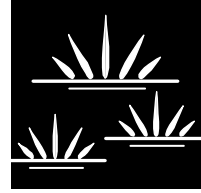


GLENN LUKOS ASSOCIATES

Regulatory Services



November 3, 2007

Hunter Oliver
Corporate Transactions and Asset Management
Sunstone Hotel Properties, Inc.
903 Calle Amanecer
San Clemente, California 92673

SUBJECT: Results of Biological Surveys and Impact Analysis Conducted for the Newport Hyatt Regency Golf Course, a Less-Than 20-Acre Portion of the Property Located in Newport Beach, Orange County, California.

Dear Mr. Oliver:

Biologists from Glenn Lukos Associates, Inc. (GLA) visited the above-mentioned property on February 14 and February 15, 2006 as well as January 10, February 17, March 1, May 3, May 10 and May 21, 2007 to identify the presence of special-status species or habitats capable of supporting special-status species on the site or adjacent to the site in areas that could be adversely affected by the project (the three surveys in May of 2007 were protocol surveys for the California gnatcatcher). In addition, the property was also evaluated for the presence of areas potentially subject to the jurisdiction of the U.S. Army Corps of Engineers (Corps) pursuant to Section 404 of the Clean Water Act and the California Department of Fish and Game (CDFG) pursuant to Section 1602 of the California Fish and Game Code.¹ Finally, the project was evaluated relative to potential impacts to Environmentally Sensitive Habitat Area (ESHA) as defined under Section 30240 of the California Coastal Act, in accordance with Section 4.1.1 of the City's Coastal Land Use Policies.

The following letter includes an analysis of the potential biological resources associated with the above-mentioned property as it pertains to special-status species and habitats, including offsite open space immediately north of the site. Potential impacts (direct and/or indirect) to special-status species and habitats are addressed below for purposes of review under the California

¹ Please note, the biological constraints analysis will alert the client to potential constraints in development of the property, but will not be sufficient to support any permitting that may be required and may not satisfy local or lead agency requirements under CEQA. Separate and more detailed surveys may be required for the permitting/approval process, if needed.

Environmental Quality Act (CEQA). In addition, impacts to species listed as threatened or endangered under the federal Endangered Species Act (ESA) are regulated by the U.S. Fish and Wildlife Service (USFWS) and species listed as threatened or endangered by the State of California are regulated by the California Department of Fish and Game (CDFG) pursuant to the State ESA and are addressed below. Wildlife that are assigned other designations by CDFG (i.e., species of concern, fully-protected species, etc.), and plants given special status by the California Native Plant Society (CNPS) are not granted additional protection, except that impacts to these species generally require evaluation pursuant to CEQA.

This letter also provides an analysis of requirements of the Regional Water Quality Control Board specifically as they relate to areas of Corps jurisdiction pursuant to Section 401 of Clean Water Act.

SITE DESCRIPTION

The approximate 20-acre Newport Hyatt Regency Golf Course property is located in the City of Newport Beach, Orange County, California [Exhibits 1 and 2]. The property is part of the Newport Hyatt Regency Hotel, located northwest of Jamboree Road; east of Backbay Drive, Backbay Science Center (Shellmaker Island) and Newport Back Bay; northeast of Pacific Coast Highway and Newport Dunes Resort; south of the Palisades Tennis Club (a private facility); and southwest of John Wayne Gulch within a portion of the Newporter North open space, which is adjacent to Newport Bay Ecological Preserve. The property is a portion of a resort style hotel with associated tennis courts, pools, restaurants, banquet facilities and guest accommodations.

No blue-line drainages occur on site, as depicted on the U.S. Geological Survey (USGS) topographic map Newport Beach, California [dated 1965 and photorevised in 1981].

METHODOLOGY

GLA biologists visited the Newport Hyatt Regency Golf Course property on February 14 and 15, 2006 well as January 10 and February 17, and March 1, 2007 to conduct a site review of the property and to survey areas of open space immediately north of the site. Protocol surveys for the California gnatcatcher were conducted on May 3, 10, and 21, 2007. Site reconnaissance was conducted in such a manner as to allow inspection of the entire site by direct observation, including the use of binoculars. The site was inspected to determine whether any sensitive species, sensitive habitats, or potential jurisdictional areas are present on site as well as to determine whether such resources occurred in the adjacent open space.

In addition to site reconnaissance and focused surveys, evaluation of the property included a review of the California Natural Diversity Database (CNDDDB) for the Newport Beach, Laguna Beach, Tustin, Orange, Anaheim, Los Alamitos and Seal Beach Quadrangles², and a review of the 2001 California Native Plant Society (CNPS) inventory³.

RESULTS

Site Reconnaissance

The Hyatt Regency Golf Course portion of the Hyatt Regency Hotel Property, located at the northern portion of the Hyatt property, is comprised of open green space consisting of turf grass interspersed with mostly ornamental landscaping. The golf course is bordered by offsite open space that includes coastal sage scrub, emergent marsh and ruderal areas associated with Newport Back Bay to the north and west and ornamental vegetation associated with the neighboring tennis club to the east [see Exhibit 3 for these vegetation types].

As noted, the golf course consists of well-manicured turfgrass with various ornamental plantings including jelly palm (*Butia capitata*), fish tail palm (*Caryota mitis*), Mediterranean fan palm (*Chamaerops humilis*), windmill palm (*Trachycarpus fortunei*), Calabrian pine (*Pinus brutia*), Aleppo pine (*Pinus halepensis*), Canary Island pine (*Pinus canariensis*), plumeria (*Plumeria* spp.), blue gum (*Eucalyptus globulus*), bougainvillea (*Bougainvillea spectabilis*), bird of paradise (*Strelitzia reginae*), and Nile lily (*Agapanthus africanus*).

Offsite of the golf course to the north and west are open space areas. Immediately adjacent to the northerly boundary of the golf course is a steeply descending slope that supports a mixture of native and exotic species. Non-native species associated with the slope include castor bean (*Ricinus communis*), whorlhound (*Marrubium vulgare*), Asian mustard (*Brassica tournefortii*), pampas grass (*Cortaderia selloana*), tocalote (*Centaurea melitensis*), ice plant (*Carpobrotus edulis*), African daisy (*Osteospermum fruticosum*), Bermuda grass (*Cynodon dactylon*) and red brome (*Bromus madritensis* ssp. *rubens*). Native vegetation occurring on the slope is a mixture of coastal sage scrub species and riparian/marsh species including California coastal sagebrush (*Artemisia californica*), deerweed (*Lotus scoparius*), buckwheat (*Eriogonum fasciculatum*), coyote bush (*Baccharis pilularis*) and arroyo willow (*Salix lasiolepis*). Immediately adjacent to the northwesterly boundary of the golf course is a bluff supporting dense coastal sage scrub

² California Department of Fish and Game. October, 2005. Natural Diversity Database: RareFind 2.

³ California Native Plant Society. 2001. Inventory of Rare and Endangered Plants of California (Sixth Edition). Rare Plant Advisory Committee, David Tibor Convening Editor, California Native Plant Society, Sacramento, California, 388 pp.

dominated by California coastal sagebrush (*Artemisia californica*), deerweed (*Lotus scoparius*), coastal encelia (*Encelia californica*) and buckwheat (*Eriogonum fasciculatum*).

Birds observed within the property include American crow (*Corvus brachyrhynchos*), American kestrel (*Falco sparverius*), Anna's hummingbird (*Calypte anna*), marsh wren (*Cistothorus palustris*), mourning dove (*Zenaida macroura*), Allen's hummingbird (*Melanerpes formicivorus*), house finch (*Carpodacus mexicanus*), yellow-rumped warbler (*Dendroica coronata*), bushtit (*Psaltriparus minimus*), red-tailed hawk (*Buteo jamaicensis*), white-crowned sparrow (*Zonotrichia leucophrys*) and northern mockingbird (*Mimus polyglottos*).

Birds observed within the adjacent open space include the above-mentioned birds in addition to turkey vulture (*Cathartes aura*), white-tailed kite (*Elanus leucurus*), Cassin's kingbird (*Tyrannus vociferans*), sharp-shinned hawk (*Accipiter striatus*), and coastal California gnatcatcher (*Poliophtila californica californica*).

Reptiles observed on site include side blotch lizard (*Uta stansburiana*).

Mammals either observed by direct observation or by the presence of diagnostic sign (i.e., tracks, scat, etc.) within the property include Audubon's cottontail (*Sylvilagus audubonii*) and Beechey ground squirrel (*Spermophilus beecheyi*). Mammals observed within the adjacent open space include coyote (*Canis latrans*), meadow vole (*Microtus californicus*), Audubon's cottontail (*Sylvilagus audubonii*) and dusky-footed wood rat (*Neotoma fuscipes*).

Special-Status Animals

No special-status animals were observed on site; however, the coastal California gnatcatcher was observed in the coastal sage scrub to the northwest of the site as depicted on Exhibit 4.

Table 1 provides a summary of all species considered for the constraints analysis. Species were considered based on a number of factors, including: 1) species identified by the September 2005 CNDDDB as occurring (either currently or historically) on or in the vicinity of the property and 2) any other special-status species that are known to occur within the vicinity of the property, or for which potentially suitable habitat occurs on site. Following the table, additional discussions are provided for any special-status animals observed on site, for which potentially suitable habitat occurs on the property, and/or for which additional discussion is necessary for other reasons.

Table 1. Special-status wildlife considered for the constraints analysis.

Species Name	Status	Habitat Requirements	Occurrence On Site
American badger <i>Taxidea taxus</i>	Federal: None State: None CDFG: CSC	Occurs in drier shrub, forest, and herbaceous habitats. Needs open, uncultivated ground and friable soils for digging burrows. Preys on burrowing rodents.	Not expected to occur on site due to a lack of suitable habitat.
Belding's savannah sparrow <i>Passerculus sandwichensis beldingi</i>	Federal: None State: SE CDFG: None	Coastal Marshes	Not expected to occur on site due to a lack of suitable habitat.
Big free-tailed bat <i>Nyctinomops macrotis</i>	Federal: None State: None CDFG: CSC	Occurs in low-lying arid areas in Southern California. Roosts in high cliffs or rocky outcrops.	Not expected to occur on site due to a lack of suitable habitat.
California black rail <i>Laterallus jamaicensis coturniculus</i>	Federal: None State: ST CDFG: None	Coastal spartina marshes, inland in dense, shortgrass, shallow marshes.	Not expected to occur on site due to a lack of suitable habitat.
California least tern <i>Sterna antillarum browni</i>	Federal: FE State: SE CDFG: CFP	Flat, vegetated substrates near the coast. Occurs near estuaries, bays, or harbors where fish is abundant.	Not expected to occur on site due to a lack of suitable habitat.
Coastal California gnatcatcher <i>Poliptila californica californica</i>	Federal: FT State: None CDFG: CSC	Low elevation coastal sage scrub and coastal bluff scrub.	Not expected to occur on site due to a lack of suitable habitat; occurs in coastal sage scrub habitat directly adjacent to project site.
Cooper's hawk (nesting) <i>Accipiter cooperi</i>	Federal: None State: None CDFG: CSC	Primarily occurs in riparian areas and oak woodlands, most commonly in montane canyons. Known to use urban areas, occupying trees among residential and commercial.	May occur on site for foraging only.
Globose dune beetle <i>Coelus globosus</i>	Federal: None State: SE CDFG: None	Coastal sand dunes.	Not expected to occur on site due to a lack of suitable habitat.
Light-footed clapper rail <i>Rallus longirostris levipes</i>	Federal: FE State: SE CDFG: CFP	Marsh vegetation of coastal wetlands.	Not expected to occur on site due to a lack of suitable habitat.

Species Name	Status	Habitat Requirements	Occurrence On Site
Monarch butterfly (wintering) <i>Danaus plexippus</i>	Federal: None State: None	Roosts in winter in wind-protected tree groves along the California coast from northern Mendocino to Baja California, Mexico.	Not expected to occur on site due to a lack of suitable habitat.
Northern harrier (nesting) <i>Circus cyaneus</i>	Federal: None State: None CDFG: CSC	A variety of habitats, including open wetlands, grasslands, wet pasture, old fields, dry uplands, and croplands.	May occur as rare visitor for foraging only.
San Diego fairy shrimp <i>Branchinecta sandiegonensis</i>	Federal: FE State: None CDFG: CSC	Seasonal vernal pools	Not expected to occur on site due to a lack of suitable habitat.
San Diego horned lizard <i>Phrynosoma coronatum blainvillei</i>	Federal: None State: None CDFG: CSC	Occurs in a variety of vegetation types including coastal sage scrub, chaparral, annual grassland, oak woodland, and riparian woodlands.	Not expected to occur on site due to a lack of suitable habitat.
Southern California saltmarsh shrew <i>Sorex ornatus salicornicus</i>	Federal: None State: None CDFG: CSC	Presumed to be coastal marshes	Not expected to occur on site due to a lack of suitable habitat.
Western snowy plover <i>Charadrius alexandrinus nivosus</i>	Federal: FT State: None CDFG: CSC	Sandy or gravelly beaches along the coast, estuarine salt ponds, alkali lakes, and at the Salton Sea.	Not expected to occur on site due to a lack of suitable habitat.
White-tailed kite (nesting) <i>Elanus leucurus</i>	Federal: FSC State: None CDFG: CFP	Low elevation open grasslands, savannah-like habitats, agricultural areas, wetlands, and oak woodlands. Dense canopies used for nesting and cover.	May occur as rare visitor for foraging only.

Federal

FE – Federally Endangered
 FT – Federally Threatened
 FPT – Federally Proposed Threatened
 FSC – Federal Species of Concern

State

SE – State Endangered
 ST – State Threatened

CDFG

CSC – California Species of Concern
 CFP – California Fully-Protected Species

Coastal California Gnatcatcher (*Polioptila californica californica*)

The coastal California gnatcatcher (CAGN) is a federally listed threatened species and a CDFG designated species of concern. This small songbird is a year-round, obligate resident of coastal sage scrub communities in southern California and northwestern Baja California, Mexico. CAGN is insectivorous, and nests and forages in moderately dense stands of sage scrub occurring on arid hillsides, mesas, and in washes. CAGN generally occur below 1,200 feet in elevation. Coastal sage scrub communities dominated by California sagebrush (*Artemisia californica*), California buckwheat (*Eriogonum fasciculatum*), white sage (*Salvia apiana*), and black sage (*Salvia mellifera*) are preferred by this species. Loss and fragmentation of suitable habitat due to expanding development have been major factors in the decline of this bird in southern California; however, implementation of Habitat Conservation Plans and/or Natural Community Conservation Plans throughout most of range in southern California has ensured the long-term persistence of this species in the United States.

Coastal sage scrub (CSS) habitat will not be affected by the project and a 50-foot buffer will be established between areas of offsite CSS and areas impacted by development. CAGNs were detected during the non-nesting season within areas of adjacent CSS; however, these areas will be avoided and buffered from project impacts.

Protocol surveys were initially determined to be unnecessary as at least one individual gnatcatcher was observed during three of the four survey visits by expert birders within a few hundred feet of the site. In all instances, the gnatcatchers were detected without playing tapes that would require a Section 10(a)(1)(A) permit. Given the size of the patch of coastal sage scrub depicted on Exhibit 4, it is expected that the area would be capable of supporting one or possibly two pairs of breeding gnatcatchers, with the best habitat well removed from the edge of the existing golf course.

However, because only individual gnatcatchers were detected in early 2006 and early 2007, outside of the nesting season when gnatcatchers are still dispersing and potentially finding mates, it was determined that nesting season surveys would be appropriate to determine whether nesting individuals were using CSS within the areas that could be subject to direct or indirect impacts. As such, protocol surveys were conducted during May 2007 by GLA biologists with section 10(a)(1)(A) permits for the gnatcatcher.

Special-Status Plants

No special-status plants were observed during site reconnaissance, and none have the potential to occur, as the entire site is landscaped.

Table 2 provides a summary of all plants considered for the constraints analysis. Species were considered based on a number of factors, including: 1) species identified by the September 2005 CNDDDB as occurring (either currently or historically) on or in the vicinity of the property and 2) any other special-status plants that are known to occur within the vicinity of the property, or for which potentially suitable habitat occurs on site.

Table 2. Special-status plants considered for the constraints analysis.

Species	Status	Habitat	Occurrence On Site
Aphanisma <i>Aphanisma blitoides</i>	Federal: None State: None CNPS: List 1B	On south-facing slopes above coastal salt marsh. Occurs with California sagebrush, California buckwheat and bladderpod in also clay soils.	Does not occur on site due to lack of suitable habitat
Chaparral sand verbena <i>Abronia villosa</i> var. <i>aurita</i>	Federal: None State: None CNPS: List 1B	Sandy soils in chaparral, coastal sage scrub.	Does not occur on site due to lack of suitable habitat.
Coast woolly-heads <i>Nemacaulis denudata</i> var. <i>denudata</i>	Federal: None State: None CNPS: List 1B	Coastal dunes	Does not occur on site due to lack of suitable habitat
Coulter's goldfields <i>Lasthenia glabrata</i> ssp. <i>coulteri</i>	Federal: None State: None CNPS: List 1B	Playas, vernal pools, marshes and swamps (coastal salt).	Does not occur on site due to lack of suitable habitat
Coulter's saltbush <i>Atriplex coulteri</i>	Federal: None State: None CNPS: List 1B	Coastal bluff scrub, coastal dunes, coastal sage scrub, valley and foothill grassland. Occurring on alkaline or clay soils.	Does not occur on site due to lack of suitable habitat
Davidson's saltscale <i>Atriplex serenana</i> var. <i> davidsonii</i>	Federal: None State: None CNPS: List 1B	Alkaline soils in coastal sage scrub, coastal bluff scrub.	Does not occur on site due to lack of suitable habitat
Estuary seablite <i>Suaeda esteroa</i>	Federal: None State: None CNPS: List 1B	Coastal salt marsh and swamps. Occuring in sandy soils	Does not occur on site due to lack of suitable habitat
Los Angeles sunflower <i>Helianthus nuttallii</i> ssp. <i>parishii</i>	Federal: None State: None CNPS: List 1A	Salt and freshwater marshes, historically in Los Angeles, Orange, Riverside and San Bernardino Counties	Does not occur on site due to lack of suitable habitat
Many-stemmed dudleya <i>Dudleya multicaulis</i>	Federal: None State: None CNPS: List 1B	Chaparral, coastal sage scrub, valley and foothill grassland. Often occurring in clay soils.	Does not occur on site due to lack of suitable habitat
Mud nama <i>Nama stenocarpum</i>	Federal: None State: None CNPS: List 2	Marshes and swamps	Does not occur on site due to a lack of suitable habitat.

Species	Status	Habitat	Occurrence On Site
Prostrate navarretia <i>Navarretia prostrata</i>	Federal: FSC State: None CNPS: List 1B	Coastal sage scrub, valley and foothill grassland (alkaline), vernal pools. Occurring in mesic soils.	Does not occur on site due to lack of suitable habitat
Salt marsh bird's-beak <i>Cordylanthus maritimus</i> ssp. <i>maritimus</i>	Federal: FE State: SE CNPS: List 1B	Coastal dune, coastal salt marshes and swamps.	Does not occur on site due to lack of suitable habitat
San Fernando Valley spineflower <i>Chorizanthe parryi</i> var. <i>fernandina</i>	Federal: Candidate State: Candidate CNPS: List 1B	Coastal sage scrub, occurring on sandy soils.	Does not occur on site due to lack of suitable habitat
Southern tarplant <i>Centromadia parryi</i> ssp. <i>australus</i>	Federal: None State: Rare CNPS: List 1B	Disturbed habitats, margins of marshes and swamps, vernal mesic valley and foothill grassland, vernal pools.	Does not occur on site due to lack of suitable habitat
South coast saltscale <i>Atriplex pacifica</i>	Federal: None State: None CNPS: List 1B	Coastal bluff scrub, coastal dunes, coastal sage scrub, playas.	Does not occur on site due to lack of suitable habitat

Federal

FE - Federally Endangered
 FT - Federally Threatened

State

SE - State Endangered
 ST - State Threatened

CNPS

List 1B - Plants rare, threatened, or endangered in California and elsewhere.
 List 2 - Plants rare, threatened, or endangered in California, but more common elsewhere.
 List 3 - Plants about which more information is needed.

Special-Status Habitats

A review of the September 2005 CNDDDB identified the following special-status habitats as occurring within the Newport Beach Quadrangle: southern coastal salt marsh, southern cottonwood willow riparian forest, southern dune scrub and southern foredunes. None of these special-status habitats occurs within the golf course project area; however, as noted, coastal sage scrub, which is identified in the City of Newport Beach Coastal Land Use Policies, Section 4.0 Coastal Resource Protection, Section 4.1 Biological Resources as potential ESHA, does occur immediately adjacent to the site along the portions of the northern and northwesterly boundary [see below for more detailed discussion].

Critical Habitat

The property does not occur within any USFWS critical habitat units.

Environmentally Sensitive Habitat Areas (ESHA)

The coastal sage scrub immediately north of the site was evaluated in accordance with the policies set forth below it under Coastal Land Use Policies Section 4.1.1 et seq.). The following criteria were used to determine whether the CSS would be considered ESHA under Section 4.1.1.:

- *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.*
- *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.*
- *The presence of coastal streams.*
- *The degree of habitat integrity and connectivity to other natural areas.*

In addition, in accordance with section 4.1.1, CSS is specifically identified by the City as potential ESHA as follows:

“Another important habitat within the Newport Beach is coastal sage scrub (CSS). Although CSS has suffered enormous losses in California (estimates are as high as 85%), there are still thousands of acres in existence and this community type is no longer listed as rare by CDFG. Nevertheless, where CSS occurs adjacent to coastal salt marsh or other wetlands, or where it is documented to support or known to have the potential to support rare species such as the coastal California gnatcatcher, it meets the definition of ESHA because of its especially valuable role in the ecosystem. CSS is important transitional or “edge” habitat adjacent to saltmarsh, providing important function 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.”

Areas of CSS, *“are presumed to be ESHA unless there are strong site-specific reasons to rebut that presumption. Factors that should be considered when making site-specific assessments include:*

- Patch size and connectivity. Very small patches of habitat that are effectively isolated from other natural areas may lose many of their natural ecological functions. Functional patch size is dependent upon both the ecological needs of the species of importance supported by the habitat and the spatial scale of the habitat. For example, what is isolated for a small mammal may not be for a bird and what is small for a coyote may not be for some insects.
- Dominance by invasive, non-native species. Non-native species often provide poorer habitat for wildlife than native vegetation and proliferation of exotic plant species alters ecosystem processes and may threaten certain native species with extirpation. However, there are probably no habitats in southern California that have not been invaded by exotic species, and the remaining stands of native grassland are almost always dominated by non-native annual species. Only where exotic species are so overwhelmingly dominant that the native community can no longer perform its functions in the ecosystem should the presence of exotic species rebut the presumption of ESHA.
- Disturbance and proximity to development. Disturbance is the negative effect of human activities such as dumping, vegetation removal, development, pollution, etc. Habitat areas bordering development may be subject to impacts from negative edge effects, such as lighting, non-native invasive plant species, domestic animals, and human activity. The negative effects of disturbance are strongest immediately adjacent to development and decline with distance from the edge. However, where very small patches of habitat are effectively surrounded by development, these impacts may be severe. In general, disturbance by itself is not enough to rebut the finding of ESHA. Disturbance that is clearly reversible (e.g., presence of trash or illegal dumping) is not determinative.
- Fragmentation and isolation. Where there are large areas of more-or-less continuous development, native communities may be reduced to small islands of habitat that are distant from other natural habitats. This fragmentation and isolation can create barriers to migration, reduce wildlife food and water resources and generally compress territory size to reduce existing wildlife populations to non-viability.

This smaller a particular habitat patch is, the greater the proportion of its area that experiences negative edge effects.”

As noted above, coastal California gnatcatchers were detected in the CSS adjacent to the site during site visits in early 2006 and early 2007; however, these observations were made outside the nesting season and were of individual birds as depicted on Exhibit 4. The detection of a vocalizing gnatcatcher within approximately 80 feet of the site on January 10, 2007 at a time that gnatcatchers are dispersing and/or searching for mates, for example, is not an indicator by itself that the habitat is important (i.e., used regularly) for breeding or for foraging. Protocol surveys conducted during May 2007 detected paired gnatcatchers on two occasions many hundreds of feet from the project site, near Back Bay Road confirming that the better habitat is well removed from the golf course edge. As noted, on one occasion, a pair of gnatcatchers was observed approximately 30 feet beyond the limits of the proposed fuel modification zone as depicted on Exhibit 4. Based on these sightings, these offsite areas could be considered “potentially occupied” by the gnatcatcher and potential ESHA in accordance with the City’s Coastal Land Use Policies. Furthermore, application of the criteria that would allow rebutting of the presumed ESHA status does not lead to a conclusion that the subject CSS is not ESHA as set forth below:

Patch Size and Connectivity. The subject offsite CSS is part of a large natural area that consists of CSS and wetland habitats that are connected to the larger adjacent reserve area. The subject CSS is of sufficient size to support at least one and potentially two pairs of breeding coastal California gnatcatchers and the patch is within dispersal distance of other gnatcatcher pairs in the reserve.

Dominance by invasive non-native species/disturbance. The subject offsite CSS is not dominated by non-native invasive species and is not significantly disturbed and would not be considered as non-ESHA based on dominance by non-native invasive species or other types of disturbance.

Fragmentation and isolation. The subject offsite CSS is not fragmented or isolated; rather, as described above, and as depicted on Exhibit 4, is connected to a mosaic of other habitat types as well as CSS within a larger reserve area.

IMPACT ANALYSIS

The following discussion examines the potential impacts to plant and wildlife resources that may occur as a result of implementation of the project. Project-related impacts can occur in two forms, direct and indirect. Direct impacts are considered to be those that involve the loss, modification or disturbance of plant communities, which in turn, directly affect the flora and

fauna of those habitats. Direct impacts also include the destruction of individual plants or wildlife, which may also directly affect regional population numbers of a species or result in the physical isolation of populations thereby reducing genetic diversity and population stability. Other impacts, such as loss of foraging habitat, can occur although these areas or habitats are not directly removed by project development; i.e., indirect impacts. Indirect impacts can also involve the effects of increases in ambient levels of noise or light, unnatural predators (i.e., domestic cats and other non-native animals), competition with exotic plants and animals, and increased human disturbance such as hiking and dumping of green waste on site. Indirect impacts may be associated with the subsequent day-to-day activities associated with project build-out, such as increased traffic use, permanent concrete barrier walls or chain link fences, exotic ornamental plantings that provide a local source of seed, etc., which may be both short-term and long-term in their duration. These impacts are commonly referred to as “edge effects: and may result in a slow replacement of native plants by exotics, and changes in the behavioral patterns of wildlife and reduced wildlife diversity and abundances in habitats adjacent to project sites.

The potential for significant adverse effects, either directly or through habitat modifications, on any special-status plant, animal, or habitat that could occur as a result of project development is discussed below.

California Environmental Quality Act

Thresholds of Significance

Environmental impacts relative to biological resources are assessed using impact significance threshold criteria, which reflect the policy statement contained in CEQA, Section 21001(c) of the California Public Resources Code. Accordingly, the State Legislature has established it to be the policy of the State of California:

“Prevent the elimination of fish or wildlife species due to man’s activities, ensure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities...”

Determining whether a project may have a significant effect, or impact, plays a critical role in the CEQA process. According to CEQA, Section 15064.7 (Thresholds of Significance), each public agency is encouraged to develop and adopt (by ordinance, resolution, rule, or regulation) thresholds of significance that the agency uses in the determination of the significance of environmental effects. A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which

means the effect normally will be determined to be less than significant. In the development of thresholds of significance for impacts to biological resources CEQA provides guidance primarily in Section 15065, Mandatory Findings of Significance, and the CEQA Guidelines, Appendix G, Environmental Checklist Form. Section 15065(a) states that a project may have a significant effect where:

“The project has the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or wildlife community, reduce the number or restrict the range of an endangered, rare, or threatened species, ...”

Therefore, for the purpose of this analysis, impacts to biological resources are considered potentially significant (before considering offsetting mitigation measures) if one or more of the following criteria discussed below would result from implementation of the proposed project.

Criteria for Determining Significance Pursuant to CEQA

Appendix G of the 1998 State CEQA guidelines indicate that a project may be deemed to have a significant effect on the environment if the project is likely to:

- a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.*
- b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.*
- c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.*
- d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.*

e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.

f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

Environmentally Sensitive Habitat Areas

Section 30107.5 of the Coastal Act defines “environmentally sensitive habitat area” 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.” Section 30240 of the Coastal Act requires that environmentally sensitive habitat areas (ESHAs) be protected against any significant disruption of habitat values. Only uses dependent on those resources are allowed within ESHAs and adjacent development must be sited and designed to prevent impacts that would significantly degrade the ESHA and must be compatible with the continuance of the ESHA.

In addition to Policy 4.1.1-1, which requires the determination of ESHA habitat according to the aforementioned criteria, the following Policies apply:

- 4.1.1-3 Prohibit new development that would necessitate fuel modification in ESHA.*
- 4.1.1-4 Protect ESHAs against any significant disruption of habitat values.*
- 4.1.1-5 Design land divisions, including lot line adjustments, to preclude new development within and minimize impacts to ESHAs.*
- 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.*

Impacts to Vegetation and California Gnatcatcher

As noted, the majority of the project site includes existing golf course, which is predominately turf grass with ornamental landscaping. The conversion of turf and ornamental landscaping to hotel or residential uses would not be considered a significant impact on biological resources.

Project design has resulted in complete avoidance of offsite CSS, such that neither grading nor fuel modification activities would remove any CSS. In addition, project design includes a

minimum 50-foot buffer between developed areas and offsite CSS to ensure full compliance with the City's Coastal Land Use Policies.

Construction of the project could have a temporary adverse impact on CAGN nesting within preserved areas of coastal sage scrub adjacent to the site due to construction noise which could disrupt breeding activities. Potential impacts due to construction noise would be mitigated to a level that is less than significant as set forth in the mitigation measures below. Such impacts could be considered harassment under the federal ESA and would be addressed through coordination with USFWS and as determined by the USFWS could potentially require authorization through the Section 7 or Section 10 process referenced above [see mitigation section below for additional discussion].

The proposed project would result in the construction of dwelling units in proximity to CSS occupied by the CAGN, resulting in potential indirect impacts from lighting. Lighting impacts could be significant; however, with mitigation, such impacts can be reduced to less than significant. Mitigation measures are provided below that ensure that any potential lighting impacts are reduced to less than significant.

Impacts to Special-Status Plants

No special-status plants would be affected by the project.

Migratory Bird Treaty Act Considerations

The Hyatt Regency Golf Course property currently contains ornamental trees and shrubs that have the potential to support nesting birds. Impacts to such species are prohibited under the Migratory Bird Treaty Act.⁴ With mitigation (as set forth in the Mitigation section below), any potential impacts would be reduced to a less than significant level.

Raptor Foraging Habitat

The property is an open golf course, adjacent to open space, which supports, at best, moderate quality foraging habitat for common raptor species. Impacts to potential foraging area would not be considered significant pursuant to CEQA.

⁴ The MBTA makes it unlawful to take, possess, buy, sell, purchase, or barter any migratory bird listed in 50 C.F.R. Part 10, including feathers or other parts, nests, eggs, or products, except as allowed by implementing regulations (50 C.F.R.21). In addition, sections 3505, 3503.5, and 3800 of the California Department of Fish and Game Code prohibit the take, possession, or destruction of birds, their nests or eggs.

Corps/CDFG Jurisdiction

The property does not contain any Corps/CDFG jurisdiction.

Impacts to ESHA

As noted above, the project would have no direct adverse impact on CSS that potentially meets the City's Coastal Land Use Policies for ESHA under the California Coastal Act.

Mitigation

Direct impacts to special-status biological resources including CSS occupied by the CAGN have been fully avoided through project design that also includes a minimum 50-foot buffer between CSS and the development. Potential temporary indirect impacts due to construction noise on CAGN nesting within the vicinity of the site would require mitigation during the construction period and is addressed below. Finally, the project exhibits potential for impacts to nesting birds pursuant to the MBTA. Such impacts would be reduced to less than significant as described below.

Impacts to Coastal Sage Scrub and Coastal California Gnatcatcher

As noted, the direct loss of CSS has been avoided and mitigation for impacts to CSS is not required. Potential impacts due to construction noise would be mitigated by the following construction minimization measures designed to limit construction-related impacts to the CAGN as set forth in the NCCP/HCP:

The applicant shall comply with all requirements of the NCCP/HCP, including construction-related minimization and mitigation measures that minimize impacts to the coastal California gnatcatcher and other coastal sage scrub species. These include:

- To the maximum extent practicable, no grading of coastal sage scrub habitat that is occupied by nesting gnatcatchers will occur during the breeding season (February 15 through July 15). It is expressly understood that this provision and the remaining provisions of these "construction-related minimization measures" are subject to public health and safety considerations. These considerations include unexpected slope stabilization, erosion control measure and emergency facility repairs. In the event of such public health and safety circumstances, landowners or public agencies/utilities will provide USFWS/CDFG with the maximum practicable notice (or such notice as is specified in the NCCP/HCP) to allow for capture of gnatcatchers, cactus

wrens, and any other coastal sage scrub Identified Species that are not otherwise flushed and will carry out the following measures only to the extent as practicable in the context of the public health and safety considerations.

- Prior to commencement of grading operations or other activities involving significant soil disturbance, all areas of coastal sage scrub habitat to be avoided under the provisions of the NCCP/HCP, shall be identified with temporary fencing or other markers clearly visible to construction personnel. Additionally, prior to the commencement of grading operations or other activities involving disturbance of coastal sage scrub, a survey will be conducted to locate gnatcatchers and cactus wrens within 100 feet of the outer extent of projected soil disturbance activities and the locations of any such species shall be clearly marked and identified on the construction/grading plans.
- A monitoring biologist, acceptable to USFWS/CDFG will be on-site during any clearing of coastal sage scrub. The landowner or relevant public agency/utility will advise USFWS/CDFG at least seven (7) calendar days [and preferably fourteen (14) calendar days] prior to the clearing of any habitat occupied by Identified Species to allow USFWS/CDFG to work with the monitoring biologist in connection with bird flushing/capture activities. The monitoring biologist will flush Identified Species (avian or other mobile Identified Species) from occupied habitat areas immediately prior to brush-clearing and earth-moving activities. If birds cannot be flushed, they will be captured in mist nets, if feasible, and relocated to areas of the site to be protected or to the NCCP/HCP Reserve System. It will be the responsibility of the monitoring biologist to assure that Identified bird species will not be directly impacted by brush-clearing and earth-moving equipment in a manner that also allows for construction activities on a timely basis.
- Following the completion of initial grading/earth movement activities, all areas of coastal sage scrub habitat to be avoided by construction equipment and personnel will be marked with temporary fencing and other appropriate markers clearly visible to construction personnel. No construction access, parking, or storage of equipment or materials will be permitted within such marked areas.
- In areas bordering the NCCP Reserve System or Special Linkage/Special Management areas containing significant coastal sage scrub identified in the NCCP/HCP for protection, vehicle transportation routes between cut-and-fill locations will be restricted to a minimum number during construction

consistent with project construction requirements. Waste dirt or rubble will not be deposited on adjacent coastal sage scrub identified in the NCCP/HCP for protection. Preconstruction meetings involving the monitoring biologist, construction supervisors, and equipment operators will be conducted and documented to ensure maximum practicable adherence to these measures.

- Coastal sage scrub identified in the NCCP/HCP for protection and located within the likely dust drift radius of construction areas shall be periodically sprayed with water to reduce accumulated dust on the leaves as recommended by the monitoring biologist.

In addition, to further minimize impacts to nesting CAGN, if construction occurs during the CAGN breeding season (February 15 to July 15), a biological monitor will conduct weekly surveys of the coastal sage scrub within 300 feet of grading activities. If CAGN nest are located within 300 feet, noise monitoring will be implemented and where construction noise exceeds 60 decibels and the birds appear to be distressed, noise mitigation will be implemented and may include (but not be limited to), construction of noise barriers, change in grading arrays, or other means determined appropriate by the project biologist.

Indirect Impacts due to Lighting to CAGN

In order to ensure that project lighting along the northern perimeter of the site does not cause significant impact to nesting gnatcatchers the following measures will be implemented:

1. All lighting within 100 feet of coastal sage scrub will be directed away from coastal sage scrub habitat.
2. All lighting within 100 feet of coastal sage scrub will consist of the lowest intensities that still provide for adequate safety.
3. A qualified biologist will review lighting plans prior to construction to ensure that the proposed lighting minimizes potential impacts on the California gnatcatcher.

As noted, the project has been designed to avoid direct impacts to CSS as well as provision of a minimum 50-foot buffer between CSS and developed areas. This avoidance in conjunction with implementation of the NCCP/HCP construction minimization measures and mitigation for construction noise impacts and project lighting impacts would result in avoidance of “take” of the California gnatcatcher. Nevertheless, the applicant will coordinate with USFWS and will implement any additional measures required by USFWS to ensure that no adverse impacts to the CAGN are associated with the project.

Nesting Birds Protected under the MBTA

As noted above, the site contains a number of non-native trees. Because there is the potential for migratory birds to nest in the trees on site, the following recommendations are provided to ensure that nesting birds are not harmed during project construction:

1. Identify all trees to be removed during project construction. Such trees should be removed outside the avian nesting season, which extends from March 15 to July 15.
2. If for some reason it is not possible to remove all trees during the non-nesting season, then prior to removal, trees to be removed during the nesting season must be surveyed by a qualified biologist no more than three days prior to removal. If no nesting birds are found, the tree may be removed. If nesting birds are detected, then removal must be postponed until the fledglings have vacated the nest or the biologist has determined that the nest has failed. Furthermore, the biologist shall establish an appropriate buffer zone where construction activity may not occur until the fledglings have vacated the nest or the biologist has determined that the nest has failed.
3. Similarly, for trees being preserved, if construction is to occur during the nesting season, preserved trees should be surveyed for the presence of nesting birds. If nesting birds are detected, the biologist shall establish an appropriate buffer zone where construction activity may not occur until the fledglings have vacated the nest or the biologist has determined that the nest has failed.

If you have any questions regarding this letter report, please contact me at (949) 837-0404.

Sincerely,

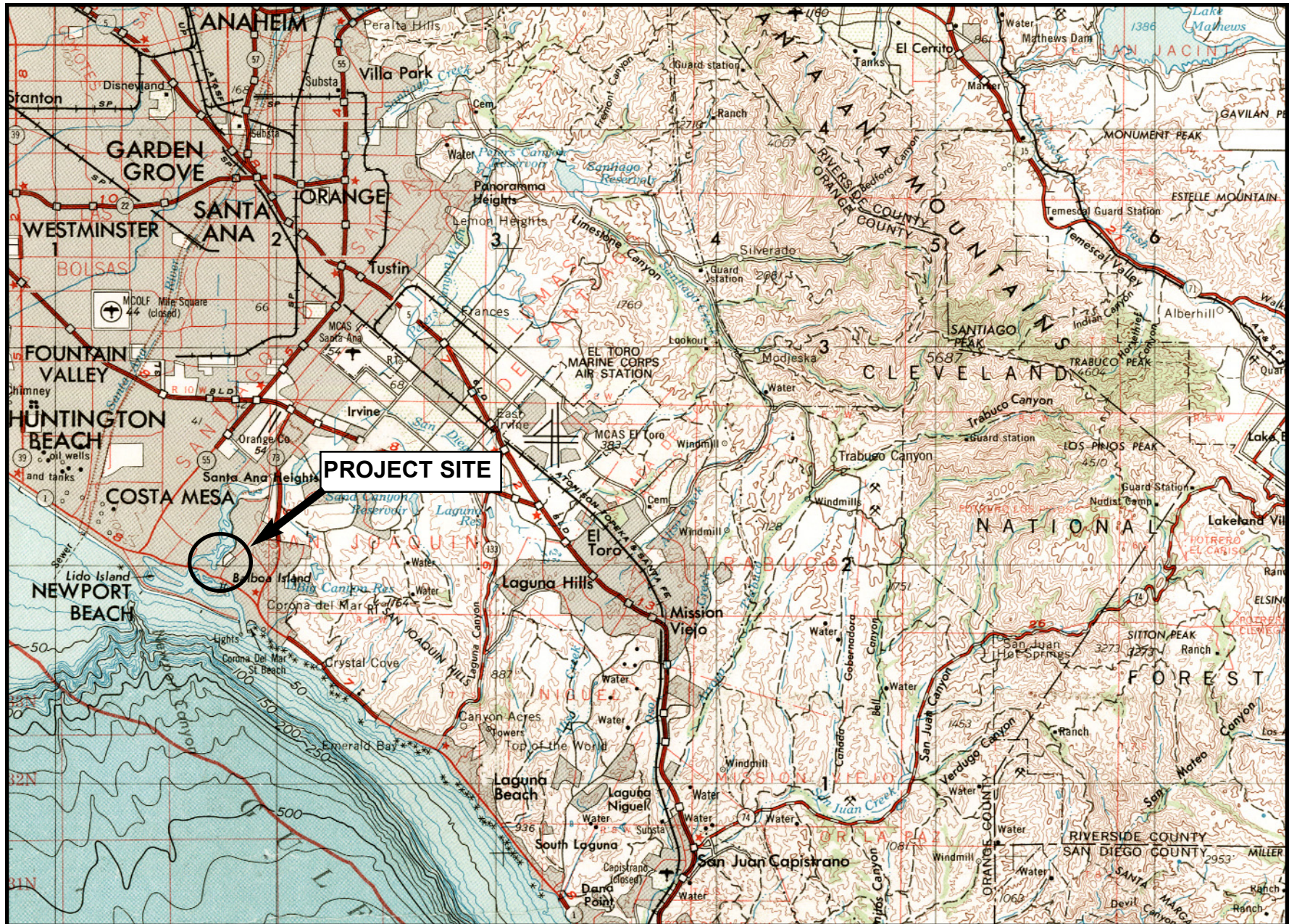
GLENN LUKOS ASSOCIATES, INC.

Tony Bomkamp
Senior Biologist

Adapted from USGS Santa Ana quadrangle

NORTH
↑

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2
4
6
MILES



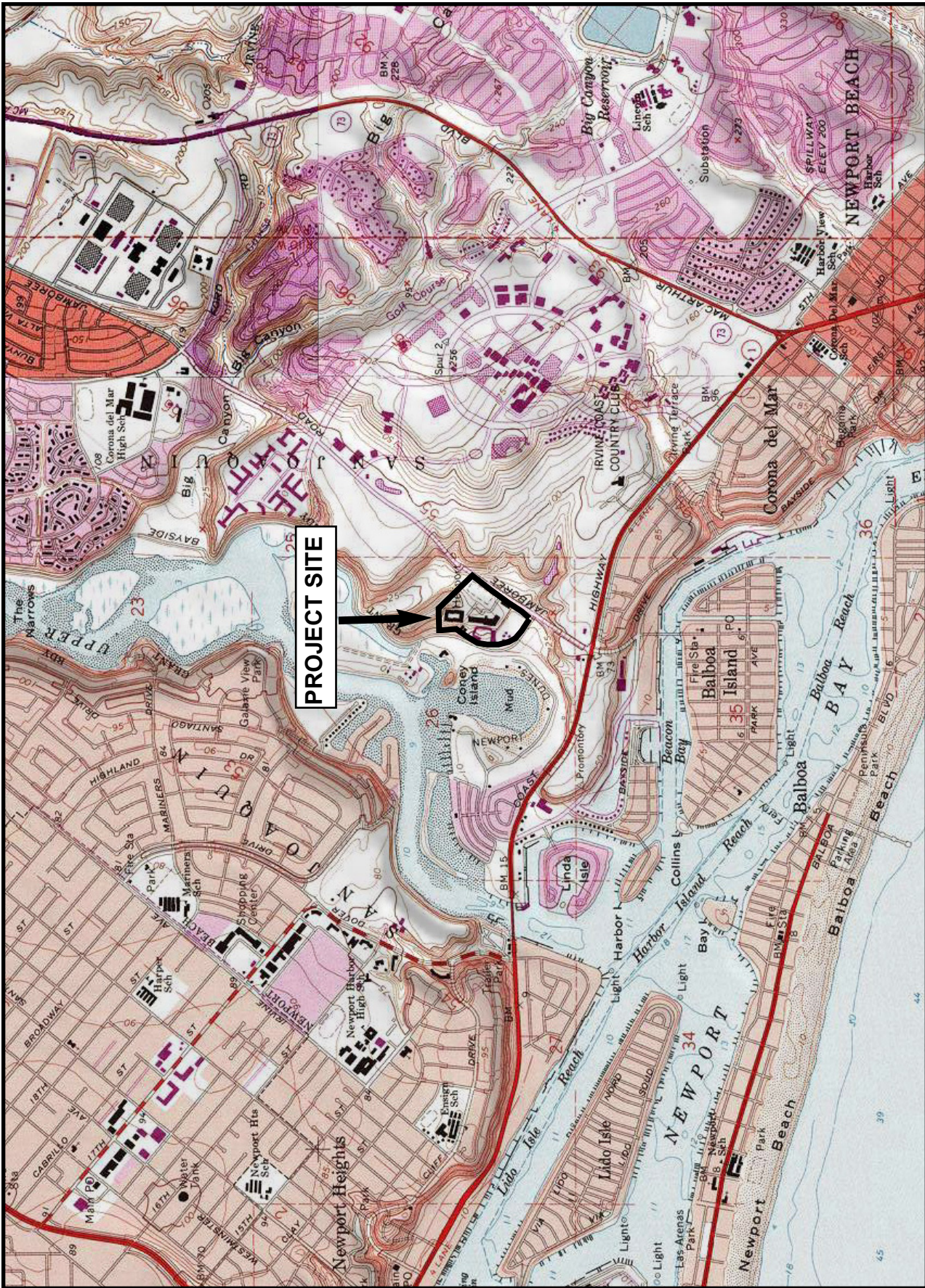
HYATT REGENCY GOLF COURSE

Regional Map

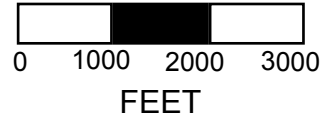
GLENN LUKOS ASSOCIATES

EXHIBIT 1





Adapted from USGS Newport Beach OES quadrangle

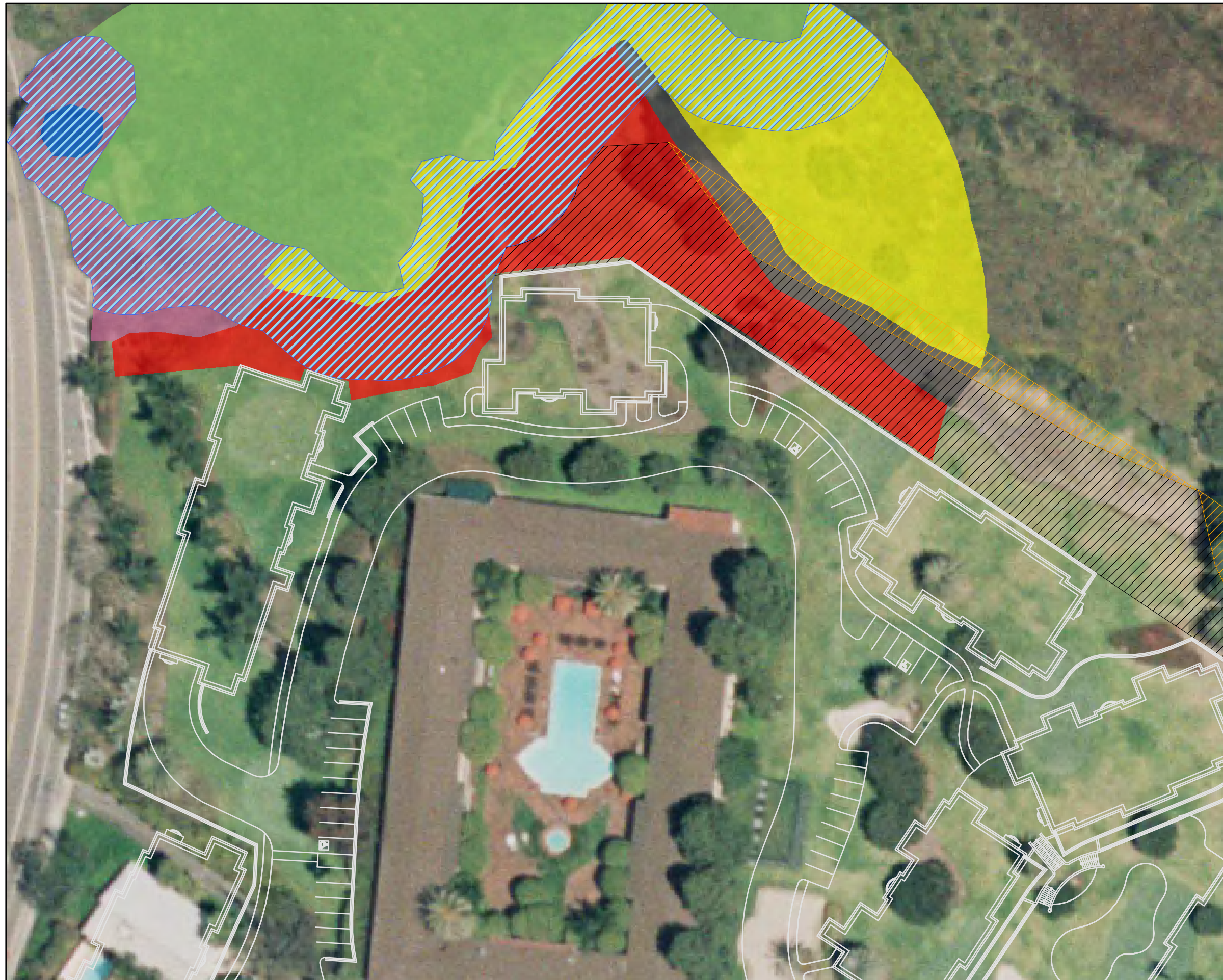


HYATT REGENCY GOLF COURSE
Vicinity Map



GLENN LUKOS ASSOCIATES

EXHIBIT 2

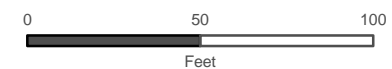


Legend

- Site Plan
- Vegetation**
- CSS
- Disturbed
- Disturbed Wetland
- Golf Course/Ornamental
- Ruderal
- Ruderal/Ornamental

Fuel Modification Zones

- ▨ Zone B:
This zone lies within existing maintenance easement. No additional Landscaping is anticipated for this area. Surface fuels shall be maintained At a height not to exceed 18 inches, grasses shall not exceed 8 inches in height. All non-native trees and shrubs shall be removed from this zone. Any proposed planting in this zone shall be in accordance with planting guidelines and spacing standards established in the Nbfd Fuel Modification Standards. All undesirable plant species shall be Removed and the area shall be maintained free of dead and dying plant material.
- ▨ Zone C/D:
No additional landscaping is anticipated for this zone. Treatment of this zone Shall include removal of all dead and dying vegetation. All fine fuels shall be reduced to a maximum of 8-12 inches in height. Trees and large tree-form shrubs which are being retained shall be pruned to provide clearance of three times the height of the under story plant material or 10 feet, whichever is higher. Dead and excessively twiggy growth shall also be removed. All existing plants or plant groupings shall be separated by a distance of three times the height of the plant material or 20 feet, whichever is greater.
- ▨ Special Treatment Zone
Environmentally sensitive area adjacent to coastal sage scrub habitat. Landscaping vegetation shall be limited to Carex grass species or ground Cover only from the Nbfd fire resistive plant list. Ground cover to be Irrigated and maintained at a height of 8 inches or less and free of dead plant Material. No shrubs or trees to be planted in this zone.



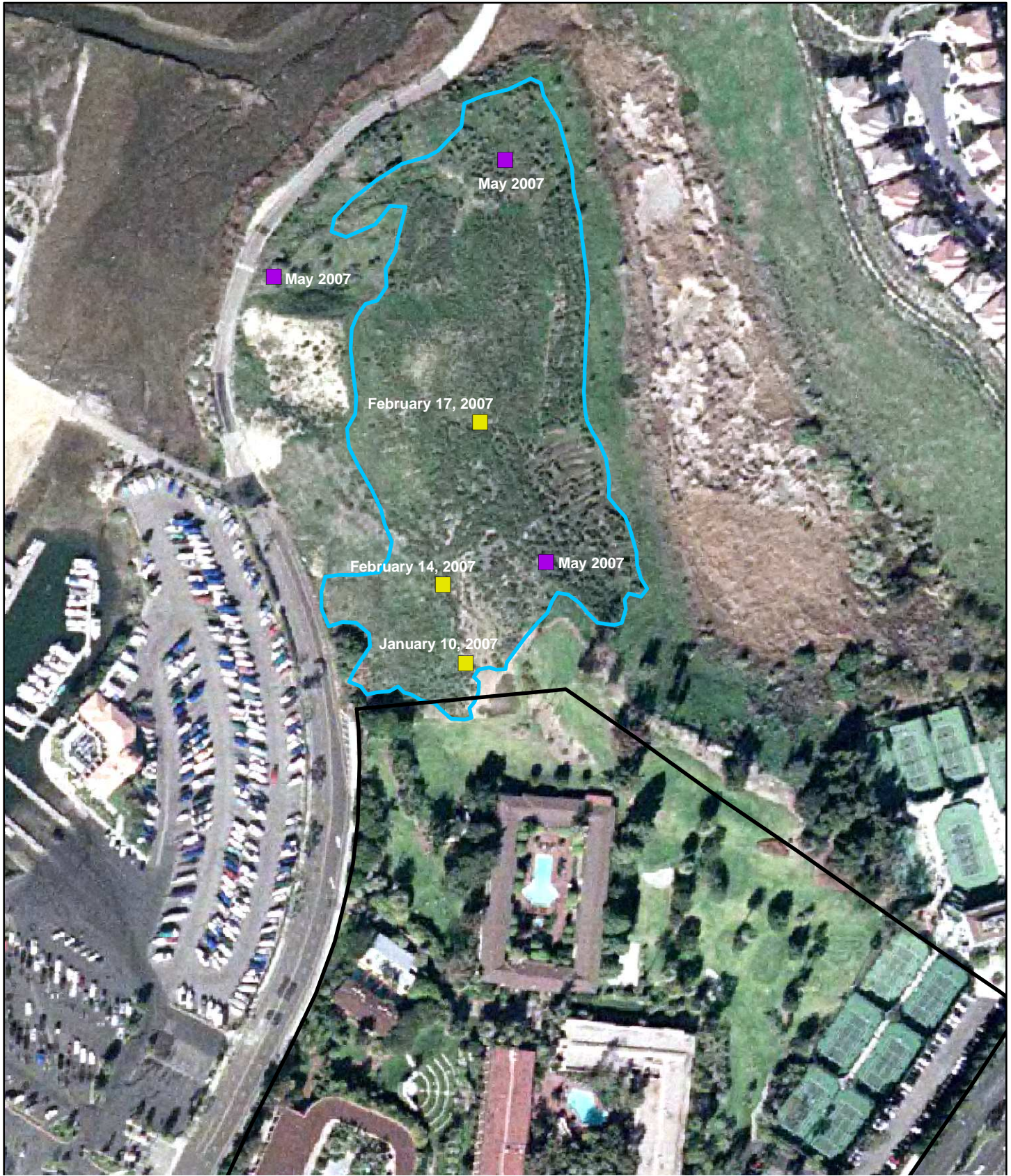
NEWPORT HYATT REGENCY

Vegetation/Fuel Modification Zone Map

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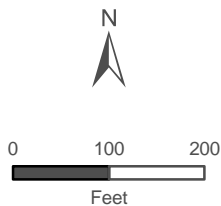
Exhibit 3



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Legend

-  Project Boundary
-  CSS
-  Observed CAGN Individuals (Early 2006 or Early 2007)
-  Observed CAGN Pairs (May 2007)



NEWPORT HYATT REGENCY
 CAGN Location Map

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Exhibit 4