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CENTER FOR NATURAL LANDS
MANAGEMENT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE**

CENTER FOR NATURAL LANDS
MANAGEMENT, a non-profit organization,

Plaintiff and Cross-Defendant,

v.

CITY OF DANA POINT; and DOES 1-50,

Defendants.

CITY OF DANA POINT,

Cross-Complainant,

v.

CENTER FOR NATURAL LANDS
MANAGEMENT,

Cross-Defendant.

Case No. 30-2021-01219668-CU-OR-CJC

ASSIGNED FOR ALL PURPOSES TO:
MICHAEL STRICKROTH, DEPARTMENT
C15

**PLAINTIFF AND CROSS-DEFENDANT
CENTER FOR NATURAL LANDS
MANAGEMENT'S NOTICE OF MOTION
AND MOTION TO DISSOLVE OR, IN
THE ALTERNATIVE TO, MODIFY THE
PRELIMINARY INJUNCTION;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Reservation No. 74254693

Date: December 9, 2024

Time: 1:45 p.m.

Dept.: C15

Judge: Hon. Michael Strickroth

Action Filed: September 7, 2021

Trial Date: None Set

1 **TO THE HONORABLE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF**
2 **RECORD:**

3 **PLEASE TAKE NOTICE** that in the above entitled matter, on December 9, 2024, or as
4 soon thereafter as the matter may be heard, in Department C15 of the Superior Court of the State
5 of California, County of Orange, located at 700 Civic Center Drive West, Santa Ana, California,
6 92701, Plaintiff/Cross-Defendant Center for Natural Lands Management (“CNLM”), and pursuant
7 to California Code of Civil Procedure, section 533, will and hereby does move the Court for an
8 Order dissolving or modifying the terms of the preliminary injunction issued against CNLM on
9 November 3, 2022 (“Preliminary Injunction”). Good cause exists to grant this motion because
10 there has been a material change in facts upon which the preliminary injunction was granted and
11 the ends of justice would be served.

12 This motion will be based on this Notice of Motion and Motion, the Memorandum of
13 Points and Authorities in support thereof, the Declarations of Deborah L. Rogers and Korie
14 Merrill attached in support thereof, the court records in this case, and such other and further
15 evidence that shall be presented at or before the time of the hearing on this Motion.

16
17 DATED: March 25, 2024

MEYERS NAVE

18
19 By:



20 SHAYE DIVELEY
21 RUSSELL E. MORSE
22 RICA V. GARCIA
23 Attorneys for Plaintiff and Cross-Defendant
24 CENTER FOR NATURAL LANDS
25 MANAGEMENT
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1 **I. INTRODUCTION**

2 Pursuant to California Code of Civil Procedure, section 533, Plaintiff and Cross-Defendant
3 Center for Natural Lands Management (“CNLM”) moves for an order to dissolve or modify the
4 Preliminary Injunction (“Preliminary Injunction”) issued in favor of Defendant/Cross-
5 Complainant City of Dana Point (“City”) and against CNLM on November 3, 2022.

6 The Preliminary Injunction ordered CNLM to implement new hours of operation for the
7 Nature Trail and Overlook Areas (“Trail”) at CNLM’s Dana Point Preserve (“Preserve”), from
8 7:00 AM to sunset, 7 days a week (“Preliminary Injunction Hours”), and enjoined CNLM from
9 closing public access to the Trail during those hours except in connection with temporary closures
10 subject to notice to the City. **On December 14, 2023, the Coastal Commission notified the City**
11 **that the Preliminary Injunction Hours are “not authorize[d]” under a Coastal Development**
12 **Permit, “constitute an ongoing inconsistency with the Local Coastal Program” and “are**
13 **detrimental to PPM,” the Pacific Pocket Mouse** (“December 2023 CCC Letter”). (Declaration
14 of Deborah L. Rogers in Support of Motion to Dissolve Preliminary Injunction [“Rogers Decl.”],
15 ¶ 14, Ex. 7, pp. 1-2, 5.) The City has failed to respond to the California Coastal Commission’s
16 notice, sent more than 90 days ago, to “forego its insistence on maintaining the existing hours of
17 operation and process CNLM’s request to establish hours of operation” protective of the Pacific
18 Pocket Mouse. (*Ibid.*)

19 The Coastal Commission’s December 2023 CCC Letter to the City constitutes a material
20 change of facts that warrants dissolving or modifying the Preliminary Injunction under section
21 533. The Court granted the Preliminary Injunction based on the City’s alleged showing of a
22 “prima facie” violation of the Coastal Act, including a November 2021 Letter from the Coastal
23 Commission (“2021 CCC Letter”) to CNLM and the City regarding the process for changing the
24 hours of operation for the Trail. (Notice of Ruling re Motion for Preliminary Injunction [ROA
25 200], Ex. A, pp. 6-7.) The December 2023 CCC Letter clarifies the Coastal Commission’s
26 position to make clear that the Preliminary Injunction Hours, insisted upon by the City, are
27 threatening the existence of the federally endangered Pacific Pocket Mouse and are inconsistent
28 with the Local Coastal Program and the Coastal Act. (Rogers Decl., ¶ 14, Ex. 7, pp. 1-5.) The

1 Coastal Commission further stated that it was CNLM, not the City, that sets the hour of operation
2 for the Trail and that the Preliminary Injunction Hours are not authorized under a coastal
3 development permit. (*Id.*, pp. 3-5.)

4 The December 2023 CCC Letter directed the City to take immediate action on CNLM's
5 proposed updates to the Habitat Management and Monitoring Plan ("2023 HMMP Update"),
6 already approved by the federal and state resource agencies, or process the proposed hours as a
7 coastal development permit application to modify the Trail's hours to protect the endangered
8 Pacific Pocket Mouse. (*Ibid.*) Given the urgency of the matter, the Coastal Commission
9 requested the City to respond to the December 2023 CCC Letter within 15 days—by December
10 29, 2023. (*Id.*, p. 5.) As of the filing of this Motion—more than 90 days later—the City has not
11 responded to the Coastal Commission, other than confirming receipt of the letter. There is no
12 excuse for the City's failure to respond to the Coastal Commission, especially when the City's
13 non-response is causing ongoing harm to the Pacific Pocket Mouse and maintaining inconsistency
14 with the Coastal Act.

15 In short, the December 2023 CCC Letter made clear that the Preliminary Injunction Hours
16 violate the Local Coastal Program and must be modified to protect the Pacific Pocket Mouse. (*Id.*,
17 p. 1-5.) The Court should pay due attention to the December 2023 CCC Letter, as it did to the
18 Coastal Commission's 2021 CCC Letter when it granted the Preliminary Injunction. Indeed, when
19 the City urged the Court to rely on the 2021 CCC Letter to issue the Preliminary Injunction, the
20 City stated that "[t]he Commission is charged with implementing the Act's provisions" and that
21 the Commission's "position is backed by solid law and facts, and is entitled to great deference."
22 (City Supplemental Br. [ROA 168], p. 11.) The Court should apply this same level of deference to
23 the December 2023 CCC Letter. Accordingly, CNLM respectfully requests the Court to grant this
24 motion to dissolve or modify the Preliminary Injunction.

25 **II. STATEMENT OF FACTS**

26 **A. CNLM's Authority to Manage Coastal Resources and Public Access to the** 27 **Preserve**

28 As the Court is aware, CNLM owns and manages the 29.4-acre Dana Point Preserve

1 (“Preserve”), which was created to protect unique biological values and resources, including the
2 federally endangered Pacific Pocket Mouse (“PPM”), Coastal California Gnatcatcher, and their
3 fragile coastal habitat. (Rogers Decl. , ¶ 3.) The facts below provide a brief history of the
4 Preserve and Trail; some of the relevant documents are also summarized in the December 2023
5 CCC Letter. (*See generally, id.*, Ex. 7.)

6 The Preserve was created in 2005 as part of required mitigation for the Headlands
7 Development Project. As part of the approvals for the Project, the City adopted the Headlands
8 Development and Conservation Plan (“HDCP”) in September 2004. (CNLM’s Request for
9 Judicial Notice in Support of Motion to Dissolve Preliminary Injunction [herein “CNLM RJN”],
10 Ex. A.) To ensure permanent protection of the Preserve for the preservation and management of
11 habitat for sensitive species, including the Pacific Pocket Mouse, Coastal California Gnatcatcher,
12 and Coastal Sage Scrub, , the HDCP required that a non-profit trust be established to manage the
13 Preserve in conjunction with the U.S. Fish and Wildlife Service (“USFWS”) and California
14 Department of Fish and Wildlife (“CDFW”), and required the recordation of a conservation
15 easement. (*Id.*, pp. 4-12, 4-13.) The HDCP provides CNLM with authority to manage public
16 access hours to the Trail: the “non-profit entity [that owns and operates the Preserve] will establish
17 hours of operation for the bluff top trail.” (*Id.*, p. 3-37; *see also*, p. 4-49 [CNLM “will determine
18 hours of operation” for the Trail].)

19 In January 2005, the City issued Coastal Development Permit No. 04-23 (“CDP No. 04-
20 23”). (CNLM RJN, Ex. B.) CDP No. 04-23 incorporates the HDCP, including its provision that
21 the non-profit owner of the Preserve will establish hours for the bluff-top trail. (*Id.*, p. 1.) After
22 CNLM obtained ownership of the Preserve, CNLM and the City entered into the Conservation
23 Easement, with USFWS and CDFW as third-party beneficiaries. (CNLM RJN, Ex. C.) The
24 Conservation Easement acknowledged that “certain portions” of the Preserve would be “open to
25 the public for scenic enjoyment, education and passive recreation,” but required that “such public
26 access shall be controlled” and made clear that “[n]otwithstanding the foregoing, this
27 Conservation Easement does not convey to the public a general right of access to the [Preserve].”
28 (*Id.*, ¶ 5.2) Significantly, the Conservation Easement also does not specify public access hours for

1 the Trail, nor does it authorize the City to manage the Trail or set the hours of public access. (*Id.*,
2 ¶ 4.1.)

3 Further, CDP No. 04-23 required the preparation of a habitat management plan (i.e. the
4 Habitat Management and Monitoring Plan), to be approved by the Coastal Commission, USFWS,
5 CDFW and the City prior to the disturbance of any environmentally sensitive habitat areas.
6 (CNLM RJN, Ex. B, Condition No. 38.) A draft Habitat Management and Monitoring Plan
7 (“HMMP”) was prepared by a consultant in 2005, in association with the City of Dana Point’s
8 developmental approval for the HDCP. (CNLM RJN, Ex. D; *see also*, Rogers Decl., ¶ 14; Ex. 7,
9 p. 3.) In particular, the 2005 HMMP stated that its implementation “will comply with and
10 conform to the relevant requirements” of the HDCP, including the provision that grants CNLM
11 with authority to set public access hours. (CNLM RJN, Ex. D, p. 4; *see also* Ex. B.) As the owner
12 and operator of the Preserve, CNLM has the authority and responsibility to establish the hours of
13 operation for the Trail and to manage it to ensure public access does not unduly interfere with
14 habitat conservation and protection. (Rogers Decl. ¶ 14; Ex. 7, p. 3.)

15 **B. The Court Issues the Preliminary Injunction Setting the Current Hours of the**
16 **Trail**

17 The current dispute between the City and CNLM was the result of CNLM’s modification
18 of the hours of operation for the Trail during the pandemic, and subsequently maintaining reduced
19 hours for better protection of the Pacific Pocket Mouse. (Rogers Decl., ¶¶ 4-5.) The City
20 responded by, among other things, issuing administrative citations against CNLM, claiming
21 CNLM’s hours of operation for the bluff-top trail were a public nuisance, and later by filing its
22 countersuit, seeking in excess of \$12,420,000 of civil penalties under the Coastal Act against
23 CNLM. (First Amended Cross-Complaint [“FACC”], [ROA 171] ¶ 42, p. 16.)

24 On November 3, 2022, the City successfully sought a preliminary injunction order under
25 the enforcement provision of the Coastal Act, Public Resources Code, section 30803. The Court
26 issued the Preliminary Injunction on the basis that the City made a “prima facie” showing that
27 CNLM violated the Coastal Act, based on the allegation that changing the operating hours of the
28 Trail constitutes development under the Coastal Act, which required CNLM to apply for a CDP.

1 (Notice of Ruling re Motion for Preliminary Injunction [ROA 200], Ex. A, p. 7.) The Court’s
2 decision to issue the Preliminary Injunction relied on a letter from Andrew Willis of the California
3 Coastal Commission to CNLM and the City, dated November 4, 2021 (“2021 CCC Letter”).
4 (Rogers Decl., ¶ 7, Ex. 1.) The Coastal Commission advised that a coastal development permit
5 (“CDP”) “is required to authorize any hours of operation for the bluff top trail”—indicating hours
6 set by the Preliminary Injunction also require a CDP. (*Ibid.*)

7 On September 26, 2022, Mr. Willis issued another letter (“2022 CCC Letter”) to CNLM
8 and the City, following up on the 2021 CCC Letter, regarding setting the hours for the Trail.
9 (Rogers Decl., ¶ 10, Ex. 3.) In the 2022 CCC Letter, Mr. Willis noted again that CDP No. 04-23
10 does not authorize *any* specific hours of operation for the Trail, but allowed for the hours to be set
11 by CNLM through the HMMP process. (*Id.*, p. 1.) The 2022 CCC Letter recommended that
12 CNLM consider submitting an updated HMMP to the City, USFWS, CDFW, and Coastal
13 Commission for review and approval in order to set the hours for the Trail. (*Id.* at 2)

14 CNLM had already started the HMMP update process earlier in 2022, receiving feedback
15 and approval from the USFWS and CDFW, but the City had refused to participate. (Rogers Decl.,
16 ¶¶ 8-9, Ex. 2.) In response to the 2022 CCC Letter, CNLM revised and circulated the HMMP
17 Update to the Coastal Commission, USFWS, CDFW and the City in 2023 (“2023 HMMP
18 Update”). (Rogers Decl., ¶¶ 11-13.) On May 15, 2023, USFWS and CDFW approved the 2023
19 HMMP Update and supported CNLM’s setting the hours of operation for the Trail, consistent with
20 the public access policies in the 2023 HMMP Update, to be four days per week, with seasonal
21 hours, to protect the Pacific Pocket Mouse. (Rogers Decl., ¶ 12, Ex. 5, p. 1.) In a letter sent
22 August 1, 2023, the City refused to process the 2023 HMMP Update and asserted that CNLM had
23 no right to even propose modification of the Trail hours. (Rogers Decl., ¶ 13, Ex. 6.)

24 **C. The Coastal Commission Notifies the City that the Preliminary Injunction**
25 **Hours Violate the Local Coastal Program and Pose Harm to the Pacific Pocket**
Mouse

26 In response to the City’s refusal to consider the 2023 HMMP Update, or earlier versions,
27 on December 14, 2023, the Coastal Commission sent the December 2023 CCC Letter to the City,
28 directing the City to take action to allow for CNLM to set the Trail hours to protect the federally

1 endangered Pacific Pocket Mouse. (Rogers Decl., Ex. 7.) The Coastal Commission asserted that
2 the Preliminary Injunction Hours (7:00 AM to sunset, 7 days a week) are endangering the
3 existence of the Pacific Pocket Mouse and are inconsistent with the Local Coastal program. (*Id.*)
4 Specifically, the December 2023 CCC Letter stated:

5 [W]e are also concerned that ***the City’s insistence upon these hours***
6 ***is endangering the existence of the federally threatened Pacific***
7 ***Pocket Mouse***, a small population of which is supported by the
8 Headlands Conservation Park. Managing public use of the
9 Headlands Conservation Park in a way that minimizes impacts on
this threatened species is critical to the survival of this species,
which is just another piece in protecting the ecosystem and its
critical functions. (*Id.*, p. 1, emphasis added.)

10 The Coastal Commission continued:

11 ***In order to protect the Pacific Pocket Mouse and undo the***
12 ***inconsistency with the Local Coastal Program with respect to trail***
13 ***hours described herein, we are asking the City to forego its***
14 ***insistence on maintaining the existing hours of operation*** and
15 process CNLM’s request to establish hours of operation through an
amendment to the Headlands Conservation Park management plan
or a coastal development permit, as CNLM has requested to do. (*Id.*,
emphasis added.)

16 The Commission made clear that the Preliminary Injunction Hours are not authorized:

17 [W]e are not aware of the City taking action to authorize the trail
18 hours that it has sought in litigation with CNLM – hours that we
19 believe constitute an ongoing inconsistency with the Local Coastal
Program. (*Id.*, p. 1.)

20 As noted in previous correspondence, the Headlands project coastal
21 development permit, CDP No. 04-23, does not authorize specific
hours of operation for the trail. (*Id.*, p. 2.)

22 The Coastal Commission stated that the Preliminary Injunction Hours are also inconsistent
23 with the recommendations by the federal and state resources agencies—which makes them
24 inconsistent with the Local Coastal Program:

25 With specific regard to how public access and habitat protection will
26 be balanced with respect to trail hours, Section 4.5.1 of the Local
27 Coastal Program states, in part: “The bluff-top trail in the Headlands
28 Conservation Park shall be accessible to the public year-round,
except for any specific period determined by the resources agencies
to protect on site resources. The recipient public agency or non-
profit entity will determine hours of daily operation.”

1 As evident from the joint May 15, 2023 letter from the resources
2 agencies, United States Fish and Wildlife Service and California
3 Department of Fish and Wildlife, the resources agencies share the
4 concern here and support CNLM’s proposed trail hours to better
5 protect the Pacific Pocket Mouse. For instance, the resources
6 agencies state that “As relayed in our prior comment letter, the
7 status of each of the extant PPM populations warrants a conservative
8 management approach to safeguard them from extirpation,
9 especially at Dana Point, which supports the smallest and most
10 vulnerable population to environmental, demographic and genetic
11 threats.”

12 ***The City’s trail hours are inconsistent with this recommendation
13 by the resources agencies to regulate trail use to better protect the
14 pocket mouse, and thus are inconsistent with the Local Coastal
15 Program. (Id., p. 2, emphasis added.)***

16 The Coastal Commission requested that either the City agree to review and approve
17 compliance documents for the existing CDP No. 04-23 through the 2023 HMMP Update, or
18 accept an application for a new CDP by CNLM. (*Id.*, p. 5.) The Coastal Commission directed the
19 City to respond to the Commission within 15 days of receipt of the December 2023 CCC Letter
20 “so that Commission staff can consider its options to ensure trail hours that are protective of an
21 endangered species, and consistent with the Local Coastal Program, are established in a timely
22 manner.” (*Id.*) On January 3, 2024, the City acknowledged receipt. (Rogers Decl., ¶ 15, Ex. 8.)
23 However, as of the date of the filing of this Motion, the City has not responded substantively to
24 the December 2023 CCC Letter, necessitating this motion. (*See, id.*)

25 **III. LEGAL ARGUMENT**

26 **A. The Preliminary Injunction, Setting the Preliminary Injunction Hours, Should 27 Be Dissolved to Avoid Continued Violation of the Coastal Act and Harm to 28 Pacific Pocket Mouse**

29 Code of Civil Procedure, section 533 authorizes this Court to dissolve or modify the terms
30 of an injunctive order upon a showing that: (1) there has been a material change in the facts upon
31 which the injunction was granted; (2) there has been a change in the law upon which the
32 injunction was granted; or (3) modification of the injunction would serve the interests of justice.
33 (Code of Civ. Proc., § 533; *see also, New Tech Developments v. Bank of Nova Scotia* (1987) 191
34 Cal.App.3d 1065, 1072.) The California Supreme Court has recognized that “the power to modify
35 or revoke a preliminary injunction is an inherent power not dependent upon statute.” (*Union*

1 *Interchange, Inc. v. Savage* (1959) 52 Cal.2d 601, 605; *see also, City of San Marcos v. Coast*
2 *Waste Management, Inc.* (1996) 47 Cal.App.4th 320, 328.) The court that grants a preliminary
3 injunction may, in the exercise of its judicial discretion, modify the same at any time before the
4 case terminates in a final judgment. (*Hobbs v. Amador & Sacramento Canal Co.* (1884) 66 Cal.
5 161.) The restrained party has the burden of showing by a preponderance of the evidence that
6 there has been a change of facts, law, or in the furtherance of justice termination of the injunction
7 is justified. (*Loeffler v. Medina* (2009) 174 Cal.App.4th 1495, 1504.)

8 This Court issued the subject Preliminary Injunction, and thus has the power to dissolve or
9 modify it. Dissolution or modification is appropriate because there has been a material change in
10 the circumstances upon which the injunction was granted and to further the ends of justice.

11 **1. The Injunction Should be Dissolved Because There Has Been a**
12 **Material Change in the Facts Upon Which the Injunction was Granted**

13 A preliminary injunction can be dissolved or modified when circumstances change: “When
14 the decree is continuing in nature, directed at future events, it must be subject to adaptation as
15 events may shape the need.” (*Union Interchange, Inc. v. Savage* (1959) 52 Cal.2d 601, 604.) The
16 December 2023 CCC Letter establishes facts of a material change regarding the Preliminary
17 Injunction Hours that warrant dissolving the Preliminary Injunction.

18 The Court granted the Preliminary Injunction based upon an alleged “prima facie” showing
19 that CNLM violated the Coastal Act for changing the operating hours of the Trail without first
20 applying for a CDP. (Notice of Ruling re Motion for Preliminary Injunction [ROA 200], Ex. A.)
21 The Court’s decision was based upon the Coastal Commission’s 2021 CCC Letter, advising
22 CNLM to apply for a CDP in order to formalize the then-current modified hours for public access
23 to the Trail. (*Id.*, pp. 5-6.) The Court interpreted the 2021 CCC Letter to mean that CNLM’s
24 modified hours were in violation of the Coastal Act because they were not expressly changed
25 pursuant to a CDP, and ordered the Preliminary Injunction Hours be implemented for the Trail.
26 (*Ibid.*)

27 Since the issuance of the Preliminary Injunction order, the Coastal Commission has
28 determined, in the December 2023 CCC Letter, that the Preliminary Injunction Hours—the hours

1 of operation demanded by the City—are “endangering the existence of the federally threatened
2 Pacific Pocket Mouse” and “constitute an ongoing inconsistency with the Local Coastal Program.”
3 (Rogers Decl., Ex. 7, p. 1.) The December 2023 CCC Letter further stated that the Preliminary
4 Injunction Hours are not authorized under any CDP. (*Id.*, pp. 1, 3.) In other words, the
5 Preliminary Injunction Hours violate the Coastal Act. (*See, id.*) The December 2023 CCC Letter
6 to the City expresses the agency’s concerns regarding the survival of the Pacific Pocket Mouse,
7 and urges the City to allow CNLM to implement the 2023 HMMP Update or accept an application
8 for a new CDP from CNLM to set the Trail hours for the protection of the Pacific Pocket Mouse.
9 (*Ibid.*)

10 The Court must reconsider the evidentiary basis for its original grant of the Preliminary
11 Injunction and setting the Preliminary Injunction Hours in light of the December 2023 CCC
12 Letter. (See *Union Interchange, supra*, 52 Cal.2d at 604.) The Court’s issuance of the
13 Preliminary Injunction was based on the Court’s conclusion that the 2021 CCC Letter determined
14 that a CDP was required for CNLM set the Trail hours different from the Preliminary Injunction
15 Hours. (Notice of Ruling re Motion for Preliminary Injunction [ROA 200], Ex. A, pp. 5-6.) The
16 December 2023 CCC Letter—issued by the same agency as the 2021 CCC Letter—established:
17 (1) that the Preliminary Injunction Hours “endanger” the Pacific Pocket Mouse and “constitute an
18 ongoing inconsistency with the Local Coastal Program;” and (2) that a CDP is not required for
19 CNLM to set the hours because CNLM can set the Trail hours under the HMMP update process.
20 (Rogers Decl., Ex. 7, p. 1.) Furthermore, the December 2023 CCC Letter determined that CNLM
21 has been engaged in the HMMP Update process since at least January, 2022, with the express
22 support of the Coastal Commission, USFWS and CDFW, but the City has improperly refused to
23 process the requested update to set the Trail hours. (*Id.*, pp. 1-2, 5.) Thus, the City is at fault that
24 the Trail hours—i.e., the Preliminary Injunction Hours—are not consistent with the Local Coastal
25 Program and are not sufficiently protective of the Pacific Pocket Mouse. (*Ibid.*)

26 The Court’s issuance of the Preliminary Injunction was also based on its conclusion that
27 the hours of operation for the Trail needed to be “returned” to the Preliminary Injunction Hours
28 (7:00 AM to sunset, seven days a week) to avoid a “change in intensity of use” and violation of

1 the Coastal Act. (Notice of Ruling re Motion for Preliminary Injunction [ROA 200], Ex. A, pp. 5-
2 6.) The December 2023 CCC Letter demonstrated that this conclusion is also not correct, and, in
3 fact, the opposite is true—that the Preliminary Injunction Hours are not authorized by any CDP
4 and are inconsistent with the Local Coastal Program. (Rogers Decl., ¶ 14, Ex. 7, p. 1.)

5 In short, the Coastal Commission has determined that the Preliminary Injunction Hours are
6 inconsistent with the Local Coastal Program and need to be changed to protect the Pacific Pocket
7 Mouse. (Rogers Decl., ¶ 14, Ex. 7, p. 1.) The City is preventing that from occurring, despite the
8 specific direction of the Coastal Commission, USFWS and CDFW. (*Ibid.*) This is a different
9 evidentiary record than what was before the Court when it issued the Preliminary Injunction.
10 Accordingly, there is a material change in the facts upon which the injunction was granted and
11 good cause for the Court to dissolve the Preliminary Injunction in order to avoid violating the
12 Coastal Act and contributing to continued harm to the Pacific Pocket Mouse and the coastal
13 habitat.

14 **2. The Ends of Justice Would be Served by Dissolving the Preliminary**
15 **Injunction Because it Will Protect the Federally Endangered Pacific**
Pocket Mouse

16 Code of Civil Procedure, section 533 states that the Court may “modify or dissolve an
17 injunction or temporary restraining order upon a showing that ... the ends of justice would be
18 served by the modification.” (Code Civ. Proc., § 533.)

19 Here, the urgency of the December 2023 CCC Letter and this Motion is based on the
20 ongoing threats to the survival of the federally endangered Pacific Pocket Mouse caused by the
21 Preliminary Injunction Hours insisted upon by the City. As recognized by the Coastal
22 Commission, the Preliminary Injunction Hours urged by the City are detrimental to the Pacific
23 Pocket Mouse and inconsistent with the Local Coastal Program, which requires a balanced
24 approach to providing public access and protecting sensitive habitat. (Rogers Decl., ¶ 14; Ex. 7,
25 p. 2.) The Coastal Commission cites to Section 4.5.1 of the Local Coastal Program, which states
26 that the Preserve shall be “accessible to the public year-round *except for any specific period*
27 *determined by the resources agencies to protect on site resources.*” (*Id.*, emphasis added.)

28 Indeed, USFWS and CDFW have expressed on multiple occasions their concerns about the

1 detrimental impacts of public access under the Preliminary Injunction Hours. As stated in the
2 agencies' joint March 23, 2022, and May 15, 2023, letters regarding the HMMP updates, "the
3 status of each of the extant [Pacific Pocket Mouse] populations warrants a conservative
4 management approach to safeguard them from extirpation, especially at Dana Point, which
5 supports the smallest and most vulnerable [Pacific Pocket Mouse] population to environmental,
6 demographic and genetic threats." (Rogers Decl., ¶ 12, Ex. 5, p. 1.) The resource agencies
7 therefore approved the 2023 HMMP Update and supported CNLM's proposal to closely monitor
8 and apply adaptive management principles, including setting the hours of operation for the Trail to
9 be four days per week, with seasonal hours, to protect the Pacific Pocket Mouse. (*Id.*) This was
10 needed, reasoned the resource agencies, because "public access is one of the few threats to the
11 Dana Point population that can be effectively managed and could appreciably influence the size of
12 the Dana Point population." (*Ibid.*)

13 Moreover, the threat to the Pacific Pocket Mouse is not hypothetical. Most recently, on
14 June 5, 2023, CNLM discovered and immediately reported the death of one Pacific Pocket Mouse
15 at the Preserve to the USFWS, CDFW, and San Diego Zoo Alliance. (Declaration of Korie C.
16 Merrill ["Merill Decl."], ¶ 2; Ex. A; ¶ 3, Ex. B) CNLM subsequently reported the incident to the
17 Coastal Commission and the City shortly after the incident. (*Id.* at ¶ 2, Ex. A.) The Pacific Pocket
18 Mouse specimen was found dead on the ground in a set of shoe prints on the Trail at
19 approximately 8:20 AM. (*Id.*) Public access to the Trail would have occurred at 7:00 a.m. under
20 the Preliminary Injunction Hours. (*Id.*) There was no evidence of a predator attack and the
21 individual Pacific Pocket Mouse—a young male—appeared otherwise healthy. (*Id.*) These
22 conditions, in addition to the findings of a necropsy, indicated that the mortality was related to a
23 pedestrian encounter. (*Id.* at ¶ 3, Ex. C.)

24 Given the City's failure to respond to CNLM's updates to the HMMP or the December
25 2023 CCC Letter and/ or limit public access to the Trail in order to protect sensitive habitat at the
26 Preserve, the ends of justice require this Court to prevent continued harm to the Pacific Pocket
27
28

1 Mouse and its habitat and dissolve the Preliminary Injunction.

2 **B. In the Alternative, the Preliminary Injunction Should be Modified**

3 If the Court is not inclined to dissolve the Preliminary Injunction at this time, CNLM
4 moves in the alternative that the order be modified, allowing the Preliminary Injunction Hours to
5 be modified by CNLM with approval from the Coastal Commission, USFWS, and CDFW, as
6 provided in the Local Coastal Program Section 4.5.1.

7 The California Supreme Court has recognized that “[i]njunctive process ought never to go
8 beyond the necessities of the case.” (*Anderson v. Souza* (1952) 38 Cal.2d 825, 840–841.) Rather,
9 “[i]t is a familiar doctrine of equity that the scope of [an] injunction will be limited to the wrongful
10 act sought to be prevented.” (*Magill Bros. v. Building Service etc. Union* (1942) 20 Cal.2d 506,
11 512.) Thus, “[i]n fashioning a remedy, a court should ‘strive for the least disruptive remedy
12 adequate to its legitimate task’ and tailor it to the harm at issue.” (*People v. Uber Technologies,*
13 *Inc.* (2020) 56 Cal.App.5th 266, 313, quoting *Butt v. State of California* (1992) 4 Cal.4th 668,
14 695-696.)

15 Here, modification is appropriate because the Preliminary Injunction order is not
16 sufficiently narrow to be consistent with the Local Coastal Program. As noted in the December
17 2023 CCC Letter, Section 4.5.1. of the Local Coastal Program provides, in part:

18 The bluff-top trail in the Headlands Conservation Park shall be
19 accessible to the public year-round, except for any specific period
20 determined by the resources agencies to protect on site resources.
The recipient public agency or non-profit entity will determine hours
of daily operation. (Rogers Dec., Ex. 7, p. 2.)

21 As noted above, USFWS and CDFW support the modified hours of operation proposed by
22 CNLM “to protect on site resources.” (*Id.*, Ex. 5, p.1.) The Coastal Commission determined that
23 the Preliminary Injunction Hours are inconsistent with the resources agencies’ recommendation
24 and, thus, are inconsistent with the Local Coastal Program. (*Id.*, ¶ 14, Ex. 7) At the very least, the
25 Preliminary Injunction needs to be modified to be consistent with Section 4.5.1. of the Local
26 Coastal Program to allow for the hours of operation of the Trail to be modified subject to the
27 approval of the Coastal Commission, USFWS, and CDFW.

28 Modification of the Preliminary Injunction to allow CNLM to set the public hours for the

Trail with approval of the resources agencies is also consistent with CNLM’s authority to modify the hours of public access to the Trail under the HDCP, HMMP, and Conservation Easement. (See also, CNLM RJN, Ex. A, p. 3-37, 4-49; Ex. D, p. 20.) This too is confirmed by the Coastal Commission in the December 2023 CCC Letter:

The Local Coastal Program identifies CNLM, which is the recipient of fee title to the Headlands Conservation Park, as the entity that sets the trail hours. (Rogers Decl., ¶ 14; Ex. 7, p. 3.)

Requiring CNLM to provide public access to the Trail during the Preliminary Injunction Hours is also overbroad and not tailored to the alleged harm at issue. The City’s only alleged “harm” is that the public’s access to the Trail was partially restricted for two years. (City of Dana Point’s Motion for Preliminary Injunction [ROA 97], p. 16.) However, the public had and continues to have access to multiple other City-owned open space facilities on the days the Trail was closed. In contrast, the Pacific Pocket Mouse only exists in three places naturally in the wild, one of which is at the Preserve (the other two are at Camp Pendleton). (Rogers Decl., ¶ 6.) The Coastal Act requires that the time of public access must take into account “topographic and geologic site characteristics, the capacity of the site to sustain use and at what level of intensity, and the fragility of the natural resources in the area.” (Pub. Res. Code, § 30214.) Given the extreme consequences of allowing public access to the Trail for the Preliminary Injunction Hours—the ongoing threat to the Pacific Pocket Mouse—and the relatively minimal reduction in public access to a single trail, the injunction is overbroad and should be modified.

Thus, in the alternative to dissolving the Preliminary Injunction order, CNLM requests that the Court modify the injunction to allow for the Preliminary Injunction Hours be modified by CNLM with approval from the Coastal Commission, USFWS, and CDFW, as provided in the Local Coastal Program Section 4.5.1.

IV. CONCLUSION

Based on the foregoing reasons, the Center for Natural Lands Management respectfully

1 requests that this Court grant its Motion to Dissolve or Modify the Preliminary Injunction.

2

3 DATED: March 25, 2024

MEYERS NAVE

4

5

By:



6

SHAYE DIVELEY

7

RUSSELL E. MORSE

8

RICA V. GARCIA

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Attorneys for Plaintiff and Cross-Defendant

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CENTER FOR NATURAL LANDS

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MANAGEMENT

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1 **PROOF OF SERVICE**

2 ***Center for Natural Lands Management v. City of Dana Point, and Cross Action,***
3 **Superior Court of Orange County Case No. 30-2021-01219668-CU-OR-CJC**
4 **30-2021-01219668-CU-OR-CJC**

5 **STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

6 At the time of service, I was over 18 years of age and not a party to this action. I am
7 employed in the County of Alameda, State of California. My business address is 1999 Harrison
8 Street, 9th Floor, Oakland, CA 94612.

9 On March 25, 2024, I served true copies of the following document(s) described as
10 **PLAINTIFF AND CROSS-DEFENDANT CENTER FOR NATURAL LANDS**
11 **MANAGEMENT'S NOTICE OF MOTION AND MOTION TO DISSOLVE**
12 **PRELIMINARY INJUNCTION; MEMORANDUM OF POINTS AND AUTHORITIES** on
13 the interested parties in this action as follows:

14 Patrick Munoz, Esq.
15 Jennifer Farrell, Esq.
16 Robert Owen, Esq.
17 RUTAN & TUCKER LLP
18 18575 Jamboree Road, 9th Floor
19 Irvine, CA 92612

Attorneys for Defendant and Cross-
Complainant CITY OF DANA POINT

Telephone: (714) 641-5100
Facsimile: (714) 546-9035
Email: pmunoz@rutan.com
jfarrell@rutan.com
bowen@rutan.com

20 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
21 persons at the addresses listed in the Service List and placed the envelope for collection and
22 mailing, following our ordinary business practices. I am readily familiar with the practice of
23 Meyers Nave for collecting and processing correspondence for mailing. On the same day that
24 correspondence is placed for collection and mailing, it is deposited in the ordinary course of
25 business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

26 **BY ELECTRONIC SERVICE:** I electronically filed the document(s) with the Clerk of
27 the Court by using the One Legal system. Participants in the case who are registered users will be
28 served by the One Legal system. Participants in the case who are not registered users will be
served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Executed on March 25, 2024, at Oakland, California.



Melissa Bender

5672702.7

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Attorneys for Plaintiff and Cross-Defendant
CENTER FOR NATURAL LANDS
MANAGEMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

CENTER FOR NATURAL LANDS
MANAGEMENT, a non-profit organization,

Plaintiff and Cross-Defendant,

v.

CITY OF DANA POINT; and DOES 1-50,

Defendants.

CITY OF DANA POINT,

Cross-Complainant,

v.

CENTER FOR NATURAL LANDS
MANAGEMENT,

Cross-Defendant.

Case No. 30-2021-01219668-CU-OR-CJC

ASSIGNED FOR ALL PURPOSES TO:
MICHAEL STRICKROTH, DEPARTMENT
C15

**DECLARATION OF DEBORAH L.
ROGERS, PH.D. IN SUPPORT OF
PLAINTIFF AND CROSS-DEFENDANT
CENTER FOR NATURAL LANDS
MANAGEMENT'S MOTION TO
DISSOLVE OR, IN THE ALTERNATIVE,
TO MODIFY THE PRELIMINARY
INJUNCTION**

Reservation No. 74254693

Judge: Hon. Michael Strickroth

Date: December 9, 2024

Time: 1:45 p.m.

Action Filed: September 7, 2021

Trial Date: None Set

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I, Deborah L. Rogers, declare as follows:

1. I am a party in the above-entitled action. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. I am Co-Executive Director and Director of Conservation Science and Stewardship at the Center for Natural Lands Management (“CNLM”), a non-profit organization operating for the protection and management of natural resources.

3. CNLM owns and manages the 29.4-acre Dana Point Preserve (“Preserve”), which was created to protect unique conservation values and natural resources, including the critically endangered Pacific Pocket Mouse and its fragile coastal habitat. I joined CNLM in 2006 and have been involved in the management and oversight of the Preserve since that time.

4. In March 2020, with the COVID-19 pandemic, state and local governments mandated the closure of spaces where people could congregate. In compliance with these orders, CNLM closed the Nature Trail and Overlook Areas (“Trail”) of the Preserve. When the COVID-19 pandemic occurred, CNLM’s staff used the opportunity to research and revisit best management practices for the Preserve, including public access on the bluff-top trail, to protect the Pacific Pocket Mouse and other protected species and habitat. After assessing the condition of the Preserve and the need to control public access, CNLM notified the City in early October 2020, of its plans to open the Preserve with limited hours and under special conditions. Those special conditions included safety signage, sanitizing supplies at entrances, and a unidirectional flow for visitors (as social distancing could not be maintained if there was two-way pedestrian traffic). CNLM then re-opened the Trail under these special conditions in mid-October 2020, for two days a week, initially from 9:00 A.M. to 12:00 P.M.; this was later extended to 8:00 A.M. to noon in recognition of visitors who valued earlier access. CNLM’s staff used these initial limited hours to, in part, observe compliance by the public with the special conditions.

5. In June 2021, CNLM expanded hours of operation to three days a week (Tuesday,

1 Thursday, and Saturday) from 8:00 A.M. to 4:00 P.M. These days and hours of operation
2 continued until the Court’s grant of Defendant’s Motion for Preliminary Injunction on November
3 3, 2022.

4 6. The Preserve is an extremely important public resource for the protection of natural
5 resources, not just coastal views. It is one of only two locations (the other is Marine Corps Base
6 Camp Pendleton) where the Pacific Pocket Mouse persists in the wild. Another resident species of
7 the Preserve, the Coastal California Gnatcatcher, has lost so much of its habitat to development
8 that it is listed as threatened. These species and other rare and sensitive species resident to the
9 Preserve require protection to persist, and their protection is mandated under the federal
10 Endangered Species Act. In contrast, there are many opportunities for coastal access (including
11 direct coastal access to water), coastal views, and outdoor recreation throughout California and in
12 the City of Dana Point. On the City of Dana Point’s website there is a list of more than 30 parks,
13 trails, and beaches, offering many alternatives for exercise and views in the City of Dana Point,
14 Orange County, and California.

15 7. On November 4, 2021, Andrew Willis, of the California Coastal Commission, sent
16 a letter to CNLM and the City of Dana Point (“2021 CCC Letter”). Attached as **Exhibit 1** is a true
17 and correct copy of the 2021 CCC Letter.

18 8. In the beginning of 2022, CNLM prepared a “Draft Update to the Habitat
19 Management Monitoring Plan for the Dana Point Headlands Biological Open Space” (“HMMP
20 Update”) based on a rigorous review of new scientific literature, the results of data analysis and
21 experience based on Preserve conditions, and input from wildlife agency personnel and other
22 scientists. The 2022 HMMP Update concluded that setting a policy for public access for the Trail
23 with limited hours and days each week and not during low-light hours of the day as a necessary
24 adaptive action in the best interest of the Preserve. CNLM distributed the 2022 HMMP Update to
25 the U.S. Fish and Wildlife Service (“USFWS”), the California Department of Fish and Wildlife
26 (“CDFW”), and the City for review and comment. On March 23, 2022, Jonathan Snyder,
27 USFWS, and David Mayer, CDFW, issued a letter to CNLM, regarding CNLM’s 2022 HMMP
28 Update, and CNLM revised the 2022 HMMP Update in response to the agencies’ comments.

1 9. The City did not provide a response to CNLM’s request for comments on the 2022
2 HMMP until July 28, 2022. The City continued to assert disapproval of any changes to public
3 access on the Trail. Attached as **Exhibit 2** is a true and correct copy of the letter from the City to
4 CNLM, dated July 28, 2022.

5 10. On September 26, 2022, Andrew Willis, California Coastal Commission, issued a
6 letter to CNLM and Jeff Rosaler, City of Dana Point, regarding operation of the Trail. Mr. Willis’
7 letter was issued to follow-up on the 2021 CCC Letter, in which he identified the coastal
8 development permit process as the path forward for CNLM to set hours of operation for the Trail,
9 and clarified the availability of an alternative mechanism to set the hours of operation through the
10 HMMP update process, with approval by the City, USFWS, CDFW, and Coastal Commission.
11 The Commission recommended that CNLM consider submitting an updated HMMP to the City,
12 USFWS, CDFW, and Coastal Commission for review and approval in order to propose new hours
13 of operation. Attached as **Exhibit 3** is a true and correct copy of the letter from the Coastal
14 Commission, dated September 26, 2022.

15 11. On March 14, 2023, CNLM submitted a letter to the City, USFWS, CDFW, and the
16 Coastal Commission, accompanying the “Draft Habitat Management Plan for Public Access at
17 Dana Point Reserve” (“2023 HMMP Update”). The 2023 HMMP Update incorporated feedback
18 received from the resource agencies and included expanded public access hours for the Trail
19 compared to what CNLM initially proposed in 2022. Attached as **Exhibit 4** is a true and correct
20 copy of the letter from CNLM to the City and the resources agencies, dated March 14, 2023.

21 12. On May 15, 2023, USFWS and CDFW issued a letter to CNLM, regarding the
22 2023 HMMP Update. Attached as **Exhibit 5** is a true and correct copy of the letter from USFWS
23 and CDFW, dated May 15, 2023.

24 13. On August 1, 2023, Brenda Wisneski, Director of Community Development for the
25 City of Dana Point, issued a letter to CNLM regarding the 2023 HMMP Update. The letter
26 claimed to serve as the City’s disapproval of the updated 2023 HMMP and asserted that the City
27 is responsible for setting hours for Trail. Attached as **Exhibit 6** is a true and correct copy of the
28 letter from the City, dated August 1, 2023.

14. On December 14, 2023, Andrew Willis, California Coastal Commission, issued a letter to Brenda Wisneski, Director of Community Development for the City of Dana Point (“December 2023 CCC Letter”). The letter was sent in response to the City’s August 1, 2023, letter to CNLM and the City’s failure to respond to CNLM’s attempts to establish trail hours consistent with the Local Coastal Program since 2022. Attached as **Exhibit 7** is a true and correct copy of the December 2023 CCC Letter.

15. Attached as **Exhibit 8** is a true and correct copy of an email dated January 3, 2024, from Brenda Wisneski, Director of Community Development for the City of Dana Point, responding to the December 2023 CCC Letter to confirm receipt. The email carbon copied me and Korie Merrill, Regional Preserve Manager of CNLM. As of the date of this declaration, I have not received any further communications from the City in response to the December 2023 CCC Letter.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 25th day of March, 2024, at Hercules, California.

PH Rogers

Deborah L. Rogers

5686173.1

EXHIBIT 1

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
301 E. Ocean Blvd., Suite 3000
Long Beach, CA 90802-4302
(562) 590-5071

**SENT VIA EMAIL**

November 4, 2021

Jeff Rosaler
Community Development Manager
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

Deborah Rogers
Co-Executive Director & Director of Conservation Science and Stewardship
Center for Natural Lands Management
27258 Via Industria, Suite B
Temecula, CA 92590

Re: Operation of bluff top trail at Dana Point Preserve

Dear Mr. Rosaler and Ms. Rogers:

Commission staff has received notice of a change of hours of operation of the bluff top trail at the Dana Point Preserve¹, which is owned and operated by the Center for Natural Lands Management (CNLM). As you are no doubt aware, the Dana Point Preserve is a vital resource for both the coastal access that it provides and sensitive habitats that it protects. The bluff top trail provides the public with stunning views of the coast, and the preserve supports the federally threatened Coastal California Gnatcatcher and endangered Pacific Pocket Mouse, as well as other rare plant species and communities. Since the permitting and planning for the preserve did not establish hours of operation for the trail, we see the current interest in the hours of operation as an opportunity for all of the parties to work together to formalize management of the trail pursuant to the terms of the Coastal Act and City of Dana Point Local Coastal Program (LCP).

The preserve is one of the positive outcomes of the planning for The Strand development that is located upcoast of the preserve. The Headlands Development and Conservation Plan (HDCP), which is one component of the City's LCP, governs development² at the preserve.³ The permitting requirements for development at the preserve, and elsewhere in the Headlands development area, are described in Section 3.2 of the HDCP, which states, in part:

A. Development Permit

¹ Staff understands that the Center for Natural Lands Management initiated the modification of trail operations in response to the coronavirus crisis, and in compliance with local and state health orders, as a public health measure.

² Section 9.75.040 of the City Zoning Code defines development to include, for the purposes of the LCP, a change of access to water. Changing or establishing hours of operation of a coastal access trail changes access to water, and, thus, constitutes development.

³As a point of clarification, the preserve is referred to as the Headlands Conservation Park in planning documents.

All development within the HDCP shall comply with the provisions of the Municipal Code unless otherwise specified herein. All development permits shall be issued after the Director of Community Development or designee has determined said permit is consistent with the following:

- HDCP (Implementing Actions Program)
- Coastal Development Permit of Master Development Permit
- The PDD, and, where applicable, the Municipal Code
- The Final EIR...

Section 3.2 of the HDCP also identifies the HDCP as one of the components of the LCP that is the standard of review for coastal development permits, stating that:

The standard of review for coastal development permits processed by the City is the certified local coastal program which consists of the Coastal Land Use Plan and the Implementation Plan. For the Headlands, the Coastal Land Use Plan is comprised of the Land Use Element, Urban Design Element, and Conservation Open Space Element of the City's General Plan; while the Implementation Plan is comprised of the City's Zoning Code and Section 3.0 (Headlands Planned Development District) and Section 4.0 (Development Guidelines) of the Headlands Development and Conservation Plan.

The Master Coastal Development Permit for The Strand development (CDP No. 04-23) does not authorize hours of operation for the trail, nor does any other coastal development permit.⁴ Therefore, a coastal development permit is required to authorize any hours of operation for the bluff top trail. Although the HDCP does not specify what hours would be consistent with the HDCP, and, thus approvable, the HDCP does provide some guidance in this matter. The policies for the preserve are contained in Table 3.4.5, as well as elsewhere in the HDCP. Table 3.4.5 describes the Headlands Conservation Park and its use. It states, in part:

Headlands Conservation Park: The Headlands Conservation Park includes a limited bluff top trail, spectacular views of the ocean, and limited visitor access to the coastline and natural environment. The Headlands Conservation Park, as more fully described in Section 4.4, Parks and Open Space Plan, will be preserved in perpetuity as conservation open space through the establishment of a non-profit trust and a perpetual endowment to own and manage the property.

...

Improvements in the Headlands Conservation Park will be limited to a bluff top trail, overlooks, seating, public safety fencing, and recontouring necessary to restore the road cut for Marguerita Road. Balancing the desire for limited public access and views along the

⁴ At issue in Consent Cease and Desist Order No. CCC-16-CD-02, which was issued to the City in 2016, was whether CDP No. 04-23, or any City ordinance, had authorized hours of operation for trails at The Strand. The Commission found that neither CDP No. 04-23, nor the LCP, nor any City ordinance, had lawfully established hours of operation. Subsequently, the City processed a CDP for hours of operation, in some cases 24 hours/day, for the trails that it manages, which does not include the bluff top trail at the preserve.

perimeter, this planning area also is designed to protect a number of sensitive flora and fauna, including the Pacific pocket mouse. As a result, and to protect this natural resource area from overuse, only limited portions of the area will accommodate passive uses such as the bluff top trails, security fencing, overlooks, seating, and signage. The bluff top trail shall be sited to avoid and setback at least 25 feet from coastal bluff scrub in the vicinity of the bluff edge. The receiving agency or non-profit entity will establish hours of operation for the bluff top trail....

Table 4.5.1 of the HDCP, which is titled, in part, Public Access Program Guidelines, expands somewhat on the hours of operation of the bluff top trail. It states:

Public and coastal access shall be established by a trail and a series of overlooks located near the coastal bluff edge consistent with the NCCP/HCP, subject to the approval of the City, the USFWS and the DFG, and California Coastal Commission, and located where the facilities will not degrade environmentally sensitive habitat area.

The bluff-top trail in the Headlands Conservation Park shall be accessible to the public year-round, except for any specific period determined by the resources agencies to protect on site resources. The recipient public agency or non-profit entity will determine hours of daily operation.

The provisions of the HDCP cited above indicate that the path forward to formalizing hours of operation for the bluff top trail, and its management, is the coastal development process, during which the hours of operation will be analyzed for consistency with the provisions of the HDCP. To initiate this process, we ask that CNLM, as the entity that sets the hours of operation for the bluff top trail per the terms of the HDCP, apply for a coastal development permit from the City for the hours that it proposes, as well as any management measures that it believes are appropriate to protect the sensitive species at the site. Commission staff is happy to meet with the parties to discuss the permit process and the HDCP in more detail, and we are available to assist in whatever way that we can.

Commission staff looks forward to a formalization of trail operations that is consistent with the public access and habitat protection policies of the HDCP. This is a cherished location for both its access and habitat; we are optimistic that a coastal development permit for trail operations will enshrine these interests.

Sincerely,



Andrew Willis
Enforcement Supervisor

EXHIBIT 2



July 28, 2022

Deborah L. Rogers, Ph.D.
Co-Executive Director and
Director of Conservation Science and Stewardship
Center for Natural Lands Management
Email: drogers@cnlm.org

Dear Ms. Rogers,

It has come to the attention of the City of Dana Point (the "City") that the Center for Natural Lands Management ("CNLM") website purports that the Habitat Mitigation and Monitoring Plan ("HMMP") applicable to the Dana Point Nature Preserve has been updated. This apparently is a position that CNLM has recently begun to assert before the Court in association with the ongoing litigation related to CNLM's unlawful restriction of public access upon the Nature Trail and Outlook Areas. The purported update to the HMMP makes substantial changes to the original HMMP, which have not been approved by the City or authorized by the issuance of a Coastal Development Permit ("CDP".) To be absolutely clear, the HMMP has not been lawfully updated, and the HMMP as originally approved remains the operative document.

By way of background, CNLM sent an email request to the City's Code Enforcement Manager asking for comments on a draft of a proposed update to the HMMP on January 28, 2022. The City's planning department never received a formal application to which it might be obligated to respond. Moreover, the City chose not to respond to your informal request for input, believing it would be more appropriate to do so, if at all, after the significant legal issues and litigation that have arisen between the parties are resolved. In this regard, the draft update does virtually nothing other than seek to restrict public access, which is the exclusive topic of the current litigation.

Should CNLM at some point seek the requisite approval for the draft update to the HMMP that was included in your January 28th correspondence, the City would not approve it for a variety of reasons including because the requested changes impede public access to the Nature Trails and Overlook Areas in a manner that conflicts with (1) the City's easement rights, (2) the entitlements that govern the use of the Dana Point Preserve (including but not limited to Coastal Development Permit 04-23 ("CDP 04-23"), the Headlands Development and Conservation Plan certified on January 14, 2005 ("HDCP") and the currently operative, original HMMP dated April 2005 (collectively, the "Entitlement Documents")), and (3) the Coastal Act. The Entitlement Documents were approved by the City and authorized by the California Coastal Commission ("Commission"), as well as the City's Municipal Code. (See, D.P.M.C §§ 9.27.030(a)(4) [imposing minimum requirement of permanent right of access for the public for active and/or passive recreational use for bluff top and trail access developments and further requiring City approval of Management Plan].) Indeed, as the California Coastal Commission clearly indicated in its November 4, 2021 letter to CNLM and the City, in order to lawfully establish daily hours of operation for the Nature Trails and Overlook Areas (and/or implement any management measures), CNLM must submit a CDP application to the City for its review and approval. Any action on the part of CNLM to limit public access absent a valid HMMP amendment (approved by the City) and a duly approved CDP is null and void, and in violation of the Coastal Act and the governing Entitlement Documents.

Notwithstanding the above, should you wish to update the HMMP as you have proposed, please submit an application to the City for that purpose, including an application for a CDP, and bear in mind the following comments:

General Comments on HMMP Update and Process

It is apparent from CNLM's conduct that led to the current litigation, and the language of the purported update to the HMMP, that CNLM is using the HMMP update as a pretext to avoid its obligations related to public access imposed by the Coastal Act. CDP No. 04-23 approved the development located at the Headlands, including but not limited to the Nature Trails and the Overlook Areas contained within the Dana Point Preserve. As a condition of that approval, General Condition No. 37 required that an HMMP be prepared and submitted to the City (amongst other agencies) for its "review and approval." (See *also*, D.P.M.C. § 9.27.030(H) [same].) The CDP also provided, as a condition of its approval, that all development must be consistent with the HDCP, and Local Coastal Plan Amendment No. 01-02. (Condition No. 3.) The HDCP, in turn, states that the Nature Trails shall be "accessible to the public year round" with the only exception being for "any specific period of time determined by the resources agencies to protect on site resources." (HDCP, p. 4-49.) Stated otherwise, the trails are to be open to the public *every day* (*i.e.*, "year-round") unless closure is required for a "specific period of time" (*i.e.*, one week) to protect on site resources. Clearly, this language was intended to allow for closure of the trails for limited periods of time for remedial activities, like replacing damaged ESHA, or for allowing additional protections during the gnatcatcher's mating season. It was **not** intended to (and indeed, does not) allow for CNLM to restrict public access to only three days a week in perpetuity. In fact, this type of limitation on public access – whether temporary (*i.e.*, during COVID) or more permanent – without an approved CDP is in direct violation of Condition No. 43 of CDP 04-23 which requires a CDP for any temporary event that has the "potential to significantly adversely impact public access, as determined by the Community Development Director."

In light of the provisions contained in the entitlements discussed above, it is no surprise that the original HMMP contemplated that the trails would incur a "substantial amount public use" and as such, it established *daily* hours of operation of 7am-sunset. (HMMP, p. 20). The exact language of the HMMP provides as follows: "Hours of operation for the Headlands Conservation Park and other areas of the Biological Open Space will be 7:00 a.m. to sunset." (*Ibid.*) Notably, to the extent portions of the HMMP identify these hours as "anticipated," it is only due to the fact that the hours must confirm with a CDP that is reviewed and approved by the City.

Because the City's approval was required for the HMMP, it goes without saying that the City must approve changes to the HMMP. In this regard, the purported "update" to the HMMP makes substantial changes to the original hours and days of operation, reducing the days the trails are open from seven days a week or "year-round" to a mere three days a week (Tuesday, Thursday, and Saturday). Moreover, it reduces the hours of operation from 7am-sunset (approx. 10-13 hours per day) to 8:00 am – 4:00 pm (8 hours per day). Stated otherwise, by the most conservative estimate, the purported HMMP "update" prepared by CNLM reduces the average number of hours the trails are open to the public from 70(+) hours a week (7:00 am-approx. 5:00 pm (winter) or 8:00 pm (summer); 7 days a week) to only 24 hours per week. This amounts to an approximate 66% reduction on public access. This is a substantial change to the original HMMP, and is not an "update;" but rather, constitutes a wholesale "amendment." As set forth in the Coastal Commission's November 4, 2021 letter, any proposed restrictions on public access (or

any other management measure that CNLM desires to employ) constitutes “development” because it results in a change in the “intensity of use of land.” (D.P.M.C. § 9.75.040; Condition 43 to CDP 04-23.) As such, regardless of whether these changes are labeled as an “update” or an “amendment” to the HMMP, CNLM must process an application for (and obtain approval of) a CDP. (D.P.M.C. § 9.69.020; *City of Dana Point v. California Coastal Commission* (2013) 217 Cal.App.4th 170) In sum, and regardless of semantics, the purported update requires City approval as was the case with the original HMMP, and further requires City approval of a CDP. Be advised the City will not support the drastic reduction of hours CNLM desires to impose as part of any CDP application.

Specific Concerns Related to Each Section of the HMMP Update

The HMMP was prepared for the City and CNLM by URS Corporation (Pat Mock) in April of 2005. The HMMP provides a comprehensive, cost-effective plan that establishes information, short and long-term management, and funding requirements necessary to ensure ecologically sustainable habitat conservation areas within the Headlands project boundaries. The HMMP was intended to be viable for an initial five-year period of habitat management and monitoring, with updates thereafter. The Reporting Requirements, therefore, instructs that the HMMP will be reviewed and updated once every five years and all requires that reports shall be submitted to the City of Dana Point and Wildlife Agencies. To date, this has not occurred. While annual working plans have been submitted to the City for review, a comprehensive HMMP update has not been received, nor has the City received a formal request to approve an update. Some explanation of these facts should be included.

Comments on Preface and Introduction Sections

The draft HMMP sent to the City for comment on January 28, 2022 only attempts to update the original HMMP as it relates to human access on the Nature Trail and Outlook Areas. The preface and executive summary attempt to lay the background for CNLM’s efforts to limit public access on the Preserve by citing the regulatory documents. Yet, the introductory section is written in a manner to achieve the predetermined outcome of limiting public access, and cites only to provisions taken out of context to support this outcome, without addressing numerous other provisions of the operative Entitlement Documents. The Coastal Commission has already weighed in on the issue of whether the Entitlement Documents enable CNLM to set hours in a way that limits public access. In its letter dated November 4, 2021, to CNLM, Andrew Willis from the California Coastal Commission’s enforcement staff states: *“the Master Coastal Development Permit for the Strand development (CDP No. 04-23) does not authorize hours of operation for the trail, not does any other coastal development permit. Therefore, a coastal development permit is required to authorize any hours of operation for the bluff top trail.”* In light of this, the introduction and Preface sections will need substantial revision.

Comments on Public Use and Impacts Section

This section will need significant revisions to address the following observations. CNLM states that the Preserve’s recent COVID-related closure provided *“new and undeniable evidence of the negative impacts on many aspects of natural systems and species from the presence of the public.”* However, this evidence is not presented. There is one incident identified in the proposed update of a California Gnatcatcher breeding pair that had a failed nest, but there are numerous other instances of failed nest sites at the Preserve in the last 14 years that were not attributed to anthropogenic disturbances. The update is full of disclaimers that impacts on the Preserve’s

natural resources are “*difficult to ascertain, impacts are not directly observable, PPM detection is more challenging and less precise, the latter COULD include the influence of the visiting public, direct impacts to mammals are less known, CAN have a harmful effects of species...*” etc. These disclaimers make the conclusory statements related to impacts on nesting all the more unpersuasive.

The City recognizes that anthropogenic disturbances can have an effect on natural resources. yet, the proposed update does little to provide a correlation between disturbances on the Preserve and the effect on the physiology or populations of the endangered species onsite. The proposed update states that there is evidence of decreased PPM presence after the Preserve Trail initially opened, and an increase in onsite population after the trail was closed to the public in 2020. However, there is no evidence that this increase is directly related to an absence of human use, and not to other aspects of environmental change, such as habitat clearing done through management or reduced rainfall.

Furthermore, the HMMP recognizes that human use will be problematic and identifies the need for education and outreach. CNLM efforts for education and outreach to date have been minimal to non-existent. CNLM has too often relied on and relegated that portion of their mission to City staff, volunteers, and the Nature Interpretive Center (NIC).

The proposed update sites D’Antonio’s (2020) introduction to the California Fish and Wildlife Journal Special Issue, Effects of Non-consumptive Recreation on Wildlife in California stating, “*if outdoor recreation is allowed in an area, impacts to the ecosystem are inevitable.*” Yet, because it is written as a pretext with an outcome in mind, it does not include the following sentence of D’Antonio’s introduction, which reveals: “*outdoor recreation has a myriad of benefits to society that range from economic growth, improved human health and well-being, community building, and increases in an individual’s connection to nature. Moreover, outdoor recreation is one of the primary mechanisms by which humans interact with the natural world in a contemporary society.*” D’Antonio concludes that the key challenges facing researchers, conservation practitioners and biological area managers as they try to balance conservation goals with recreation access are understanding the mechanism and the level and extent of these impacts; identifying what level of negative impact, if any, is acceptable; and deciding how to mitigate or manage the impacts. These findings imply that adaptive management of natural systems is difficult and will require further information, research, education, and outreach. Simply shutting down an area for access cannot be the answer both from a true adaptive management standpoint, and from the perspective of the public’s right for coastal access as defined by the Coastal Act.

Comments on the Public Access Plan Section

Section VI. Public Access Principals and Plan provides six guiding objectives to better balance the protection of sensitive natural resources and public access. The City agrees with all six objectives; however, it does not feel that the proposed update meets these objectives, or is otherwise consistent with the HDCP, the original HMMP, the City’s easement rights or the Entitlement Documents as a whole. Moreover, these “objectives” do not, and cannot, eliminate the legal requirement for CNLM to apply for and obtain a CDP.

CNLM’s four reasons for conducting the proposed update were as follows:

1. *Determine and establish hours of operation (days of week/hours per day) for the public trail.*

In response, please note: The City attempted to collaborate with CNLM staff to discuss reasonable hours of operations and an opening strategy after COVID. CNLM has simply stated that it is within their authority alone to set the hours of their property. They have not acted in good faith and have not consulted with City staff or other agencies regarding the continued trail closure, and in fact the continued closure ignores enforcement efforts by the City and the Coastal Commission. The City maintains that, per the HDCP, the trail should be open daily. Without an approved CDP from the City, the HMMP states that the trails should be open daily 7 am – Sunset. CNLM is currently and has been in violation of both the HDCP and HMMP.

2. *Revisit, revise and implement a more robust public awareness/education program.*

In response, please note: CNLM has done little to provide public awareness and education. CNLM has always relied heavily on the City (staff, volunteers and NIC) to provide outreach and education on their behalf. The City would welcome renewed efforts of CNLM to provide education and outreach, including having additional staff onsite during open trail hours.

3. *Conduct outreach to others who potentially use the Preserve for important activities.*

In response, please note: Additional outreach is warranted and should be encouraged.

4. *Conduct research and adaptively manage to serve the conservation values of the Preserve Trail.*

In response, please note: It is imperative that a balance between public access and conservation is used to manage the Biological Open Spaces on the Headlands. The implementation of adaptive management techniques (such as trail closures) cannot be made unilaterally. Adaptive management needs to be an open discussion that takes place between all stakeholders, and strategy implementation should be agreed upon utilizing the best available science and information. To that end, the City encourages continued efforts to monitor onsite resources to further understand and examine the relationship between human use and the natural resources.

Sincerely,



Brenda Wisneski
Community Development Director

EXHIBIT 3

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
301 E. Ocean Blvd., Suite 3000
Long Beach, CA 90802-4302
(562) 590-5071

**SENT VIA EMAIL**

September 26, 2022

Jeff Rosaler
Community Development Manager
City of Dana Point
33282 Golden Lantern
Dana Point, CA 92629

Deborah Rogers
Co-Executive Director & Director of Conservation Science and Stewardship
Center for Natural Lands Management
27258 Via Industria, Suite B
Temecula, CA 92590

Re: Operation of bluff top trail at Dana Point Preserve

Dear Mr. Rosaler and Ms. Rogers:

Commission staff is following up on its letter dated November 4, 2021, in which we identified the coastal development permit process as the path forward for the Center for Natural Lands Management to set hours of operation for the bluff top trail at the Dana Point Preserve, to provide an alternative mechanism to set the hours of operation, also within the coastal development permit context. Namely, that mechanism is the condition compliance process for the Master Coastal Development Permit for The Strand development (CDP No. 04-23).

As noted in our November 4 letter, CDP No. 04-23 does not authorize specific hours of operation for the trail. However, Condition No. 38 of CDP No. 04-23 does require submittal of a habitat management plan ("HMP"), and preliminary drafts of the HMP did contemplate hours of operation for the trail. The HMP thus could be an alternative avenue for CNLM to set hours of operation, as approved by the City, wildlife agencies, and the Coastal Commission - Condition No. 38 requires, in part, that "[a] habitat management plan shall be prepared and submitted for review and approval by the Community Development Director, wildlife agencies and Executive Director of the Coastal Commission prior to disturbance of any ESHA." Although a draft HMP was prepared in 2005 and circulated for review, and Commission provided comments on the draft HMP, Commission staff is not aware of providing final approval of the HMP that established hours of operation for the preserve, but we would be happy to receive any information to the contrary.

We note that any hours set through the HMP must be found to be consistent with relevant conditions and policies of CDP No. 04-23 and the Headlands Development and Conservation Plan ("HDCP"), which is one component of the Local Coastal Program that governs development at the preserve. For instance, with regard to the latter, Table 4.5.1 of the HDCP states, in part:

The bluff-top trail in the Headlands Conservation Park shall be accessible to the

public year-round, except for any specific period determined by the resources agencies to protect on site resources. The recipient public agency or non-profit entity will determine hours of daily operation.

We encourage CNLM to consider submitting an HMP to the City, Commission, and wildlife agencies for review and approval. Through that process the proposed hours of operation can be analyzed for consistency with provisions of the HDCP that identify, in this location, the goal of balancing public access with protection of sensitive wildlife species at the preserve.

As suggested in our November 4 letter, Commission staff is happy to meet with the parties to find a mutually acceptable path forward to resolution of this matter through the coastal development permit process, including, potentially, through the condition compliance process for CDP No. 04-23. Please contact me to schedule a meeting to discuss how we can work together to resolve this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Willis', with a stylized, flowing script.

Andrew Willis
Enforcement Manager

cc: Lisa Haage, Chief of Enforcement, CCC
Karl Schwing, Deputy Director, CCC

EXHIBIT 4

Center for Natural Lands Management

A non-profit organization for the protection and management of natural resources

27258 Via Industria, Suite B
Temecula, CA 92590-3751
Phone: 760.731.7790
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March 14, 2023

City of Dana Point

Brenda Wisneski	bwisneski@danapoint.org
Jeff Rosaler	jrosaler@danapoint.org
Bernice Villanueva	bvillanueva@danapoint.org

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Andrew Willis	andrew.willis@coastal.ca.gov

VIA ELECTRONIC MAIL

RE: Draft Habitat Management Plan for Public Access at Dana Point Preserve

Dear Colleagues:

The Center for Natural Lands Management (CNLM) is submitting for your review and comment a draft habitat management plan (Plan) for public access for the Dana Point Preserve (Preserve), located in the City of Dana Point, in Orange County, California. As you know, CNLM, a nonprofit organization, owns the 29.4-acre Preserve and manages the habitat for protection of the unique coastal resources, including the endangered Pacific Pocket Mouse (PPM) and the threatened coastal California gnatcatcher. CNLM acquired the Preserve in 2005 and manages the Preserve under the Orange County Central Coastal Subregions Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP), Coastal Development Permit (CDP) 04-23, the Headlands Development and Conservation Plan (HDGP), and the Conservation

March 14, 2023
Page 2 of 2

Easement (CE) granted by CNLM to the City of Dana Point, with U.S. Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW) as third-party beneficiaries, which all incorporate provisions of federal and state law governing both sensitive species and public access under the Coastal Act. This Plan is being submitted under CDP 04-23 Condition No. 38, which describes provisions for a habitat management plan as part of the coastal development permit process for the Headlands area in Dana Point.

The proposed Plan specifically addresses issues related to public access to the blufftop trail on the Preserve and impact to sensitive species and habitat. The Plan describes the history and changes in public use of the trail, data and research on species at the Preserve, especially PPM, and data and research related to recreational ecology and impacts of passive recreational use on natural resources. Finally, the Plan proposes hours of public use of the trail that are consistent with the Coastal Act, the HDCP, and the City of Dana Point's Local Coastal Program.

CDP Condition No. 38 requires the approval of a habitat management plan by the City of Dana Point Community Development Director, the Executive Director of the California Coastal Commission, and by USFWS and CDFW. As such, CNLM is submitting this draft to representatives of these agencies and requesting your input. We would appreciate receiving any comments within 45 days of the date of this letter.

Sincerely,



Deborah L. Rogers, Ph.D.
Co-Executive Director &
Director of Conservation Science and Stewardship
Center for Natural Lands Management

Attachment: Draft 2023 Habitat Management Plan for Public Access for the Dana Point Preserve

cc (Via Electronic Mail):

Sarah Mueller
General Counsel
Center for Natural Lands Management
smueller@cnlm.org

Korie Merrill
Regional Preserve Manager – South Coast
Center for Natural Lands Management
kmerril@cnlm.org

EXHIBIT 5



U.S. FISH AND WILDLIFE SERVICE
Carlsbad Fish and Wildlife Office
2177 Salk Avenue, Suite 250
Carlsbad, California 92008



CALIFORNIA DEPARTMENT OF
FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, California 92123

In Reply Refer to:
2022-0016223-HCP-TA-OR

May 15, 2023
Sent Electronically

Deborah L. Rogers
Co-Executive Director and Director of Conservation Science and Stewardship
Center for Natural Lands Management
27258 Via Industria, Suite B
Temecula, California 92590-3751

Subject: Draft Habitat Management Plan for Public Access at Dana Point Preserve, City of
Dana Point, Orange County, California

Dear Deborah Rogers:

This letter responds to your request for the U.S. Fish and Wildlife Service (Service) and California Department of Fish and Wildlife (Department), jointly “Wildlife Agencies,” to review and comment on the “2023 Habitat Management Plan [HMP] for Public Access for the Dana Point Preserve” dated March 14, 2023, to address a proposed change to public access policies for the Dana Point Preserve (hereafter “Preserve”) owned and managed by the Center for Natural Lands Management (CNLM). The subject HMP has been revised from a January 28, 2022, draft of this document submitted for our review to which we provided conceptual concurrence on March 23, 2022 (response enclosed).

As with the prior draft, much of the content of the HMP focuses on the rationale for adjusting public access policies: the trends, dynamics and threats to the federally endangered Pacific pocket mouse (*Perognathus longimembris pacificus*; PPM) within the Preserve and range-wide; the observed doubling of daily visitors to the Preserve since 2011; the growing body of scientific literature that indicates that even passive, non-consumptive recreation—like hiking—can adversely impact habitat use by wildlife; the observed expansion in habitat use by multiple species across the globe following Covid-related alterations in human activity; and the observed rebound of the Dana Point PPM population following the 2020 closure of the Preserve to the public. Otherwise, the HMP has been revised to respond to our request that the public access schedule selected as being consistent with the updated public access policies be specified (i.e., 4 days per week with seasonal hours), and to include more detailed information about how public access and the PPM population will be monitored going forward.

As relayed in our prior comment letter, the status of each of the extant PPM populations warrants a conservative management approach to safeguard them from extirpation, especially at Dana Point, which supports the smallest and most vulnerable PPM population to environmental, demographic and genetic threats. Because public access is one of the few threats to the Dana Point population

Deborah L. Rogers (2022-0016223-HCP-TA-OR)

2

that can be effectively managed and could appreciably influence the size of the Dana Point population, we continue to support the proposal to more closely monitor and manage public access as a component of the adaptive management plan for the Preserve.

Although we support updating the public access policies for CNLM's Dana Point Preserve, we note that the current "Habitat Management and Monitoring Plan for Dana Point Headlands Biological Open Space" (URS and CNLM 2005) addresses more than public access and was prepared to address all the conserved open space at the Dana Point Headlands, including City of Dana Point (City) owned property. Another management action with potential to appreciably benefit PPM at Dana Point is managing vegetation to enhance habitat suitability for PPM. While CNLM has been studying the effect of removing dead shrubs, duff, and woody debris from PPM monitoring plots since around 2010 and is augmenting its habitat management efforts at the Preserve with endowment funding recently provided by the U.S. Marine Corps, the City has more recently begun managing habitat for PPM as part of the 2019 Service-funded effort to concurrently enhance habitat for PPM within the Preserve and the City's adjoining Hill Top Park. As the observed 2020 expansion of the Dana Point PPM population also coincided with this effort, we encourage CNLM and the City to continue to work together to determine if vegetation management can be used to meaningfully expand the distribution of PPM across this shared property boundary. Over the long term, we recommend that CNLM and the City work together to prepare a more holistic joint update to the HMP that comprehensively and adaptively addresses public access, habitat management and monitoring on all the Dana Point Headland's conserved open space.

Thank you for the opportunity to review and provide input on the HMP. Should you have questions or wish to discuss any of the above, please contact [William Miller](#)¹ with the Service at 760-431-9440, extension 206, or [Emily Gray](#)² of the Department.

Sincerely,

JONATHAN SNYDER
Digitally signed by
JONATHAN SNYDER
Date: 2023.05.15
15:42:39 -07'00'

Jonathan D. Snyder
Assistant Field Supervisor
U.S. Fish and Wildlife Service

DocuSigned by:
David Mayer
D700B4520375406...

David A. Mayer
Environmental Program Manager
California Department of Fish and Wildlife

Enclosure

cc:

Jeff Rosaler, City of Dana Point
Bernice Villanueva, City of Dana Point
Korie Merrill, Center for Natural Lands Management
Andrew Willis, California Coastal Commission

¹ William_B_Miller@fws.gov

² emily.gray@wildlife.ca.gov

LITERATURE CITED

[URS and CNLM] URS Corporation and Center for Natural Lands Management. 2005. Habitat Management and Monitoring Plan for Dana Point Headlands Biological Open Space. Prepared for City of Dana Point and Headlands Reserve, LLC. 74 pp.



U.S. FISH AND WILDLIFE SERVICE
Carlsbad Fish and Wildlife Office
2177 Salk Avenue, Suite 250
Carlsbad, California 92008



CALIFORNIA DEPARTMENT OF
FISH AND WILDLIFE
South Coast Region
3883 Ruffin Road
San Diego, California 92123

In Reply Refer to:
FWS/CDFW-OR-2022-0016223

March 23, 2022
Sent Electronically

Deborah L. Rogers
Co-Executive Director and Director of Conservation Science and Stewardship
Center for Natural Lands Management
27258 Via Industria, Suite B
Temecula, California 92590-3751

Subject: Update to the Habitat Management and Monitoring Plan for Dana Point Headlands
Biological Open Space, City of Dana Point, California

Dear Deborah Rogers:

This letter responds to the “Draft Update to the Habitat Management and Monitoring Plan [HMMP] for the Dana Point Headlands Biological Open Space” dated January 28, 2022, that has been prepared by the Center of Natural Lands Management (CNLM) to address a proposed change to public access policies for the Dana Point Preserve (also known as the Headlands Conservation Park; hereafter “Preserve”) that is owned and managed by CNLM.

History of the Preserve and the HMMP

The original HMMP (URS and CNLM 2005) was prepared in association with the City of Dana Point’s development approval for the Headlands Development and Conservation Plan (HDCP), which included amending the Dana Point Local Coastal Program to accommodate residential and visitor/recreational commercial land uses along with the establishment of 34 acres of Conservation Open Space and 34.5 acres of Recreation Open Space on the overall 121-acre Dana Point Headlands Property. Because the HDCP project proponent and former landowner of the Preserve is a “Participating Landowner” to the Orange County Central and Coastal Subregions Natural Community Conservation Plan/Habitat Conservation Plan (NCCP/HCP), the HDCP and associated HMMP were also prepared to conform to the requirements of the NCCP/HCP, which addresses impacts to and conservation of the federally endangered Pacific pocket mouse (*Perognathus longimembris pacificus*; PPM), federally threatened coastal California gnatcatcher (*Poliophtila californica californica*), and other “Identified Species” throughout much of Central and Coastal Orange County, including the Dana Point Headlands property.

Among the provisions of the NCCP/HCP was a commitment by the landowners to grant the U.S. Fish and Wildlife Service (Service) and the California Department of Fish and Wildlife (Department)—jointly the Wildlife Agencies—an option to purchase a 22-acre portion of the Dana Point Headlands property designated as a “Temporary Pacific Pocket Mouse Preserve” should the Wildlife Agencies determine that “...continuance of the preserve is necessary to

ensure the survival and recovery of the species [PPM]” (NCCP/HCP Implementation Agreement Section 8.3.2 (a)(1)(F), pp. 85-86). Ultimately, the Wildlife Agencies waived our purchase option and supported approval of the HDCP based on the proposal to include as components of the HDCP the acquisition and permanent preservation of the Temporary Pacific Pocket Mouse Preserve by the Harry and Grace Steele Foundation and a commitment to manage this area in perpetuity for conservation purposes. These commitments were realized via the transfer of funds from the Harry and Grace Steele Foundation to CNLM to purchase and manage the Temporary Pocket Mouse Preserve and the establishment of a Conservation Easement (CE) to protect this property in perpetuity.

To help ensure that the CE is enforced, and its biological values and resources are maintained, the Wildlife Agencies are named as Third Party Beneficiaries to the CE, and CNLM has an obligation to periodically update the HMMP that helps govern uses within the CE “...consistent with best adaptive management practices and in consultation and coordination with [the Wildlife Agencies]” (Conservation Easement Section 5.1). Accordingly, you have requested that the Wildlife Agencies review and comment on the proposal to update the HMMP, which seeks to update the policies governing controlled public access to develop “...a public access schedule that more appropriately addresses a balance between public access and protection of sensitive (even endangered) natural resources” (HMMP Update, p. 24). Based on the status of PPM within the Preserve and the available information regarding the potential effects of outdoor recreation on wildlife, we support the proposed changes to the public access schedule, but we acknowledge that additional information regarding the effects of trail use on PPM in adjacent habitat would help inform future management of public access. Additional reasoning is provided below.

Status of PPM in the Preserve

Monitoring of PPM within the Preserve has documented dramatic fluctuations in the PPM population. Since the re-discovery of PPM in 1993, several comprehensive live-trapping efforts in the Preserve have detected fewer than 10 animals. There have also been two documented peaks in abundance. The first peak occurred in 2009 when 82 individuals were captured in May of that year (Brylski *et al.* 2010), following several years of habitat management and just prior to the Preserve being opened to public access. After 2009, the population began to decline, and by 2017 a comprehensive live-trapping effort detected just six individuals (Miller 2017).

Following the very low population numbers documented in 2017, we worked closely with CNLM to increase its capacity to manage habitat and increase the abundance of PPM within the Preserve. Through grant funding provided to CNLM by the Service, from December of 2019 through February of 2020, CNLM was able to create the more open habitat conditions preferred by PPM within 4.3 acres of the Preserve by removing dead shrubs, woody debris, leaf litter, and duff. Subsequent results from live-trapping surveys performed in June and July of 2020 were encouraging, with the capture of 77 mice suggesting the population rebounded and responded positively to the habitat management effort (Brehme *et al.* 2021).

However, as noted in the proposed modification to the HMMP, it is challenging to attribute the observed fluctuations in the PPM population to any single factor. Between 2009 and 2017, when

public visitation within the Preserve was increasing and the PPM population was in decline, there were also periods of drought and changes in the age structure and composition of the vegetation community. Following the 2019–2020 habitat management efforts and the observed increase of the PPM population, there was no public access allowed within the Preserve (see “Public Access in the Preserve” below). Regardless of the cause of the observed fluctuations in the PPM population, the monitoring results clearly illustrate that this population remains vulnerable to extirpation due to its isolation and small population size.

Additionally, even with the apparent rebound in numbers of mice within the Preserve, genetic studies suggest the Dana Point population has suffered a severe loss of genetic variation since its rediscovery (Swei *et al.* 2003; Wilder *et al.* 2020), likely associated with the population going through bottlenecks such as that observed in 2017. Loss of genetic variation increases the risk of extirpation of small populations because it results in the loss of adaptive potential (i.e., the ability of a species to evolve and adapt in response to changing conditions) and can lead to inbreeding depression (reduced fitness resulting from mating between close relatives; Franklin 1980). Thus, another focus of our efforts to recover PPM at Dana Point and elsewhere has been to formulate a genetic management strategy for the species.

Because the Dana Point population is genetically differentiated from the other two extant populations on Marine Corps Base Camp Pendleton (Swei *et al.* 2003; Wilder *et al.* 2020), and mice at Dana Point may have a different chromosome number than mice on Camp Pendleton (Shier and King 2020), significant questions remain whether it is appropriate to pursue genetic rescue (i.e., augment genetic variation within a population by outcrossing with individuals from another population) at Dana Point for fear of introducing outbreeding depression (decreased fitness of progeny from crosses between divergent populations). This underscores how critical it is to conserve the remaining genetic variation within the Dana Point population by maximizing the size of this population and preventing further bottlenecks while additional studies are performed to inform the genetic management strategy.

Public Access in the Preserve

When we provided our support for the HDCP, we did so with the understanding that the public would be granted controlled access to a trail constructed within the Preserve. Due to the small size and sensitivity of the PPM population, during development of the HDCP and HMMP we emphasized that it would be critical to design and regulate public use to safeguard PPM and other sensitive flora and fauna within the Preserve. Among the provisions incorporated in the HDCP and HMMP to address this concern were: fencing the perimeter of the Preserve, placing lockable gates at the trail heads, aligning and minimizing the width of the trail to minimize impacts to sensitive resources, fencing the trail alignment to discourage off-trail use, prohibiting the public from bringing dogs within the Preserve, and restricting public use of the trail to daytime hours. The HMMP further contemplated that the Habitat Manager (CNLM) would monitor public access and its consequences within the Preserve and would apply adaptive management to minimize impacts to individuals or populations of NCCP/HCP Identified Species from public access (URS and CNLM 2005).

To assist CNLM monitor public visitation to the Preserve, during 2010 we worked with the Natural Communities Coalition (the non-profit entity that helps oversee implementation of the NCCP/HCP) to fund the acquisition of trail counters to place at each of the trail heads. Public visitation data collected by CNLM since 2010 shows that the popularity of the Preserve has grown appreciably, with the estimated number of annual visitors nearly doubling between 2011 and 2017 to almost 250,000 visitors per year.

As discussed in the proposed modification to the HMMP, human disturbance of wildlife from non-consumptive recreation (e.g., hiking) can cause altered spatio-temporal habitat use, decreased survival and reproduction, reduced population abundance, and extirpation of animals from otherwise suitable habitat (see review by Dertien *et al.* 2021). Thus, it is important to consider modifying public access within the Preserve to ameliorate the threat that the increasing popularity of the Preserve to the public may present to the Dana Point PPM population. The status of this population further suggests a conservative management strategy is warranted that focuses on ameliorating all potential threats to this population, including recreation use, habitat senescence, Argentine ants, and other factors discussed in the HMMP update.

Adaptive Management of the Preserve

The Wildlife Agencies supported the HDCP based on the proposal to permanently preserve the Temporary Pacific Pocket Mouse Preserve and manage this area and its resources using adaptive management principles, which we determined would help promote the survival and recovery of PPM. Adaptive management makes use of management interventions and follow up monitoring to improve understanding of how a resource system works and improve subsequent decisions to help achieve management objectives. In developing the proposal to reduce public access to benefit sensitive resources within the Preserve, CNLM has considered the monitoring data on public use, the dynamics of the PPM population before and after restriction of public access to the Preserve due to COVID-19, and the growing body of scientific literature that indicates that even passive non-consumptive recreation can have deleterious effects on wildlife individuals and populations. Looking forward, we recommend that CNLM work with the Wildlife Agencies and others to determine how the existing monitoring program might be adjusted to better study the effects of trail use on PPM and other sensitive species. Refining the PPM monitoring methodology to use track tubes and live trapping to more frequently estimate PPM distribution and abundance on the Preserve, including documenting any changes in PPM distribution during days that the public is using the trail and days that they are not, should provide the information necessary to allow CNLM to continue to adjust public access and management effort in response to the changes in PPM populations and to adaptively manage the Preserve.

We recognize that providing the public access to nature is important for maintaining support for conservation efforts and that many members of the public will have an interest in the level of public access in the Preserve. Thus, our support for CNLM's proposed modification to the HMMP is based on the current status of the Dana Point PPM population and of the species as whole, which warrants a conservative management strategy within each of the extant populations. However, we wish to emphasize the importance of accompanying this management change with implementation of a more robust public outreach and education program that includes the use of

Deborah L. Rogers (FWS/CDFW-OR-2022-0016223)

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augmented signage and information displays. We also recommend implementing an updated species-specific monitoring plan to help address remaining questions about the effects of public access and other questions of concern to PPM management and recovery. The Wildlife Agencies are available to assist CNLM with an update to the species monitoring component of the HMMP.

Finally, we note that the plan includes guidance for establishing hours of operation (days of week/hours per day) for the public access trail but does not specify what those hours will be. We recommend including a figure that explicitly identifies the location of the trail where public access is permitted and a discussion of other allowable and prohibited public uses in the Preserve (e.g., access for pets or use of drones). To avoid confusion or different interpretations of allowable public use, we recommend these items be included as a component of the update to the HMMP.

We appreciate the opportunity to comment on the draft update to the HMMP and CNLM's management of the Preserve. We look forward to continuing to work cooperatively with CNLM to adaptively manage the Preserve and public access to continue to benefit PPM. Should you have questions or wish to discuss any of the above, please contact [William Miller](#)¹ with the Service at 760-431-9440, extension 206, or [Emily Gray](#)² of the Department.

Sincerely,

JONATHAN
SNYDER
Digitally signed by
JONATHAN SNYDER
Date: 2022.03.23
12:04:02 -07'00'

Jonathan D. Snyder
Assistant Field Supervisor
U.S. Fish and Wildlife Service

DocuSigned by:
David Mayer
D700B4520375406... 3/23/2022

David A. Mayer
Environmental Program Manager
California Department of Fish and Wildlife

cc:

Jeff Rosaler, City of Dana Point
Korie Merrill, CNLM

¹ william_b_miller@fws.gov

² emily.gray@wildlife.ca.gov

LITERATURE CITED

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EXHIBIT 6

**VIA E-MAIL**

Deborah L. Rogers
Co-Executive Director &
Director of Conservation Science and Stewardship
CENTER FOR NATURAL LANDS MANAGEMENT
27258 Via Industria, Suite B
Temecula, CA 92590-3751

drogers@cnlm.org

Re: Draft Updated Habitat Mitigation and Monitoring Plan for
Public Access at Dana Point Preserve Dated March 14, 2023

Dear Ms. Rogers:

The City is in receipt of your letter dated March 14, 2023, which attaches a Draft Updated Habitat Mitigation and Monitoring Plan at Dana Point Preserve ("HMMP Update") prepared by the Center for Natural Lands Management ("CNLM"). In your letter, you request that the City of Dana Point ("City") (among other agencies) approve the HMMP Update. The purpose of this letter is to inform you that the City **does not** approve of the HMMP Update for each of the following reasons:

First, as we have advised you in several meetings, approval of the HMMP will require a Coastal Development Permit ("CDP"). Staff cannot approve it on behalf of the City without following the proper procedure which allows for public input, and a transparent public process. This is the case without regard to the substantive concerns the City has, which are noted below. Stated otherwise, regardless of the substance of the changes contained in the HMMP Update, your request ignores the proper process for approval of the proposed changes.

Next, the primary substantive change proposed by the HMMP Update is a proposal to reduce the days and hours of public access from seven (7) days a week from 7:00 am to sunset to four (4) days a week (Tues, Thurs, Sat, Sun) from 8:00 am to 6:00 pm in the summer and 8:00 am to 4:00 pm in the winter. This change constitutes "development" under the Coastal Act and the City's Municipal Code including because it results in a change in the intensity of land use and a change in access to Strand Beach. As such, without regard to any other reason for requiring a CDP, the proposed changes contained within the HMMP Update require approval by way of a CDP. Indeed, as the California Coastal Commission clearly indicated in its November 4, 2021, letter to CNLM and the City, daily hours of operation for the Nature Trail and Overlook Areas (and/or implementation of any management measures), cannot be lawfully established or restricted without an approved CDP. Any action on the part of CNLM to limit public access absent a duly approved CDP is null and void and in violation of the Coastal Act and the governing Entitlement Documents.

Equally important is the fact the City is the "recipient" or holder of the public access easement contained in the Conservation Easement, and hence is the appropriate entity to establish



operating hours for the Nature Trail and Overlooks. (See, HDCP, Pg. 3-37, Table 3.4.5, Pg. 4-49, Table 4.5.1, Pg. 5-12, Section 5.5(B) ["The Headlands Conservation Park has been established to conserve 27.9 acres of sensitive flora and fauna on the Headlands. To protect this natural habitat, only limited portions of the area will accommodate passive uses, such as a bluff top trail, security fencing, overlooks, seating, and signage. ***Times of access to the bluff top trail will be determined by the receiving public agency.***".]) While CNLM should submit an application for a CDP to update other aspects of the HMMP, as we have discussed multiple times, the City is responsible for setting hours for the Nature Trail and Overlooks. Hence, the establishment of operational hours should not be part of the HMMP or any CDP application submitted by CNLM.

Finally, and aside from the fact the City is responsible to establish operational hours, the City continues to have concerns regarding the proposed substantial limitation on public access proposed in the HMMP Update which it has repeatedly expressed to CNLM. These concerns were not only relayed in the multiple meetings between CNLM and the City, and in the ongoing litigation, but were also contained in the letter I provided to CNLM dated July 28, 2022. That letter makes clear that if CNLM proposed an update to the HMMP that restricted public access to fewer days and hours than is currently permitted, City staff would not recommend that it be approved for a variety of reasons. These reasons include that such changes would impede public access to the Nature Trail and Overlook Areas in a manner that conflicts with: (1) the City's (and public's) public access easement rights; (2) the entitlements that govern the use of the Dana Point Preserve, and (3) the Coastal Act.

In sum, the City does not approve the proposed HMMP Update for all the forgoing reasons.

Sincerely,

Brenda Wisneski
Director of Community Development

cc (via e-mail):

Mike Killebrew, City Manager; City of Dana Point (mkillbrew@danapoint.org)
Jeff Rosaler, Deputy Director of Community Services;
City of Dana Point (jrosaler@danapoint.org)
Bernice Villanueva, Natural Resource Protection Officer;
City of Dana Point (bvillanueva@danapoint.org)
Jonathan Snyder; US Fish and Wildlife Service (Jonathan_D_Snyder@fws.gov)
Carol Roberts; US Fish and Wildlife Service (carol_a_roberts@fws.gov)
Will Miller; US Fish and Wildlife Service (William_B_Miller@fws.gov)
Dave Mayer; CA Dept. of Fish and Wildlife (David.Mayer@wildlife.ca.gov)



Ed Pert; CA Dept. of Fish and Wildlife (Ed.Pert@wildlife.ca.gov)
Emily Gray; CA Dept. of Fish and Wildlife (emily.gray@wildlife.ca.gov)
Karl Schwing; California Coastal Commission (Karl.Schwing@coastal.ca.gov)
Eric Stevens; California Coastal Commission (eric.stevens@coastal.ca.gov)
Jonna Engel; California Coastal Commission (jonna.engel@coastal.ca.gov)
Andrew Willis; California Coastal Commission (andrew.willis@coastal.ca.gov)
Sarah Mueller, General Counsel; Center for Natural Lands Management
(smueller@cnlm.org)
Korie Merrill, Regional Preserve Manager – South Coast;
Center for Natural Lands Management (kmerril@cnlm.org)
Angela Howe, Sr. Legal Director, Surfrider Foundation (ahowe@surfrider.org)
Mandy Sackett, Senior California Coastal Commission Advisor;
Surfrider Foundation (msackett@surfrider.org)
Henry Chou, Chair; Surfrider Foundation South
OC Chapter (hchou@southoc.surfrider.org)
Rick Erkeneff, Vice Chair; Surfrider Foundation South
OC Chapter (rerkeneff@southoc.surfrider.org)
Denise Erkeneff, Chapter Coordinator; Surfrider Foundation,
South OC Chapter (derkeneff@southoc.surfrider.org)

EXHIBIT 7

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
301 E. Ocean Blvd., Suite 3000
Long Beach, CA 90802-4302
(562) 590-5071

**SENT VIA REGULAR MAIL AND EMAIL**

December 14, 2023

Brenda Wisneski
City of Dana Point
Director of Community Development
33282 Golden Lantern
Dana Point, CA 92629-1805

Re: Headlands Conservation Park Trail Hours

Dear Ms. Wisneski:

We received a copy of your letter to Center for Natural Lands Management (“CNLM”) on August 1, 2023, which, amongst other things, suggests that the City of Dana Point is responsible for setting hours for the blufftop trail in the Headlands Conservation Park, which is a position that is not supported by the Commission-certified Local Coastal Program for the City of Dana Point, as described below. Regardless, we are not aware of the City taking action to authorize the trail hours that it has sought in litigation with CNLM¹ – hours that we believe constitute an ongoing inconsistency with the Local Coastal Program.

We understand the importance of public access generally and work to protect it statewide. However, we are also concerned that the City’s insistence upon these hours is endangering the existence of the federally threatened Pacific Pocket Mouse, a small population of which is supported by the Headlands Conservation Park. Managing public use of the Headlands Conservation Park in a way that minimizes impacts on this threatened species is critical to the survival of this species, which is just another piece in protecting the ecosystem and its critical functions. As the United States Fish and Wildlife Service and California Department of Fish and Wildlife put it in their joint March 23, 2022 to CNLM, “Due to the small size and sensitivity of the PPM population, during development of the HDCP and HMMP we emphasized that it would be critical to design and regulate public use to safeguard PPM and other sensitive flora and fauna within the Preserve.”

In order to protect the Pacific Pocket Mouse and undo the inconsistency with the Local Coastal Program with respect to trail hours described herein, we are asking the City to forego its insistence on maintaining the existing hours of operation and process CNLM’s request to establish hours of operation through an amendment to the Headlands Conservation Park management plan or a coastal development permit, as CNLM has requested to do. We are hopeful that such a compromise will allow for both public access and the survival of a threatened species.

¹ See, for instance, page 9 of the City’s Cross-Complaint for Civil Fines and Injunctive Relief for Violation of the Coastal Act, which says, in part, that “The City responded on or about June 19, 2020, again requesting the Nature Trail be returned to normal operating hours and advised CNLM of the City’s successful management of its other, opened trails at the Headlands, pointing out COVID had not been a challenge related to such trails.”

City Trail Hours are Detrimental to PPM and Inconsistent with the LCP

The Local Coastal Program requires that trail hours must be found to be consistent with policies of the Local Coastal Program. Table 3.4.5 (Headlands Conservation Park) of the Local Coastal Program describes the balanced approach to access and protecting habitat that must occur at the Headlands Conservation Park. It states, in part, that:

The Headlands Conservation Park includes a limited bluff top trail, spectacular views of the ocean, and limited visitor access to the coastline and natural environment...

Balancing the desire for limited public access and views along the perimeter, this planning area also is designed to protect a number of sensitive flora and fauna, including the Pacific pocket mouse. As a result, and to protect this natural resource area from overuse, only limited portions of the area will accommodate passive uses, such as the bluff top trails, security fencing, overlooks, seating, and signage. The bluff top trail shall be sited to avoid and setback at least 25 feet from coastal bluff scrub in the vicinity of the bluff edge. The receiving agency or nonprofit entity will establish hours of operation for the bluff top trail.

With specific regard to how public access and habitat protection will be balanced with respect to trail hours, Section 4.5.1 of the Local Coastal Program states, in part:

The bluff-top trail in the Headlands Conservation Park shall be accessible to the public year-round, except for any specific period determined by the resources agencies to protect on site resources. The recipient public agency or non-profit entity will determine hours of daily operation.

As is evident from the joint May 15, 2023 letter from the resources agencies, United States Fish and Wildlife Service and California Department of Fish and Wildlife, the resources agencies share the concern here and support CNLM's proposed trail hours to better protect the Pacific Pocket Mouse. For instance, the resources agencies state that "As relayed in our prior comment letter, the status of each of the extant PPM populations warrants a conservative management approach to safeguard them from extirpation, especially at Dana Point, which supports the smallest and most vulnerable PPM population to environmental, demographic and genetic threats. Because public access is one of the few threats to the Dana Point population that can be effectively managed and could appreciably influence the size of the Dana Point population, we continue to support the proposal to more closely monitor and manage public access as a component of the adaptive management plan for the Preserve."

The City's trail hours are inconsistent with this recommendation by the resources agencies to regulate trail use to better protect the pocket mouse, and thus are inconsistent with the Local Coastal Program.

Authorize Hours of Operation through a CDP

As noted in previous correspondence, the Headlands project coastal development permit, CDP No. 04-23, does not authorize specific hours of operation for the trail. Therefore, a coastal development

permit is required to authorize hours of operation for the bluff top trail. This may occur through review and approval of the compliance documents for the existing Headlands coastal development permit, e.g. the Habitat Management and Monitoring Plan, or a new coastal development permit. Regarding the former option, Condition No. 38 of CDP No. 04-23 requires submittal of a habitat management plan (i.e. the Habitat Management and Monitoring Plan), and the preliminary drafts of the Habitat Management and Monitoring Plan HMP do contemplate trail hours. This is consistent with the Dana Point Municipal Code's requirements for management plans, see Section 9.27.030(a)(4)(H), which says:

(H) Management Plan (Minimum Requirements). A management plan may be required in conjunction with a dedication of public access in any case where there is substantial evidence of potential conflicts between public access use and other uses on or immediately adjacent to the site. Examples include access in areas of sensitive habitats, agricultural resources, or significant hazards, or adjoining residential neighborhoods or military security areas. The plan shall be prepared by the accepting agency and approved by the City of Dana Point prior to the opening of the access to public use. Where applicable, the plan should specify management controls on time and intensity of use, standards for privacy buffers, and requirements for maintenance of aesthetic values through such measures as litter control.

The Habitat Management and Monitoring Plan thus could be an option for CNLM to set hours of operation, as approved by the City, wildlife agencies, and the Coastal Commission.

CNLM Sets the Hours of Operation

The Local Coastal Program identifies CNLM, which is the recipient of fee title to the Headlands Conservation Park, as the entity that sets the trail hours. Table 3.4.5 (Headlands Conservation Park) of the Local Coastal Program says in part that "The receiving agency or non-profit entity will establish hours of operation for the bluff top trail." Table 4.5.1 (Headlands Conservation Park (27.9 Acres) Public Access Program Guidelines) says in part that "The recipient public agency or non-profit entity will determine hours of daily operation."

The Habitat Management and Monitoring Plan, which was prepared by CNLM and a City-hired consulting firm, also designates CNLM as the entity that sets the trail hours. As a preliminary matter, the Habitat Management and Monitoring Plan identifies CNLM as the habitat manager: "Headlands Reserve LLC has entered into an agreement with the Steele Foundation to ensure the perpetual management of the Biological Open Space of the Conservation Park. In turn, the Steele Foundation has selected CNLM as the habitat manager for the Headlands Conservation Park." The Habitat Management and Monitoring Plan then identifies the habitat manager as the entity that controls public access: "The Habitat Manager will be monitoring the consequences of this public access, and making recommendations to the City, which will be responsible for controlling public access for all areas other than the Headlands Conservation Park. Control of public access to the Headlands Conservation Park will be the responsibility of CNLM in consultation with the City of Dana Point. Hours of operation for the Headlands Conservation Park and other areas of Biological Open Space will be 7:00 am to sunset." As noted on numerous occasions in correspondence regarding this matter, CNLM has indeed monitored the consequences of public access and is recommending trail hours to help protect the Pacific Pocket Mouse.

Despite the provisions quoted above, I understand that it is your position that the receiving entity that sets the trail hours is the City. This position is apparently based upon a sentence in the Local Coastal Program, in Section 5.5B, which says in part that “Times of access to the bluff top trail will be determined by the receiving public agency”. Since this sentence refers only to a “public agency”, which CNLM is not, it is your position then that the receiving entity must be the City, and the item being received is the conservation easement over the Headlands Conservation Park, and not the park itself. Notably, recipient is not defined in the section that you cite, or elsewhere in the Local Coastal Program, to refer to the recipient of the conservation easement. In the section that you cite, there is no mention of the conservation easement at all.

Your position does not account for all of the other iterations of this same sentence in the Local Coastal Program, which are quoted herein, that include reference to a public agency *and* a non-profit entity, e.g. CNLM. In fact, in the same section that you cite as evidence for your position, the next paragraph after the sentence that you quote reads as follows:

The Headlands Conservation Park also requires a long-term management program to conserve and enhance the sensitive plants and species. An endowment or annual budget will be established by the recipient public or non-profit agency to ensure the long term maintenance and operations of the Headlands Conservation Park.

That sentence that you rely on is clearly an aberration since in each other instance of the analogous sentence in the Local Coastal Program, it refers to both a receiving public agency or non-profit entity.

Conservation Easement does not Transfer Authority to Set the Trail Hours to the City

The conservation easement over the Headlands Conservation Park is not identified by the Local Coastal Program or the Headlands Coastal Development Permit, which govern development at the Headlands Conservation Park, as a mechanism to set trail hours, nor does the easement purport to set trail hours, and thus the easement cannot confer to the City the authority to set trail hours. In fact, the easement references the Habitat Management and Monitoring Plan (referred to as the “Restoration/Revegetation Plans” in the easement) as the document that specifically regulates access to the Headlands Conservation Park. See Section 5.2(d) of the easement, which identifies the following uses as prohibited uses: “Recreational activities, including but not limited to, walking, hiking, bicycling, horseback riding, or fishing (except as described in Section 5.2(d) or unless specifically provided for in the Restoration/Revegetation Plans).” [underlining added for emphasis]

As described above, the Habitat Management and Monitoring Plan identifies CNLM as the entity that sets the trail hours.

Conclusion

We would appreciate your cooperation and assistance in resolving this matter consistent with applicable law, and to assist us in the delicate balance and protection of this critical ecosystem. CNLM has been attempting to establish trail hours that are consistent with the Local Coastal Program since, to our knowledge, at least January 2022, and the City has rejected CNLM’s attempts

to modify trail hours through an amendment to the Habitat Management and Monitoring Program. If the City will not allow hours to be established that are consistent with the Local Coastal Program through the HMMP process, we suggest that the City process an application for CNLM's proposed hours through the CDP process. We would appreciate it if you would indicate the City's agreement to engage in the HMMP process or accept a CDP application within 15 days of the receipt of this letter so that Commission staff can consider its options to ensure trail hours that are protective of an endangered species, and consistent with the Local Coastal Program, are established in a timely manner. Thank you very much for your time and attention and I look forward to hearing from you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Andrew Willis', with a stylized, cursive-like script.

Andrew Willis
Enforcement Staff Counsel

cc: Deborah Rogers, CNLM
Jonathan D. Snyder, USFWS
David A. Mayer, CDFW
Lisa Haage, Chief of Enforcement, CCC
Karl Schwing, Deputy Director, CCC

EXHIBIT 8

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

From: **Brenda Wisneski** <BWisneski@danapoint.org>

Date: Wed, Jan 3, 2024 at 2:50 PM

Subject: RE: 2023 Draft Habitat Management Plan

To: Willis, Andrew@Coastal <Andrew.Willis@coastal.ca.gov>, Deborah Rogers <drogers@cnlm.org>

Cc: Mike Killebrew <MKILLEBREW@danapoint.org>, Jeff Rosaler <JROSALER@danapoint.org>, Bernice Villanueva <BVillanueva@danapoint.org>, Jonathan Snyder <Jonathan_D_Snyder@fws.gov>, [carol a roberts@fws.gov](mailto:carol_a_roberts@fws.gov) <carol_a_roberts@fws.gov>, William B. Miller <William_B_Miller@fws.gov>, Mayer, David@Wildlife <David.Mayer@wildlife.ca.gov>, Pert, Ed@Wildlife <Ed.Pert@wildlife.ca.gov>, Gray, Emily@Wildlife <Emily.Gray@wildlife.ca.gov>, Schwing, Karl@Coastal <Karl.Schwing@coastal.ca.gov>, Engel, Jonna@Coastal <Jonna.Engel@coastal.ca.gov>, Sarah Mueller <smueller@cnlm.org>, Korie Merrill <kmerrill@cnlm.org>, ahowe@surfrider.org <ahowe@surfrider.org>, Mandy Sackett <msackett@surfrider.org>, hchou@southoc.surfrider.org <hchou@southoc.surfrider.org>, rerkeneff@southoc.surfrider.org <rerkeneff@southoc.surfrider.org>, derkeneff@southoc.surfrider.org <derkeneff@southoc.surfrider.org>, Haage, Lisa@Coastal <Lisa.Haage@coastal.ca.gov>, Munoz, Patrick <pmunoz@rutan.com>, jfarrell <jfarrell@rutan.com>

Happy New Year, Andrew. Just wanted to confirm receipt of your letter. City Hall was closed over the holidays, so we will review your comments and get back to you.



Brenda Wisneski

Community Development Director

City of Dana Point – Community Development Department

(949) 248-3560 | bwisneski@danapoint.org

From: Willis, Andrew@Coastal <Andrew.Willis@coastal.ca.gov>
Sent: Thursday, December 14, 2023 1:11 PM
To: Brenda Wisneski <BWisneski@DanaPoint.org>; Deborah Rogers <drogers@cnlm.org>
Cc: Mike Killebrew <MKILLEBREW@DanaPoint.org>; Jeff Rosaler <JROSALER@DanaPoint.org>; Bernice Villanueva <BVillanueva@DanaPoint.org>; Jonathan Snyder <Jonathan_D_Snyder@fws.gov>; carol_a_roberts@fws.gov; William B. Miller <William_B_Miller@fws.gov>; Mayer, David@Wildlife <David.Mayer@wildlife.ca.gov>; Pert, Ed@Wildlife <Ed.Pert@wildlife.ca.gov>; Gray, Emily@Wildlife <Emily.Gray@Wildlife.ca.gov>; Schwing, Karl@Coastal <Karl.Schwing@coastal.ca.gov>; Engel, Jonna@Coastal <Jonna.Engel@coastal.ca.gov>; Sarah Mueller <smueller@cnlm.org>; Korie Merrill <kmerrill@cnlm.org>; ahowe@surfrider.org; Mandy Sackett <msackett@surfrider.org>; hchou@southoc.surfrider.org; rerkeneff@southoc.surfrider.org; derkeneff@southoc.surfrider.org; Haage, Lisa@Coastal <Lisa.Haage@coastal.ca.gov>
Subject: RE: 2023 Draft Habitat Management Plan

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Brenda, please see the attached letter. Thank you, Andrew

Andrew Willis (he/him/his)

Enforcement Staff Counsel
CALIFORNIA COASTAL COMMISSION

South Coast District Office

301 E. Ocean Blvd, Suite 300

Long Beach, CA 90802
(562) 590-5071



From: Brenda Wisneski <BWisneski@DanaPoint.org>

Sent: Tuesday, August 1, 2023 5:42 PM

To: Deborah Rogers <drogers@cnlm.org>

Cc: Killebrew, Michael@City of Dana Point <mkillebrew@danapoint.org>; Jeff Rosaler <JROSALER@DanaPoint.org>; Bernice Villanueva <BVillanueva@DanaPoint.org>; Jonathan Snyder <Jonathan_D_Snyder@fws.gov>; carol_a_roberts@fws.gov; William B. Miller <William_B_Miller@fws.gov>; Mayer, David@Wildlife <David.Mayer@wildlife.ca.gov>; Pert, Ed@Wildlife <Ed.Pert@wildlife.ca.gov>; Gray, Emily@Wildlife <Emily.Gray@Wildlife.ca.gov>; Schwing, Karl@Coastal <Karl.Schwing@coastal.ca.gov>; Stevens, Eric@Coastal <eric.stevens@coastal.ca.gov>; Engel, Jonna@Coastal <Jonna.Engel@coastal.ca.gov>; Willis, Andrew@Coastal <Andrew.Willis@coastal.ca.gov>; Sarah Mueller <smueller@cnlm.org>; Korie Merrill <kmerrill@cnlm.org>; ahowe@surfrider.org; Mandy Sackett <msackett@surfrider.org>; hchou@southoc.surfrider.org; rerkeneff@southoc.surfrider.org; derkeneff@southoc.surfrider.org

Subject: 2023 Draft Habitat Management Plan

Please see the City's response to your letter dated March 14, 2023.

Brenda Wisneski

Community Development Director

City of Dana Point

949-248-3560

1 **PROOF OF SERVICE**

2 ***Center for Natural Lands Management v. City of Dana Point, and Cross Action,***
3 **Superior Court of Orange County Case No. 30-2021-01219668-CU-OR-CJC**
4 **30-2021-01219668-CU-OR-CJC**

5 **STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

6 At the time of service, I was over 18 years of age and not a party to this action. I am
employed in the County of Alameda, State of California. My business address is 1999 Harrison
Street, 9th Floor, Oakland, CA 94612.

7 On March 25, 2024, I served true copies of the following document(s) described as
8 **DECLARATION OF DEBORAH L. ROGERS, PH.D. IN SUPPORT OF PLAINTIFF AND**
9 **CROSS-DEFENDANT CENTER FOR NATURAL LANDS MANAGEMENT'S MOTION**
10 **TO DISSOLVE OR, IN THE ALTERNATIVE, TO MODIFY THE PRELIMINARY**
11 **INJUNCTION** on the interested parties in this action as follows:

12 Patrick Munoz, Esq.
Jennifer Farrell, Esq.
13 Robert Owen, Esq.
RUTAN & TUCKER LLP
14 18575 Jamboree Road, 9th Floor
Irvine, CA 92612

Attorneys for Defendant and Cross-
Complainant CITY OF DANA POINT

Telephone: (714) 641-5100
Facsimile: (714) 546-9035
Email: pmunoz@rutan.com
jfarrell@rutan.com
bowen@rutan.com

15 **BY ELECTRONIC SERVICE:** I electronically filed the document(s) with the Clerk of
the Court by using the One Legal system. Participants in the case who are registered users will be
16 served by the One Legal system. Participants in the case who are not registered users will be
served by mail or by other means permitted by the court rules.

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct.

19 Executed on March 25, 2024, at Oakland, California.

20 

21 _____
22 Melissa Bender
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1 SHAYE DIVELEY (SBN: 215602)
sdiveley@meyersnave.com
2 RUSSELL E. MORSE (SBN: 251057)
rmorse@meyersnave.com
3 RICA V. GARCIA (SBN 320758)
rgarcia@meyersnave.com
4 MEYERS NAVE
1999 Harrison Street, 9th Floor
5 Oakland, California 94612
Telephone: (510) 808-2000
6 Facsimile: (510) 444-1108

7 Attorneys for Plaintiff and Cross-Defendant
CENTER FOR NATURAL LANDS
8 MANAGEMENT

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF ORANGE**

11
12 CENTER FOR NATURAL LANDS
MANAGEMENT, a non-profit organization,
13
14 Plaintiff and Cross-Defendant,
15 v.
16 CITY OF DANA POINT; and DOES 1-50,
17 Defendants.

18 CITY OF DANA POINT,
19 Cross-Complainant,
20 v.
21 CENTER FOR NATURAL LANDS
MANAGEMENT,
22 Cross-Defendant.
23

Case No. 30-2021-01219668-CU-OR-CJC

ASSIGNED FOR ALL PURPOSES TO:
MICHAEL STRICKROTH, DEPARTMENT
C15

**DECLARATION OF KORIE MERRILL
IN SUPPORT OF PLAINTIFF AND
CROSS-DEFENDANT CENTER FOR
NATURAL LANDS MANAGEMENT'S
MOTION TO DISSOLVE OR, IN THE
ALTERNATIVE, TO MODIFY THE
PRELIMINARY INJUNCTION**

Reservation No. 74254693

Date: December 9, 2024

Time: 1:45 p.m.

Dept.: C15

Judge: Hon. Michael Strickroth

Action Filed: September 7, 2021

Trial Date: None Set

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1. I am the Regional Preserve Manager of the Center for Natural Lands Management (“CNLM”), and a party to the above-entitled action. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

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1 June 20, 2023.

2 I declare under penalty of perjury under the laws of the State of California that
3 the foregoing is true and correct.

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6 Korie Merrill

7 5673612.3

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EXHIBIT A

Center for Natural Lands Management

A non-profit organization for the protection and management of natural resources

27258 Via Industria, Suite B
Temecula, CA 92590-3751
Phone: 760.731.7790
Fax: 760.731.7791
www.cnlm.org



RE: Report for Permit TE-221411-6.1 & SCP-013986

Report Date and Time: June 5, 2023, 7:15 PM

Report Prepared by: Korie Merrill, Regional Preserve Manager, CNLM

We are reporting 1 (one) Pacific Pocket Mouse (PPM) death that we encountered at our Dana Point Preserve today (5 June 2023). The PPM individual was found dead on the ground in the middle of the trail at approximately 08:20 AM by CNLM staff – note the trail was open to trail users starting at 0700 AM. CNLM Regional Preserve Manager, Korie Merrill, immediately went to the Preserve to verify the specimen as PPM and collect other information. After verification, CNLM immediately (9:29 a.m.) reached out to staff at CDFW, USFWS, USGS, and the San Diego Zoo Wildlife Alliance (SDZWA) to report the mortality and request confirmation as to salvage protocol, assuming the specimen could be used for scientific purposes. After receiving confirmation of preservation protocol from SDZWA and authorization from USFWS, CNLM staff recovered the carcass, put it on ice then placed it in a freezer at the Regional Preserve Manager's office, where it currently resides. The carcass does appear to have track-tube ink on its front toes, indicating that at some point it had visited a track tube. However, based on the location and timing is not believed to be an incident related to track tube monitoring – conducted under federal and state permits (10(a)(1)(A) permit TE- 221411-6.1 and SCP 013986, respectively) – or any other CNLM management actions.

The carcass was found within a few hours after sunrise (05:41 AM) in the middle of the trail when the trail was open, thus it is possible the individual died after being stepped on by a trail user. There was no evidence of predator attack—another possible cause of mortality—and the animal appeared otherwise healthy. As such, mortality related to a pedestrian encounter is a possibility.

We recognize and appreciate the USFWS authorization to transfer the carcass to the San Diego Zoo Wildlife Alliance as a repository (email attached). We will coordinate directly with their staff to do so.

Carcass salvage details:

Date: June 5, 2023

Location: UTM E 433693.000/ N 3702578.978; CNLM's Dana Point Preserve, Dana Point Orange County, CA

Species: *Perognathus longimembris pacificus*

Notes on the Individual: Juvenile male PPM. No obvious signs of depredation. Appeared to have been dead for a little while (cool and slightly stiff but not rigid, air temp at the time was approximately 57F). Found on the trail in a set of shoe prints (photo below).

Permittee: Korie Merrill; TE- 221411-6.1 and SCP-013986.

Should you have any questions or concerns regarding this report please contact Korie Merrill (949-218-1145).

Sincerely,



Korie C. Merrill
Regional Preserve Manager, South Coast
Center for Natural Lands Management

5 June 2023

Date



EXHIBIT B



Korie Merrill <kmerrill@cnlm.org>

PPM Mortality

Miller, William B. <william_b_miller@fws.gov>

Mon, Jun 5, 2023 at 12:47 PM

To: Deborah Rogers <drogers@cnlm.org>, Aryn Wilder <awilder@sdzwa.org>, Debra Shier <DShier@sdzwa.org>, Korie Merrill <kmerrill@cnlm.org>

Cc: "Sin, Hans@Wildlife" <Hans.Sin@wildlife.ca.gov>, "Gray, Emily@Wildlife" <Emily.Gray@wildlife.ca.gov>, "Drewe, Karen@Wildlife" <Karen.Drewe@wildlife.ca.gov>, "Snyder, Jonathan" <Jonathan_d_Snyder@fws.gov>, "Roberts, Carol" <carol_a_roberts@fws.gov>, Debra Shier <DShier@sdzwa.org>, Aryn Wilder <awilder@sdzwa.org>, "Love, Stacey" <stacey_love@fws.gov>

Deborah- Thank you for promptly informing us of this unfortunate discovery and seeking assistance on how best to preserve the specimen so that best use can be made of it. Per Condition 24 of CNLM's Recovery Permit (attached) we ask that in such instances (i.e. in the future) you inform Stacey Love, the Carlsbad Fish and Wildlife Office Recovery Permit Coordinator within 24 hours of such discoveries. As Stacey is out this week, I have copied her here to fulfill that requirement. We also ask that you provide a little more information regarding the circumstances of the discovery (e.g. was the animal discovered during trap tube surveys being performed at the site?) and any apparent or hypothesized reasons that may have led to the mortality.

Fortunately, Aryn Wilder of the San Diego Zoo Wildlife Alliance (SDZWA), has confirmed that freezing the specimen is an appropriate method of preservation for sampling the DNA, which we support for scientific study. Associated with salvage of the specimen, we ask that the specimen be properly labeled and transferred to the San Diego Zoo Wildlife Alliance as soon as possible. As SDZWA is not an identified repository in CNLM's recovery permit, please consider this email as authorization to transfer the specimen to SDZWA. When you transfer the specimen, please provide a copy of CNLM's permit to SDZWA along with this email to document that the transfer was performed in conformance with CNLMs recovery permit.

Please refer to CNLM's Recovery Permit conditions 24 and 25 for additional guidance on salvage and transfer of the PPM to SDZWA and do not hesitate to reach out should you have any questions.

Sincerely,

William B. Miller, Biomonitor
U.S. Fish and Wildlife Service
Carlsbad Fish and Wildlife Office
[2177 Salk Avenue, Suite 250](https://www.fws.gov/carlsbad)
Carlsbad, California 92008
(760) 431-9440 Ext. 206
William_B_Miller@fws.gov

Pronouns: *He, Him, His*

From: Deborah Rogers <drogers@cnlm.org>

Sent: Monday, June 5, 2023 9:29 AM

To: Snyder, Jonathan <Jonathan_d_Snyder@fws.gov>; Aryn Wilder <awilder@sdzwa.org>; Debra Shier <DShier@sdzwa.org>; Roberts, Carol <carol_a_roberts@fws.gov>; Miller, William B. <william_b_miller@fws.gov>

Cc: Korie Merrill <kmerrill@cnlm.org>; Fisher, Robert N <rfisher@usgs.gov>; Brehme, Cheryl S

<cbrehme@usgs.gov>; Mayer, David@Wildlife <David.Mayer@wildlife.ca.gov>; Sin, Hans@Wildlife
<Hans.Sin@wildlife.ca.gov>; Gray, Emily@Wildlife <Emily.Gray@wildlife.ca.gov>; Drewe, Karen@Wildlife
<Karen.Drewe@wildlife.ca.gov>

Subject: [EXTERNAL]

This email has been received from outside of DOI - Use caution before clicking on links, opening attachments, or responding.

Good morning.

We are concerned to report that a dead PPM was found on the trail at the Dana Point Preserve this morning. Staff are onsite documenting. Korie reported that it is a male, probably a juvenile, and it doesn't appear to have been caused by a predator - no blood or obvious wounds

Debra or Aryn: Please advise on how to handle to make best use of the remains for genetic purposes (e.g. freeze immediately? or ?). We are uncertain of the time or cause of death.

Please contact Korie with her cell # (949)605-5037

Deborah



221411-6_CNLM_20230228.pdf

608K

EXHIBIT C



Korie Merrill <kmerrill@cnlm.org>

Fwd: (CNLM Ref S033) Cause of Death -- PPM on Trail at Dana Point Preserve

Debra Shier <DShier@sdzwa.org>

Tue, Jun 20, 2023 at 3:15 PM

To: Deborah Rogers <drovers@cnlm.org>, Korie Merrill <kmerrill@cnlm.org>

Cc: "Miller, William" <William_B_Miller@fws.gov>, Hans Sin <Hans.Sin@wildlife.ca.gov>, Jonathan Snyder <Jonathan_D_Snyder@fws.gov>, Aryn Wilder <awilder@sdzwa.org>, "stremor@sdnhm.org" <stremor@sdnhm.org>

Hi All,

Our pathologist finished her gross necropsy of the animal that was found dead on the trail at the Dana Point headlands on June 5th.

Here is the info that our pathologist sent to us:

This juvenile male was in good postmortem condition and had food in his GI tract. I'll know more about his body condition when I look at tissues microscopically. The most significant finding was a large amount of hemorrhage under the skin along his chest, underarms, and left forelimb consistent with trauma. He also had a broken right tibia and fibula but that was presumed postmortem (maybe a second runner/walker) as there was no hemorrhage at the fracture site. He had no evidence of kyphosis.

I saved a full set of tissues for histopathology to screen out any underlying disease. I also saved his skull(minus the brain) and full pelt for the San Diego Natural History Museum. Please feel free to email with any questions or concerns in the meantime.

So, at this point, COD was likely trauma. We'll send additional info once histopathology is completed.

Best,

Debra

Debra M. Shier, Ph.D. (she/her)

Brown Endowed Associate Director of Recovery Ecology



From: Deborah Rogers <drogers@cnlm.org>
Sent: Tuesday, June 6, 2023 5:07 PM
To: Debra Shier <DShier@sdzwa.org>
Cc: Miller, William <William_B_Miller@fws.gov>; Hans Sin <Hans.Sin@wildlife.ca.gov>; Jonathan Snyder <Jonathan_D_Snyder@fws.gov>; Aryn Wilder <awilder@sdzwa.org>
Subject: Re: (CNLM Ref S033) Cause of Death -- PPM on Trail at Dana Point Preserve

Thanks, Debra. Yes, it would be very helpful to know anything else that can be ascertained about possible or probable COD (even if not certain) in case there is any management action that can be taken towards prevention of further deaths.

Deborah

[Quoted text hidden]

1 **PROOF OF SERVICE**

2 ***Center for Natural Lands Management v. City of Dana Point, and Cross Action,***
3 **Superior Court of Orange County Case No. 30-2021-01219668-CU-OR-CJC**

4 **STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

5 At the time of service, I was over 18 years of age and not a party to this action. I am
6 employed in the County of Alameda, State of California. My business address is 1999 Harrison
7 Street, 9th Floor, Oakland, CA 94612.

8 On March 25, 2024, I served true copies of the following document(s) described as
9 **DECLARATION OF KORIE MERRILL IN SUPPORT OF PLAINTIFF AND CROSS-
10 DEFENDANT CENTER FOR NATURAL LANDS MANAGEMENT'S MOTION TO
11 DISSOLVE OR, IN THE ALTERNATIVE, TO MODIFY THE PRELIMINARY
12 INJUNCTION** on the interested parties in this action as follows:

13 Patrick Munoz, Esq.
14 Jennifer Farrell, Esq.
15 Robert Owen, Esq.
16 RUTAN & TUCKER LLP
17 18575 Jamboree Road, 9th Floor
18 Irvine, CA 92612

Attorneys for Defendant and Cross-
Complainant CITY OF DANA POINT

Telephone: (714) 641-5100
Facsimile: (714) 546-9035
Email: pmunoz@rutan.com
jfarrell@rutan.com
bowen@rutan.com

19 **BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the
20 persons at the addresses listed in the Service List and placed the envelope for collection and
21 mailing, following our ordinary business practices. I am readily familiar with the practice of
22 Meyers Nave for collecting and processing correspondence for mailing. On the same day that
23 correspondence is placed for collection and mailing, it is deposited in the ordinary course of
24 business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

25 **BY ELECTRONIC SERVICE:** I electronically filed the document(s) with the Clerk of
26 the Court by using the One Legal system. Participants in the case who are registered users will be
27 served by the One Legal system. Participants in the case who are not registered users will be
28 served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Executed on March 25, 2024, at Oakland, California.



Melissa Bender



CITY OF DANA POINT

COMMUNITY DEVELOPMENT DEPARTMENT
33282 Golden Lantern, Suite 209
Dana Point, CA 92629
(949) 248-3564 | www.danapoint.org

COASTAL DEVELOPMENT PERMIT APPLICATION CHECKLIST

OFFICE USE ONLY:

PLANNER SIGNATURE: Chris Johnson
DATE: 4/01/24

PLANNING DIVISION

COASTAL DEVELOPMENT PERMIT (CDP) APPLICATION CHECKLIST

PROJECT: Headlands Conservation Trail - Public Access Hours

The Community Development Department cannot consider an application that is incomplete or incorrectly prepared. Particular attention should be given to the preparation of the Site Plans, Floor Plans, & Elevations. Both existing and proposed conditions must be shown. ***The applicant or agent must hand deliver all the required exhibits.***

NOTE:

- ☐ **A STAFF PLANNER MUST SIGN & DATE ABOVE AND CHECK (X) THE APPROPRIATE BOXES BELOW BASED ON THE SCOPE OF WORK PROPOSED FOR EACH DISTINCT APPLICATION(S).**

A. ITEMS REQUIRED FOR FILING:

- All plans, legal descriptions, and other documents must be submitted on sheets not less than 8½" x 11" in size, and not greater than 24" x 36" in size.
- All application material between 8½" x 11" and 24" x 36" in size shall be folded to a maximum of 8½" x 11" in size.

N/A ☐ 1. Completed Project Information Packet:

- ☐ Application Form
- ☐ Land Use Fact Sheet
- ☐ Justification Statement
- ☐ Environmental Assessment Form

N/A ☐ 2. Processing Fee/Associated Entitlements:

- ☐ Application processing fee:
 - ☐ Coastal Development Permit – Non-Residential (Major) – Bluff top or ESHA: **\$14,648.00**
 - ☐ Coastal Development Permit – Non-Residential (Minor) – No bluff top or ESHA: **\$8,595.00**
 - ☐ Coastal Development Permit – Residential (Major) – Bluff top or ESHA: **\$7,172.00**
 - ☐ Coastal Development Permit – Residential (Minor) – No bluff top or ESHA: **\$4,628.00**
- ☐ \$_____ (Deposit Amount; if applicable)
- ☐ Environmental Assessment fee of **\$50.00** (Separate Check-Made Payable to County of Orange)
- ☐ Required Notification Postage (To be assessed at the current postage rate and added to the permit)
- ☐ Other Discretionary Application Fees:
 - ☐ Conditional Use Permit: ☐ Major **\$10,096.00** ☐ Minor **\$2,601.00**
 - ☐ Site Development Permit: ☐ Major **\$7,594.00** ☐ Minor **\$3,680.00** ☐ Special Studies **\$27,034.00**
 - ☐ Tentative Maps: ☐ Tract Map (5-50 units/lots) **\$8,890.00** ☐ Tract Map (51+ units/lots) **\$11,496.00** ☐ Parcel Map **\$6,041.00**
 - ☐ Variance **\$9,504.00**
 - ☐ \$_____ (Deposit Amount; if Applicable)
- ☐ 3rd Party Review: ☐ Geotechnical ☐ Wave Run-Up/Coastal Engineering ☐ Traffic
 - ☐ \$_____ (Deposit Amount)

PLANNING DIVISION

COASTAL DEVELOPMENT PERMIT APPLICATION CHECKLIST

N/A ☐ **3. Legal Description of Property:**

- ☐ Provide one copy of recorded grant deed if property is not located in a recorded tract, where parcels are lot(s) in a recorded tract, the information may be noted on the plot plan by Tract and Lot Number
- ☐ Provide two copies of a recent (*within six months*) preliminary title report for all property in which development is proposed

N/A ☐ **4. Site Plans (5 Sets):**

(Containing the following information)

- ☐ Vicinity map which clearly shows the location of the site
- ☐ Title Block (name and address or property owner of record)
- ☐ Scale, north arrow and date prepared
- ☐ Property lines of building site and their dimensions
- ☐ Ultimate street right-of-way lines designated
- ☐ Streets: location, name, and width, and existing improvements including sidewalks and bike facilities
- ☐ Identify all easements: locations, purpose, and width on site plan
- ☐ Buildings: existing and proposed, location and size, showing distances from property lines, existing and proposed rooflines
- ☐ Access: (driveways, etc.) existing and proposed location, add dimensions and materials
- ☐ Fencing, non-retaining walls: existing and proposed, type, location, height, and materials
- ☐ Retaining walls existing or proposed: type, location, height, and materials
- ☐ Topography, showing existing and proposed grades
- ☐ Trash facilities: Show location and method of screening for trash containers
- ☐ _____.

N/A ☐ **5. Development Plans (5 Sets):**

(Fully dimensioned and containing the following information)

Floor Plans:

- ☐ Overall building and individual room dimensions, including square footage calculations
- ☐ All proposed interior walls and partitions
- ☐ Room identification
- ☐ Window and door locations

N/A ☐ Elevations:

- ☐ Provide views of elevations for all areas of improvement
- ☐ Indicate height limit and proposed height on elevations
- ☐ Height dimensioned from lowest point of structure
- ☐ Height dimensioned above grade of all floor, eaves, and ridges
- ☐ Roof pitches
- ☐ All roof mounted equipment and screening locations
- ☐ Exterior wall openings locations
- ☐ Cross-sections of project area
- ☐ Identify all exterior finish materials

PLANNING DIVISION

COASTAL DEVELOPMENT PERMIT APPLICATION CHECKLIST

- N/A Landscape Plans:
- ☐ Indicate percentage of lot that is landscaped and size, type and location of landscaping
 - ☐ Provide a water use analysis on the landscape plan
 - ☐ Provide landscape materials and plant legend on plan

- N/A ☐ **6. Additional Materials:**
- ☐ Materials Board
(Specifications and samples of type, color, and texture of proposed construction materials)

- N/A ☐ **7. Reduced Plans (11"x17"):**
- ☐ (1) Copy of Site Plans
 - ☐ (1) Copy Development Plans

- ☒ **8. Notification Package:**
- ☐ **500-foot Radius (Appealable Jurisdiction)**
 - ☐ One copy of a certified list of the names and addresses of all owners (including all condominium unit owners) within a **500-foot radius** of the exterior boundary of the subject property prepared for the latest tax rolls
 - ☐ (2) sets of printed address labels for all properties within a **500-foot radius** of the exterior boundary of the subject property with the assessor's parcel number printed on the labels
 - ☐ (2) sets of printed address labels for all properties within a **100-foot radius** of the exterior boundary of the subject property addressed to "occupant" with the assessor's parcel number printed on the labels
 - ☐ Copies of the Assessor's maps including properties and area within the 500-foot radius
 - ☐ Postage for mailing of notifications
 - ☐ **300-foot Radius (Non-Appealable Jurisdiction)**
 - ☐ One copy of a certified list of the names and addresses of all owners (including all condominium unit owners) within a **300-foot radius** of the exterior boundary of the subject property prepared for the latest tax rolls
 - ☐ (2) sets of printed address labels for all properties within a **300-foot radius**
 - ☐ Copies of the Assessor's maps including properties and area within the 300-foot radius
 - ☐ Postage for mailing of notifications

- N/A ☐ **9. Photographic log of existing conditions:** *(Provide photographs of the following on 8 ½" X 11" sheets of paper)*
- ☐ Front elevation of project site
 - ☐ Front elevation of the properties adjacent to the project site
 - ☐ Front elevation of properties directly across the street from subject property
 - ☐ Side elevations to properties adjacent to the subject property
 - ☐ Rear elevation of project site

PLANNING DIVISION

COASTAL DEVELOPMENT PERMIT APPLICATION CHECKLIST

N/A ☐ **10. Special Requirements** *(If applicable to your project, and a deposit is required):*

- ☐ Flood Plain Analysis *(Properties in FP-1,2,3 Overlay Zone)*
- ☐ Wave Run-Up Study *(Beach Road developments)*
- ☐ A detailed geotechnical study addressing bluff stability *(properties adjacent to coastal bluffs)*
- ☐ A comprehensive Sign Program *(commercial projects)*
- ☐ Preliminary Water Quality Management Plan (WQMP)
- ☐ _____.

B. ☐ _____.

NOTICE TO APPLICANTS:

1. To file an application, the applicant or his agent needs to bring all the exhibits described above to the City of Dana Point Community Development Department located at 33282 Golden Lantern, Suite 212, Dana Point, California 92629. You will want to meet with a Staff Planner. After they have briefly reviewed the plans and application to assure all the basic items are included and in the proper format, and the fees have been paid, the project will be deemed filed. Filing hours are 8:00 a.m. to 12:00 noon, Monday through Friday.

2. Your project will be assigned to one of the City of Dana Point's Planners. Your Planner will be responsible for managing the City's analysis of your proposed project.

3. Acceptance of application at the counter does not represent a complete application. California Government Code Section 65943 provides for 30 days in which the City can review the application and determine completeness. The applicant will be sent a letter during this time period stating the application is complete or that additional items are necessary.

4. It is recommended that the applicant, representative or property owner should be present at all hearings.

5. All correspondence and reports will be mailed to the project applicant/agent only.

6. If you have any questions regarding the above, please call the Planning Department at (949) 248-3564.



CITY OF DANA POINT

COMMUNITY DEVELOPMENT DEPARTMENT
33282 Golden Lantern, Suite 209
Dana Point, CA 92629
(949) 248-3564 | www.danapoint.org

NOTICE OF PENDING COASTAL DEVELOPMENT PERMIT

A COASTAL DEVELOPMENT PERMIT APPLICATION FOR DEVELOPMENT ON THIS SITE IS PENDING
BEFORE THE CITY OF DANA POINT.

PROPOSED DEVELOPMENT:

Headlands Conservation Trail - Public Access Hours. A Coastal Development Permit application to establish hours of public access for the Headlands Conservation Park Trail System for year round use, seven (7) days a week from 7:00 am to sunset.

LOCATION: The Terminus of Dana Strand Road and Scenic Drive (APN#672-591-11)

APPLICANT: City of Dana Point

APPLICATION NUMBER: CDP24-0008

DATE NOTICE POSTED: April 1, 2024

NOTE:

A FINAL ACTION TAKEN BY THE CITY OF DANA POINT ON A COASTAL DEVELOPMENT PERMIT APPLICATION MAY BE APPEALED TO THE COASTAL COMMISSION BECAUSE THIS DEVELOPMENT SITE IS WITHIN AN APPEALABLE ZONE PURSUANT TO SECTION 9.75.010 OF THE ZONING CODE UNDER "APPEALABLE DEVELOPMENT, COASTAL". (COASTAL ACT/30603(A)).

FOR FURTHER INFORMATION, PLEASE PHONE OR WRITE THE OFFICE LISTED BELOW BETWEEN 8 AM AND 5 PM, WEEKDAYS.

CITY OF DANA POINT

COMMUNITY DEVELOPMENT DEPARTMENT
33282 Golden Lantern, Suite 209
Dana Point, CA 92629
(949) 248-3564

RECEIVED BY: *Chris Johnson*

DECLARATION OF POSTING

Prior to or at the time the application is submitted for filing, the applicant must post, at a conspicuous place, easily read by the public and as close as possible to the site of the proposed development, notice that an application for the proposed development has been submitted to the City of Dana Point. Such notice shall contain a general description of the nature of the proposed development. The City of Dana Point furnishes the applicant with a standardized form to be used for such posting. If the applicant fails to post the completed notice form and sign the Declaration of Posting, the Community Development Director shall refuse to file the application, or shall withdraw the application from filing if it has already been filed when he or she learns of such failure. 14 Cal. Admin. Code Section 13054(b).

Please sign and date this Declaration of Posting form when the site is posted; it serves as proof of posting. It should be returned to our office with the application.

Pursuant to the requirements of California Administrative Code Section 13054(b), I hereby certify that on April 1, 2024, I or my authorized representative posted the Notice of Pending Permit for application to obtain a Coastal Development Permit for the development of: Headlands Conservation Park Trail – Public Access Hours.

Located at The Terminus of Dana Strand Road and Scenic Drive.

(Address of development or assessor's parcel number)

The public notice was posted at APN#672-591-11.

(A conspicuous place, easily seen by the public and as close as possible to the site of the proposed development)

Chris Johnson
(Signature)

4/1/24
(Date)

Note: Your application cannot be processed until this Declaration of Posting is signed and returned to this office.

FOR OFFICE USE ONLY

PERMIT NUMBER CDP 24-0008

RECEIVED 4/1/24

DECLARATION COMPLETE 4/1/24







Objective 1: Implement a baseline habitat assessment and establish permanent vegetation monitoring stations.

Baseline quantitative measures of the coastal sage scrub plant community within the Preserve were completed. The same program has been implemented on all other preserves managed by the Center in western Riverside County and Orange County. The long-term objective of the baseline is to compare with future measurements to identify changes within the dominant plant communities. Surveys were done using four permanent, randomly distributed transects of 25m length within mature sage scrub habitats. The starting point and azimuth of each transect were randomly determined. All shrub species that intercepted a vertical point on the transect at 0.5m intervals (starting at "0" and ending at "24.5") were recorded. Percent cover was estimated from these point intercepts. Plant species were designated with letter codes (Table 3). A photograph was also taken from each end of the transect. Shrub cover had a mean percent cover of 77.2% and ranged from 64% to 102%, while the cover of Subshrubs was lower, with a mean percent cover of 9.2% and a range from 2% to 14%. Dead shrubs made up a large component of the cover on the Preserve, with a mean percent cover of 13.6%, and at maximum covered 22% of a transect (Fig. 1). Eight species make up the shrub layer of the coastal sage scrub community on the Preserve, and three species combined to represent over 75% of the cover. *Artemisia californica* had the highest mean percent cover (36.4%), while both *Eriogonum fasciculatum* var. *foliolosum* and *Encelia californica* constituted nearly as much mean percent cover as *A. californica* (20.4% and 18.4%, respectively) (Fig. 2). Of the shrubs that were encountered on transects, *A. californica* made up 37% of the shrub cover, while *E. f. var. foliolosum* made up 21% and *E. californica* made up 19% of the shrub cover. Dead shrubs only made up 14% of the relative shrub cover, and the remaining 9% of shrub cover was composed of four species of shrubs and subshrubs (Fig. 3).

Figure 1. Range of percent cover of functional groups of shrubs on transects within the Dana Point Headland Preserve. The boundaries of boxes indicate the 25th and 75th percentiles, the solid line within the box marks the median, and the dashed line indicates the mean. Whiskers above and below the box indicate the 90th and 10th percentiles; outlying points are also graphed.

Table 1.

Dana Point - Functional Groups					
Statistic	Shrubs	SubShrubs	Dead	Live (Shrubs+Sub)	Total (Live+Dead)
mean	77.20	9.20	13.60	86.40	100.00
stdev	15.85	4.60	7.80	12.12	9.38
sterr	7.09	2.06	3.49	5.42	4.20
min	64	2	2	76	86
max	102	14	22	104	110

Figure 2. Range of percent cover of individual species on transects within Dana Point Headlands Preserve. Species are represented by code; see Table 3 for full species names. Conventions of box and whisker plots were described in Figure 1.

Table 2.

All data combined - Species

Statistic	Arca	Erfaf	Enca	Dead	Crca	Losc	Mica	Bapi	Isme
mean	36.40	20.40	18.40	13.60	4.40	3.20	1.60	1.20	0.80
stdev	28.68	23.08	19.92	7.80	4.34	3.63	3.58	2.68	1.79
sterr	12.83	10.32	8.91	3.49	1.94	1.62	1.60	1.20	0.80
min	12	0	0	2	0	0	0	0	0
max	78	56	48	22	10	8	8	6	4

Figure 3. Relative composition of the shrub layer of RSS within the Dana Point Headlands Preserve. Species are represented by code; see Table 3 for full species names.

Table 3. Species code definitions.

<u>CODE</u>	<u>GENUS</u>	<u>SPECIES</u>	<u>SUBSPEC/VA</u>	<u>COMMON NAME</u>
Auca	<i>Antennaria</i>	<i>californica</i>		coastal sagebrush
Bani	<i>Baccharis</i>	<i>vilularis</i>		Coaste brush
Crea	<i>Croton</i>	<i>californica</i>		California croton
Enca	<i>Encelia</i>	<i>californica</i>		brittlebush
Erfaf	<i>Eriogonum</i>	<i>fasciculatum</i>	<i>foliolosum</i>	Interior California
Lauca	<i>Larrea</i>	<i>tridentata</i>		Coastal silver cholla
Laca	<i>Larrea</i>	<i>tridentata</i>	<i>occidentalis</i>	coastal desert cholla
Mica	<i>Mimulus</i>	<i>californicus</i>		California red flower bush

Annual Report for the Fiscal Year 2006
(October 2005 - September 2006)

on the

Dana Point Preserve
(S033)

Prepared for:

U.S. Fish and Wildlife Service
California Department of Fish and Game

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Prepared by:

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www.cnlm.org

March 2007

SUMMARY

- *California gnatcatcher surveys were completed. A total of three CAGN family groups were observed.*
- *The public trails alignment was marked and ground-checked for compliance with permit conditions.*
- *Staff worked with the City of Dana Point and local residents to have Scenic Drive vacated and become privately maintained by the residents.*
- *U.S. Fish and Wildlife Service biologists were consulted and visited the Preserve to discuss Pacific pocket mouse issues.*
- *The rare plant, *Aphanisma blitoides* (CNPS List 1B), was documented on the Preserve.*

INTRODUCTION

The Dana Point Preserve (Preserve) is in the City of Dana Point, Orange County, California, and was dedicated in December 2005. The development projects and creation of the Preserve are guided by the “Headlands Development and Conservation Plan” (HDCP) which was certified by the Dana Point Coastal Program. The Preserve consists of 29.4 acres of coastal bluff scrub, and adjoins the Hilltop Park (11.5 acres), which also is a natural open space preserve to be owned and managed by the City of Dana Point.

This document details the management activities for the Fiscal Year (FY) 2006 (October 2005 - September 2006) on the Preserve.

The primary management objectives for the Preserve are to:

1. Maintain the site to permit ecological processes to function.
2. Contribute to the preservation and restoration of the endangered or threatened species and their habitats that are present on the Preserve.
3. Contribute to the preservation and restoration of non-listed sensitive species that contribute to biodiversity.
4. Develop a public awareness program that informs local residents and visitors of the sensitivity and ecological importance of the Preserve.

The specific tasks and objectives for the 2006 fiscal year were to:

1. Enhance restrictions and enforcement over general public access, through use of patrols, fences and signs.
2. Implement a baseline habitat assessment and establish permanent vegetation monitoring stations.
3. Implement a small mammals trapping and monitoring program, focusing on Pacific pocket mouse (*Perognathus longimembris pacificus*).
4. Implement a monitoring program for breeding birds, focusing on coastal California gnatcatcher (*Polioptila californica californica*) and coastal cactus wren (*Campylorhynchus brunneicapillus sandiegensis*).
5. Oversee habitat restoration that the developer implements on the Preserve.
6. Oversee construction of a public use trail and protective fencing.
7. Implement a weed control program outside of the active restoration areas.
8. Initiate a GIS database and develop maps that express management goals and practices.
9. Other tasks as necessary to effectively establish the Preserve and the presence of the Center for Natural Lands Management in the City of Dana Point.

CAPITAL IMPROVEMENTS

Objective 1: Oversee construction of a public use trail and protective fencing.

The specifications for the design of the public trail and adjacent fences was developed but not sent out for bid. The trail location was flagged following maps included in permits of approval for the development. The permitted trail alignment was found to impact coastal bluff scrub, defined by the presence of cliff spurge (*Euphorbia misera*) within 25 feet of the trail. To move the trail alignment to avoid cliff spurge results in the trail alignment entering areas where Pacific pocket mouse were previously trapped, and the development project was never given take authorization for Pacific pocket mouse. The Center met with biologists from U.S. Fish and Wildlife Service to find the best solution for locating the trail alignment, and after meetings with USFWS the trail alignment was re-flagged but there is still a question whether all regulatory agency permits can be satisfied without amendment. Trail and fence construction will occur in 2007, if permits do not require major amendment.

BIOTIC SURVEYS

Objective 1: Implement a baseline habitat assessment and establish permanent vegetation monitoring stations.

Baseline quantitative measures of the coastal sage scrub plant community

within the Preserve were completed. The same program has been implemented on all other preserves managed by the Center in western Riverside County and Orange County. The long-term objective of the baseline is to compare with future measurements to identify changes within the dominant plant communities. Surveys were done using four permanent, randomly distributed transects of 25m length within mature sage scrub habitats. The starting point and azimuth of each transect were randomly determined. All shrub species that intercepted a vertical point on the transect at 0.5m intervals (starting at "0" and ending at "24.5") were recorded. Percent cover was estimated from these point intercepts. Plant species were designated with letter codes (Table 3). A photograph was also taken from each end of the transect. Shrub cover had a mean percent cover of 77.2% and ranged from 64% to 102%, while the cover of Subshrubs was lower, with a mean percent cover of 9.2% and a range from 2% to 14%. Dead shrubs made up a large component of the cover on the Preserve, with a mean percent cover of 13.6%, and at maximum covered 22% of a transect (Fig. 1). Eight species make up the shrub layer of the coastal sage scrub community on the Preserve, and three species combined to represent over 75% of the cover. *Artemisia californica* had the highest mean percent cover (36.4%), while both *Eriogonum fasciculatum* var. *foliolosum* and *Encelia californica* constituted nearly as much mean percent cover as *A. californica* (20.4% and 18.4%, respectively) (Fig. 2). Of the shrubs that were encountered on transects, *A. californica* made up 37% of the shrub cover, while *E. f.* var. *foliolosum* made up 21% and *E. californica* made up 19% of the shrub cover. Dead shrubs only made up 14% of the relative shrub cover, and the remaining 9% of shrub cover was composed of four species of shrubs and subshrubs (Fig. 3).

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Auca	<i>Antennaria</i>	<i>californica</i>		coastal sagebrush
Roni	<i>Roeperia</i>	<i>villosa</i>		coarse brush
Crea	<i>Croton</i>	<i>californica</i>		California croton
Enca	<i>Encelia</i>	<i>californica</i>		brittlebush
Erfaf	<i>Eriogonum</i>	<i>fasciculatum</i>	<i>foliolosum</i>	interior California
Laca	<i>Larrea</i>	<i>tridentata</i>		coastal sagebrush
Laca	<i>Larrea</i>	<i>tridentata</i>	<i>tridentata</i>	coastal sagebrush
Mica	<i>Mimulus</i>	<i>californicus</i>		California monkey flower

Other observations: The rare plant, *Aphanisma blitoides*, on the California Native Plant Society List 1B, was documented on the Preserve. A voucher specimen was deposited in the herbarium at the University of California- Riverside. This is the first of its species documented in Orange County in years (A. Sanders, pers. comm.).

Objective 2: Implement a small mammals trapping and monitoring program, focusing on Pacific pocket mouse (Perognathus longimembris pacificus).

The USFWS and the Center for Research on Endangered Species (CRES) are jointly operating a research program to evaluate the efficacy of a population reintroduction and augmentation program as part of the recovery plan for the Pacific pocket mouse. Dana Point Preserve is one of the areas targeted to be included in this study, so representatives from USFWS and CRES toured the Preserve. By the time the objectives for a trapping program on the Preserve were determined, the trapping season was about to close. A contractor has been contacted, and a trapping program is planned for April 2007. Details will be included in the Work Plan for the new fiscal year.

Objective 3: Implement a monitoring program for breeding birds, focusing on California gnatcatcher (Poliophtila californica) and coastal cactus wren (Campylorhynchus brunneicapillus sandiegensis).

A total of three California gnatcatcher family groups were observed on the Preserve in 2006 (Fig. 4). This is the same number of pairs described in biological reports prior to dedication of the Preserve. *No cactus wrens were heard or seen.*

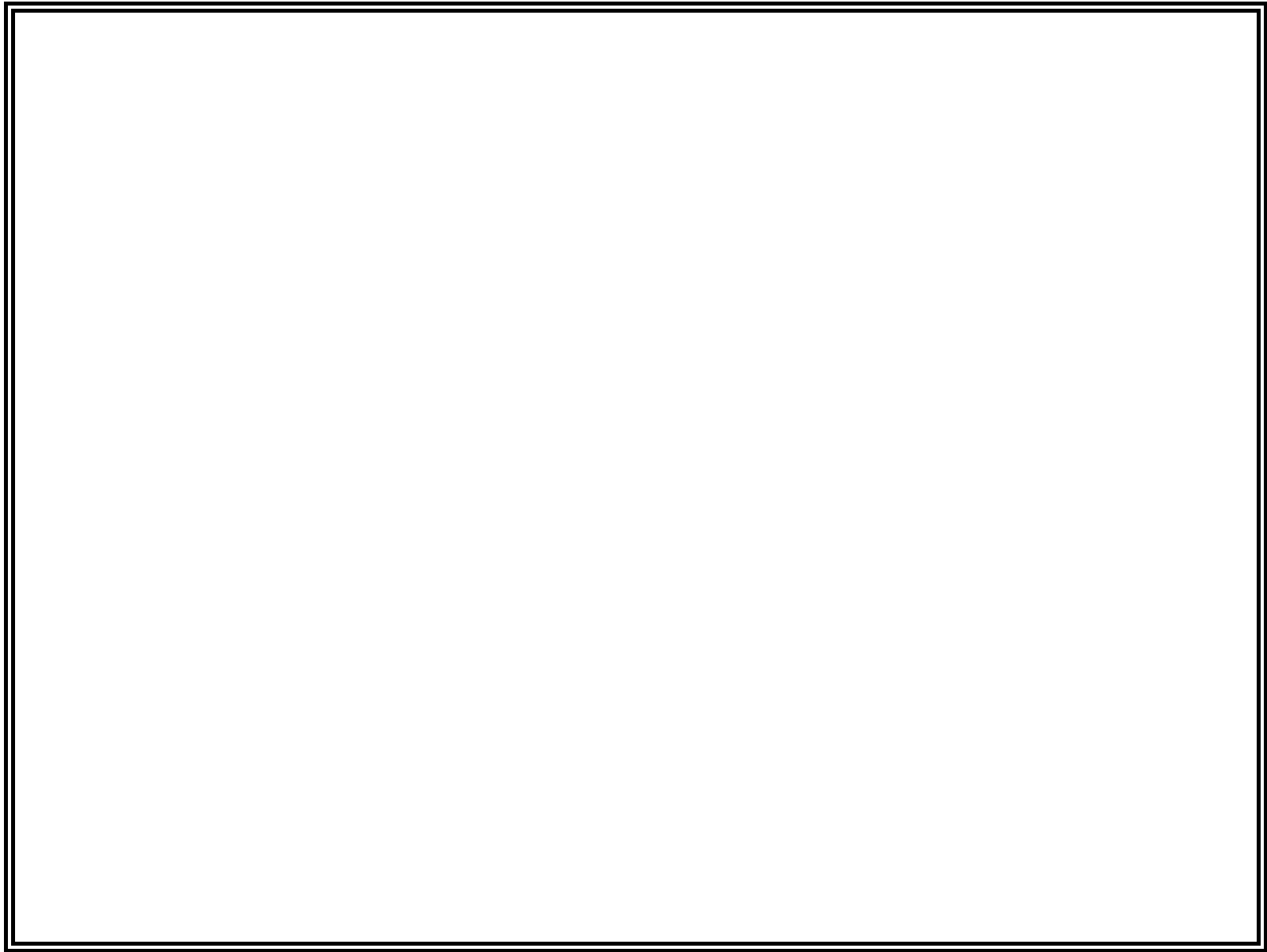


Figure 4: Locations of coastal California gnatcatchers (*Polioptila californica californica*) on the Dana Point Preserve, 2006.

HABITAT MAINTENANCE AND RESTORATION

Objective 1: Oversee habitat restoration that the developer implements on the Preserve.

The developer has funded a contractor to remove all of the major weedy infestations from the Preserve. That work was well under way prior to dedication of the Preserve, and the work continues. Active restoration, including use of irrigation systems, is occurring on the east side of Marguerite Road, but west of the road is generally passive restoration where weedy species were removed and native species are being allowed to recolonize without assistance. The more involved restoration of the Marguerite Road alignment will begin in 2007, after the removal of the road.

Objective 2: Implement a weed control program outside of the active restoration areas.

The Center's staff regularly pulled resprouting and newly germinating weedy plants. Otherwise, the developer retains the responsibility for initial weed control efforts, leaving little responsibility for the Center.

Objective 3: Begin developing an inventory of flora and fauna on the Preserve.

General flora and fauna inventories were conducted throughout the year. In addition, information was gleaned from documents that referenced biological work funded by the developer and other biological assessments. Appendix A presents a list of all animal species now known to occur or have occurred on the Preserve to date, and Appendix B presents a list of vascular plants documented on the property to date.

PUBLIC SERVICE AND GENERAL MAINTENANCE

Objective: Enhance restrictions and enforcement over general public access, through use of patrols, fences and signs

Existing fences are expected to be removed as part of the developer's habitat restoration responsibilities, but this can not be done until Marguerita Road is vacated and removed. In the interim, the Center is maintaining the temporary fence. Signs identifying the Preserve as a nature preserve and that the Center is the owner and manager were placed on the fences.

REPORTING

Objective: Draft a Five Year Management Plan, an Annual Report, and a Work Plan.

A long-term management plan was produced by consultants for the developer prior to dedication of the Preserve, and the permits and development approvals conditioned that this management plan be used by the Center with periodic, unspecified updates. However, this management plan is considered inadequate for the Preserve once the short-term restoration phase is

completed, so a revision is already being drafted. There is no target date established for completing the draft.

A Work Plan and budget for the fiscal year October 2006 through September 2007 were completed.

APPENDIX A: Animal species documented on the Dana Point Preserve.

Birds (76 species as of 9/30/06)

Brown pelican

APPENDIX B: Plant species documented on the Dana Point Preserve.

Family	Genus	Species	Subsp/var	Common Name
POLYPODIACEAE – Polypodi				
	<i>Polypodium</i>	<i>californicum</i>		California
ARECACEAE – Palm Family				
	<i>Washingtonia</i>	<i>ca</i>		exotic planting
CYPERACEAE – Sedges				
	<i>*Juncus</i>	<i>ca</i>		exotic planting
IRIDACEAE – Iris Family				
	<i>Sisyrinchium</i>	<i>bellum</i>		Blue-eyed sedge
JUNCACEAE – Rush Family				
	<i>Juncus</i>	<i>bufonius</i>		Toad-Rush
LILIACEAE – Lily Family				
	<i>*Agave</i>	<i>americana</i>		American agave
	<i>*Agave</i>	<i>attenuata</i>		Duck
	<i>Blechnum</i>	<i>crucis</i>	<i>crucis</i>	Common
	<i>Calochortus</i>	<i>calendens</i>		Splendid
	<i>Chlorogalum</i>	<i>naniflorum</i>		Small-flower soap
	<i>Dicelostemma</i>	<i>capitatum</i>	<i>capitatum</i>	wild hyacinth
DIACEAE – Dine Family				
	<i>*Dianus</i>	<i>ca</i>		exotic planting
POACEAE – Grass Family				
	<i>*Arundo</i>	<i>donax</i>		giant reed grass
	<i>*Avena</i>	<i>barbata</i>		slender wild oat
	<i>*Bromus</i>	<i>diandrus</i>		riparian bromus
	<i>*Bromus</i>	<i>hordeaceus</i>		soft chess
	<i>*Bromus</i>	<i>mandrinensis</i>	<i>rubens</i>	foxtail chess
	<i>*Cynodon</i>	<i>dactylon</i>		bermuda grass
	<i>Distichlis</i>	<i>spicata</i>		salt grasses
	<i>*Echinochloa</i>	<i>ventricosa</i>		nitgrass
	<i>*Hordeum</i>	<i>maritimum</i>	<i>leporinum</i>	hare barley
	<i>*Lolium</i>	<i>perenne</i>		English ryegrass
	<i>Melinis</i>	<i>imperfecta</i>		coast range melin
	<i>Muhlenbergia</i>	<i>microchloa</i>		little-seed muhly

<i>Nacella</i>	(Stinn)	<i>lenida</i>	foothill
<i>Nacella</i>	(Stinn)	<i>nulchra</i>	nuwale
* <i>Dennicetium</i>	<i>cetaceum</i>		fountain grass
* <i>Dhalavie</i>	<i>canariensis</i>		Mediterranean
* <i>Dintatherium</i>	<i>williacum</i>		emilo grass
* <i>Dna</i>	<i>annua</i>		annual bluegrass
* <i>Dolunnon</i>	<i>maroccanensis</i>		annual beardgrass
* <i>Schizanthus</i>	<i>barbatus</i>		Mediterranean
* <i>Vulnia</i>	<i>maritima</i>	<i>maritima</i>	foxtail fescue

TYPHACEAE - Cat-tail Family

<i>Typha</i>	<i>latifolia</i>		soft flag
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ALZOOACEAE - Carnot-weed

* <i>Carnobentus</i>	<i>edulis</i>		hottentot
* <i>Mecombrianthe</i>	<i>crystallinum</i>		crystal ice plant
* <i>Mecombrianthe</i>	<i>nodiflorum</i>		little ice plant
* <i>Mecombrianthe</i>	<i>cn</i>		exotic plantings
* <i>Tetragonia</i>	<i>tetragonioides</i>		New Zealand

ANACARDIACEAE - Sumac

<i>Rhus</i>	<i>integrifolia</i>		lemonadeberry
* <i>Schinus</i>	<i>terebinthifolius</i>		Brazilian pepper

APIACEAE - Carrot Family

<i>Anisotrum</i>	<i>angustifolium</i>		wild celery
* <i>Daucus</i>	<i>carota</i>		wild carrot
<i>Daucus</i>	<i>pusillus</i>		rattlesnake weed+
* <i>Foeniculum</i>	<i>vulgare</i>		fennel
<i>Sanicula</i>	<i>acuta</i>		charm-tooth

APOCYNACEAE - Dogbane

* <i>Nerium</i>	<i>oleander</i>		oleander
* <i>Vinc</i>	<i>major</i>		blue periwinkle

ASTERACEAE - Aster Family

<i>Amblyopappus</i>	<i>pusillus</i>		roast weed+
<i>Ambrosia</i>	<i>psilostachya</i>		western ragweed
<i>Artemisia</i>	<i>californica</i>		California
<i>Raccharis</i>	<i>nilavaric</i>		couste brush
<i>Raccharis</i>	<i>californica(alutianica)</i>		mailefot
* <i>Centauria</i>	<i>melitensis</i>		torolote
<i>Chaenactis</i>	<i>alabamica</i>		San Diego
* <i>Chamaemilla</i>	<i>canadensis</i>		nineapple weed
* <i>Chrysanthemum</i>	<i>coronarivum</i>		garland
* <i>Cirsium</i>	<i>vulgare</i>		bull thistle
* <i>Conium</i>	<i>canadensis</i>		horehound
* <i>Coreopsis</i>	<i>grandiflora</i>		giant sea dahlia
* <i>Cynara</i>	<i>cardunculus</i>		artichoke
<i>Encelia</i>	<i>californica</i>		common encelia

<i>Eriogonum</i>	<i>foliosum</i>	<i>foliosum/stemum</i>	leaf daisy
<i>Filago</i>	<i>californica</i>		California filago
* <i>Filago</i>	<i>gallina</i>		narrow-leaved
<i>Gnaphalium</i>	<i>bicolor</i>	<i>bicolor</i>	redweed
<i>Gnaphalium</i>	<i>californicum</i>		California
<i>Gnaphalium</i>	<i>chilense</i>		
<i>Gnaphalium</i>	<i>canescens</i>		white everlasting
<i>Grindelia</i>	<i>canadensis</i>	<i>var. bracteosa</i>	green gum plant
* <i>Hedysarum</i>	<i>crotium</i>		rosette hedysarum
<i>Hemizonia</i>	<i>fasciculata</i>		tanweed
<i>Heteranthera</i>	<i>grandiflora</i>		telegraph weed
* <i>Hymenocallis</i>	<i>alabra</i>		cat's ear
<i>Isocoma</i>	<i>menziesii</i>		coastal
<i>Lactonia</i>	<i>californica</i>		goldfields
<i>Laccaria</i>	<i>filaginifolia</i>	<i>filaginifolia</i>	vivante sand aster
<i>Lasia</i>	<i>platyacantha</i>		common tidus
<i>Malacothrix</i>	<i>cavatifolia</i>	<i>tenuifolia</i>	cliff malacothrix
<i>Oenadenia</i>	<i>tenella</i>		roseweed
<i>Pentstemon</i>	<i>aurea</i>		golden daisy
<i>Senecio</i>	<i>californicus</i>		California
* <i>Senecio</i>	<i>acutus</i>		chin's leaf
* <i>Senecio</i>	<i>oleaceus</i>		common
<i>Stephanomeria</i>	<i>dianensis</i>		San Diego wreath
<i>Stylidium</i>	<i>guthriei</i>		everlasting nest
<i>Thymus</i>	<i>lindleyi</i>		silver ruffe

BORAGINACEAE - Borago

<i>Amsinckia</i>	<i>menziesii</i>	<i>intermedia</i>	ranchorte
<i>Cryptantha</i>	<i>intermedia</i>		niveitae
* <i>Echium</i>	<i>plantaginifolium</i>		
<i>Hesperis</i>	<i>palmeri</i>		Palmer's
<i>Platanthera</i>	<i>collinsii</i>	<i>californicus</i>	California
<i>Platanthera</i>	<i>collinsii</i>	<i>arabica</i>	small California

BRASSICACEAE - Mustard

* <i>Brassica</i>	<i>niara</i>		black mustard
* <i>Cakile</i>	<i>maritima</i>	<i>maritima</i>	sea-rocket
* <i>Hirschfeldia</i>	<i>incana</i>		short-nod
<i>Leavenworthia</i>	<i>lanceolata</i>	<i>lanceolata</i>	sand penstemon
<i>Leavenworthia</i>	<i>nitida</i>		penstemon
* <i>Isotria</i>	<i>maritima</i>		sweet alyssum
* <i>Sisymbrium</i>	<i>irio</i>		London rocket

CACTACEAE - Cactus Family

<i>Opuntia</i>	<i>littoralis</i>		coastal prickly
<i>Opuntia</i>	<i>arborescens</i>		prickly cactus
<i>Opuntia</i>	<i>prolifera</i>		coast cholla

CAPPARIDACEAE - Capeweed Family

<i>Isomeris</i>	<i>rubra</i>		bladderpod
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CARYOPHYLLACEAE - Pink

<i>Cardianthemum</i>	<i>rumicissimum</i>	trend lightless
<i>Dolichocarpus</i>	<i>donroscium</i>	California
* <i>Dolichocarpus</i>	<i>tetranthellum</i>	four-leaf dolichocarp
* <i>Silene</i>	<i>callica</i>	common catchfly
* <i>Spergularia</i>	<i>villosa</i>	willow sand

CHENOPODIACEAE - Goosefoot

<i>Anhonicum</i>	<i>blitoides</i>	Anhonicum+
<i>Atriplex</i>	<i>brevifolia</i>	Brewer's saltbush
<i>Atriplex</i>	<i>californica</i>	California saltbush
<i>Atriplex</i>	<i>watsonii</i>	Watson saltbush
<i>Atriplex</i>	<i>leucophylla</i>	coarse saltbush
<i>Chenopodium</i>	<i>murale</i>	nettle-leaf
* <i>Salsola</i>	<i>tricus</i>	Russian thistle
<i>Suaeda</i>	<i>tavifolia</i>	sea blite

CONVOLVULACEAE - Morning-Glory Family

<i>Calustegia</i>	<i>macrostegia</i>	morning glory
<i>Dichondra</i>	<i>occidentalis</i>	western monardra

CRASSIACEAE - Stonewort

* <i>Crucula</i>	<i>arabica</i>	evtic plantina
<i>Crucula</i>	<i>conata</i>	conata
<i>Dudleya</i>	<i>blochmanniae</i>	blochmanniae
<i>Dudleya</i>	<i>caespitosa</i>	caespitosa
<i>Dudleya</i>	<i>lanceolata</i>	lanceolata
<i>Dudleya</i>	<i>nervulenta</i>	nervulenta

CLICURBITACEAE - Gourd

<i>Morah</i>	<i>macrocarpus</i>	wild cucumber
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EUPHORBIACEAE - Spurge

<i>Croton</i>	<i>californicus</i>	California croton
<i>Euphorbia</i>	<i>micra</i>	cliff spurge
* <i>Euphorbia</i>	<i>perla</i>	nettle spurge
* <i>Ricinus</i>	<i>communis</i>	caster bean

FABACEAE - Bean Family

* <i>Aracia</i>	<i>ca</i>	evtic plantina
* <i>Rauhinia</i>	<i>ca</i>	evtic plantina
<i>Lotus</i>	<i>coronarius</i>	coronal doornwood
<i>Lotus</i>	<i>eternus</i>	hickory's lotus
<i>Lupinus</i>	<i>truncatus</i>	collar lupine
* <i>Medicago</i>	<i>polymorpha</i>	California burr
* <i>Melilotus</i>	<i>indicus</i>	Indian sweet
<i>Quercus</i>	<i>dumosa</i>	crush oak

GERANIACEAE - Geranium

	<i>*Erodium</i>	<i>botrys</i>	long-stem filaree
	<i>*Erodium</i>	<i>cirutarium</i>	red-stem filaree
	<i>Erodium</i>	<i>macranthum</i>	large-leaf filaree
	<i>*Delarionium</i>	<i>zonale</i>	zonal geranium
HYDROPHYLLACEAE -			
	<i>Phacelia</i>	<i>distans</i>	wild heliotrope
HYPERICACEAE - St. John's			
	<i>Hypericum</i>	<i>canariense</i>	Canary Island's
LAMIACEAE - Mint Family			
	<i>*Marrubium</i>	<i>vulgare</i>	horehound
	<i>Stachys</i>	<i>niagoides</i> <i>visida</i>	hedge nettle
MALVACEAE - Mallow Family			
	<i>*Hibiscus</i>	<i>cn</i>	exotic plantings
	<i>*Lavatera</i>	<i>occidentiflora</i>	malva rose
	<i>*Malva</i>	<i>parviflora</i>	cheesewood
MISACEAE - Banana Family			
	<i>*Musa</i>	<i>cn</i>	exotic plantings
MYOPORACEAE - Myoporum			
	<i>*Myoporum</i>	<i>laetum</i>	myoporum
MYRTACEAE - Myrtle Family			
	<i>*Eucalyptus</i>	<i>cn</i>	exotic plantings
NYCTAGINACEAE - Four O'Clock			
	<i>Mirabilis</i>	<i>californica</i>	wickbush bush
ONAGRACEAE - Evening			
	<i>Camissonia</i>	<i>hirsuta</i>	southern sun sun
	<i>Camissonia</i>	<i>cheiranthifolia suffruticosa</i>	beach evening
OXALIDACEAE - Oxalic Family			
	<i>Oxalis</i>	<i>albicans</i>	wood sorrel
	<i>*Oxalis</i>	<i>res-candens</i>	Bermuda
PLANTAGINACEAE - Plantain			
	<i>Plantago</i>	<i>ovata</i>	California
	<i>Plantago</i>	<i>racemosa</i>	western sisymbrium
PLUMBAGINACEAE - Leadwort			
	<i>Limnium</i>	<i>californicum</i>	sea lavender
POLYMONIACEAE - Dandelion			
	<i>Linanthus</i>	<i>dianthiflorus</i>	around pink

POLYGONACEAE – Buckwheat

<i>Chorizanthe</i>	<i>procumbens</i>	narrow-leafed
<i>Chorizanthe</i>	<i>stans</i>	Turkish ruscus
<i>Eriogonum</i>	<i>oblongatum</i>	tall buckwheat
<i>Eriogonum</i>	<i>fasciculatum</i>	flat-topped
<i>Eriogonum</i>	<i>arale</i>	clender
<i>Eriogonum</i>	<i>nanifolium</i>	coastal buckwheat
<i>Dierneya</i>	<i>drummondii</i>	crimson hairnet
* <i>Rumex</i>	<i>crispus</i>	curly dock

PORTULACACEAE – Purslane

<i>Calandrinia</i>	<i>ciliata</i>	red maids
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PRIMULACEAE – Primrose

* <i>Anagallis</i>	<i>arvensis</i>	scarlet pimpernel
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ROSACEAE – Rose Family

* <i>Ranunculus</i>	<i>indica</i>	Indian hawthorn
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RUBIACEAE – Madder Family

<i>Galium</i>	<i>oblongifolium</i>	narrow-leaf
* <i>Galium</i>	<i>oblongifolium</i>	common

SAPINDACEAE – Soap Berry

* <i>Dodonaea</i>	<i>viscidiflora</i>	exotic plantain
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SCROPHULARIACEAE – Figwort

<i>Antirrhinum</i>	<i>nuttallianum</i>	Nuttall's
<i>Castilleja</i>	<i>occidentalis</i>	purple milk
<i>Linaria</i>	<i>canadensis</i>	large blue
<i>Mimulus</i>	<i>aurantiacus</i>	monkeyflower
<i>Mimulus</i>	<i>aurantiacus</i> (<i>purpureus</i>)	red bush monkey

SOLANACEAE – Nightshade

<i>Datura</i>	<i>metelii</i>	western
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* next to genus name indicates a non-native

Compiled from the "Habitat Management and Monitoring Plan For Dana Point Additions by Eliza Maher (CNU M) in her 2006 survey are marked next to the

APPENDIX C: Summary of Expenditures

Expense	S033 Dana Point		% of
	Oct '05 - Sep 06	Budget	
Admin Fee Expense	6,286.16	18,436.34	34.10%
Biotic Surveys	946.52	14,816.00	6.39%
Field Equipment	1,741.05	14,227.00	12.24%
General Maintenance	919.17	180.00	510.65%
Habitat Maintenance	695.79	10,450.00	6.66%
Office Maintenance	5,776.16	3,3039.00	190.07%
Operations	6,896.80	4,345.00	158.73%
Public Services	3,498.75	26,945.00	12.99%
Reporting	2,343.90	2,828.00	82.88%
Site Construction	1,861.73		
Total Preserve Management	30,966.03	81,866.34	37.83%

Annual Report for the 2006-07 Fiscal Year
(October 2006 - September 2007)

on the

Dana Point Preserve
(S033)

Prepared for:

U.S. Fish and Wildlife Service
California Department of Fish and Game
City of Dana Point

Prepared by:



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SUMMARY of 2006-07 ACTIVITIES

- Coastal California gnatcatcher surveys were completed. A total of three coastal California gnatcatcher pairs were observed. One nest produced three fledglings.
- No cactus wren were observed.
- A red coachwhip and a kingsnake were documented on the Preserve.
- Orange throated whiptail were documented on the Preserve.
- The U.S. Fish and Wildlife Service conducted small mammal trapping in the trail alignment and captured one Pacific pocket mouse on the Preserve.
- Cliff spurge was remapped and 250 individuals were identified and mapped on the bluff top of the Preserve (documentation of all cliff spurge on the bluff face was not attempted).
- Headlands Reserve LLC constructed a public use trail and 5 overlooks with metal post and 4-strand cable fencing through the Preserve.
- Staff worked with the City of Dana Point and local residents to pursue vacating Scenic Drive to become privately maintained by the residents.
- Staff provided comments to the City of Dana Point on LCP amendment changes requested by Headlands Reserve, LLC to add new public use trails adjacent to the Preserve.
- Staff coordinated with URS Corporation and Natures Image regarding creation and enhancement activities on the Preserve.



Figure 1: Aerial of Dana Point Headlands Preserve Areas provided by City of Dana Point taken 10/20/06

INTRODUCTION

The Dana Point Preserve (Preserve) is in the City of Dana Point, Orange County, California. The Preserve has been owned and managed by the Center for Natural Lands Management (Center) since December 2005. The creation of the Preserve and headlands development projects and are guided by the “Headlands Development and Conservation Plan” (HDCP) which was approved through the California Coastal Commission’s certification of the 2004 amendments to the City of Dana Point’s Local Coastal Program. The Preserve consists of 29.4 acres of native coastal habitat. Another 11.5 acres of natural open space preserve, currently owned by Headlands Reserve, LLC but later to be owned and managed by the City of Dana Point as the Hilltop Park, are adjacent to the Preserve. A habitat management plan was prepared by URS Corporation for all preserve lands associated with the Headlands development project, including the Center owned and managed Dana Point Preserve. The Habitat Management and Monitoring Plan (HMMP) for Dana Point Headlands Biological Open Space prepared by URS Corporation was reviewed by the California Coastal Commission, United States Fish and Wildlife Service, California Department of Fish and Game, and the City of Dana Point. However, we have no record of the final HMMP, dated April 18, 2005, being approved by the California Coastal Commission, United States Fish and Wildlife Service, or California Department of Fish and Game. Despite this uncertainty, the Center has been managing the Dana Point Preserve according to the HMMP and will continue to do so until the Center revises the management plan in consultation with the United States Fish and Wildlife Service and California Department of Fish and Game (Wildlife Agencies).

This document details the management activities for the Fiscal Year (FY) 2007 (October 2006 - September 2007) on the Preserve. Four primary management objectives for the Preserve are identified in HMMP as presented below. These objectives, which will direct the management on the Preserve until the Center has a revised management plan approved by the Wildlife Agencies, are:

1. Maintain the Preserve to permit ecological processes to function.
2. Contribute to the preservation and restoration of the endangered or threatened species and their habitats that are present on the Preserve.
3. Contribute to the preservation and restoration of non-listed sensitive species that contribute to biodiversity.
4. Develop a public awareness program that informs local residents and visitors of the sensitivity and ecological importance of the Preserve.

The specific tasks that were to be undertaken to serve these objectives for the 2007 fiscal year were to:

1. Oversee construction of a public use trail and protective fencing.
2. Conduct a plant species inventory, including the mapping of all rare plant locations.
3. Conduct a small mammals trapping and monitoring program, focusing on Pacific pocket mouse (*Perognathus longimembris pacificus*).

4. Conduct presence-absence monitoring of California gnatcatcher (*Poliophtila californica*) and coastal cactus wren (*Campylorhynchus brunneicapillus sandiegensis*).
5. Oversee habitat restoration that the developer implements on the Preserve.
6. Conduct weed control measures.
7. Maintain an inventory of flora and fauna on the Preserve.
8. Enhance restrictions and enforcement over general public access, through use of patrols, fences and signs.
9. Expand the GIS database and develop maps that express management goals and practices.
10. Develop a public awareness program that informs local residents and visitors of the sensitivity and ecological importance of the Preserve.
11. Other tasks as necessary to effectively establish the Preserve and the presence of the Center for Natural Lands Management in the City of Dana Point.

The implementation of these tasks in FY2007 is described below. They are organized within the following budget categories: 1) Capital Improvements, 2) Biotic Surveys, 3) Habitat Maintenance and Restoration, 4) Public Service and General Maintenance, 5) Reporting, and 6) Endowment.

CAPITAL IMPROVEMENTS

Objective: Oversee construction of a public use trail and protective fencing.

The Center's Priority for the Preserve in FY2007 was to have the public trail and associated fencing constructed. However, as stated in our FY2006 Annual Report, the permitted trail alignment was found to impact coastal bluff scrub, defined by the presence of cliff spurge (*Euphorbia misera*) within 25 feet of the trail. To buffer cliff spurge by 25-feet, the trail alignment enters areas where Pacific pocket mice (PPM) were previously trapped. After a discussion with the U.S. Fish and Wildlife (USFWS) staff, the Center developed the following schedule for construction of the trail in FY 2007:

- conduct sensitive plant surveys (March – May)
- reflag the trail route (late May)
- solicit trail construction proposals (late May - early June)
- trap for PPM (June)
- reflag the trail route if necessary post PPM trapping results (July)
- remove above-ground vegetation on trail route (July)
- construct the trail (August), with post trail construction repair period (September 2007 through February 2008)

This schedule minimizes impacts to all sensitive species on-site, reduces the potential for last minute trail construction changes/delays, and completes construction with ample time before the trail can be opened to the public.

Center staff tried to communicate and coordinate with staff of URS Corporation and Natures Image (contractors to Headlands Reserve, LLC) on various issues with minimal response to such attempts. Neither contractor would proactively communicate with the Center. We then notified Headlands Reserve, LLC to the issues related to trail construction and our proposed schedule via a letter dated November 22, 2006.

Unfortunately, Headlands Reserve, LLC responded in February 2007 by stating that they were taking over construction of the trail. URS Corporation staff, under contract to Headlands Reserve, LLC, staked a trail route that did not meet the 25-foot buffer standard. When trail construction by Headlands Reserve, LLC looked imminent, we notified the California Coastal Commission (CCC) and USFWS of these and other potentially environmentally damaging issues. We expected the CCC and USFWS to rectify the problem, but Headlands Reserve, LLC responded by sighting the trail 25-feet from cliff spurge. They disregarded the potential impacts to PPM by locating the trail where PPM were captured in the past and disregarded the potential impacts to breeding birds, including coastal California gnatcatchers. On April 13, 2007, Natures Image (under contract to Headlands Reserve, LLC), began cutting the vegetation in preparation for trail construction. Over the next several weeks Natures Image cut all the vegetation within the 4-foot trail alignment, trenched the soil to install redwood headers at grade, and compacted the native soil within the trail. A separate contractor, Golden Gate Fence Company, installed the trail fencing which consists of metal posts with 4 strand cable. The USFWS provided staff to trap for PPM along the trail alignment during construction for six nights and one PPM was captured. Trail base construction was completed; however, the fencing associated with the trail remains incomplete. There is one area where the trail fence is broken and the fencing does not attach to the current temporary perimeter fence at both gate entrances. No trails outside of the current temporary perimeter fence, on our property or future City preserve property, have been constructed to date. It is unclear whether Headlands Reserve, LLC, will install benches at the overlook or any signage. Although Headlands Reserve, LLC and the City of Dana Point have stated in writing the urgency to complete the trail in order not to delay the availability of the lands for public use, the trail network is not complete and plans to open the trail for public use have not been communicated with the Center. We support opening the trail to public use as soon as possible once the trail is complete. However, we are concerned about opening the trail to public use during the gnatcatcher breeding season, should gnatcatchers select nest sites adjacent to the trail, as they did this year.

The Center objected to Headlands Reserve, LLC's construction of the trail and the timing of such activities, but they have been unwilling to cooperate with us to date. The construction of the trail by Headlands Reserve, LLC is unfortunate because trail construction likely adversely affected PPM and coastal California gnatcatchers (*Polioptila californica californica*: CAGN). The trail is now sighted in an area that PPM have been captured in 2002 and PPM are confirmed to still be present on-site. Trenching and compaction of soil may result in trapping PPM within burrows and six nights of trapping within the trail alignment alone is not sufficient to ensure no PPM have been harmed by trail construction activities. In addition, the trail was constructed in the middle of the CAGN breeding season and adjacent (within 60 feet) to two active CAGN nests.

We are disappointed with such course of events, however, we were not willing to construct a trail that could be considered unlawful or damaging to sensitive resources on-site. All parties could have worked together to design a trail that adequately addressed all the sensitive species needs and be constructed well before trails would be open to the public throughout the Headlands project area. However, the actions of Headlands Reserve, LLC precluded such an approach.



Figure 2: Trail Construction 5-1-07



Figure 3: West View before Trail 2-15-07



Figure 4: West View of Trail 7-12-07

BIOTIC SURVEYS

Objective 1: Conduct a plant species inventory, including the mapping of all rare plant locations.

Arrangements were made to contract with Fred Roberts, Botanist, to conduct a plant species inventory and document all rare plant locations within the Preserve. However, due to lack of rainfall (approximately 25% of long-term average), it was not appropriate to proceed with such an effort this year. The inventory has been rescheduled and budgeted for FY 2008, as long as adequate rainfall is received.

Cliff spurge was mapped on the Preserve by URS Corporation. URS biologists mapped 245 additional cliff spurge on the Preserve, predominantly on the bluff top at the southern end of the Preserve (Appendix D). The Center's Preserve Manager for the Dana Point Preserve reviewed the data produced by URS Corporation to ensure those individual cliff spurge plants closest to the proposed trail location were identified. There was no attempt to map all the cliff spurge on the Preserve, especially on the edge and face of the bluff where it is visually estimated that at least 2/3 of the individuals occur. Thus, there are estimated to be over 1,000 individual cliff spurge plants on the Preserve.

Objective 2: Conduct a small mammals trapping and monitoring program, focusing on Pacific pocket mouse.

The USFWS and the Center for Research on Endangered Species (CRES) are jointly operating a research program to evaluate the efficacy of a population reintroduction and augmentation program as part of the recovery plan for the Pacific pocket mouse (*Perognathus longimembris pacificus*). Dana Point Preserve is one of the areas targeted to be included in this study; however, no associated activities were initiated by the Service or CRES this year.

A small mammal trapping effort was conducted by Service staff on-site to help reduce adverse impacts to Pacific pocket mice from trail construction implemented by Headlands Reserve, LLC. This program was run completely by Service staff with field support from USGS staff. Center staff accompanied the trapping effort on a few occasions to observe the methods and increase knowledge of the species and small mammal trapping in general. The following methods and results were provided by the Service to the Center.

Trapping was initiated by the Service on April 12, 2007 and concluded on April 20, 2007. All trapping was done using 9-inch Sherman™ Live Traps with modified shortened doors. Traps were baited with a 1:4 ratio, by weight, of steamed flat rolled oats to white millet. Traps were baited at dusk and their contents checked at midnight and dawn.

Traps were placed subjectively along and immediately adjoining the trail alignment in areas that appeared most suitable for PPM (e.g. in relatively open areas with sandy soils). Because trail

construction was being performed concurrent with the trapping period, traps were typically removed from the Preserve following the morning trap-check. Thus, precise trap locations were adjusted throughout the trapping period to accommodate construction crews and in response to the removal of vegetation and associated flagging.

Six nights of trapping were performed between April 12 and April 20, 2007, resulting in a total effort of 925 trap nights. Species captured included Pacific pocket mouse, western harvest mouse (*Reithrodontomys megalotis*), desert woodrat (*Neotoma lepida*), and California mouse (*Peromyscus californicus*). As during prior trapping efforts at the Preserve, the most commonly captured animals included western harvest mouse and desert woodrat.

Only one Pacific pocket mouse was captured (UTM Capture Location using North American Datum 83 is 11 S 0433801, 3702637). This animal was held in temporary captivity by the Service and released by Service and CRES staff on April 23, 2007 using soft release methods following completion of the trail segment constructed in proximity to its capture location.

Objective 3: Conduct presence-absence monitoring of California gnatcatcher and coastal cactus wren.

A total of three California gnatcatcher family groups were observed on the Preserve in 2007 (Appendix E). This is the same number of pairs observed in 2006 and described in biological reports prior to dedication of the Preserve. The entire Preserve was surveyed using standard Service protocol by Lee Ann Carranza under Markus Spiegelberg's U.S. Fish and Wildlife Service 10(a)1(A) Recovery Permit (TE-787924). The HMMP for Dana Point states that gnatcatcher surveys should be conducted every three years and between the months of January and March. However, due to the ongoing construction activity in the area and especially trail construction by Headlands Reserve LLC within the Preserve, Presence/Absence surveys for gnatcatchers were conducted this year as well. The surveys were conducted on April 9, April 22, May 5, and June 13, 2007. Taped vocalizations were only used on April 9 and 22nd along the East side of Marguerita Road, since gnatcatchers were not heard or detected in the area in previous surveys. The surveys were conducted after the dates provided in the HMMP, however, they were conducted to Service protocol and the birds initiated breeding activity later than usual this year seemingly due to the drought conditions.

The extent of the area used by each pair of gnatcatchers was attempted to be mapped by marking the extent of the locations where each pair was observed during each survey. Such information could be used to infer the pairs use area. The same effort was conducted in 2006. All gnatcatcher pairs use areas in 2007 expanded from that which was documented last year.

Table 1: ArcView Theme Data for Figure in Appendix D

ID	OBSERVER	GPS_NORTH	GPS_EAST	STATUS	DATE
6	Lee Ann Carranza	3702762	433708	Single Female	April 22, 2007
5	Lee Ann Carranza	3702789	433792	Single Female	April 22, 2007
4	Lee Ann Carranza	3702690	433855	Single Male	April 22, 2007
2	Lee Ann Carranza	3702673	433528	Pair	May 5, 2007
3	Lee Ann Carranza	3702577	433693	Pair	May 5, 2007
1	Lee Ann Carranza	3702709	433769	Pair	May 5, 2007

Later in the season after completion of the formal protocol surveys, nest monitoring was conducted by Rick Bailey of URS Corporation with the Center's Dana Point Preserve Manager present. All three CAGN pair documented on the Preserve built nests. However, as the season continued it seemed as though use areas changed in that one pair's use area increased significantly and where there were once two pair, only one pair could be observed at any given time. The pair that did not change their use area on the western edge of the Preserve is the only pair that was successful with the production of three fledglings (Figure 5). Three other nests were built on the Preserve. Only two had eggs laid in them and were unsuccessful. One of the two nests had eggs as late as August 1, 2007. It is suspected that both nests failed due to predation by snakes. It is unclear whether these two nests were by the same pair or two different pairs. No brown headed cowbird parasitism was documented on the Preserve this year.



Figure 5: 2 of the 3 gnatcatcher fledglings 7-12-07

Other observations:

No cactus wrens (*Campylorhynchus brunneicapillus cousei*) were heard or seen.

An orange throated whiptail (*Cnemidophorus hyperythrus*) was observed and photographed on June 16, 2007, in the area previously treated for ice plant and along the newly constructed trail (Figure 6). Two additional orange throated whiptail were later observed on the Preserve.



Figure 6: Orange throated whiptail on trail 6-16-07

A red coachwhip (*Masticophis flagellum piceus*) was observed and photographed on May 1, 2007, in the southern side of the Preserve on the newly constructed trail (Figure 7). A king snake was also observed near the bee hive on the far western edge of the Preserve.



Figure 7: Red racer on trail

HABITAT MAINTENANCE AND RESTORATION

Objective 1: Oversee habitat restoration that the developer implements on the Preserve.

The developer has an obligation under the Onsite Mitigation and Revegetation Plan, dated April 15, 2005, prepared by URS Corporation, to restore a total of 26.2 acres to coastal sage scrub through enhancement and creation activities throughout the natural open space associated with the Headlands Project. Some of the restoration areas are located within the Preserve and consist of both creation and enhancement. According to the California Coastal Commission documents and the Onsite Mitigation and Revegetation Plan, no container plants or irrigation are to be used within the Preserve. Thus, the activities consist of treating exotic plants (through hand pulling and/or chemical treatment), raking in native seed (from an approved seed mix), and removing trash. Minimal soil disturbance is allowed within the Preserve to help minimize impacts to Pacific pocket mice.

The developer has maintained a contractor, Nature's Image, to maintain the revegetation areas (creation and enhancement) weed free over the monitoring period of 5 years, as required in the Onsite Mitigation and Revegetation Plan. Nature's Image retreated all of the areas previously treated on the Preserve and removed new weedy species that were identified by Center staff. Nature's Image did not seem to proactively periodically check the Preserve for non-natives in need of removal/treatment, but they did respond to requests by Center staff. In the winter of 2006/2007 Nature's Image raked in native seed throughout a majority of all the open sand areas within the Preserve. This effort included substantially more acreage than is identified for restoration and was a concern to the Center because open sand is needed for Pacific pocket mouse habitat. However, the lack of winter rains produced little to no seed germination throughout the Preserve. Center staff approached the California Coastal Commission (CCC) with our concern of increasing the density of vegetation within Pacific pocket mouse habitat through the restoration program and our desire to not seed open sand areas, but rather let such areas naturally revegetate. The CCC staff (John Dixon) agreed and stated to all parties (Headlands Reserve, LLC; Center; Service; URS Corporation; and CCC) at a meeting on March 28, 2007, that seeding the Preserve is no longer necessary to meet their restoration requirements.

Nature's Image also installed erosion control matting at the Northeast corner of the Preserve where they removed a large area of ice plant. The erosion control matting was installed to ease neighbors concerns with erosion that may result from winter rains due to the lack of vegetation. Since that time, a substantial amount of salt grass (*Distichlis spicata*) has grown through the erosion matting.

Active restoration, including use of irrigation systems and container plants, occurred on the East side of Marguerita Road in FY 2006. It looks as though non-natives are continuing to be treated in this portion of the Preserve, but erosion at the cut bank adjacent to Marguerita Road is a concern (Figure 8). The developer said that they would do some recontouring to address the problem, but no such actions occurred in FY2007. No activity to remove Marguerita Road occurred in FY2007.



Figure 8: Erosion gully East of Marguarita Road 12-11-06

Please note that the above information is that which Center staff has gained by patrolling the Preserve at least once per week. No formal coordination or reports are provided to the Center from the developer or their contractors. However, when encountered on-site, the contractors share information on the activities they are conducting on-site. Unfortunately, attempts by the Center to create more coordination among all parties, has failed to date.

Objective 2: Conduct weed control outside of the active restoration areas, as needed.

Center staff regularly pulled resprouting and newly germinating weedy plants encountered during patrols. However, as stated above, the Center has little obligation to control weeds during the 5-year monitoring period.

Objective 3: Maintain an inventory of flora and fauna on the Preserve.

All new recognized flora and fauna are recorded. Appendix A presents a list of all animal species known to occur or have occurred on the Preserve to date. Amphibians, reptiles, and mammals have been added to this list along with the documentation of a short-eared owl (*Asio flammeus*) on the Preserve (Figure 9). Appendix B presents a list of vascular plants documented on the Preserve to date. However, please note that Appendices A and B were originally created by consultants to Headlands Reserve, LLC who did not differentiate sightings found within the Preserve owned and managed by the Center from sightings on the other preserves associated with the Headlands Project to be owned and managed by the City of Dana Point. The Center will continue to update these species lists so that the appendices to future annual reports will

represent species identified solely on-site of the Center owned and managed Dana Point Preserve.



Figure 9: Short-eared Owl (10-28-06)

PUBLIC SERVICE AND GENERAL MAINTENANCE

Objective 1: Enhance restrictions and enforcement over general public access, through use of patrols, fences and signs

The Preserve was closed to general public access in FY2007. A majority of the Preserve is protected by chain link fencing with 3-strand barbed wire at the top of the fence. A new gate was installed by the developer at the end of Dana Strand Road in April 2007 (Figure 10); making a total of three gates available to enter the Preserve. All gates are locked to prevent access by the general public. Existing perimeter fences are expected to be removed as part of the developer's habitat restoration responsibilities, but this can not be done until Marguerita Road is vacated, removed, and permanent perimeter fencing is in place. In the interim, the Center is maintaining the temporary perimeter fence and signage that identifies the Preserve as a nature preserve that is managed by the Center.



Figure 10: New Gate Installed by Headlands LLC

The Preserve, fence, and signs are patrolled weekly by the Preserve Manager. Trash is collected from inside the fenced area and any holes or damage to the fence and signs are repaired weekly. The fence was cut a few times and some new trash was encountered, but in general trespass problems were substantially less than experienced in FY2006. The neighbors to the Preserve have provided good oversight and information to help the Preserve Manager readily resolve any such problems.

Objective 2: Expand the GIS database and develop maps that express management goals and practices

Several GIS coverages were acquired from URS Corporation to expand our GIS database of spatial information for the Preserve. Such coverages included the following: trail alignment, sensitive plants, sensitive species, gnatcatcher, cliff spurge, Environmentally Sensitive Habitat Area, open space boundaries, jurisdictional channels, project boundaries, and revegetation areas (Table 2). We also received a shape file of all Pacific pocket mouse trap locations from the Service.

Table 2: GIS Coverages on File

Coverage	Source	Source Year
Gnatcatcher (points, use area, nests locations)	Center	2007
General Wildlife (whiptail and red racer)	Center	2007
Cliff Spurge Points	Center	2006
Veg Baseline Transect Locations	Center	2006
Aerial Photos	URS Corporation	2006 and 1991
PPM Habitat Areas	URS Corporation	
Vista Points	URS Corporation	
Pacific Pocket Mouse Points	USFWS	1993-2007
Cliff Spurge Points	URS Corporation	2007
Trail Location Options	URS Corporation	2007
Sensitive Species (Cliff spurge and Boxthorn)	URS Corporation	2006
Vegetation Communities	URS Corporation	unknown
Gnatcatcher Locations	URS Corporation	unknown
Coastal Commission ESHA Boundaries	URS Corporation	unknown
Jurisdictional Channels	URS Corporation	unknown
Open Space	URS Corporation	unknown
Headlands LLC Project Boundaries	URS Corporation	unknown
Headlands LLC Revegetation Areas	URS Corporation	unknown

Objective 3: Develop a public awareness program that informs local residents and visitors of the sensitivity and ecological importance of the Preserve

The Preserve Manager has met a majority of the existing homeowner's on Dana Strand and Scenic Drive. However, most residents in the area are renters. An excel spreadsheet was created to maintain a mailing list of all nearby residents and interested parties.

Contact was initiated with the Ocean Institute to encourage collaboration between the two organizations.

Tours have been provided on-site to the nearby Niguel Shores Men's Club and local residents.

Other Public Service Activities:

Center staff worked with the City of Dana Point and the residents of the enclave of homes on Scenic Drive adjacent to the Preserve in an effort to vacate Scenic Drive from City ownership. Once vacated, the street will be privately maintained by the residents of Scenic Drive. The improvements associated with vacating Scenic Drive is expected to provide a more pleasant experience for the public accessing our Preserve and allow the Preserve to be better protected against trespass. Our involvement with this issue will continue in FY2008 once a formal application to vacate the road proceeds through City and CCC permitting processes.

Center staff has also been working with the City of Dana Point on the potential adverse affects to the Preserve from the LCP amendment changes requested by Headlands Reserve, LLC to add a new public use trail adjacent to the Preserve. We are concerned that by creating an additional 600 linear feet of public use trail behind the new hotel site to the cul de sac at Scenic Drive, will increase the potential for people to trespass on our Preserve. The Center provided written and oral comments to both the City of Dana Point Planning Commission and Dana Point City Council during formal public hearings on this matter. No formal changes were made to the LCP amendment in response to our comments; however, the City and Headlands Reserve, LLC verbally communicated that they intend to address this issue informally in coordination with the Center. The additional trails proposed in the LCP amendment were not considered in the HMMP that directs the management of the Preserve and adjacent preserves to be owned by the City. If new trails are to be added to the natural preserves associated with the Headlands Project, the HMMP should be revised to ensure that adequate measures are being taken to protect the Preserve from trespass. Any revisions to the HMMP should be prepared among all parties associated with the current HMMP (City, Wildlife Agencies, CCC, Headlands Reserve LLC, and Center).

REPORTING

Objective: Draft a Five Year Management Plan, an Annual Report, and a Work Plan.

A long-term management plan, HMMP, was produced by consultants for the developer prior to dedication of the Preserve, and the permits and development approvals conditioned that this management plan be used by the Center with review and update every five years. However, this management plan is considered inadequate for the Preserve once the short-term restoration phase is completed, so a revision is already being drafted. There is no target date established for completing the draft, however, it will be completed before the updated HMMP is required in 2010.

A Work Plan and budget for the 2008 fiscal year (October 2007 through September 2008) were completed.

A comprehensive management and monitoring report is required every three years. To provide specific management recommendations to reverse any declining trends in habitat or species' populations. Such a report would not be produced by the Center until December 2008 (the end of our third year of managing the Preserve).

ENDOWMENT

The status of the endowment is provided below in Table 3.

Table 3: Status of Endowment for Dana Point Preserve October 2006-September 2007

Original endowment:	\$1,747,844
Inflation adjusted endowment	\$1,866,113
I&C Remaining (Actual)	\$109,600
Trail & Fence Funds (Actual – no interest allocated to this	\$186,250
Endowment Balance	\$2,194,214
Total Funds (Actual)	\$2,490,064

Please notes, the PAR Detailed Budget Tables provided in Appendix D of the HMMP (pages 53-67) are outdated. As a result, Tables 4, 5 and 6 (pages 36-38) are also incorrect. These tables are based on a PAR produced by the Center in 2004. An updated PAR was prepared by the Center on November 8, 2005, for the Harry and Grace Steele Foundation to manage the 29.4 acre Conservation Park. The financial results of that PAR are provided in Table 4 below.

Table 4: November 8, 2005 PAR Financial Results

Funding Requirements	
Initial & Capital Costs	\$261,087
Held in Trust (Endowment)	\$1,747,844
Total Contribution	\$2,008,931
Funding Breakdown	
Annual Endowment Earnings Available After Inflation for Management (4.5% Capitalization Rate)	\$78,653
Annual Stewardship on a per acre basis (current dollars)	\$2,809

EXPENDITURES

The expenses for the 2007 Fiscal Year are provided in Appendix C. The expenditures were only 33 percent of the budget for FY07 for the following reasons, as explained in the previous sections of this report: 1) no pacific pocket mouse or rare plant surveys (Biotic Surveys) were conducted this year under contract to the Center; 2) less mileage reimbursement (Field Equipment) was needed due to the close proximity of the Preserve Manager to the site; 3) Due to the lack of rain no erosion control measures or exotic plant control was necessary by the Center. In addition, no feral animal control was taken since no sign of domestic cat predation was identified; 4) The Public Services budget contained \$150,000.00 for trail construction (funded

directly by Headlands Reserve, LLC outside of the scope of the PAR identified above), which was constructed directly by Headlands Reserve, LLC; and 5) Less fence maintenance (Site Construction) was needed than budgeted; however, some of the maintenance costs were incorrectly categorized as General Maintenance by the Preserve Manager.

The General Maintenance and Operations expenditures exceeded the budget. The General Maintenance category includes trash collection and disposal. Substantially more old trash remains on the Preserve than expected and new trash is continually created due to trespassers. The expenses in the Habitat Maintenance category were for trash removal but incorrectly categorized by the Preserve Manager. In addition, some of the expenditures classified to the General Maintenance category were for fence repair that were incorrectly categorized by the Preserve Manager.

The Operations expenditure exceeded the budget due to the new Preserve Manager needing to set up a home office and become familiar with all the documents associated with the Preserve.

Some funds were expended in the Acquisition Category which was not budgeted. These expenses were associated with addressing the trail construction issue.

Lastly, the Center expended a substantial amount of funds to address litigation by Headlands Reserve, LLC, which have yet been completely resolved. The Legal Category is a new category that was added to attempt to account for the Center's staff labor hours spent on the litigation from Headlands Reserve, LLC.

APPENDIX A: Animal Species Identified on the Dana Point Preserve.

Scientific Name

Common Name

REPTILES AND AMPHIBIANS

Order Salientia

Frogs and Toads

Family Hylidae
Hyla regilla

Pacific treefrog

Order Squamata

Lizards and Snakes

Family Anguidae
Elgaria multicarinatus

Southern alligator lizard

Family Colubridae
Lampropeltis getula californiae
Masticophis flagellum piceus

California kingsnake
Red racer, Coachwhip

Family Iguanidae
Sceloporus occidentalis
Uta stansburiana

Western fence lizard
Side-blotched lizard

Family Scincidae
Eumeces skiltonianus

Western skink

Family Teiidae
Cnemidophorus hyperythrus

Orange-throated whiptail

BIRDS

Order Apodiformes

Swifts and Hummingbird

Family Apodidae
Aeronautes saxatalis

White-throated swift

Family Trochilidae
Calypte anna
Calypte costae
Selasphorus sasin
Selasphorus rufus

Anna's hummingbird
Costa's hummingbird
Allen's hummingbird
Rufous hummingbird

Order Charadriiformes

Family Charadriidae

Pluvialis squatarola

Family Laridae

*Larus heermanni**Larus delawarensis**Larus californicus**Larus occidentalis**Larus glaucescens**Sterna caspia*

Family Scolopacidae

*Catoptrophorus semipalmatus**Numenius phaeopus**Limosa fedoa**Arenaria melanocephala**Aphriza virgata**Calidris alba***Order Columbiformes**

Family Columbidae

*Zenaida macroura**Columba livia***Order Falconiformes**

Family Accipitridae

*Buteo jamaicensis**Elanus leucurus*

Family Cathartidae

Cathartes aura

Family Falconidae

*Falco peregrinus**Falco sparverius***Order Galliformes**

Family Phasianidae

*Callipepla californica***Shorebirds, Gulls, and Relatives**

Black-bellied plover

Heermann's gull

Ring-billed gull

California gull

Western gull

Glaucous-winged gull

Caspian tern

Willet

Whimbrel

Marbled godwit

Black turnstone

Surfbird

Sanderling

Pigeons and Doves

Mourning dove

Rock dove (feral pigeon)

Vultures, Hawks, and Falcons

Red-tailed hawk

White-tailed kite

Turkey vulture

Peregrine falcon

American kestrel

Megapodes, Curassows, Pheasants, and Relatives

California quail

Order Passeriformes

Family Aegithalidae

Psaltriparus minimus

Family Corvidae

Corvus brachyrhynchos

Corvus corax

Family Emberizidae

Geothlypis trichas

Pipilo erythrophthalmus

Pipilo crissalis

Melospiza melodia

Agelaius phoeniceus

Molothrus ater

Pheucticus melanocephalus

Wilsonia pusilla

Carduelis psaltria

Carpodacus mexicanus

Vermivora celata

Vermivora ruficapilla

Dendroica coronata

Dendroica nigrescens

Dendroica townsendii

Dendroica occidentalis

Oporornis tolmiei

Spizella passerina

Melospiza lincolni

Zonotrichia atricapilla

Zonotrichia albicollis

Zonotrichia leucophrys

Sturnella neglecta

Euphagus cyanocephalus

Icterus bullockii

Icterus galbula

Family Hirundinidae

Stelgidopteryx serripennis

Hirundo rustica

Family Mimidae

Mimus polyglottos

Toxostoma redivivum

Perching Birds

Bushtit

American crow

Common raven

Common yellowthroat

Spotted towhee

California towhee

Song sparrow

Red-winged blackbird

Brown-headed cowbird

Black-headed grosbeak

Wilson's warbler

Lesser goldfinch

House finch

Orange-crowned warbler

Nashville warbler

Yellow-rumped warbler

Black-throated gray warbler

Townsend's warbler

Hermit warbler

MacGillivray's warbler

Chipping sparrow

Lincoln's sparrow

Golden-crowned sparrow

White-throated sparrow

White-crowned sparrow

Western meadowlark

Brewer's blackbird

Bullock's oriole

Northern oriole

Northern rough-winged swallow

Barn swallow

Northern mockingbird

California thrasher

Family Muscicapidae	
<i>Regulus calendula</i>	Ruby-crowned kinglet
<i>Polioptila californica californica</i>	Coastal California gnatcatcher
<i>Catharus guttatus</i>	Hermit thrush
Family Sturnidae	
<i>Sturnus vulgaris</i>	European starling
Family Timaliidae	
<i>Chamaea fasciata</i>	Wrentit
Family Troglodytidae	
<i>Campylorhynchus brunneicapillus</i>	
<i>cousei</i>	Coastal cactus wren (not observed since early 1990's)
<i>Thryomanes bewickii</i>	Bewick's wren
<i>Troglodytes aedon</i>	House wren
Family Tyrannidae	
<i>Contopus sordidulus</i>	Western wood peewee
<i>Empidonax hammondi</i>	Hammond's flycatcher
<i>Empidonax difficilis</i>	Pacific-slope flycatcher
<i>Sayornis nigricans</i>	Black phoebe
<i>Sayornis saya</i>	Say's phoebe
<i>Myiarchus cinerascens</i>	Ash-throated flycatcher
<i>Tyrannus vociferans</i>	Cassin's kingbird
<i>Tyrannus verticalis</i>	Western kingbird
Order Pelecaniformes	Tropicbirds, Pelicans and Relatives
Family Ardeidae	
<i>Ardea herodias</i>	Great blue heron
<i>Butorides striatus</i>	Green heron
Family Pelecanidae	
<i>Pelecanus occidentalis</i>	Brown pelican
Family Phalacrocoracidae	
<i>Phalacrocorax auritus</i>	Double-crested cormorant
<i>Phalacrocorax pelagicus</i>	Pelagic cormorant
Order Piciformes	Woodpeckers and Relatives
Family Picidae	
<i>Picoides nuttallii</i>	Nuttall's woodpecker
<i>Colaptes auratus</i>	Northern flicker

Order Strigiformes

Family Strigidae

*Asio flammeus***Owls**

Short-eared owl

MAMMALS**Order Lagomorpha**

Family Leporidae

*Sylvilagus audubonii***Rabbits, Hares, and Pikas**

desert cottontail

Order Rodentia

Family Sciuridae

*Spermophilus beecheyi***Squirrels, Rats, Mice, and Relatives**

California ground squirrel

Family Cricetidae

*Peromyscus maniculatus**Peromyscus californicus**Reithrodontomys megalotis**Neotoma lepida*

deer mouse

California mouse

western harvest mouse

desert woodrat

Family Heteromyidae

Perognathus longimembris pacificus Pacific pocket mouse

Family Muridae

*Peromyscus eremicus**Mus musculus**Microtus californicus*

cactus mouse

house mouse

California vole

Order Carnivora**Carnivores**

Family Canidae

Canis latrans

coyote (scat)

Family Felidae

Lynx rufus

Bobcat (sighted by 3 separate neighbors)

Family Otariidae

Zalophus californianus

California sea lion (offshore)

Family Phocidae

Phoca vitulina

harbor seal (offshore)

**Amphibian, reptile, bird, and mammal nomenclature follows Laudenslayer et al., 1991.

APPENDIX B: Plant species documented on the Dana Point Preserve.

Family	Genus	Species	Subsp/var	Common Name
POLYPODIACEAE - Polypody Fern Family				
	Polypodium	californicum		California polypody+
CUPRESSACEAE - Cypress Family				
	*Juniperus	sp.		exotic planting
IRIDACEAE - Iris Family				
	Sisyrinchium	bellum		Blue-eyed grass
JUNCACEAE - Rush Family				
	Juncus	bufonius		Toad-Rush
LILIACEAE - Lily Family				
	*Agave	americana		American agave
	*Agave	attenuata		Dyck
	*Asparagus	officinalis	officinalis	Wild asparagus
	Bloomeria	crocea	crocea	Common goldenstars
	Calochortus	splendens		Splendid mariposa-lily
	Chlorogalum	parviflorum		Small-flower soap plant
	Dichelostemma	capitatum	capitatum	wild hyacinth
PINACEAE - Pine Family				
	*Pinus	sp.		exotic planting
POACEAE - Grass Family				
	*Arundo	donax		giant reed grass
	*Avena	barbata		slender wild oat
	*Bromus	diandrus		ripgut brome
	*Bromus	hordaceus		soft chess
	*Bromus	madritensis	rubens	foxtail chess
	*Cynodon	dactylon		bermuda grass
	Distichlis	spicata		salt grass+

	<i>*Gastridium</i>	<i>ventricosum</i>		nitgrass
	<i>*Hordeum</i>	<i>murinum</i>	<i>leporinum</i>	hare barley
	<i>*Lolium</i>	<i>perrene</i>		English ryegrass
	<i>Melica</i>	<i>imperfecta</i>		coast range melic
	<i>Muhlenbergia</i>	<i>microsperma</i>		little-seed muhly
	<i>Nassella</i>	<i>(Stipa)</i>	<i>lepida</i>	foothill needlegrass
	<i>Nassella</i>	<i>(Stipa)</i>	<i>pulchra</i>	purple needlegrass
	<i>*Pennisetum</i>	<i>setaceum</i>		fountain grass
	<i>*Phalaris</i>	<i>canariensis</i>		Mediterranean canary grass
	<i>*Piptatherum</i>	<i>milliaceum</i>		smilo grass
	<i>*Poa</i>	<i>annua</i>		annual bluegrass
	<i>*Polypogon</i>	<i>monspeliensis</i>		annual beardgrass
	<i>*Schismus</i>	<i>barbatus</i>		Mediterranean schismus
	<i>*Vulpia</i>	<i>myuros</i>	<i>myuros</i>	foxtail fescue
TYPHACEAE - Cat-tail Family				
	<i>Typha</i>	<i>latifolia</i>		soft flag
AIZOACEAE - Carpet-weed Family				
	<i>*Carpobrotus</i>	<i>edulis</i>		hottentot
	<i>*Mesembryanthemum</i>	<i>crystallinum</i>		crystal ice plant
	<i>*Mesembryanthemum</i>	<i>nodiflorum</i>		little ice plant
	<i>*Mesembryanthemum</i>	<i>sp.</i>		exotic planting
	<i>*Tetragonia</i>	<i>tetragonioides</i>		New Zealand spinach
AMARYLLIDACEAE –Amaryllis Family				
	<i>*Narcissus</i>	<i>papyraceus</i>		paperwhites
ANACARDIACEAE - Sumac Family				
	<i>Rhus</i>	<i>integrifolia</i>		lemonadeberry
	<i>*Schinus</i>	<i>terebinthifolius</i>		Brazilian pepper tree
APIACEAE - Carrot Family				
	<i>Apiastrum</i>	<i>angustifolium</i>		wild celery
	<i>*Daucus</i>	<i>carota</i>		wild carrot
	<i>Daucus</i>	<i>pusillus</i>		rattlesnake weed+
	<i>*Foeniculum</i>	<i>vulgare</i>		fennel

	<i>Sanicula</i>	<i>arguta</i>		sharp-tooth sanicle
APOCYNACEAE - Dogbane Family				
	<i>*Nerium</i>	<i>oleander</i>		oleander
	<i>*Vinca</i>	<i>major</i>		blue periwinkle
ASTERACEAE - Aster Family				
	<i>Amblyopappus</i>	<i>pusillus</i>		coast weed+
	<i>Ambrosia</i>	<i>psilostachya</i>		western ragweed
	<i>Artemisia</i>	<i>californica</i>		California sagebrush
	<i>Baccharis</i>	<i>pilularis</i>		coyote brush
	<i>Baccharis</i>	<i>salicifolia(glutinosa)</i>		mulefat
	<i>*Centaurea</i>	<i>melitensis</i>		to calote
	<i>Chaenactis</i>	<i>glabriuscula</i>		San Diego pincushion
	<i>*Chamomilla</i>	<i>suaveolens</i>		pineapple weed
	<i>*Chrysanthemum</i>	<i>coronarium</i>		garland chrysanthemum
	<i>*Cirsium</i>	<i>vulgare</i>		bull thistle
	<i>*Conyza</i>	<i>canadensis</i>		horseweed
	<i>*Coreopsis</i>	<i>gigantea</i>		giant sea dahlia
	<i>*Cynara</i>	<i>cardunculus</i>		artichoke thistle/cardoon
	<i>Encelia</i>	<i>californica</i>		common encelia
	<i>Erigeron</i>	<i>foliosus</i>	<i>foliosus(stenophyllus)</i>	leaf daisy
	<i>Filago</i>	<i>californica</i>		California filago
	<i>*Filago</i>	<i>gallica</i>		narrow-leaved filago+
	<i>Gnaphalium</i>	<i>bicolor</i>	<i>bicolor</i>	cudweed
	<i>Gnaphalium</i>	<i>californicum</i>		California everlasting
	<i>Gnaphalium</i>	<i>chilense</i>		
	<i>Gnaphalium</i>	<i>canescens</i>		white everlasting
	<i>Grindelia</i>	<i>camporum</i>	<i>var.bracteosum</i>	green gum plant
	<i>*Hedypnois</i>	<i>cretica</i>		crete hedypnois
	<i>Hemizonia</i>	<i>fasciculata</i>		tarweed
	<i>Heterotheca</i>	<i>grandiflora</i>		telegraph weed
	<i>*Hypochaeris</i>	<i>glabra</i>		cat's ear
	<i>Isocoma</i>	<i>menziesii</i>		coastal goldenbush
	<i>Lasthenia</i>	<i>californica</i>		goldfields

	<i>Lessingia</i>	<i>filaginifolia</i>	<i>filaginifolia</i>	virgate sand aster
	<i>Layia</i>	<i>platyglossa</i>		common tidy tips+
	<i>Malacothrix</i>	<i>saxatilis</i>	<i>tenuifolia</i>	cliff malacothrix
	<i>Osmadenia</i>	<i>tenella</i>		rosinweed
	<i>Pentachaeta</i>	<i>aurea</i>		golden daisy
	<i>Senecio</i>	<i>californicus</i>		California butterweed
	* <i>Sonchus</i>	<i>asper</i>		spiny-leaf sow-thistle
	* <i>Sonchus</i>	<i>oleraceus</i>		common sow-thistle
	<i>Stephanomeria</i>	<i>diegensis</i>		San Diego wreath plant
	<i>Stylocline</i>	<i>gnaphalioides</i>		everlasting nest straw
	<i>Uropappus</i>	<i>lindleyi</i>		silver puffs
BORAGINACEAE - Borage Family				
	<i>Amsinckia</i>	<i>menziesii</i>	<i>intermedia</i>	rancher's fiddleneck
	<i>Cryptantha</i>	<i>intermedia</i>		nievitas
	* <i>Echium</i>	<i>plantagineum</i>		
	<i>Plagiobothrys</i>	<i>collinus</i>	<i>californicus</i>	California popcorn flower
	<i>Plagiobothrys</i>	<i>collinus</i>	<i>gracilis</i>	small California popcorn flower
BRASSICACEAE - Mustard Family				
	* <i>Brassica</i>	<i>nigra</i>		black mustard
	* <i>Cakile</i>	<i>maritima</i>	<i>maritima</i>	sea-rocket
	* <i>Hirshfeldia</i>	<i>incana</i>		short-pod mustard
	<i>Lepidium</i>	<i>lasiocarpum</i>	<i>lasiocarpum</i>	sand peppergrass
	<i>Lepidium</i>	<i>nitidum</i>		peppergrass
	* <i>Lobularia</i>	<i>maritima</i>		sweet alyssum
	* <i>Sisymbrium</i>	<i>irio</i>		London rocket
CACTACEAE - Cactus Family				
	<i>Opuntia</i>	<i>littoralis</i>		coastal prickly pear
	<i>Opuntia</i>	<i>oricola</i>		oracle cactus
	<i>Opuntia</i>	<i>prolifera</i>		coast cholla
CAPPARACEAE - Caper Family				
	<i>Isomeris</i>	<i>arborea</i>		bladderpod

CARYOPHYLLACEAE - Pink Family				
	<i>Cardionema</i>	<i>ramosissima</i>		tread lightly
	<i>Polycarpon</i>	<i>depressum</i>		California polycarp
	* <i>Polycarpon</i>	<i>tetraphyllum</i>		four-leaf polycarp
	* <i>Silene</i>	<i>gallica</i>		common catchfly
	* <i>Spergularia</i>	<i>villosa</i>		villous sand spurry
CHENOPODIACEAE - Goosefoot Family				
	<i>Aphanisma</i>	<i>blitoides</i>		Aphanisima+
	<i>Atriplex</i>	<i>breweri</i>		Brewer's saltbush
	<i>Atriplex</i>	<i>californica</i>		California saltbush
	<i>Atriplex</i>	<i>watsonii</i>		Watson saltbush
	<i>Atriplex</i>	<i>leucophylla</i>		seaside saltbush
	<i>Chenopodium</i>	<i>murale</i>		nettle-leaf goosefoot
	* <i>Salsola</i>	<i>tragus (iberica)</i>		Russian thistle
	<i>Suaeda</i>	<i>taxifolia</i>		sea blite
CONVOLVULACEAE - Morning-Glory Family				
	<i>Calystegia</i>	<i>macrostegia</i>		morning glory
CRASSULACEAE - Stonecrop Family				
	* <i>Crassula</i>	<i>argentea</i>		exotic planting
	<i>Crassula</i>	<i>connata</i>	<i>connata</i>	dwarf stonecrop
	<i>Dudleya</i>	<i>caespitosa</i>		sea lettuce
	<i>Dudleya</i>	<i>lanceolata</i>		coastal dudleya
	<i>Dudleya</i>	<i>pulverulenta</i>		chalk dudleya
CUCURBITACEAE - Gourd Family				
	<i>Marah</i>	<i>macrocarpus</i>		wild cucumber
EUPHORBIACEAE - Spurge Family				
	<i>Croton</i>	<i>californicus</i>		California croton
	<i>Euphorbia</i>	<i>misera</i>		cliff spurge
	* <i>Euphorbia</i>	<i>peplus</i>		petty spurge
	* <i>Ricinus</i>	<i>communis</i>		castor bean

FABACEAE - Pea Family				
	<i>*Acacia</i>	<i>sp.</i>		exotic planting
	<i>*Bauhinia</i>	<i>sp.</i>		exotic planting
	<i>Lotus</i>	<i>scoparius</i>		coastal deerweed
	<i>Lotus</i>	<i>strigosus</i>		bishop's lotus
	<i>Lupinus</i>	<i>truncatus</i>		collar lupine
	<i>*Medicago</i>	<i>polymorpha</i>		California bur clover
	<i>*Melilotus</i>	<i>indicus</i>		Indian sweet clover
GERANIACEAE - Geranium Family				
	<i>*Erodium</i>	<i>botrys</i>		long-beak filaree
	<i>*Erodium</i>	<i>cicutarium</i>		red-stem filaree
	<i>Erodium</i>	<i>macrophyllum</i>		large-leaf filaree
	<i>*Pelargonium</i>	<i>zonale</i>		zonal geranium
HYDROPHYLLACEAE - Waterleaf Family				
	<i>Phacelia</i>	<i>distans</i>		wild heliotrope
HYPERICACEAE - St. John's Wort Family				
	<i>Hypericum</i>	<i>canariense</i>		Canary Island's St. John's wort
LAMIACEAE - Mint Family				
	<i>*Marrubium</i>	<i>vulgare</i>		horehound
	<i>Stachys</i>	<i>ajugoides</i>	<i>rigida</i>	hedge nettle
MALVACEAE - Mallow Family				
	<i>*Hibiscus</i>	<i>sp.</i>		exotic planting
	<i>*Lavatera</i>	<i>assurgentiflora</i>		malva rose
	<i>*Malva</i>	<i>parviflora</i>		cheeseweed

MUSACEAE - Banana Family				
	* <i>Musa</i>	<i>sp.</i>		exotic planting
MYOPORACEAE - Myoporum Family				
	* <i>Myoporum</i>	<i>laetum</i>		myoporum
NYTAGINACEAE - Four O'Clock Family				
	<i>Mirabilis</i>	<i>californica</i>		wishbone bush
ONAGRACEAE - Evening Primrose Family				
	<i>Camissonia</i>	<i>bistorta</i>		southern sun cup
	<i>Camissonia</i>	<i>cheiranthifolia</i>	<i>suffruticosa</i>	beach evening primrose
OXALIDACEAE - Oxalis Family				
	<i>Oxalis</i>	<i>albicans</i>		wood sorrel (may be erroneous entry from original consulting firm)
	* <i>Oxalis</i>	<i>pes-caprae</i>		Bermuda buttercup+
PLANTAGINACEAE - Plantain Family				
	<i>Plantago</i>	<i>erecta</i>		California plantain
	<i>Plantanus</i>	<i>racemosa</i>		western sycamore
PLUMBAGINACEAE - Leadwort Family				
	<i>Limonium</i>	<i>californicum</i>		sea lavender
POLEMONIACEAE - Phlox Family				
	<i>Linanthus</i>	<i>dianthiflorus</i>		ground pink
POLYGONACEAE - Buckwheat Family				
	<i>Chorizanthe</i>	<i>procumbens</i>		prostrate spine flower
	<i>Chorizanthe</i>	<i>staticoides</i>		Turkish rugging
	<i>Eriogonum</i>	<i>elongatum</i>		tall buckwheat
	<i>Eriogonum</i>	<i>fasciculatum</i>		flat-topped buckwheat
	<i>Eriogonum</i>	<i>gracile</i>		slender buckwheat

	<i>Eriogonum</i>	<i>parvifolium</i>		coastal buckwheat
	<i>Pterostegia</i>	<i>drymarioides</i>		granny's hairnet
	* <i>Rumex</i>	<i>crispus</i>		curly dock
PORTULACACEAE - Purslane Family				
	<i>Calandrinia</i>	<i>ciliata</i>		red maids
PRIMULACEAE - Primrose Family				
	* <i>Anagallis</i>	<i>arvensis</i>		scarlet pimpernel
ROSACEAE - Rose Family				
	* <i>Raphiolepis</i>	<i>indica</i>		Indian hawthorn
RUBIACEAE - Madder Family				
	<i>Galium</i>	<i>angustifolium</i>	<i>angustifolium</i>	narrow-leaf bedstraw
	* <i>Galium</i>	<i>aparine</i>		common bedstraw
SAPINDACEAE - Soap Berry Family				
	* <i>Dodonaea</i>	<i>sp.</i>		exotic planting
SCROPHULARIACEAE - Figwort Family				
	<i>Antirrhinum</i>	<i>nuttallinum</i>		Nuttall's snapdragon
	<i>Castilleja</i>	<i>exserta</i>		purple owl's clover
	<i>Linaria</i>	<i>canadensis</i>		large blue toadflax
	<i>Mimulus</i>	<i>aurantiacus</i>		monkeyflower
	<i>Mimulus</i>	<i>aurantiacus</i>	(<i>puniceus</i>)	red bush monkey flower
SOLANACEAE - Nightshade Family				
	<i>Datura</i>	<i>wrightii</i>		western jimsonweed
* next to genus name indicates a non-native plant species. All non-native plant species have been treated/removed by contractors of Headlands Reserve, LLC. However, they remain on this list to ensure they are retreated as necessary.				
Compiled from the "Habitat Management and Monitoring Plan For Dana Point Headlands Biological Open Space", by URS Corporation dated April 2004. However, the original list contained all plant species throughout the lands to be preserved associated with Headlands Reserve, LLC, and are not unique to only the portion of land owned and managed by the Center.				
+ next to common name indicates species found on the Dana Point Preserve and added to this list by Eliza Maher (Center botanist) in her 2006 survey.				

APPENDIX C: Summary of expenditures

					S033 Dana Point		
					Oct '06 - Sep 07	Budget	% of Budget
Expense							
		Acquisitions			3,624.48		
		Admin Fee Expense			17,300.30	52,508.16	32.95
		Biotic Surveys			5,102.50	20,199.00	25.26
		Field Equipment			2,034.08	2,632.00	77.28
		General Maintenance			1,649.85	10.00	16,498.5
		Habitat Maintenance			887.98		
		Habitat Restoration			658.28	12,832.00	5.13
		Legal			26,420.27		
		Office Maintenance			5,589.49	4,284.00	130.47
		Operations			11,973.12	2,831.00	422.93
		Public Services			9,143.14	164,832.00	5.55
		Reporting			4,536.45	4,220.00	107.5
		Site Construction			464.91	6,944.00	6.7
		Total Preserve Management			89,384.85	271,292.16	32.95

**Dana Point Preserve - S033
Cliff Spurge Locations Mapped by URS Corp
2007**



Dana Point Preserve S033 **Coastal California Gnatcatcher Survey Results 2007**

