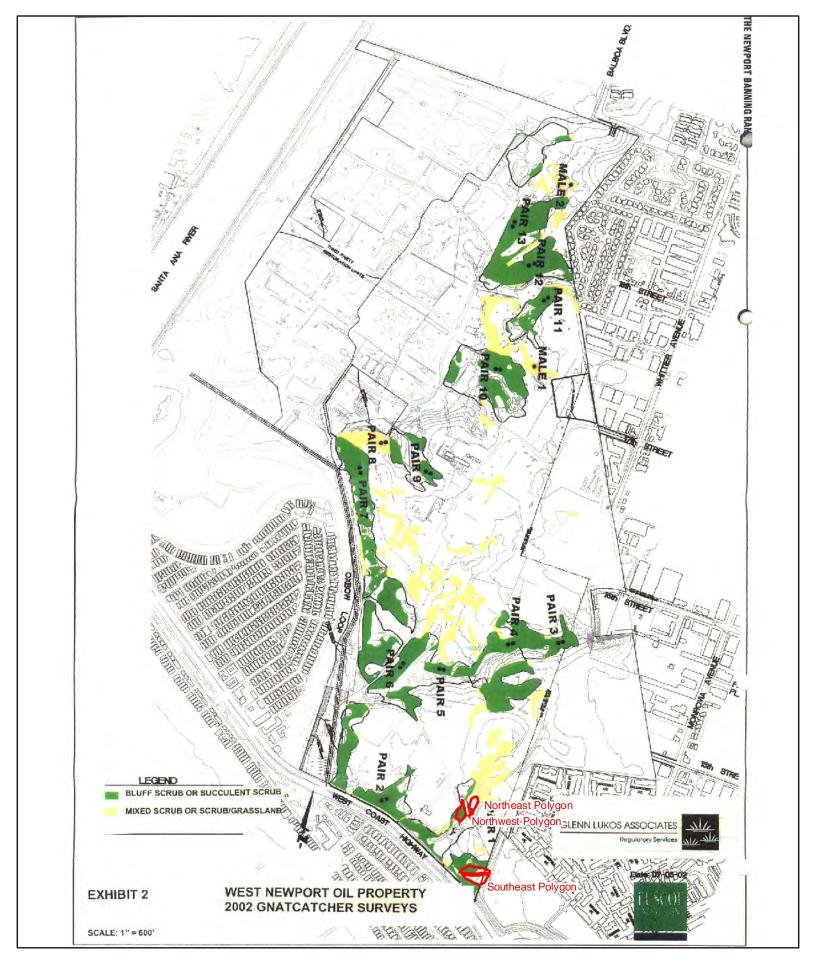
Non-native Moo Handi (NNW) Palustrine, Scrub, Arende 712 Baccharis (mulefat scrub) (PSEB) Ruderal Scrub (RS)

Figure 13



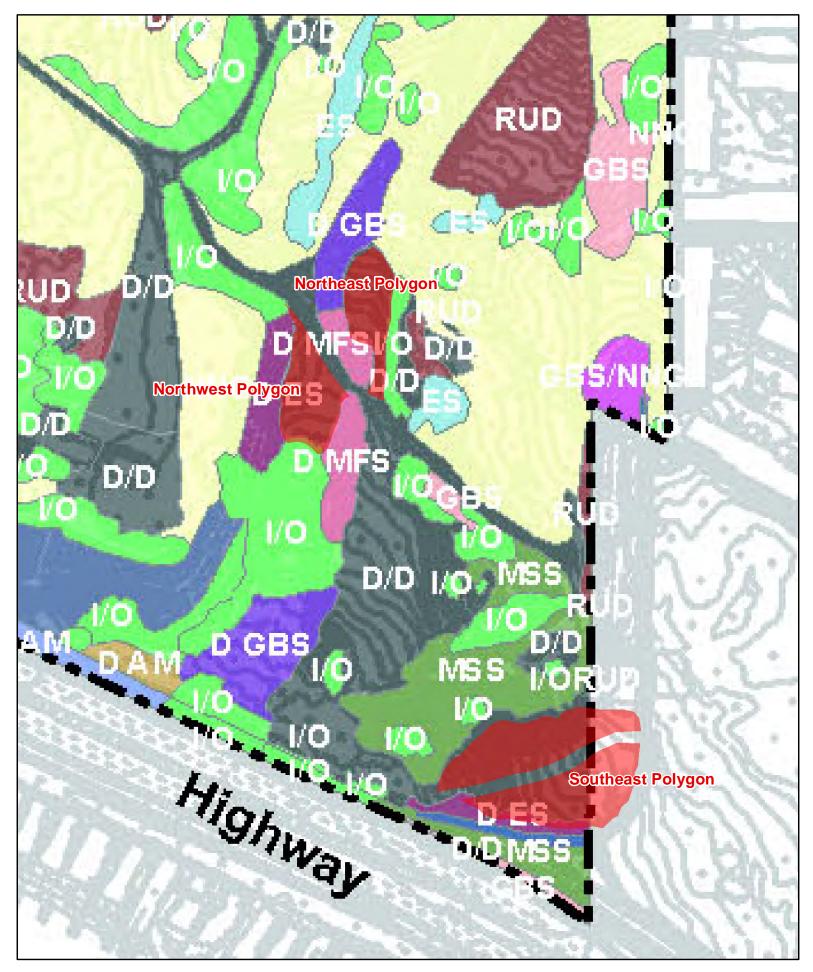






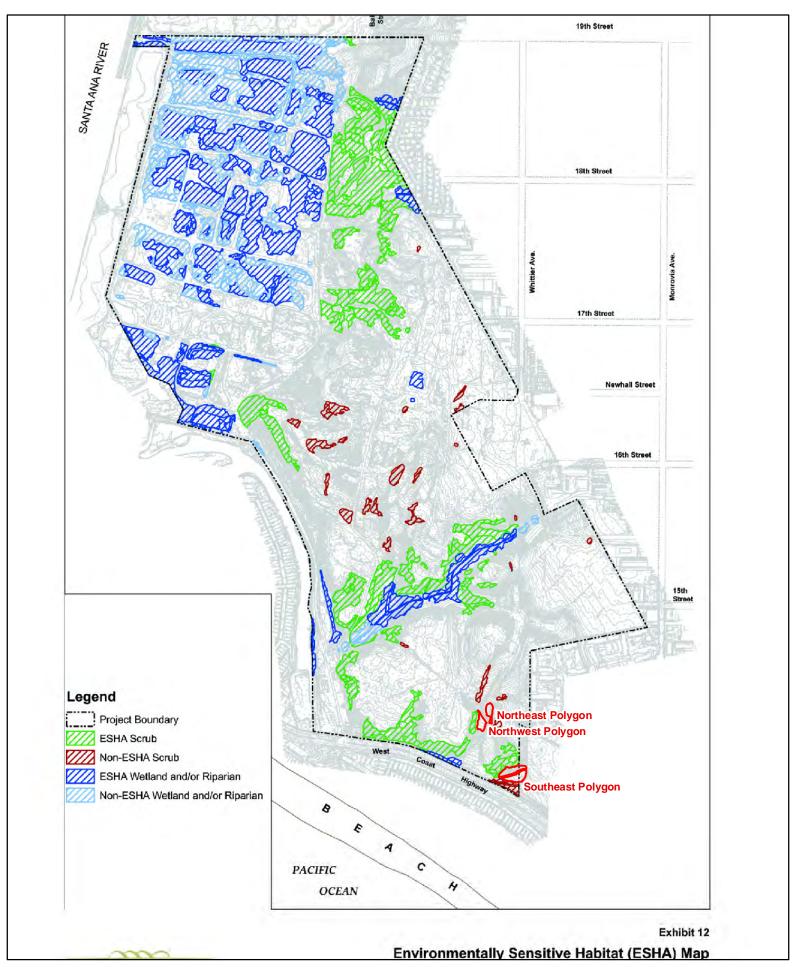














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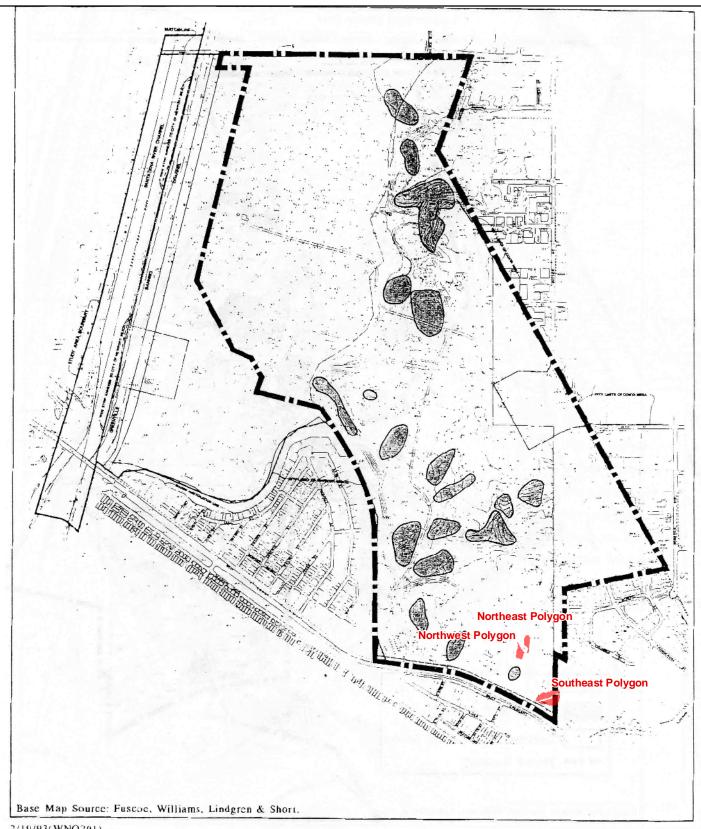


Not To Scale. All Locations Approximate. For Illustrative Purposes Only. Sources: GLA, LSA.



5-10-168, Exhibite 1020 servations of Unpaired Male 51 of 72 Estimated CAGN territories

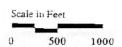
Figure 18



2/19/93(WNO201)





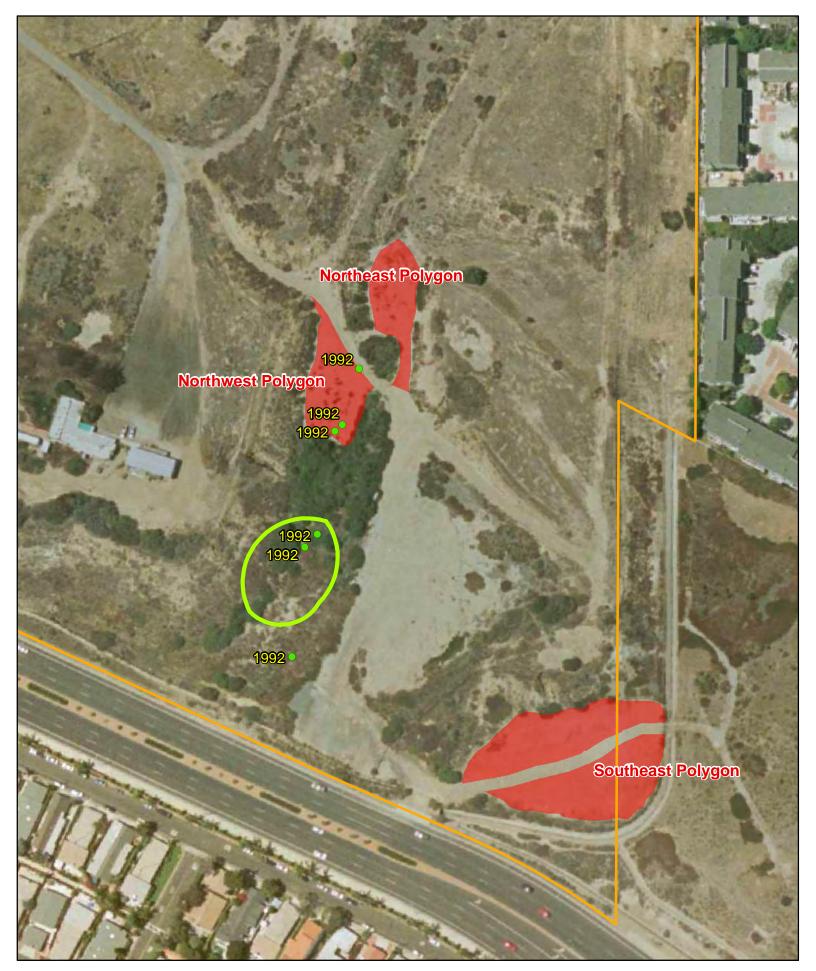


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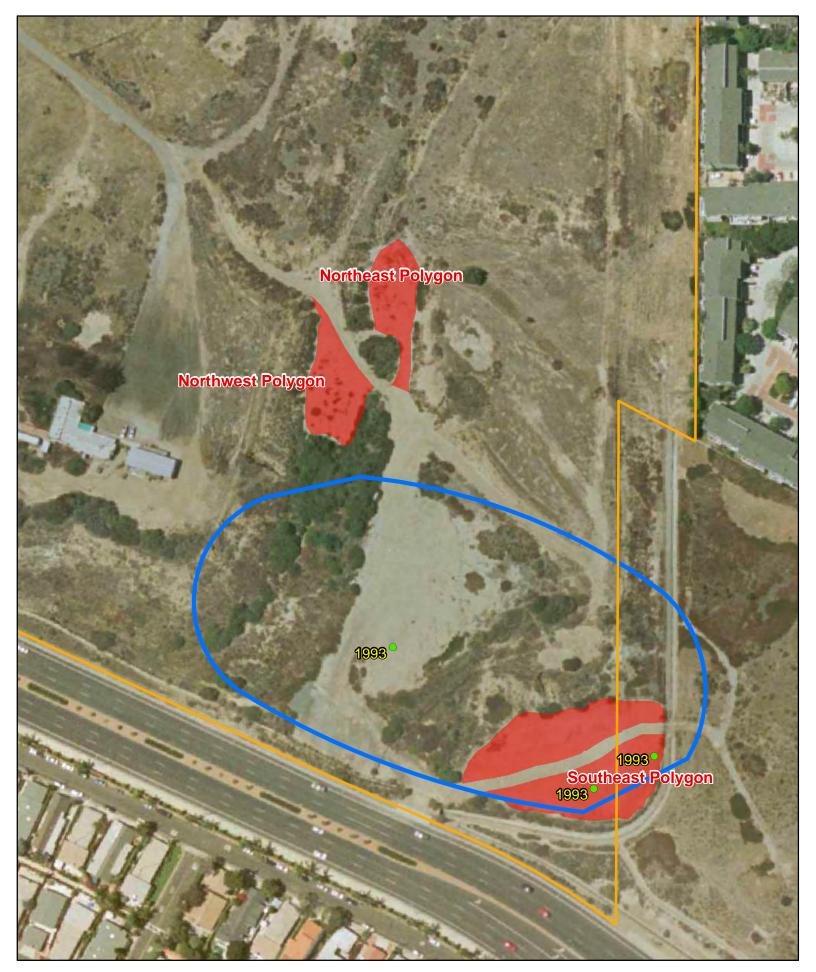
California Gnatcatcher Territories - Spring 1992



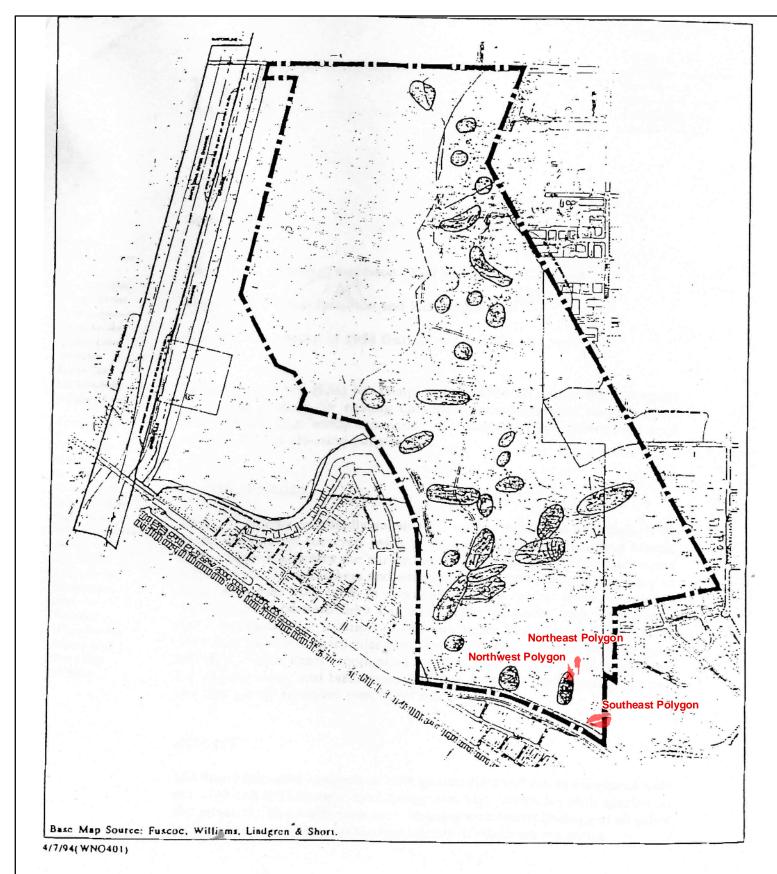














NZ.T

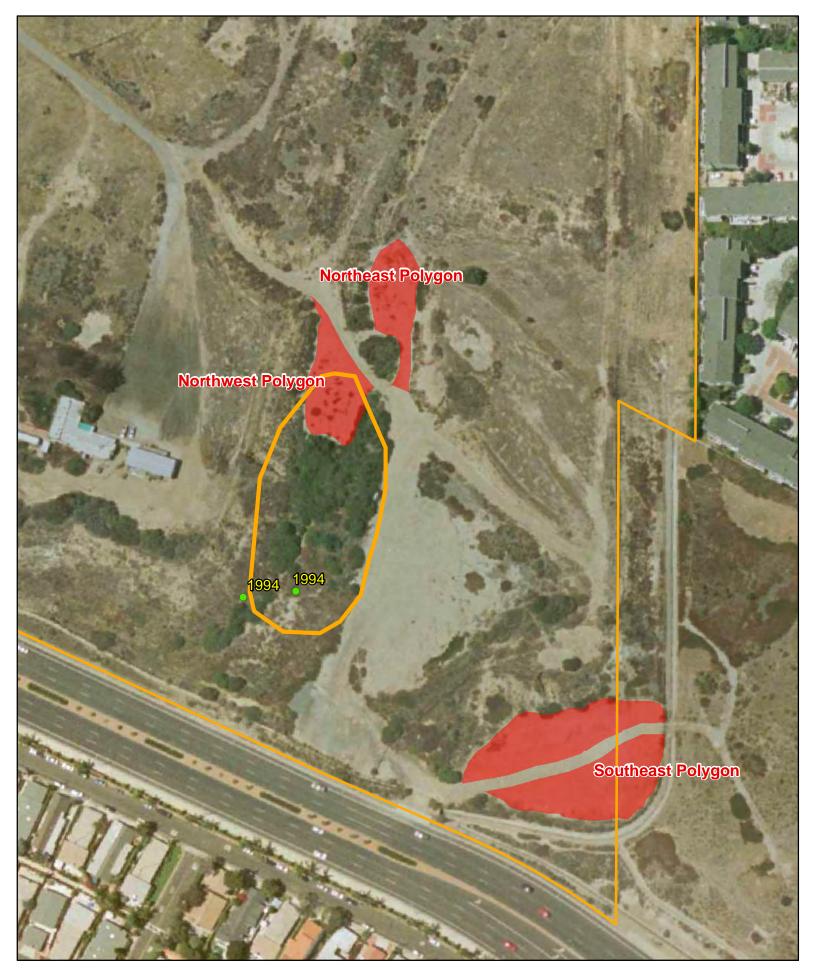
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gnateatcher



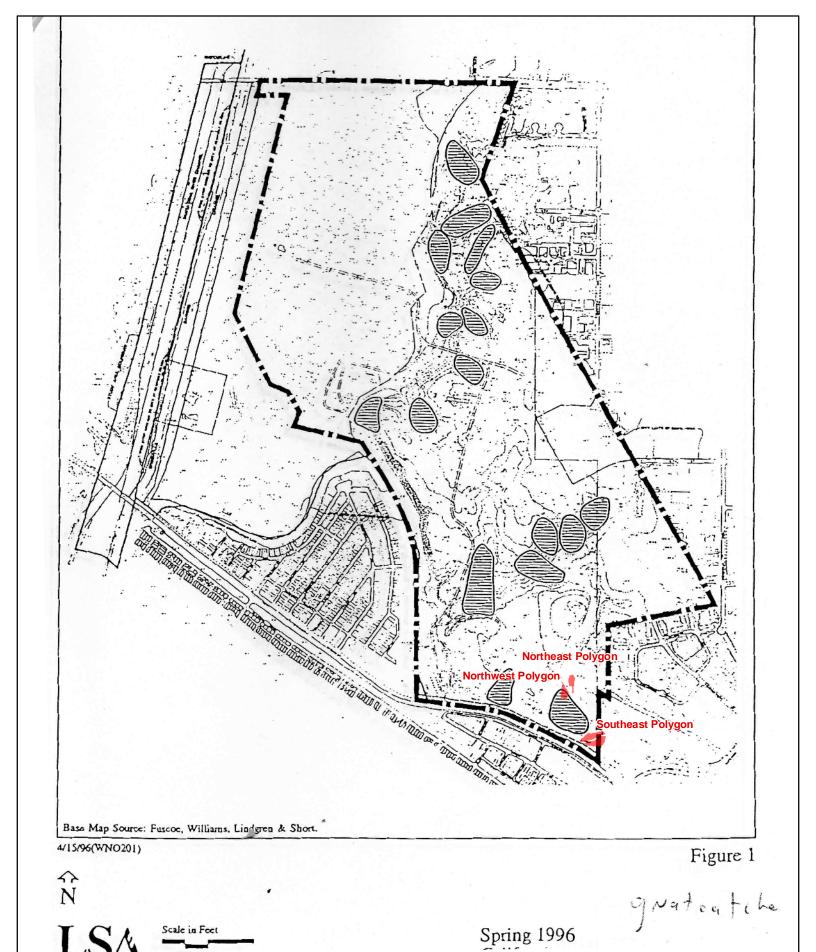


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Not To Scale. All Locations Approximate. For Illustrative Purposes Only. Source: LSA 1996.

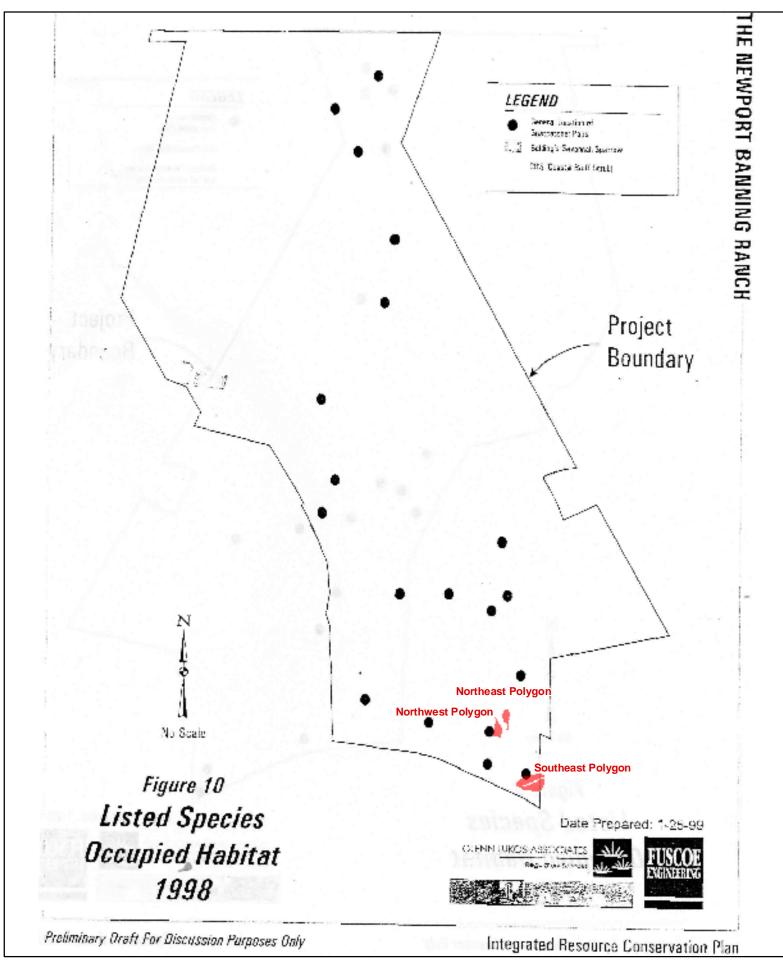


Figure 22a











Not To Scale.

Source: GLA 1998.

All Locations Approximate.

For Illustrative Purposes Only.



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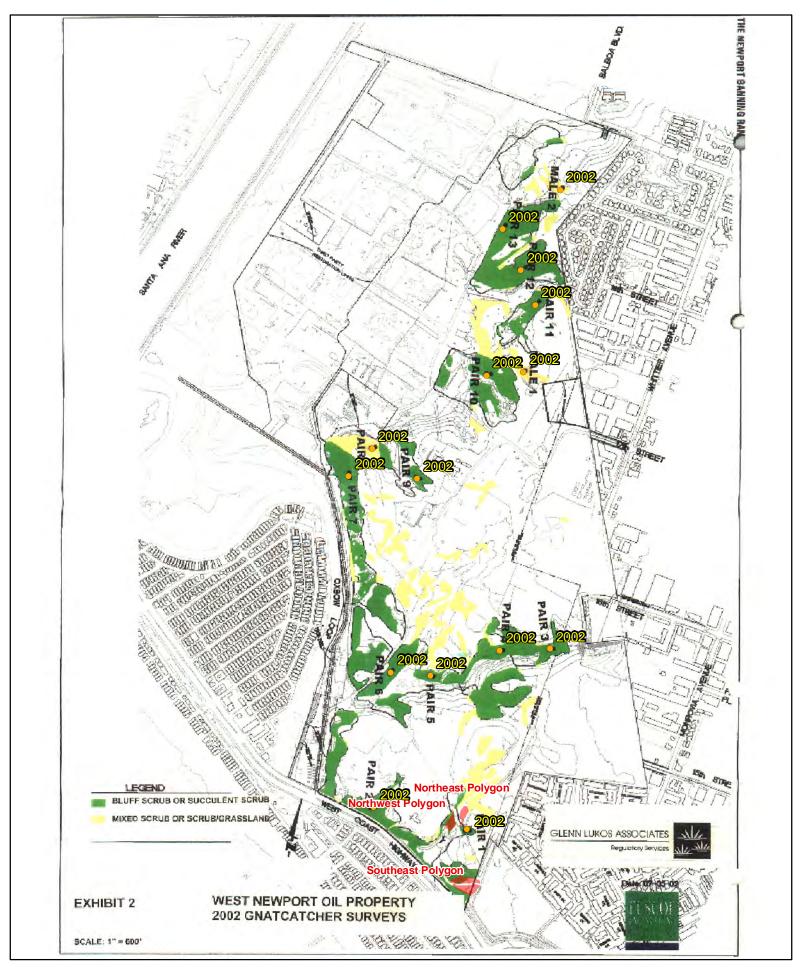




















Not To Scale. All Locations Approximate. For Illustrative Purposes Only. Sources: GLA, 2006.



**Gnatcatcher Occurances 2006** 

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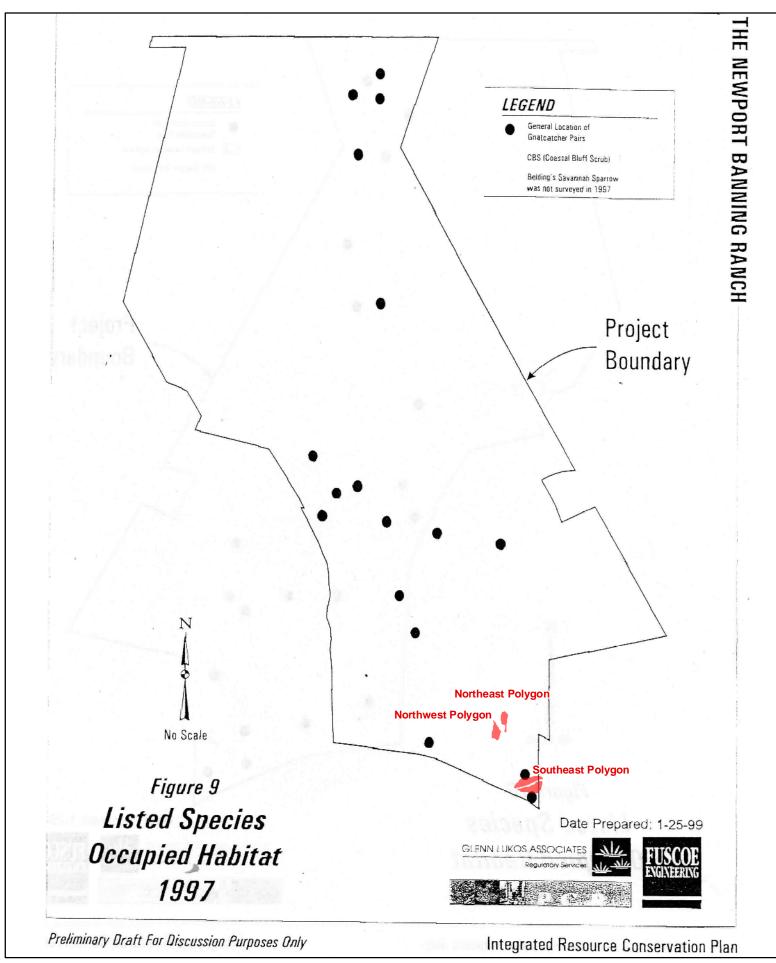














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Source: GLA 1997.

All Locations Approximate.

For Illustrative Purposes Only.





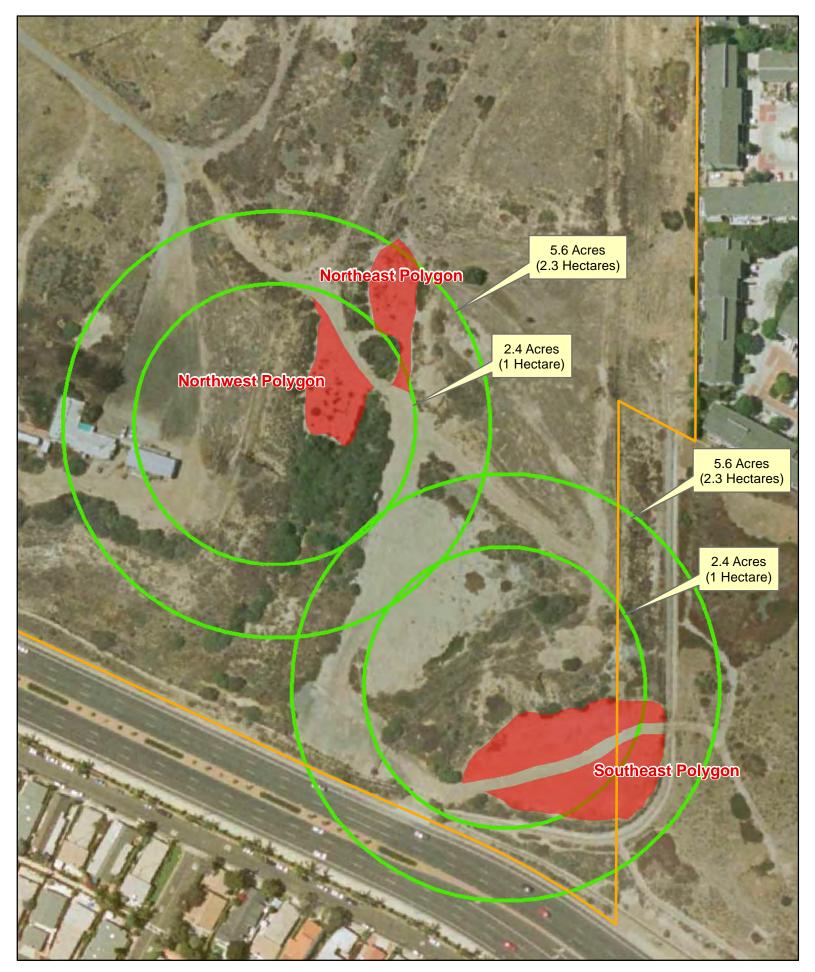


Figure 29c



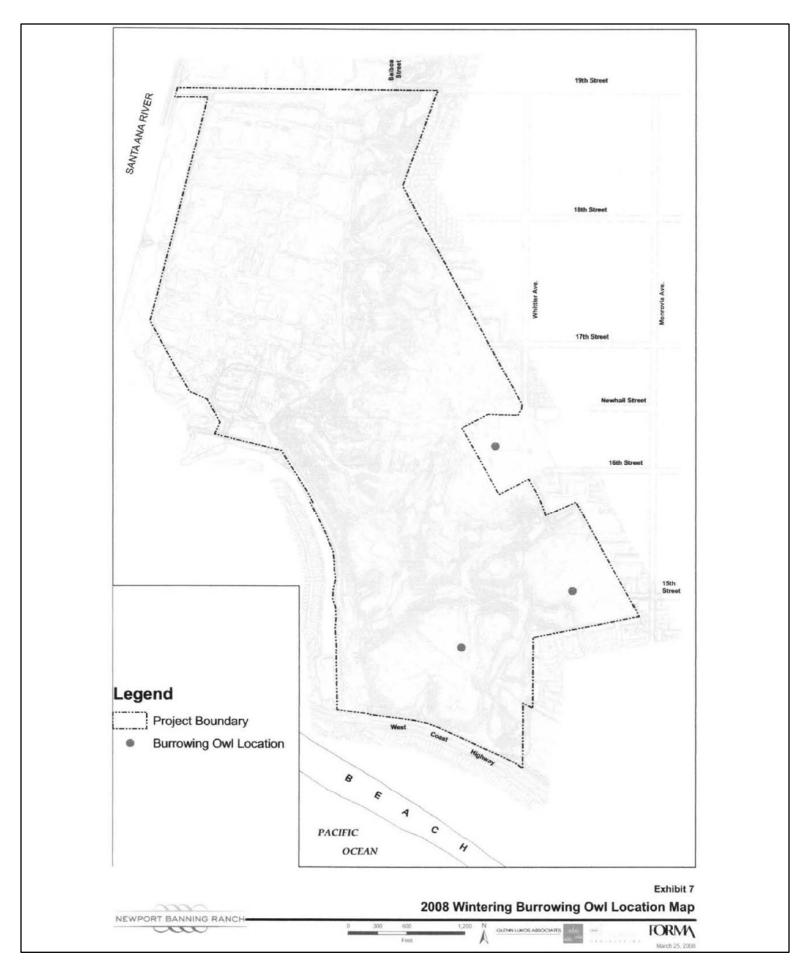














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