



State of California – Natural Resources Agency  
 DEPARTMENT OF FISH AND WILDLIFE  
 South Coast Region  
 3883 Ruffin Road  
 San Diego, CA 92123  
[wildlife.ca.gov](http://wildlife.ca.gov)

**GAVIN NEWSOM, Governor**  
**CHARLTON H. BONHAM, Director**



October 7, 2025  
*Sent Electronically*

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

**SUBJECT: Center for Natural Lands Management’s Application for a Coastal Development Permit to the City of Dana Point to Modify Public Trail Hours at the Dana Point Headlands Conservation Park (CDP24-0022)**

Dear Brenda Wisneski:

The California Department of Fish and Wildlife (“CDFW”) is providing comments in response to the proposal by the City of Dana Point (“City”) to consider an appeal by the Center For Natural Lands Management (“CNLM”) of the Planning Commission’s decision regarding the above-named Coastal Development Permit application (“Application”), which seeks to modify public trail hours at the Dana Point Preserve (also known as Headlands Conservation Park; hereafter “DPP”). CDFW appreciates the opportunity to provide our perspective regarding biological resources considerations relevant to the Application, including ongoing threats to the federally endangered Pacific Pocket Mouse (*Perognathus longimembris pacificus*; hereafter, “PPM”). Based on our interests in conservation of biological resources at the DPP and substantial scientific information on threats to PPM from public access and other factors, we oppose the City’s proposal to prepare a supplemental environmental impact report (“SEIR”) for the Application and request immediate reductions in existing public access hours to protect PPM consistent with existing statutory, regulatory and conservation easement requirements.

### **CDFW Roles and Regulatory Framework**

CDFW is California’s trustee agency for fish and wildlife resources and holds those resources in trust for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Res. Code, § 21070; CEQA Guidelines, § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (Fish & G. Code, § 1802). Similarly, for purposes of the California Environmental Quality Act (Pub. Res. Code, § 21000 et seq.), CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect state fish and wildlife resources.

*Conserving California’s Wildlife Since 1870*

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CDFW also administers the Natural Community Conservation Planning (“NCCP”) program, a California regional habitat conservation planning program. The DPP is within the County of Orange Central and Coastal Subregion NCCP/Habitat Conservation Plan (“NCCP/HCP”) (County of Orange, 1996) for which CDFW, in its Responsible Agency capacity, issued an NCCP Permit<sup>1</sup> in the same year (Pub. Res. Code, § 21069; CEQA Guidelines, § 15381). PPM is a covered species under the NCCP/HCP. The Headlands Project was permitted and take of PPM was authorized pursuant to the NCCP. Additionally, CDFW is charged with enforcing the provisions of the NCCP/HCP through our Implementation Agreement (“IA”) (County of Orange, United States Fish and Wildlife Service, and CDFW, 1996), which requires appropriate adaptive management of the DPP for the benefit of PPM and other covered species.

Pursuant to the NCCP/HCP, the City approved the Headlands Development and Conservation Plan (HDCP, 2004) for the DPP, which provides for limits on public access when necessary for species protection (p. 4-49):

“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.” (p. 4-49)

Pursuant to the HDCP and consistent with NCCP/HCP requirements, a Habitat Monitoring and Management Plan for Dana Point Headlands Biological Open Space (URS and CNLM, 2005) (“HMMP”) was prepared that governs uses in the DPP and addresses impacts to and conservation of PPM. The 2005 HMMP contemplates that the DPP Habitat Manager (CNLM) will monitor public access at the DPP and apply adaptive management to minimize impacts to PPM and other NCCP/HCP covered species from public uses. CNLM is required to update the HMMP’s management practices at least every five years consistent with best adaptive management practices and recommendations by CDFW and the United States Fish and Wildlife Service (“USFWS”). CDFW and USFWS (collectively, “Wildlife Agencies”) have repeatedly advocated in support of restrictions on public access hours during specific periods for protection of PPM, consistent with CNLM’s proposed draft *2023 Habitat Management Plan for Public Access for the Dana Point Preserve* (CNLM, 2023) (hereafter, “Draft 2023 HMMP”) (see letters from CDFW and USFWS the City dated March 23, 2022, and

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<sup>1</sup> The Implementation Agreement serves as CDFW’s NCCP Permit for the County of Orange Central and Coastal Subregion NCCP/HCP. The City of Dana Point signed the IA in 2004.

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April 19, 2024). To date, the City has declined to approve the HMMP update<sup>2</sup> and has obstructed CNLM's efforts to implement the management measures recommended by the Wildlife Agencies.

The HDCP also required conveyance of a conservation easement ("CE") over the DPP, which CNLM granted to the City in November 2005. As third-party beneficiaries to the CE, CDFW and USFWS have rights to monitor compliance with and to enforce the CE. The CE unambiguously states that its purposes are to "...ensure that biological values and resources in [the DPP] continue to exist in perpetuity, and to prevent any use of [the DPP] that will materially impair or interfere with such values and resources" (Section 2). While the CE authorizes public access for passive recreation, scenic enjoyment, and education, such access is prohibited if it is materially inconsistent with the purposes of the CE (Section 5.1).<sup>3</sup>

Under California Civil Code section 815.7, subds. (b) and (c), the grantor or holder of a conservation easement may bring an action for injunctive relief to prohibit or restrain any "[a]ctual or threatened injury to or impairment of...[the] conservation easement or actual or threatened violation of its terms..." and may also recover monetary damages for any violation of the terms of the easement or for any injury to the easement or to the interests it protects; such damages may include costs of restoration and loss of environmental value. As third-party beneficiaries to the easement, CDFW and USFWS also have standing to enforce the easement and can seek the same actions and forms of relief.

In CDFW's view based on our scientific expertise, the public access hours currently being implemented at the DPP pose a significant threat to PPM and are materially inconsistent with the species protection purposes and requirements of applicable regulatory requirements, including the HDCP and the CE. Below, we review the best available science on the imperiled status and ongoing threats to PPM at the DPP and

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<sup>2</sup> In a December 14, 2023 letter to the City, counsel for the California Coastal Commission asked the City to "forego its insistence on maintaining the existing hours of operation" given threats to PPM and to process CNLM's request to establish hours of operation that are protective of PPM and consistent with the Local Coastal Program. The letter clarified that CNLM could establish trail hours either through the Local Coastal Program CDP process or through an amendment to the HMMP.

<sup>3</sup> The CE also reserves and grants to CDFW and USFWS "all rights necessary for the conservation and recovery of the Pacific pocket mouse" provided that the activities are consistent with the CE and performed in consultation with Grantor (CNLM), including but not limited to recovery efforts to benefit or promote the PPM population within DPP (Sections 5.2(c) and 6).

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present our current recommendations for management actions necessary to protect the species.<sup>4</sup>

### **California Endangered Species Act Petition for Pacific Pocket Mouse**

On March 25, 2025, the Fish and Game Commission (“Commission”) received a petition from the Center for Biological Diversity to list PPM as threatened or endangered under the California Endangered Species Act (“CESA”) (CNLM 2025). On April 4, 2025, the Commission referred the petition to CDFW for evaluation. The Commission publicly received the petition at its April 16-17, 2025, meeting and received CDFW’s evaluation and recommendation to accept the petition for further consideration at its August 13-14, 2025 meeting.

At its upcoming October 8-9, 2025, meeting, the Commission will consider the petition, CDFW’s evaluation, and other information in the record. If the Commission determines that the petitioned action to list PPM under CESA may be warranted, then the species would become a candidate species pursuant to Fish and Game Code section 2074.2. Pursuant to Fish and Game Code section 2085, a candidate species for which notice has been given pursuant to section 2074.4 receives full CESA protections during the remainder of the listing process, and any take of the species would be subject to enforcement. We encourage the City to stay engaged on the proceedings involving the petition.

### **Misapplication of CEQA**

The City is proposing to prepare a SEIR for CNLM’s Application seeking to restrict public access hours at the DPP for PMM protection. While CDFW respects lead agency decision-making as to environmental review required under CEQA, compliance with the existing contractual and permitting obligations described above is not optional and does not involve a discretionary action that requires CEQA review. (*San Diego Navy Broadway Complex Coalition v. City of San Diego* (2010) 185 Cal.App.4th 924, 938-940 [no subsequent or supplemental EIR required where the public agency is merely ensuring compliance with existing requirements, standards, and guidelines and lacks the authority to modify the project in accordance with a proposed updated EIR].)

The City is a party to the IA, HDCP, and CE, which require adaptive management of the DPP for the protection of PPM consistent with Wildlife Agency recommendations and

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<sup>4</sup> CDFW has advised that management actions are necessary to protect PPM in numerous filings and communications over the past several years; see, e.g., Declaration of Ed Pert, Ph.D., in Opposition to Motion for Preliminary Injunction, filed in *Center for Natural Lands Management v. City of Dana Point*, Orange County Superior Court, Case No. 30-2021-01219668-CU-OR-CJC, September 2, 2022.

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prohibit uses of the DPP that materially impair or interfere with protection of PPM. Specifically, the HDCP requires closure of the DPP's trails to the public during specific periods determined by the Wildlife Agencies to protect biological resources (p. 4-49), including the specific periods identified in this letter. We are concerned that preparation of an SEIR will result in continued delays in updating management practices, leading to further declines of PPM at the DPP that may place the species at risk of local extinction. CDFW urges the City to comply with its contractual and permitting obligations and to facilitate implementation of the measures recommended in this letter without delay.

Even assuming, *arguendo*, that the City's approval of CNLM's Application involves some exercise of discretion, the Application is already covered and within the scope of impacts analyzed under the City's existing EIR for the HDCP (hereafter, "HDCP EIR").<sup>5</sup> The HDCP EIR was prepared to analyze the development and conservation of resources on the Headlands Project site and related plans, programs, and guidelines to be adopted by the City and state and federal agencies. The HDCP EIR was prepared to "...satisfy CEQA requirements for all permits or approvals needed to implement the HDCP project..." including but not limited to the City's approval of any amendments to the City of Dana Point's Local Coastal Program (pp. 3-4-3-5 and 3-12).

The HDCP EIR acknowledges potential project impacts to biological resources including PPM but concludes that any impacts would be mitigated below significance because the project is covered by the NCCP/HCP, which authorizes take of covered species, and the CEQA document for the NCCP/HCP has already analyzed and mitigated related impacts (pp. 4.3-31 and 4.3-37). However, the HDCP EIR notes that these impacts are only considered mitigated to insignificant levels if the Headlands Project and its related impacts are carried out consistent with the NCCP and IA (p. 4.3-19). Importantly, the HDCP EIR acknowledges that the NCCP requires a comprehensive habitat management regime that incorporates adaptive management principles, under which management actions "...will be monitored closely and modified (adapted) over time to respond to new scientific information, and changing conditions and habitat needs." (p. 4.3-20)

The HDCP EIR incorporates compliance with NCCP conditions as a mitigation measure (p. 4.3-25), and the impacts analysis states that the existing NCCP adaptive management program requirement was one of the bases for concluding that the project's impacts to biological resources would be less than significant (p. 4.3-37). The City, as the lead agency for the HDCP EIR, has a continuing duty to ensure that mitigation measures and project features and requirements are implemented as

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<sup>5</sup> Final Environmental Impact Report, Headlands Development and Conservation Plan, Dana Point, California, SCH #2001071015, Prepared by LSA Associates (February 2002).

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described in the EIR, including adaptive management as informed by Wildlife Agency recommendations (Pub. Res. Code, § 21081.6). If the City fails to uphold this duty, then it has prejudicially abused its discretion by failing to proceed in the manner required by CEQA, and a writ of mandate can be sought (Pub. Res. Code, § 21168.5; *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 392).

### **The Pacific Pocket Mouse Population at Dana Point Preserve**

The PPM was listed as endangered in 1994 by USFWS and currently exists in only three known populations: two populations on Marine Corps Base Camp Pendleton and one at the DPP. All three extant populations of PPM are small, isolated, and have exhibited signs of decline in size and viability over time (Spencer et al. 2005). These populations are separated by nearly 12 miles of residential, commercial, and military land uses that have provided structural barriers to population expansion and challenges for long-term recovery and management. A fourth, experimental population has been introduced but not established at Laguna Coast Wilderness Park in Orange County. Due to isolation, all populations have suffered a significant loss of genetic diversity. However, the DPP population has suffered the greatest losses (Swei et al. 2003). The DPP population has the lowest genetic variation and highest inbreeding depression when compared to the other populations (Wilder et al., 2020). As such, the DPP population of PPM is highly susceptible to local extinction. As a coastal species, PPM has suffered due to habitat loss and fragmentation, conditions that have pushed many coastal-dependent species toward a heightened risk of local extinction and long-term population instability.

The DPP is a mere 29.4 acres in size, approximately 20% of the size of an average golf course and is the only remaining area where PPM occurs outside of federally controlled military lands. Access through the DPP is made possible by a half-mile long trail that traverses the DPP. This trail is the main contributor to fracturing PPM habitat by facilitating frequent recreation. Presence and density of trails are a significant predictor of PPM occupancy of an area, whereby PPM occupancy decreases sharply with increased trail density (Brehme et al., 2015). Small species, particularly those that are fossorial with small home ranges, are much more susceptible to minor impacts and populations can be affected when these impacts are pervasive in an area as small as the DPP. In addition, PPM occupies shallow burrows in sandy habitat, which are particularly vulnerable to being crushed or trampled.

While there are many factors that contribute to PPM population dynamics, trapping results clearly demonstrate that the DPP PPM population has undergone a significant population decline. At its peak, CNLM detected 82 PPM individuals through live trapping

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in 2010, which fell drastically to just 6 individuals in 2017 (USFWS 2020). During that same period (2010-2017), the number of visitors to the DPP also doubled. Notably, CNLM detected 77 PPM individuals during trapping in June 2020, shortly after trail closures due to COVID (CNLM, 2023). Recreational activities increase disturbance, reduce foraging efficiency, and can negatively impact PPM by degrading habitat quality. Studies have shown that high levels of human recreation are associated with reduced occupancy and activity of this subspecies (USFWS 2010; Diffendorfer et al. 2009)

### **Recreation at Dana Point Preserve**

Considering ongoing population declines and the growing number and magnitude of threats facing PPM, it is now more important than ever to reassess efforts to manage the PPM population at the DPP. While multiple factors affect PPM, from habitat quality to the long-term threats posed by climate change, the impacts associated with passive recreation are among the most directly manageable. While CDFW recognizes the importance of providing public access to outdoor recreation when consistent with protection of natural resources, it is critical that we take the necessary steps to increase the protections for the PPM population at the DPP to ensure a sustainable population persists. Ongoing adaptive management and monitoring would provide data and information necessary for continued adjustments to public access and other management efforts in response to changes in PPM populations.

As discussed in the Draft 2023 HMMP, the public's use of the trails on the DPP continues to remain high. Since the adoption of the 2004 HDGP, we have learned that even mild foot traffic is negatively associated with PPM occupancy (Brehme et al., 2015). With average visitor estimates ranging from 345 to 800 persons per day between 2011 and 2023, it is essential to acknowledge and carefully consider the potential impacts of increasing public use on small, isolated populations of ground-dwelling mammals like the PPM. These considerations should directly inform adaptive management strategies to ensure long-term population viability. In combination with other threats, time is of the essence to address the impacts of visitors to prevent this population from becoming locally extinct.

While outdoor recreation comes in many forms, even seemingly benign or negligible impacts can have consequential impacts on both an individual species and a population of animals. In other words, passive recreation does not necessarily equal passive impacts. Given the small size of the DPP, the number of people entering each day, the small home range of individual PPM, and the cumulative impacts associated with sounds and vibrations from trail users, it is imperative to thoroughly evaluate and continually reevaluate the impacts of passive recreation and make adjustments if necessary to properly manage and conserve this species.

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## Ecology of the Pacific Pocket Mouse

The ecology of a species is shaped by natural selection to optimize a species' survival and reproduction within its environment. Characteristics and factors such as age at maturity, growth patterns, number of offspring, reproductive timing, life span, home range, and mortality rates are common aspects of ecological studies. In the context of natural resources management, it is essential that management actions improve, enhance, or sustain elements of a species' life cycle to recover an imperiled or sensitive population. Conversely, management actions that are detrimental to a species' ecology should be avoided or minimized whenever and wherever possible. For example, throughout the State of California, the nesting bird or bird breeding season is a sensitive time of year when CDFW staff routinely recommend "no disturbance" buffers near and around all active bird nests to avoid nest abandonment by the parental birds. The nesting bird season is the most sensitive time of year for birds and no disturbance buffers are the simplest measure which prevents nest abandonment due to noise, vibrations and human activity. Without seasonal avoidance measures, many bird nests would fail or become abandoned. Similarly, a measure to reduce disturbance to PPM during their breeding season would afford PPM the ability to successfully reproduce as we see with nesting birds.

For CDFW and our conservation partners to successfully protect and recover vulnerable populations of at-risk species, we must use the best available information and science to develop management measures that will support a biologically sustainable population of PPM. The 2004 HDGP emphasizes the importance of *"[r]egulat[ing] the time, manner and location of public access to parks and open space containing sensitive biological resources to maintain and protect those sensitive resources"* to balance natural resource protection with public access at the DPP. In CDFW's scientific judgment, the ecology of the species must be the primary consideration for determining appropriate public access hours at the DPP, and based on the imperiled status and current threats to PPM, the public should be restricted from accessing the DPP during specific periods based on when the species is at its most vulnerable state (i.e., the breeding season). Additionally, recent research shows that PPM have very small home ranges, averaging just 156 square feet, meaning that even minimal passive human activity within the DPP can potentially impact their individual home range and dispersal (Shier 2009).

The breeding season of PPM has been documented to occur from March through October (San Diego Zoo Wildlife Alliance, 2016), and April through July (USFWS, 1998). Taking these two breeding periods into consideration, CDFW recommends the closure of the DPP between March 1 and July 31, which represents what we believe is the minimum disturbance-free period based on the best available ecological information for the species. Restricted access during the breeding season is a common and widely accepted measure to protect vulnerable breeding species and is necessary to maintain



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a biologically sustainable population of PPM. As with the avian breeding season, this is a common and widely accepted measure to protect vulnerable breeding species.

In addition, we are at a critical juncture in the long-term management of PPM where implementing limited public access to the DPP during certain periods during the non-breeding season is essential to safeguard the species. During the winter months, it is critical to avoid disturbing PPM during torpor, as arousal from this energy-conserving state requires significant metabolic effort and can deplete limited fat reserves essential for overwinter survival. Repeated or premature arousals, often triggered by human disturbance, can reduce fitness, increase mortality risk, and disrupt natural activity cycles (Shier, 2009; French, 1985; Geiser, 2004). We need to ensure that adaptive management strategies are flexible to ensure the conservation of PPM consistent with applicable regulatory and contractual requirements, and CDFW's view is that restricted public access is a necessary adaptive management action. PPM avoiding areas of disturbance results in further restrictions in how many PPM can occupy a constrained area such as the DPP (CNLM, Figure 9., 2023). As such, we recommend a more limited public access schedule outside the breeding season, consistent with CNLM's proposed schedule in the Draft 2023 HMMP, which would include fewer days per week (four days of public access) versus the current, non-restricted seven days per week.

## **Recommendations**

Based on applicable regulatory requirements and the best available science on ongoing declines and threats to PPM, CDFW recommends immediate implementation of the following measures at the DPP, with ongoing adaptive management to reevaluate and adjust the measures if warranted based on PPM population data:

1. Closure to public access during the PPM breeding season, March 1 through July 31.
2. A limited public access schedule outside the PPM breeding season, which would include fewer days per week versus the current, non-restricted seven days per week. The dates and hours proposed by CNLM, as the land manager, in the 2023 draft update to the HMMP (which are consistent with CNLM's requested schedule in its Application) would be appropriate (CNLM, 2023).
3. Review and approval of an updated HMMP<sup>6</sup>. The HMMP should also include an assessment evaluating the complete absence of human presence, from March 1 through July 31, over multiple breeding seasons, on PPM recovery. The assessment would provide information and data needed to inform a revised management plan

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<sup>6</sup> The HMMP has not been updated since its adoption in 2005.

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that includes the appropriate level of management actions required to sustain the PPM population at the DPP.

In summary, we have determined that the actions outlined in this letter are essential for the protection of PPM at the DPP and will provide year-round benefit to PPM for both the breeding and non-breeding seasons. CDFW respectfully requests a written response from the City of Dana Point addressing our recommendations. We look forward to continuing to serve as a partner in the recovery and management of PPM at the Dana Point Preserve. If you have any questions or require further information on this matter, please contact Glen M. Lubcke, Environmental Program Manager, at [Glen.Lubcke@wildlife.ca.gov](mailto:Glen.Lubcke@wildlife.ca.gov).

Sincerely,

DocuSigned by:  
  
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Erinn Wilson-Olgin  
Regional Manager  
South Coast Region

ec:

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**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 ED PERT, Ph.D., IN  
OPPOSITION TO MOTION FOR  
PRELIMINARY INJUNCTION**

Reservation No.: 73774314

Date: September 19, 2022

Time: 1:45p

Judge: Hon. Michael J. Strickroth

Dept.: C15

Action Filed: September 7, 2021

Trial Date: None Set

DECLARATION OF ED PERT, Ph.D.

I, Ed Pert, declare as follows:

1. I am the Regional Manager of the South Coast Region (Region 5) for the California Department of Fish and Wildlife (“CDFW”). 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 have worked as a permanent employee at CDFW since 2000, and have extensive experience in wildlife conservation and management. I hold a Ph.D. in Fisheries and Wildlife Sciences from Virginia Tech, a M.S. in Wildland Resource Sciences from University of California, Berkeley, and a B.S., in Wildlife Management (minor Fisheries Management) from Humboldt State University. In my role at CDFW, I have worked extensively on resource and wildlife management issues, including the Dana Point Preserve (“Preserve”).

3. The Preserve was created in 2005 as part of required mitigation for the Headlands Development Project. Because the Project proponent and former landowner of the Preserve is a “Participating Landowner” to the Orange County Central and Coastal Subregion Natural Community Conservation Plan/Habitat Conservation Plan (“NCCP/HCP”), the Habitat Development and Conservation Plan (“HDCP”) and associated Habitat Management and Monitoring Plan for Dana Point Headlands Biological Open Space (“HMMP”) were 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*, also referred to as PPM) and federally threatened coastal California gnatcatcher (*Poliophtila californica californica*).

4. Based on my first-hand knowledge and ongoing involvement with the Preserve, CDFW supported approval of the HDCP based on the proposal to include, as components of the HDCP, the acquisition and permanent preservation of the 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 the Center for Natural Lands Management (“CNLM”) to purchase and manage the Preserve and

1 the establishment of a Conservation Easement (“CE”) to protect this property in perpetuity.

2         5. To help ensure that the CE is enforced, and its biological values and resources are  
3 maintained, CDFW and U.S. Fish and Wildlife Service (collectively, “Wildlife Agencies”) are  
4 named as Third Party Beneficiaries to the CE. This is a common practice for CDFW to safeguard  
5 against any use or threatened use of conservation lands that is inconsistent with the purpose of the  
6 CE or would affect the protected species.

7         6. Based on my first-hand knowledge and ongoing involvement with the Preserve and  
8 the NCCP/HCP, CDFW supported the HDCP based on the proposal to permanently protect the  
9 Preserve and manage this area and its resources using adaptive management principles, which we  
10 determined would help promote the survival and recovery of the PPM. Adaptive management  
11 makes use of management interventions and follow up monitoring to improve understanding of  
12 how a resource system works and improve subsequent decisions to help achieve management  
13 objectives. It is common practice for CDFW to require adaptive management to meet  
14 conservation goals, as environmental conditions and species needs can change over time.

15         7. When CDFW provided its support for the HDCP, we also did so with the  
16 understanding that the public would be granted controlled access to a trail constructed within the  
17 Preserve. Due to the small size and sensitivity of the PPM population, during development of the  
18 HDCP and HMMP, we emphasized that it would be critical to design and regulate public use to  
19 safeguard the PPM and other sensitive flora and fauna within the Preserve. To that end, the 2005  
20 HMMP contemplated that the Habitat Manager (here, CNLM) would monitor public access and its  
21 consequences within the Preserve, and would apply adaptive management to minimize impacts to  
22 individuals or populations of NCCP/HCP Identified Species from public access (URS and CNLM  
23 2005). Under the CE, CNLM also has an obligation to periodically update the HMMP to govern  
24 uses within the CE, “...consistent with best adaptive management practices and in consultation  
25 and coordination with [the Wildlife Agencies]” (Conservation Easement Section 5.1).

26         8. Per the CE, CNLM coordinated with us on the recent update to HMMP. We  
27 provided our feedback, with USFWS, in a written letter to CNLM and the City of Dana Point on  
28 March 23, 2022. A true and correct copy of that letter, which I helped prepare, is attached as

1 **Exhibit A.**

2 9. CNLM addressed our comments and released the updated HMMP in April of this  
3 year. A true and correct copy of the 2022 HMMP Update, which I received from CNLM, is  
4 attached as **Exhibit B.** CDFW treats the 2022 HMMP as updating and superseding portions of the  
5 original 2005 HMMP prepared by CNLM and URS for the management necessary to ensure  
6 ecologically sustainable habitat conservation areas within the Preserve.

7 10. We recognize that providing the public access to nature is important for  
8 maintaining support for conservation efforts and that many members of the public will have an  
9 interest in the level of public access in the Preserve. However, human disturbance of wildlife from  
10 non-consumptive recreation (e.g., hiking) can cause altered spatio-temporal habitat use, decreased  
11 survival and reproduction, reduced population abundance, and extirpation of animals from  
12 otherwise suitable habitat (see review by Dertien *et al.* 2021). The status of the PPM population  
13 further suggests a conservative management strategy is warranted that focuses on ameliorating all  
14 potential threats to this population, including recreation use, habitat senescence, Argentine ants,  
15 and other factors discussed in the HMMP update. Thus, our support for CNLM's modification to  
16 the HMMP is based on the current status of the Dana Point PPM population and of the species as a  
17 whole, which warrants a conservative management strategy within each of the extant populations.

18 11. If CNLM is deprived of its authority to maintain the current hours of public access  
19 for the Preserve and to modify them as needed to address the needs of the protected species and  
20 environmentally sensitive habitat areas of the Preserve, CNLM will be unable to implement the  
21 adaptive management practices required to safeguard the PPM and other sensitive flora and fauna  
22 within the Preserve. Such adaptive management practices are necessary to minimize impact to  
23 NCCP/HCP Identified Species. CDFW does not support the City of Dana Point's requirement that  
24 the Preserve trail be open for public access daily from 7 am to sunset at this time as that level of  
25 public access would not promote the survival and recovery of the PPM. In the future, if other  
26 management actions can be identified, implemented, and monitored to determine any adverse or  
27 beneficial effects on PPM or other target species, it may be possible to modify the public access  
28 component; however, this should only be pursued with the approval and under close oversight by



1 the land manager (CNLM) as part of the adaptive management program approved by the Wildlife  
2 Agencies.

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

5 Executed on this 25th day of August, 2022, at San Diego, California.

6 DocuSigned by:  
*Edmund Pert* 9/2/2022  
7 A87CE992DB57479...

8 Edmund Pert

9 5185068.1