

Comments on dEIR for Banning Ranch.

Attachments:

1. Planned Community Development Plan for Banning Ranch and Technical Appendices (August 2008)
2. Coastal Commission Consent Cease and Desist Order CCC-11-CD-03 and Coastal Commission Consent Restoration Order CCC-11-RO-02 and attachments
3. Orange County Transportation Authority (OCTA) Measure M Environmental Oversight Committee (EOC) reports including map and acquisition properties evaluation
4. Letter, dated 4/15/09, from NB City Council in support of application for Measure M funds to be used towards the purchase of the entire Banning Ranch.
5. Coastal Commission staff reports, and attachments, for Coastal Development Permit for Sunset Ridge Park project (application number 5-10-168) from both 9-23-11 and 10-20-11
6. The "Vandersloot File"
7. Final Sunset Ridge Park EIR approved by NB council April 23, 2010

Note: Per City Planner Patrick Alford, the attachments are being uploaded to a designated "Dropbox" file upload site, as well as being provided in the form of DVDs to City Hall.

## BIOLOGICAL RESOURCES

1. ESHA

The single most important factor affecting this development in the area of Biological Resources is the presence of Environmentally Sensitive Habitat Areas (ESHAs). The general concept of ESHAs and their relationship to the Coastal Act are briefly discussed, but there is no attempt to delineate ESHAs on the Banning Ranch property. ESHAs undoubtedly exist on Banning Ranch and it is likely that their presence will drastically limit the size of the development, if not outright prevent the development from being built. The dEIR says ESHA determinations will be made by the Coastal Commission, but this will happen months after the dEIR might be voted on by the City Council. Before this City Council vote, an honest attempt should be made to delineate ESHAs as best as possible, using the Coastal Act as the standard of review, but also using the Newport Beach CLUP as guidance. It is not in the public's interest to have the City Council vote on this project without a reasonable expectation of where the ESHAs exist on Banning Ranch, and how they might be affected. To be a responsible lead agency, the City of Newport Beach must understand the extent of the ESHAs before voting on this project. The results of the NB

council approving a project that impacts ESHA can mean much money and time spent on a project that violates the Coastal Act and has no chance of being approved. Such is the case at Sunset Ridge Park, where the City of NB approved a park design that was not consistent with the Coastal Act. Had the NB council known from the beginning where the ESHA is located, a different park design would have been considered earlier.

In or around early 2009, a Newport Banning Ranch Planned Community Development Plan, with extensive appendices (dated 8/08), was posted on the City of Newport Beach's website. It was removed a few months later. This entire plan, with appendices, is being submitted for the record as it included extensive invaluable material that is not present in the current dEIR.

For one thing, a map of probable ESHA was included in the 2008 appendices (this map is not present in the dEIR). While this map will undoubtedly be expanded as the knowledge of the biological resources on Banning Ranch increases, this 2008 map is significant for the extensive ESHA in the northeast corner of Banning Ranch where the extension of Bluff Road to 19<sup>th</sup> St. is proposed (see page 351 or 540 on the Technical Appendices, vol. II dated 8/08). The dEIR does not explain why a road is planned for this area despite this area being previously mapped as ESHA by the applicant.

Additional ESHA on Banning Ranch is described in the NW and SE polygons in the Coastal Commission Consent Cease and Desist Order CCC-11-CD-03 and Coastal Commission Consent Restoration Order CCC-11-RO-02 (described on page 9 of 22 as well as on other pages). Maps of these areas can be seen in the attachments for the same documents (page 8 of 100 as well as on other pages).

Additional ESHA is described in the Sunset Ridge Park Coastal Development Permit (application number 5-10-168) staff report dated 10/20/11. This document describes two areas of ESHA known as "ESHA East" and "ESHA West" (described on pages 17-19 of 46, as well as described elsewhere). Maps of "ESHA East" and "ESHA West" can also be seen in the attachments for the same document (page 177 of 204 as well as on other pages).

In 2009, the Banning Ranch Conservancy applied to the Measure M Environmental Oversight Committee (EOC), which is part of the Orange County Transportation Authority (OCTA) for funds to be used for the purchase of the entire Banning Ranch. This request was supported by a unanimous vote by the NB City Council resulting in a letter of support. Following this application, the EOC evaluated the many open space project applicants, ranking them all. The EOC placed Banning Ranch in the highest category (Group 1) based on "high quality habitat, heterogeneous habitat, larger sized properties, aligns with impacted habitats, and contains covered species." Furthermore, the EOC identified four "priority conservation areas" on the Banning Ranch mesa. Please review the Final Conservation Biology Report as well as the Acquisition Properties Evaluation List and Map.

2. Vernal Pool/wetland data is incomplete. There is no mention of the roughly 15 acres of USFWS-declared critical habitat for the San Diego Fairy Shrimp in the middle mesa. The dEIR does mention seven vernal pools/wetlands that have been demonstrated to contain San Diego Fairy Shrimp, but it does not show the locations of the other vernal pools/wetlands detected during surveys conducted by the owner's consultants, many of which contain Versatile Fairy Shrimp. Additionally, there is no mention of the roughly 24 other documented or potential vernal pools/wetlands described in the document *Complete Banning Ranch Mesa Vernal Pools/Wetlands*.

Under US Fish and Wildlife Service guidelines, a vernal pool has to be subjected to two separate studies before the vernal pool can be determined to be free of listed branchiopods (in this case, the San Diego Fairy Shrimp).

## **"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"**

***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).***

It is important to note that the City of Newport Beach has acknowledged the necessity of conducting two rounds of vernal pool/wetland surveys and has offered to conduct a second round of surveys on four of the potential vernal pools/wetlands on Banning Ranch that lie in a proposed dump site for the Sunset Ridge Park project (VP34, VP35, VP 36, and VP39) in a letter to Coastal Commission staff dated 10-19-11 (Exhibit 13 for the attachments of the Coastal Commission Staff report for the Sunset Ridge Park staff report dated 10-20-11).

In this letter the City says, "Coastal staff in a recent follow-up meeting now further requested that a wet season study be undertaken to further check and confirm that vernal pools or wetlands conditions do not exist in this area The City will agree to undertake this study, and work with Coastal Staff to modify our proposed grading disposal area accordingly if BRC's allegation can be substantiated, and if the subject park project application is approved." (page 10 of 74) Here is a list of potential/documented vernal pools/wetlands on the Banning Ranch mesa:

Vernal pool/wetland presence on aerial flyovers (Note: Significant winter rainstorms started 1/19/10 and 12/18/10)

n/a = not applicable. This means the flyover did not adequately evaluate the vernal pool/wetland.

Unk = unknown (has not been excluded by protocol studies)

Vernal Pool/ Wetland	Latitude All are 33° North	Longitude All are 117° West					Documented ponding water for ≥17 days	Two wet season surveys or one wet season and one dry season survey by certified biologist	Versatile Fairy Shrimp	San Diego Fairy Shrimp (exclusion based on Two wet season surveys or one wet season and one dry season survey by certified biologist)
(Letters) refer to 2011 Glenn Lukos study			1/28/10 9 days after rain started	12/24/10 6 days after rain started	1/11/1 1 25 days after rain started	2/7/11 52 days after rain started				
1 (VP1)	38'04.16"	56'37.23"	Yes	Yes	Yes	Likely	Yes	Yes	Yes	Yes
2 (VP2)	38'02.38"	56'38.31"	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
3 (D)	38'00.10"	56'37.56"	Yes	Yes	Yes	No	Yes	Yes	Yes	No
4 (C)	37'57.70"	56'39.50"	Yes	Yes	n/a	n/a	Yes	No	Yes	Unk
5 (B)	37'55.45"	56'36.21"	Yes	Yes	Yes	No	Yes	Yes	Yes	No
6	37'59.67"	56'33.97"	Yes	Yes	Yes	n/a	Yes	Yes	Unk	No
7 (F)	37'58.35"	56'32.70"	Yes	Yes	Yes	n/a	Yes	No	Unk	Unk
8 (I)	38'02.06"	56'32.30"	Yes	Yes	Yes	n/a	Yes	No	Unk	Yes
9 (J)	38'03.04"	56'31.88"	Yes	Yes	Yes	No	Yes	No	Unk	Yes
10 (K)	38'03.14"	56'30.31"	Yes	Yes	Yes	No	Yes	No	Unk	Unk
11 (M)	38'04.82"	56'29.27"	Yes	Yes	Yes	No	Yes	No	Yes	Unk
12 (P)	38'06.78"	56'32.10"	Yes	Yes	n/a	n/a	Unk	No	Yes	Unk
13 (R)	38'06.26"	56'33.92"	Yes	Yes	n/a	n/a	Unk	No	Yes	Unk
14 (H)	38'02.19"	56'33.72"	No	Yes	No	n/a	Unk	No	Unk	Unk
15 (L)	38'02.93"	56'30.16"	Yes	Yes	Yes	No	Yes	No	Unk	Unk
16 (N)	38'04.22"	56'30.75"	Yes	Yes	Yes	No	Yes	No	Yes	Unk
17 (E)	37'59.20"	56'35.82"	Likely	Yes	Yes	Likely	Yes	No	Unk	Yes
18 (O)	38'04.94"	56'30.73"	Yes	Yes	Yes	No	Yes	No	Unk	Unk
19 (Q)	38'05.26"	56'30.76"	Yes	Yes	n/a	n/a	Unk	No	Unk	Unk
20 (T)	38'09.03"	56'32.63"	Yes	Yes	n/a	n/a	Unk	No	Yes	Unk
21 (S)	38'08.53"	56'33.66"	Yes	Yes	n/a	n/a	Unk	No	Unk	Unk
22 (U)	38'09.76"	56'33.44"	Yes	Yes	n/a	n/a	Unk	No	Unk	Unk
23	37'53.56"	56'41.70"	Likely	n/a	n/a	No	Unk	No	Unk	Unk
24a	37'36.86"	56'41.12"	n/a	n/a	n/a	n/a	Unk	No	Yes	Unk
24b	37'35.09"	56'41.40"	n/a	n/a	n/a	n/a	Unk	No	Yes	Unk
25	38'11.59"	56'38.45"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
26	37'58.76"	56'52.07"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
27	37'35.37"	37'35.37"	n/a	n/a	n/a	n/a	Unk	No	Yes	Unk
28a(V)	38'24.29"	56'41.49"	n/a	n/a	n/a	n/a	Unk	Yes	Yes	No
28b			n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
29 (W)	37'41.79"	56'22.33"	No	n/a	n/a	n/a	Yes	No	Unk	Unk
30a(A)	37'47.36"	56'46.77"	n/a	Yes	n/a	n/a	Unk	Yes	Yes	No

30b	37'47.36"	56'46.77"	n/a	Yes	n/a	n/a	Unk	No	Unk	Unk
31			n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
32 (see 30a)										
33	37'50.38"	56'47.20"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
34	37'40.02"	56'27.15"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
35	37'39.51"	56'27.73"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
36	37'41.99"	56'26.12"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
37	37'38.97"	56'40.80"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
38	37'15.87"	56'39.78"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
39	37'43.46"	56'27.30"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
40	38'05.27"	56'42.29"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
41	38'01.44"	56'39.62"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
42	37'52.96"	56'48.49"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
43	37'56.45"	56'39.89"	Yes	n/a	n/a	n/a	Unk	No	Unk	Unk
44	37'35.65"	56'37.30"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
45	37'37.41"	56'37.30"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
46 (see 27)	37'35.37"	37'35.37"	n/a	n/a	n/a	n/a	Unk	No	Unk	Unk
47	37'50.50"	56'39.64"	Yes	Yes	n/a	n/a	Unk	No	Unk	Unk
48	37'56.99"	56'37.96"	Yes	Yes	n/a	n/a	Unk	No	Unk	Unk
49a	37'52.57"	56'21.52"	Yes	n/a	n/a	n/a	Unk	No	Unk	Unk
49b	37'52.57"	56'21.52"	Yes	n/a	n/a	n/a	Unk	No	Unk	Unk
(AD3)							Unk	No	Unk	Yes
(G)							Unk	No	Unk	Yes

Comments: The vernal pools/wetlands are listed by their number designations from the DVD *The Complete Banning Ranch Mesa Vernal Pools/Wetlands*. The letters in parenthesis refer to the letter designations in the 2010/2011 Glenn Lukos Study. Vernal pools 1 – 22, along with 51, 40, 41, 43, 48, AD3 and G are located in the “middle mesa” area and constitute the largest vernal pool complex on Banning Ranch. Vernal pools 1 and 2 are described as “Vernal Pool and small adjacent depression” respectively, in the 5/19/00 GLA report (which documented San Diego Fairy Shrimp in both). Vernal pools 23, 25, 26 are located in vicinity to the “middle mesa” vernal pool complex, but are not well seen in the aerial photos. Vernal pools 27, 24a, 24b, 3, 2, and 1 are described as “Depressions 1, 2, 3, 4, 5, and Vernal Pool” respectively, in the 10/18/00 GLA report. Vernal pool 30a was described in the 4/21/08 and 5/28/09 GLA reports.

### 3. The “Vandersloot File”

In 2008, the late Dr. Jan Vandersloot took several walking tours of Banning Ranch, carefully documenting by photo numerous plants and other biological features of Banning Ranch. Dr. Vandersloot carefully noted the type of plant, and its location, by hand-held GPS device. The information collected by Dr. Vandersloot is important because it documents native vegetation where the dEIR describes non-native, ruderal, or ornamental vegetation. The “Vandersloot File” (Dr. Vandersloot’s photo collection, Excel File describing what is in the photos, and their GPS locations, hand drawn maps showing where he walked and stopped to take photos, and a link to “GoogleEarth” showing “push-pins” at each location he stopped to take photos) is submitted as part of the record.

Two examples of discrepancies between the “Vandersloot File” and the vegetation map of the dEIR are:

- a. Dr. Vandersloot documented mulefat at “B75”, where the dEIR vegetation map says “non-native grassland.”
- b. Dr. Vandersloot documented encelia at “B152” where the dEIR vegetation map says “non-native grassland”.

Many other discrepancies exist. A thorough comparison between the “Vandersloot File” and the vegetation should be undertaken.

Any discrepancies warrant a review and site visit by a third party biologist.

Instructions on how to use the “Vandersloot File”

Jan Vandersloot collected this data in late 2008. Jan walked portions of Banning Ranch on 10/12/08, 10/19/08, 10/26/08, 11/1/08, 11/8/08, 11/22/08, 11/30/08, and 12/7/08.

10/12/08 was just a “warm up” day where Jan tested his GPS device. Pictures are not currently available for 10/12/08.

Pictures taken on 11/30/08 are currently not available. It is not clear why they are not available. Perhaps they will turn up some day.

Hand-drawn maps show where the photos were taken each day.

An Excel file gives coordinates of each photo, an approximate size of the studied area, as well as a description of what is depicted in each photo (doesn't include 12/7/08).

Finally, the location of most of the photos are depicted on Google Earth with "push-pins."

Below is Jan's description of his method:

**11-29-08**

**Notes on the files on this disk:**

- 1. The first folder, dated 10-12-08, was the first visit to get oriented. No GPS readings were taken on this date.**
- 2. The folders dated 10/19/08, 11/01/08, 11/08/08, 11/22/08, were taken with GPS readings by a Garmin GPS II model, with stated accuracy of 5-10 meters (16-33 feet). This was confirmed in my backyard.**
- 3. Since I am new to using the GPS device, the protocol for displaying the waypoint results went through an evolution. The first few waypoints are not numbered on the photos, but were saved on the GPS unit. Finally, the following protocol was followed: First the GPS waypoint was determined based on roughly the center of the vegetation patch. Then a closeup of the GPS reading was photographed to show the reading in degrees, minutes, seconds. Then I zoomed out to show where the GPS unit was located in relationship to the vegetation and photographed that point. Then a further backup photo was taken to show the general area of the vegetative patch. Thus there is usually a sequence of first a closeup of the GPS reading, with receding views after that.**
- 4. Subsequent to trying to display the GPS waypoints on Google Earth with degrees, minutes, seconds, which was way off, I used the NAV function of the GPS unit to convert the waypoints to decimal degrees. This was much more successful in placing the waypoints on Google Earth. You can see these waypoints on the Banning Ranch Decimal GPS Table on the disk. I also included the GPS Table with the original degrees, minutes, seconds recorded on the GPS unit.**

**5. The work sheets were performed by walking the areas of vegetation to determine the size in yards of each patch. Thus, you can locate the GPS waypoints on the maps.**

**6. The photographs were taken with a Nikon Coolpix 8800 with dates of the photos imprinted on the photos.**

**Jan Vandersloot**

Gnatcatcher data and Cactus Wren data

The dEIR shows one year of Gnatcatcher data (2009), and this uses “condensation points” rather than actual field data. Single “condensation points” are insufficient for establishing ESHA delineations (please review excellent discussion of this topic by biologist Robb Hamilton at the Coastal Commission hearing on Sunset Ridge Park, 11/2/11).

In addition, the dEIR doesn’t mention the multiple previous Gnatcatcher and Cactus Wren surveys from 1992-2008, as well as additional documentation of Gnatcatchers that was produced during the effort to build a park at Sunset Ridge. A summary of Gnatcatcher surveys is provided in the attachment for the Coastal Commission staff report for the Coastal Development Permit for Sunset Ridge Park project (application number 5-10-168) from 9-23-11 (see pages 119 – 139). Maps for 1995, 2006 and 2007 (which are not included in the above-mentioned attachment for the staff report) are presenting in the following three pages.

Again, where possible, field data should be produced for Gnatcatcher (and other species) surveys that present data as a single “condensation point”





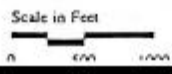
Base Map Source: Fuscoe, Williams, Lindgren & Short.

6/26/95(WNO201)

Figure 1



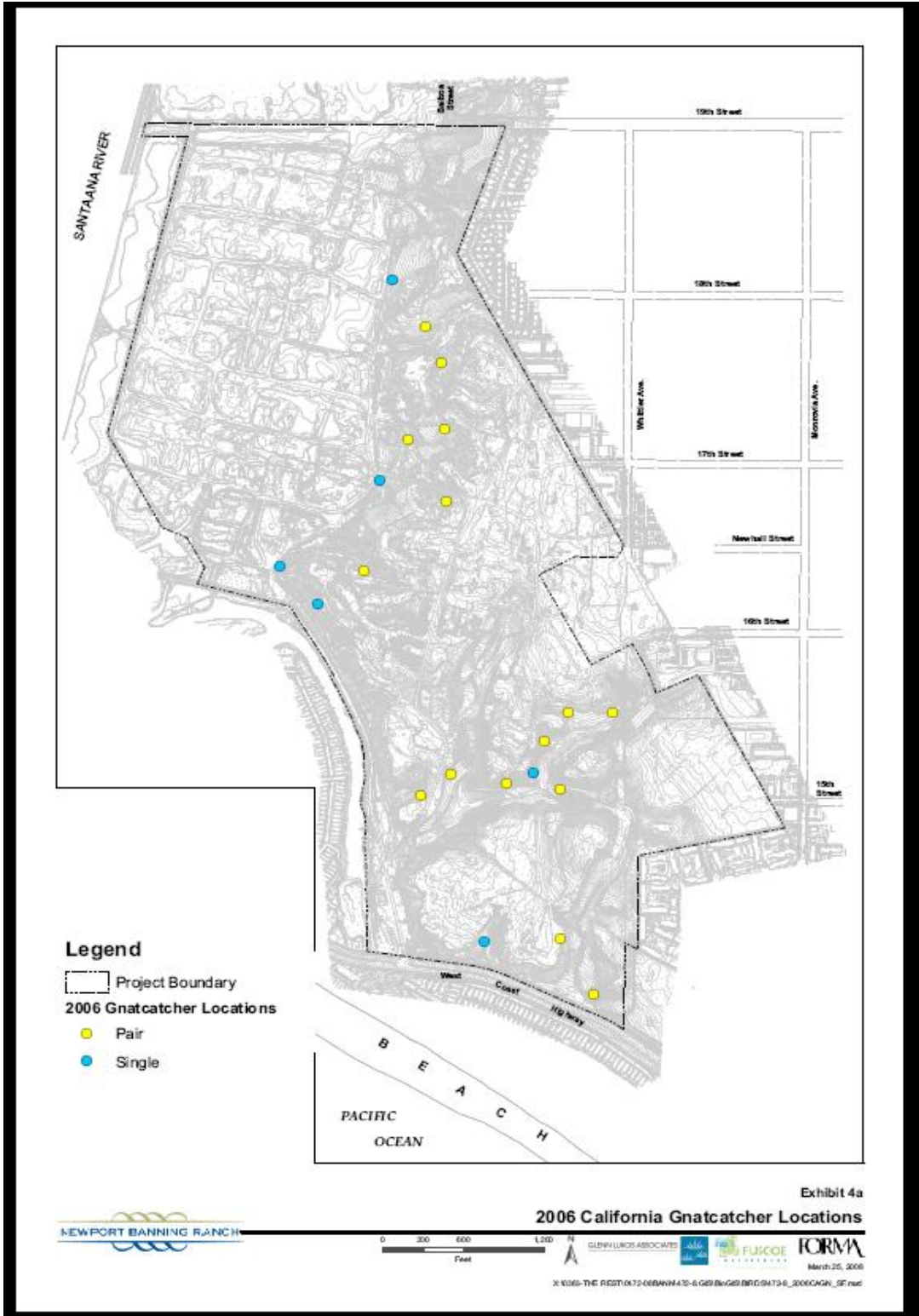
**LSA**



Spring 1995

California Gnatcatcher

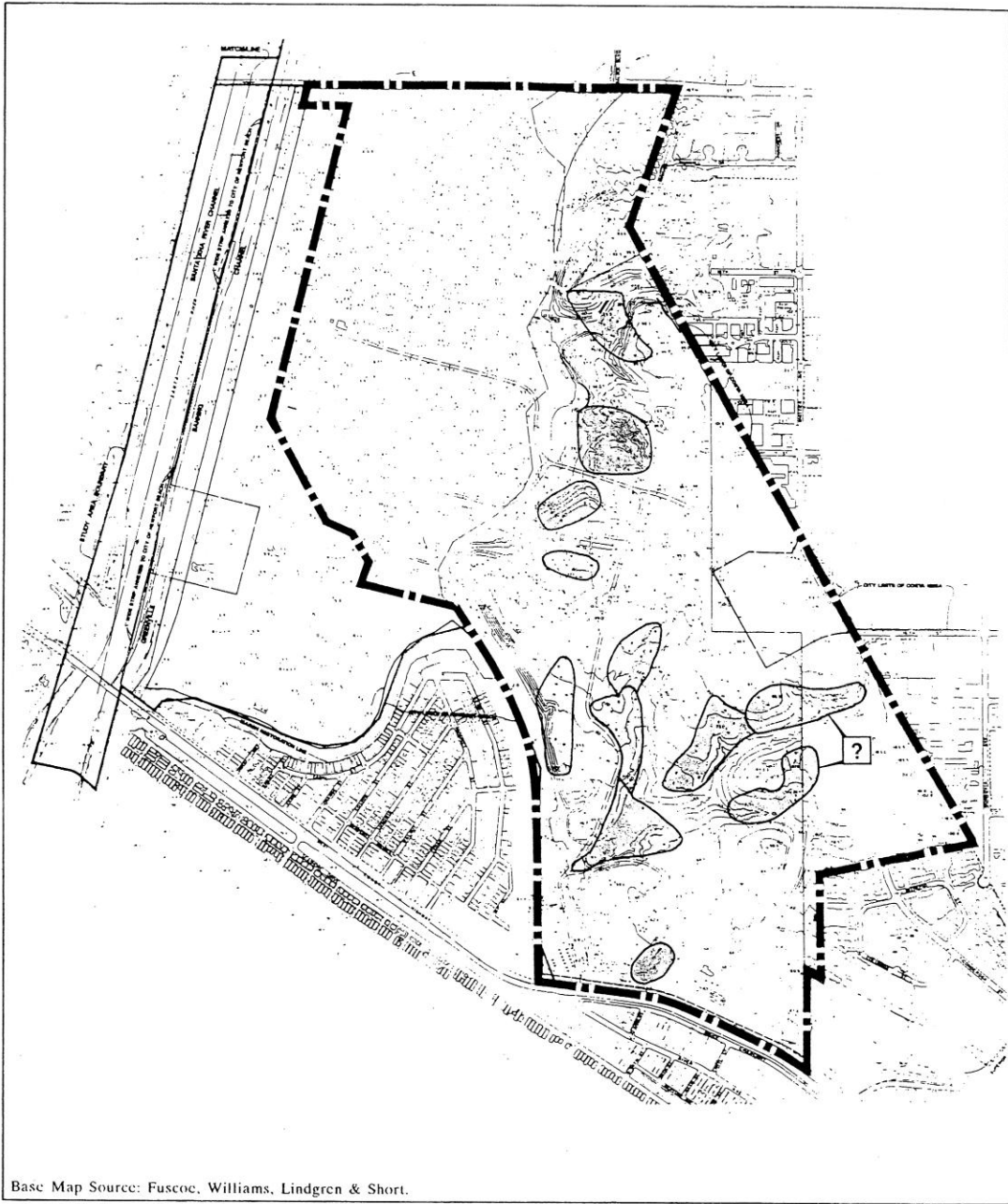
Gnatcatcher data from 1995



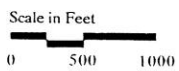
Gnatcatcher data from 2006



The dEIR contains Cactus Wren data from 2009, but does not include data beginning in 1992. This is presented as follows



**LSA**



Cactus Wren Territories - Spring 1992



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

4/7/94(WNO401)



ISA

Scale in Feet



Cactus Wren

Cactus Wren Territory Map 1994

Cactus Wren 1994



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

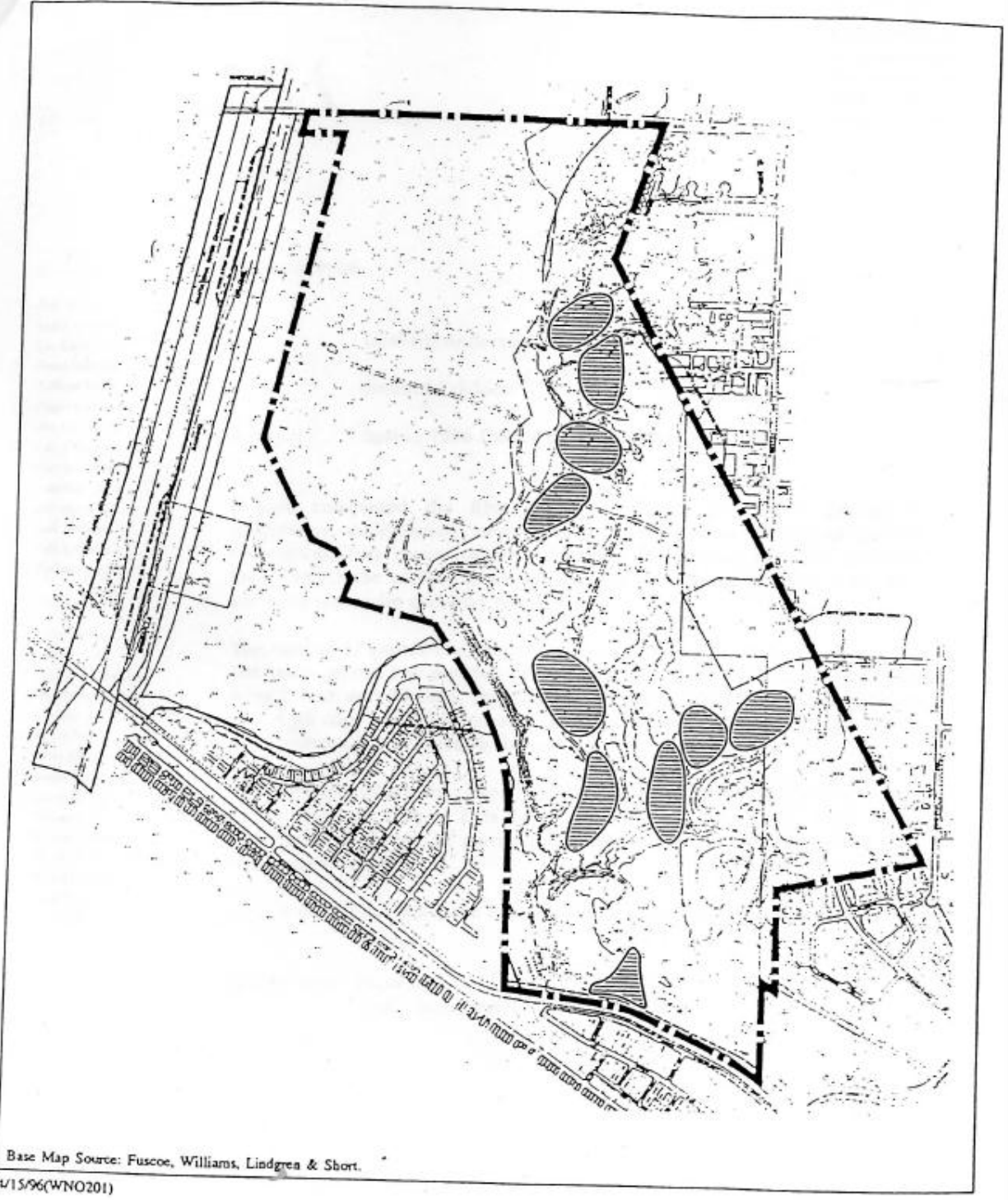
6/26/95(WNO201)

Figure 2



Spring 1995  
Cactus Wren Territories





Base Map Source: Fuscoe, Williams, Lindgren & Short.  
4/15/96(WNO201)

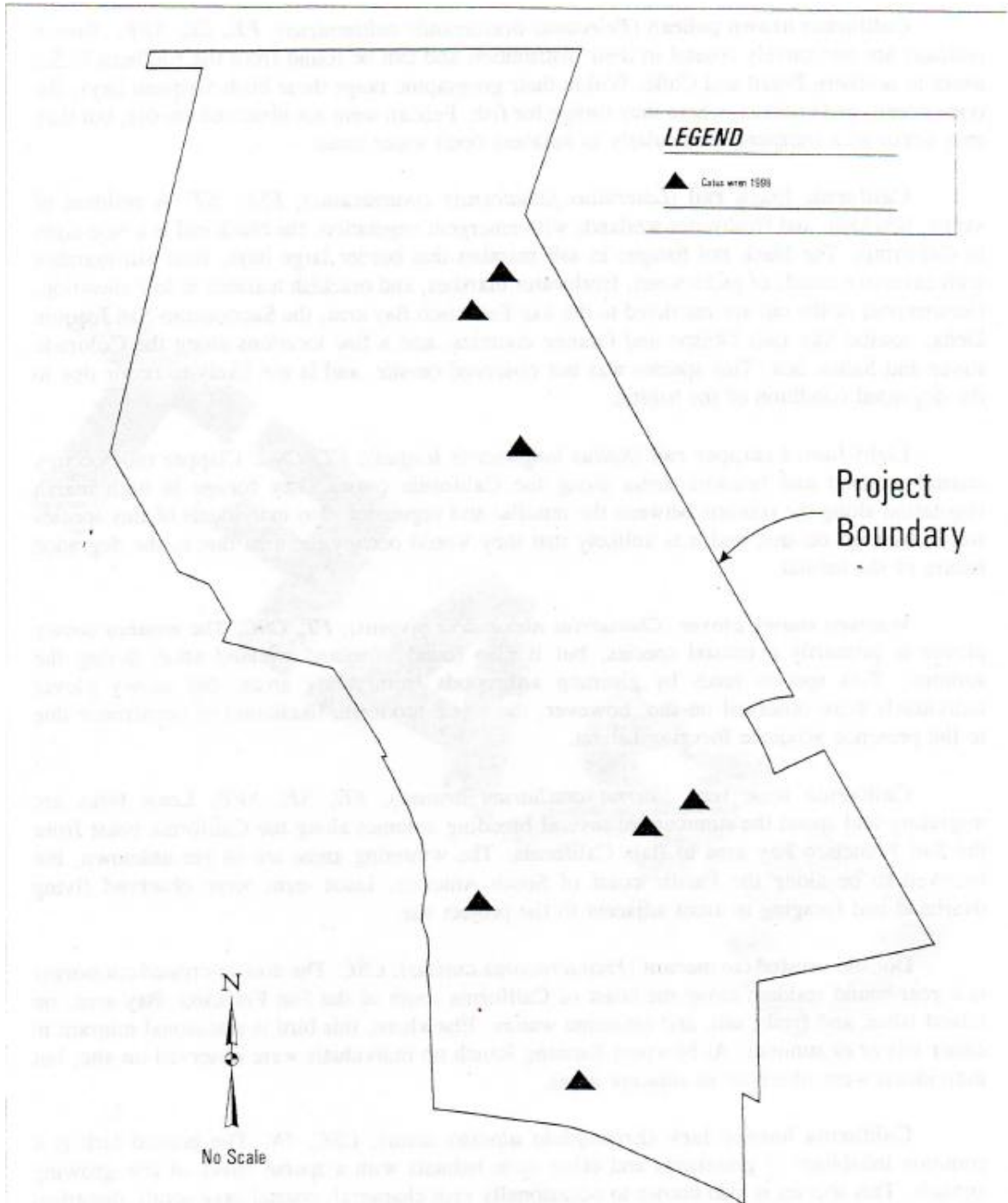


**I SA** Scale in Feet

Figure 2  
*Cactus Wren*

Spring 1996

Cactus Wren 1996



**Figure 11**  
**Cactus Wren Nesting**  
**Locations - 1998**

Date Prepared: 1-25-99

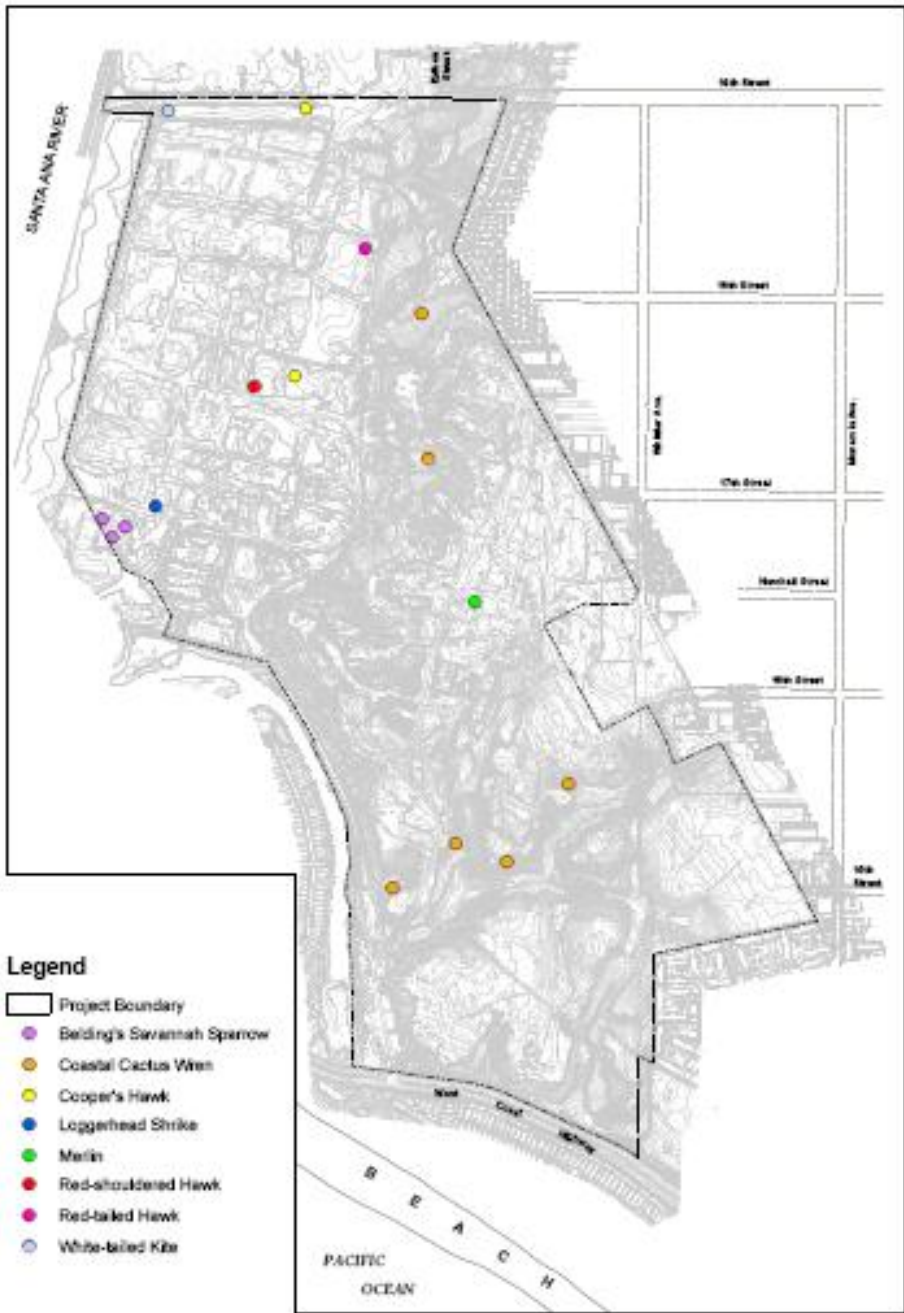
GLENN LUKOS ASSOCIATES  
Regulatory Services



FUSCOE  
ENGINEERING







## Burrowing Owl

The dEIR shows data from a 2009 Burrowing Owl survey, but does not include data from a 2008 Burrowing Owl survey that was part of the 2008 Development Plan (see page 343 of 540 in Technical Appendix vol. II of 2008 Planned Community)

## “Orstad File”

The late Jim Orstad compiled a lengthy and referenced written argument on why a residential development should not be built at Banning Ranch. The “Orstad File” had been previously submitted as part of the EIR comments for the Sunset Ridge Park project, but is again especially relevant to the proposed Banning Ranch development. The “Orstad File” is being resubmitted to be included in the record for the draft EIR for Banning Ranch (please see attached Sunset Ridge EIR comments, pages 398-414 of 602)