

**A. STATE AND FEDERAL AGENCIES**



Arnold  
Schwarzenegger  
Governor

STATE OF CALIFORNIA  
Governor's Office of Planning and Research  
State Clearinghouse and Planning Unit



Sean Walsh  
Director

April 17, 2006

Susan Harris  
City of Santa Cruz Parks and Recreation Department  
323 Church Street  
Santa Cruz, CA 95060

Subject: Arana Gluch Master Plan  
SCH#: 2005062141

Dear Susan Harris:

The State Clearinghouse submitted the above named Draft EIR to selected state agencies for review. The review period closed on April 14, 2006, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Terry Roberts  
Director, State Clearinghouse

A1-1

### Document Details Report State Clearinghouse Data Base

**SCH#** 2005062141  
**Project Title** Arana Gluch Master Plan  
**Lead Agency** Santa Cruz, City of

**Type** EIR Draft EIR  
**Description** Park Master Plan for 67.7 acre City-owned open space to include resource management, trails and interpretive displays.

#### Lead Agency Contact

**Name** Susan Harris  
**Agency** City of Santa Cruz Parks and Recreation Department  
**Phone** (831) 420-5362 **Fax**  
**email**  
**Address** 323 Church Street  
**City** Santa Cruz **State** CA **Zip** 95060

#### Project Location

**County** Santa Cruz  
**City**  
**Region**  
**Cross Streets** Agnes Street and Mentel Avenue  
**Parcel No.**  
**Township** **Range** **Section** **Base**

#### Proximity to:

**Highways** 1  
**Airports**  
**Railways**  
**Waterways** Arana Gulch Creek  
**Schools**  
**Land Use** Community Facility, Residential, Floodplain, Natural Area

**Project Issues** Aesthetic/Visual; Archaeologic-Historic; Coastal Zone; Drainage/Absorption; Geologic/Seismic; Landuse; Noise; Recreation/Parks; Soil Erosion/Compaction/Grading; Traffic/Circulation; Vegetation; Water Quality; Wetland/Riparian; Wildlife

**Reviewing Agencies** Resources Agency; Regional Water Quality Control Board, Region 3; Department of Parks and Recreation; Native American Heritage Commission; Office of Historic Preservation; Department of Fish and Game, Region 3; Department of Water Resources; California Coastal Commission; California Highway Patrol; Caltrans, District 5; Air Resources Board, Transportation Projects; Department of Toxic Substances Control

**Date Received** 02/23/2006 **Start of Review** 02/23/2006 **End of Review** 04/14/2006

**LETTER A1**

**Governor's Office of Planning and Research (State Clearinghouse)**

Response A1-1:     Comment noted.

## CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863



April 14, 2006

Susan Harris  
City of Santa Cruz Parks & Recreation Dept.  
323 Church St.  
Santa Cruz, CA 95060

Subject: **Arana Gulch Park Master Plan Draft EIR**

Dear Susan,

Thank you for providing a copy of the referenced document for Commission staff review. Commission staff appreciates the ability to provide the following comments:

- The draft EIR observes that a portion of Arana Gulch is located within the Coastal Zone and therefore is subject to regulation under the California Coastal Act. The EIR should demonstrate how the proposed Master Plan provides consistency with the applicable policies of the Coastal Act. For example, the EIR notes that development of the multi-purpose trail will have a significant and unavoidable impact to Santa Cruz tarplant habitat due to impacts to the tarplant's seed bank and permanent loss of tarplant habitat within the width of the trail. Please demonstrate how this impact can be found consistent with the Coastal Act, in particular Coastal Act Policy 30240. Similarly, for areas of Arana Gulch that are within the City's and County's coastal permitting jurisdictions, the EIR should demonstrate how the proposed Master Plan provides consistency with the policies of the City's and County's LCPs.
- On page 4.1-6 the draft EIR states: *"Development within an ESHA must be resource-dependent as stated in Section 30240 of the Coastal Act. Any exceptions to compliance with Local Coastal Program policies are to be within the context of a resource management plan that is approved by the Coastal Commission."* The second sentence of this statement implies that a resource management plan that is inconsistent with the policies of the certified LCP can be approved by the Commission. In order to approve a resource management plan, however, the Commission must find the plan to be consistent with either the certified LCP or Coastal Act, as applicable. This statement should be corrected.
- Regarding the delineation of wetlands, the draft EIR correctly states that the California Coastal Commission requires that an area need only positive indicators for one of the three technical criteria (hydrology, soil, or vegetation) to be delineated as a wetland, compared to the requirement by the U.S. Army Corps of Engineers that all three indicators be present in order to delineate an area as a wetland. On page 4.2-37, the draft EIR states: *"A preliminary delineation of wetlands potentially subject to U.S. Army Corps of Engineers jurisdiction on the coastal terrace portion of the Arana Gulch site was conducted by Habitat Restoration Group in 1996... Biologist Kathleen Lyons conducted a reconnaissance visit to the site in December 2004 to identify additional potential jurisdictional wetlands, although she did not conduct a formal delineation."* The California Coastal Commission will be reviewing the Arana Gulch Master Plan and its components as part of an LCP amendment. In addition, implementation of the plan and

A2-1

A2-2

A2-3

Susan Harris  
Arana Gulch Master Plan Draft EIR  
April 11, 2006  
Page 2

specifically development of the proposed multi-purpose paved path will be subject to California Coastal Commission approval. For these reasons, it is imperative that the wetland delineation be based on the Commission's criteria.

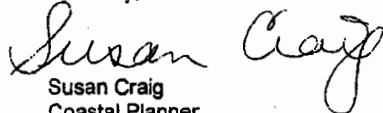
- According to the draft EIR, the City has applied for a Section 10 Permit Program to comply with the federal Endangered Species Act. The Section 10 Permit application and supporting Habitat Conservation Plan must be approved by the U.S. Fish & Wildlife Service and the National Marine Fisheries Service. The final EIR should include an estimate of the date when this process will be concluded, based on information received from U.S. Fish & Wildlife Service and National Marine Fisheries Service personnel. Also, page 4.2-38 of the draft EIR states: "*The City's Habitat Conservation Plan (HCP) is in process and has not yet been adopted. Thus the project would not conflict with an HCP.*" While it is true that the proposed Plan/project would not conflict with an existing HCP, the final EIR should note that it is not possible at this time to know if the proposed Plan/multi-purpose path project will conflict with the HCP that is currently in process.
- The proposed Master Plan includes a number of management guidelines for the various resource areas found within Arana Gulch, including Coastal Prairie/Tarplant Management Area, Arana Gulch Creek Riparian and Wetland Management Area, and Hagemann Gulch Riparian Woodland Management Area. Ongoing management will be critical to achieving the goals of the Master Plan. Since active management efforts (such as mowing, raking, and prescribed burns) to revive the tarplant population have ceased, the tarplant population has been greatly reduced (the cessation of these active management efforts was likely due to funding limitations). Please describe what type of funding mechanisms, etc., will be put in place to assure that the management components of the Master Plan will be carried out in a way to maximize benefits to coastal resources.

A2-4

A2-5

Thank you for the opportunity to comment in the development stage of this project. After we have seen additional project information, plan changes, revised CEQA documents, and/or the City's staff report, we may have additional comments to forward to you. In any event, as you move forward with your project analysis and environmental review, the issues identified above, as well as any other relevant coastal issues identified upon further review or due to project modifications, should be considered in light of the provisions of the certified City of Santa Cruz LCP and the Coastal Act. If you have any questions regarding this matter, please do not hesitate to contact me at (831) 427-4863.

Sincerely,



Susan Craig  
Coastal Planner  
Central Coast District Office

**LETTER A2**  
**California Coastal Commission**

Response A2-1: Policies of the Local Coastal Program (LCP) are denoted with an asterisk (\*) in Table 4.1-1 that can be found on pages 4.1-10 through 4.1-14 of the Draft EIR. Section 30240 of the California Coastal Act states the following:

*"(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.*

*(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas."*

Section 30240 is addressed on page 4.1-6 of the Draft EIR and is also addressed below under the Response A2-2.

The Biology section of the EIR (Section 4.2) addresses all of the resources related to the Environmentally Sensitive Habitat Areas (ESHAs) and recommends appropriate mitigation measures to avoid conflicts with the adopted Coastal Act and LCP policies. The only impact found unable to be mitigated to a less-than-significant level was the impact on historic Santa Cruz tarplant habitat. The reason that potential impacts were determined to be significant and unavoidable, despite the applicable recommended mitigation measures, was that within the footprint of the paved multi-use trails there would be a loss of historic Santa Cruz tarplant habitat. It should be noted that there is uncertainty about the viability of the seedbank within the multi-use trail alignments. The determination that the impact within the trail footprint is significant and unavoidable was a conservative approach to the seedbank location uncertainty. The only impacts to the historic tarplant habitat would be associated with trail construction, within the maximum 11-foot, 7-inch width of trail construction areas (maximum 8-foot-wide paved trail surface).

Although, for purely CEQA purposes, the City has determined that the impact to tarplant habitat is significant and avoidable, this legally conservative conclusion is not the same as stating that the project will result in any "significant disruption of habitat values" within the meaning of Section 30240. Indeed, as mitigated, the project should avoid any such significant habitat disruption. In reaching this last conclusion, the City takes note of the fact that the Coastal Act actively encourages the kind of public access and public use of coastal resources facilitated by the project. (See Pub. Resources Code, § 30001.5, subd. (c).) In other words, a CEQA "significant effect" is not necessarily the same as "significant disruption of habitat."

The DEIR explains that mapping for Areas A, B, C and D was done without the accuracy and advantages of more precise mapping allowed by the use of Global Positioning Systems (GPS) or Geographical Information Systems (GIS) and that, therefore, locations of historic populations and surveys prior to 2004 are approximate only. Nevertheless, the DEIR took the conservative view that any potential impacts on historic tarplant habitat would be significant and for this reason concluded that the impact could not be fully mitigated since the historic seedbank areas may exist where trail construction would occur.

The multi-use trails avoid recently-mapped tarplant populations in Areas A and D. As shown in the attached Figure 4.2-3a, the multi-use trail alignment fully avoids the largest recent and historic tarplant Subpopulation Area A, which is located within the southern portion of the meadow. The 2004 survey identified 797 plants and the 2005 survey identified 1,552 plants. Previous surveys undertaken from 1996 through 2003 found populations ranging from 619 plants to approximately 65,000 plants in 1998. The proposed paved multi-use trail is located no closer than 400 feet from the 2004 and 2005 mapped tarplant within Subpopulation Area A (see amended Figures 4.2-4 and 4.2-5 attached). The trail alignment was proposed and designed to the furthest north to ensure subpopulation Area A is fully protected in its entirety and not degraded.

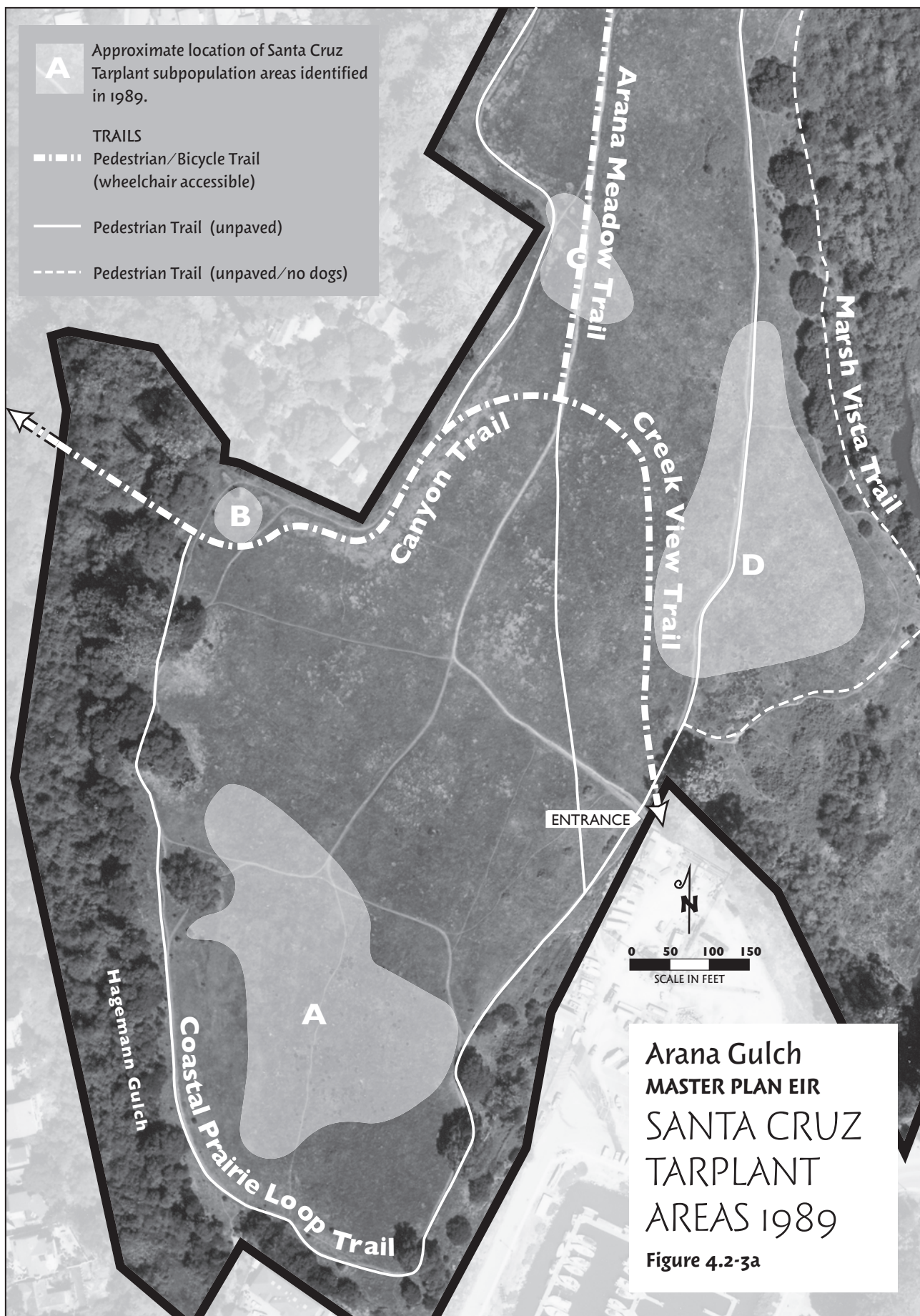
The multi-use trails also avoid recent tarplant populations within Subpopulation Area D. No tarplant was identified in Area D in 2005. Two plants were mapped in 2004. Previously surveys undertaken between 1993 and 2003 showed tarplant populations ranging from 1 to 156 plants. The alignment of the multi-use trail also aims to maintain the integrity of Subpopulation Area D. The trail alignment is located the furthest west as possible to protect the integrity of Subpopulation Area D to the maximum extent.

As noted on paged 4.2-42 of the DEIR, "The tarplant been observed in Areas B and C only once in the last 17 years. In 1998, five plants were reported observed in Area B and 20 plants in Area C. Although no plants have been observed since 1998, and prior to that no plants were observed since 1989, as a conservative approach it assumed that a seed bank may still be present throughout historic areas of tarplant occurrence.

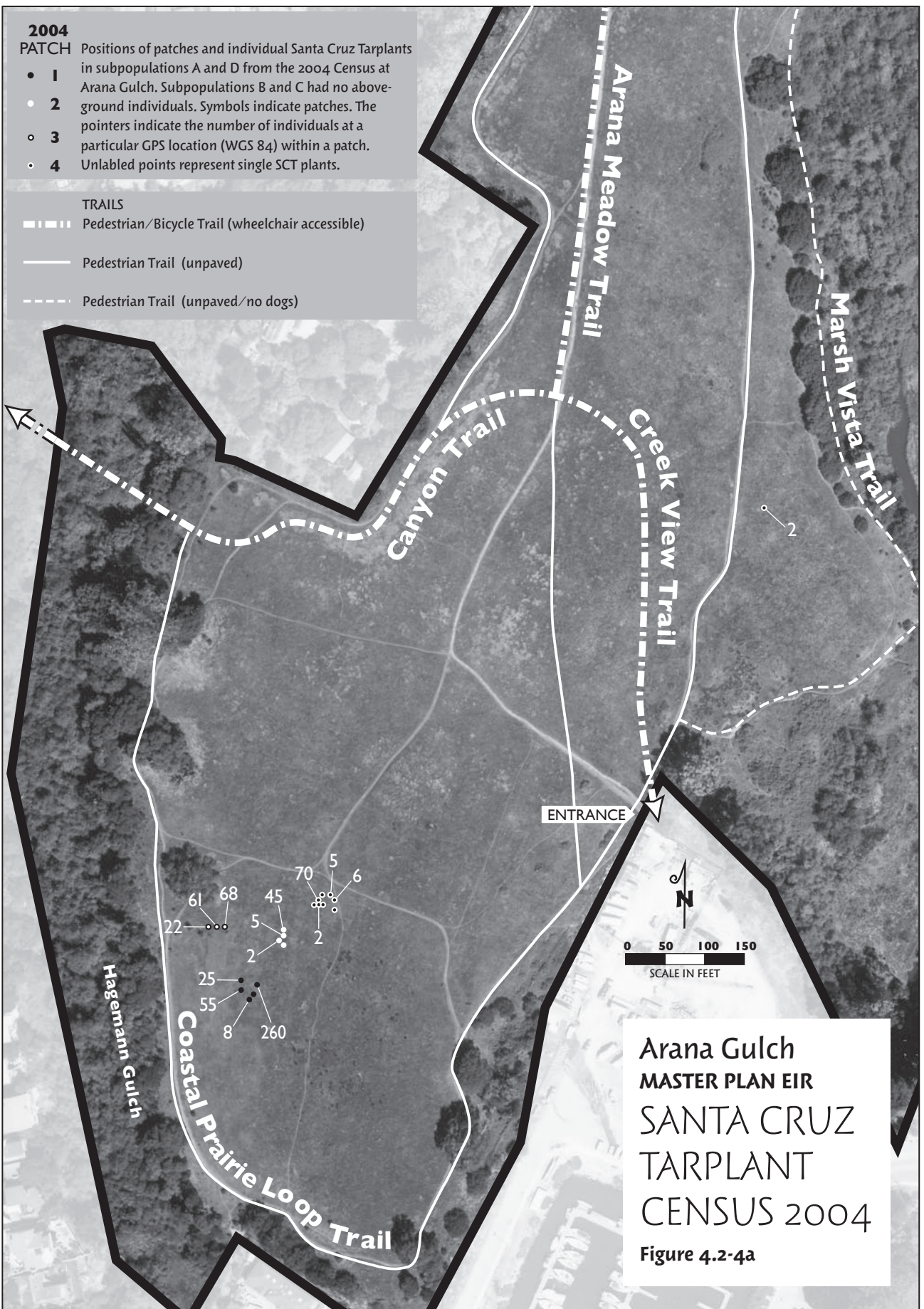
The paved multi-use trail would avoid Area B that is about 3,600 square feet in area and would pass through Area C that is about 12,000 square feet in area (see amended Figure 4.2-3a attached). However, these mapped areas are very generalized since the mapping was done without the accuracy of GIS or GPS as explained earlier.

Policy Environmental Quality 4.5.2 of the City's Local Coastal Program addresses the Santa Cruz tarplant as related to buffers and management plans, and is addressed on page 4.1-13 of the Draft EIR. The project was found consistent with this policy due to the proposed Santa Cruz Tarplant Adaptive Management Program which is addressed in detail on pages 4.2-30 and 4.2-43.

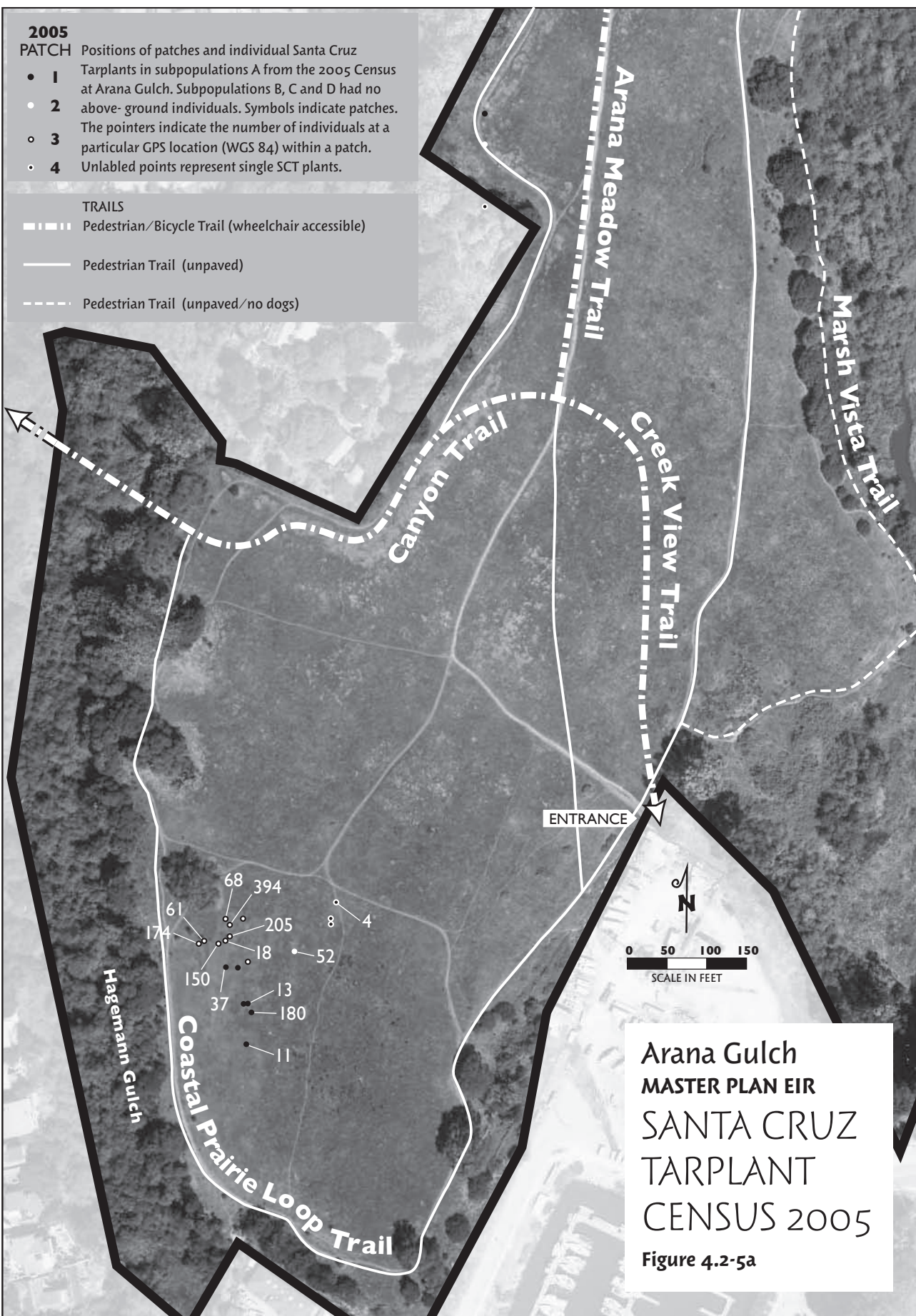












The uses proposed within Arana Gulch (as addressed in the Master Plan) are considered resource-dependent uses. The multi-use and pedestrian trails would be interpretive trails allowing pedestrian, bicycle, and wheelchair access to areas of the site where resources could be observed by visitors to Arana Gulch. Paved trails, allowing bicycle and pedestrian use, have been approved by the Coastal Commission in other jurisdictions within California (e.g., Monterey, Sand City, and Morro Bay) that included sensitive habitats (e.g., Smith's Blue Butterfly and Western snowy plover). The Santa Cruz tarplant mitigation measures would protect this resource to the maximum extent possible, especially with the adoption and implementation of the proposed Adaptive Management Program. However, as stated on page 4.2-44, the impact to the historic tarplant population within the multi-use trail footprint cannot be fully mitigated for the reasons stated above.

Response A2-2:

As stated on that page of the DEIR, "Development within an ESHA must be resource-dependent as stated in Section 30240 of the Coastal Act. Any exceptions to compliance with Local Coastal Program policies are to be within the context of a resource management plan that is approved by the Coastal Commission. The Arana Gulch Master Plan serves as a resource management plan for the 67.7-acre property. Three Management Areas are proposed within the Master Plan to specifically focus resource management. ESHAs within Arana Gulch include the Santa Cruz tarplant habitat, riparian habitat, and wetlands."

The last paragraph on page 4.1-6 of the DEIR is changed as follows:

~~"Any exceptions to compliance with Local Coastal Program policies are to be within the context of a resource management plan that is approved by the Coastal Commission. The Arana Gulch Master Plan serves as a resource management plan that is intended to protect the resources within the ESHA to the maximum extent possible. For this reason, the Arana Gulch Master Plan includes a Santa Cruz Tarplant Adaptive Management Program (see Appendix A)."~~

For all greenbelt properties in the City of Santa Cruz, park master plans are prepared and include resource management policies and programs for any sensitive resources that are identified.

Response A2-3:

Comment noted. As stated in Mitigation Measure BIO-2(a), a jurisdictional wetland delineation may be necessary. The following text change is to be included on page 4.2-40 to clarify the issue of California Coastal Commission criteria:

"...with verification by the U.S. Army Corps of Engineers (Corps). Any jurisdictional wetland delineation shall also use the California Coastal Commission criteria (i.e., one positive indicator) since the project site is within the jurisdiction of the California Coastal Commission. Because the Commission criteria and the Corps criteria differ, it is possible that

the "wetlands" acreage found pursuant to the Commission criteria may be greater than the acreage found pursuant to the Corps criteria."

Response A2-4: Refer to Master Response No. 8. The text at the top of page 4.2-38 has been changed as follows:

"...and has not yet been adopted. Thus, the project would not conflict with an HCP. The City Parks and Recreation Department is coordinating with other City staff on the citywide HCP to ensure that there are no conflicts with the Arana Gulch Master Plan. The date of approval of the citywide HCP is not known."

Response A2-5: Funding mechanisms are addressed on page 48 of the Arana Gulch Master Plan. Local funding would likely be the source for on-going resource management. For example, the City Council may provide funds from the sale of City-owned property at the terminus of Broadway (outside of the Arana Gulch greenbelt boundaries) to help fund the Santa Cruz Tarplant Adaptive Management Program. A sustained funding program would be required for the Santa Cruz Tarplant Adaptive Management Program as noted on page 48 of the Arana Gulch Master Plan.

7: Arana Gulch DEIR comments

**Subject:** FW: Arana Gulch DEIR comments  
**From:** "Susan Harris" <SHarris@ci.santa-cruz.ca.us>  
**Date:** Wed, 26 Apr 2006 14:43:26 -0700  
**To:** "Amy Skewes-Cox" <amysc@rtasc.com>

-----Original Message-----

**From:** Connie Rutherford@fws.gov [mailto:Connie Rutherford@fws.gov]  
**Sent:** Wednesday, April 26, 2006 10:25 AM  
**To:** Susan Harris  
**Cc:** David Pereksta@fws.gov; Julie Niceswanger@fws.gov  
**Subject:** Arana Gulch DEIR comments

Hi Susan,

I took a very brief look at the DEIR on behalf of other office staff and had the following comments. Since I received a phone call from Amy Skewes-Cox but did not have her e-mail address, I phoned her back with essentially the same comments. If you could do me the favor of forwarding this to her, I would appreciate it.

1) The brief reference to Federal Actions under the Required Approvals section on page 3-27 indicates that there would need to be a FONSI by FHWA "if any trails receive federal government funding." This statement leaves us uncertain as to the likelihood there will be an opportunity for consultation in the future, and to plan our workload accordingly. If there is to be no federal nexus, we would need to plan in additional review time for this project now.

2) The discussion referring to the federal Endangered Species Act on page 4.2-5 contains some inaccuracies and should be revised. For instance, the consultation requirement is part of section 7, not section 10. Obtaining a take permit under section 10 is a way of being exempted from prohibitions under section 9. Also, there are differences between how plants and wildlife species are treated under the Act. Also, no mention is made of critical habitat and how that plays into the consultation process.

A3-1

A3-2

LETTER A3

V: Arana Gulch DEIR comments

3). The section that summarizes the status of Santa Cruz tarplant on page 4.2-28 does not mention that critical habitat was designated for this species on October 16, 2002, and includes a unit at Arana Gulch. More

information on this is available through our office's homepage ([www.ventura.fws.gov](http://www.ventura.fws.gov)) or through the Service's national website ([www.fws.gov](http://www.fws.gov)).

I'd be happy to discuss the DEIR or any of these comments further with your or Amy as needed.

Connie Rutherford  
Listing and Recovery Coordinator for Plants  
U.S. Fish & Wildlife Service  
2493 Portola Road, Suite B  
Ventura, Ca 93003  
ph: 805-644-1766 x306  
fax: 805-644-3958  
e-mail: [connie\\_rutherford@fws.gov](mailto:connie_rutherford@fws.gov)

**A3-3**

**LETTER A3****U.S. Fish and Wildlife Service**

Response A3-1      The City of Santa Cruz has received federal grant funding for the proposed Canyon Trail and Creek View Trail, which would create a multi-use trail connection between Broadway and Brommer Street. This federal nexus will require a Section 7 consultation. The exact timing of this consultation has not been determined.

Response A3-2      The inaccuracies contained on page 4.2-5 starting in the third paragraph have been corrected. The text is changed as follows:

“Federal Endangered Species Act. The federal Endangered Species Act (ESA) of 1973 (Title 16 United States Code, Section 1531 *et seq.*, as amended) prohibits federal agencies from authorizing, permitting or funding any action that would result in biological jeopardy to a species listed as Threatened or Endangered under the ESA. Listed species are taxa for which proposed and final rules have been published in Federal Register (USFWS, 2005a, 2005b, 2005c, 2005d). If a proposed project may jeopardize federally listed species, Section 7 of the ESA requires consideration of those species through formal consultations with the USFWS. The U.S. Fish and Wildlife Service’s (Service) responsibilities include administering the Act, including Sections 7, 9, and 10. Section 9 of the Act prohibits the take of animal species that are federally listed as endangered or threatened. Section 3(18) of the Act defines “take” to mean to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Service regulations (50 CFR 17.3) define “harm” to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, or sheltering. “Harassment” is defined by the Service as an intentional or negligent action that creates the likelihood of injury to listed species by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Exemptions to the prohibitions against take may be obtained through coordination with the Service in two ways: 1) through interagency consultation for projects with federal involvement (i.e., funded, authorized, or carried out by a Federal agency) pursuant to Section 7; or 2) through the issuance of an incidental take permit under Section 10(a)(1)(B) of the Act. The Act or its implementing regulations do not generally prohibit take of listed plant species by private parties. However, federal agencies cannot undertake activities that would jeopardize the continued existence of a threatened or endangered plant or animal species. In addition, the removal of threatened or endangered plants may be a violation of the Act under certain circumstances, e.g., if the action is not in compliance with state law. Federal proposed species (USFWS, 2005c) are species for which a



proposed listing as Threatened or Endangered under the ESA has been published in the Federal Register. If a proposed project may jeopardize federal proposed species, Section 10(a) of the ESA affords consideration of those species through informal conferences with the USFWS. Federal Candidate species are “taxa for which [USFWS] has on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule to list, but issuance of the proposed rule is precluded” (USFWS, 1999). Federal Candidate species are not afforded formal protection, although USFWS encourages other federal agencies to give consideration to Candidate species in environmental planning.

The ESA prohibits “take” of a federally listed wildlife species. The USFWS determines whether the project represents a potential “take” of a federally listed wildlife species and advises the project proponent to seek Section 10(a) consultation if needed. The USFWS may grant an incidental take permit, which authorizes the take of a listed wildlife species incidental to project activities, but does not authorize any activities that will knowingly result in take. If “Critical Habitat” is determined and published in the Federal Register as a formal rule, that designated critical habitat (plant or animal) receives protection under Section 7 of the Act through the prohibition of destruction or adverse modification of critical habitat by actions carried out, funded, or authorized by a Federal agency (i.e., Federal Highway Administration[FHWA] funding of the multi-use trail). Consultation under Section 7 does not apply to activities on private or other non-federal lands that do not involve a Federal nexus. Therefore, the critical habitat designation would not afford any additional regulatory protections under the Act with regard to those activities.

To “take” is defined as to harass, harm, pursue, hunt, shoot, wound, kill, capture, or collect, or to attempt to engage in any such conduct. “Harassment” is defined by the USFWS as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns which include, but are not limited to, breeding, feeding, or sheltering. “Harm” is further defined by the USFWS to include significant habitat modification or degradation that results in death or injury of listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).”

Response A3-3: Refer to Master Response No. 9.

Changes to the references for Section 4.2 of the DEIR are also made as follows in Chapter 8 of the DEIR:

“U.S. Fish and Wildlife Service, 2002a. Recovery plan for the California red-legged frog (*Rana aurora draytonii*). U.S. Fish and Wildlife Service, Portland, Oregon, vii+173pp.

U.S. Fish and Wildlife Service, 2002b. Endangered and threatened wildlife and plants; Final designation of Critical Habitat for *Holocarpha macradenia* (Santa Cruz tarplant); Final rule. Federal Register 67(200): 63968-64007.

U.S. Fish and Wildlife Service, 2005. Recovery Plan for the Tidewater Goby (*Eucyclogobius newberryi*), Pacific Region U.S. Fish and Wildlife Service, Portland, Oregon. vi + 199 pp.

U.S. Fish and Wildlife Service, 2004. Draft recovery plan for the tidewater goby (*Eucyclogobius newberryi*), Pacific Region U.S. Fish and Wildlife Service Portland, Oregon (October 2004) vi+ 171pp."

Fw: Response for Arana

**Subject:** Fw: Response for Arana  
**From:** Julie\_Niceswanger@fws.gov  
**Date:** Mon, 1 May 2006 15:04:51 -0700  
**To:** amysc@rtasc.com  
**CC:** Connie\_Rutherford@fws.gov, David\_Pereksta@fws.gov

Amy,

The write-up for the listed species on page 4.2-5 describes how species "proposed" for listing would be addressed... your project currently has only listed species and designated critical habitat so the discussion about how to address species which are only "proposed" for listing could be omitted. Here is some language we typically use to describe the requirements and the process for exemptions to the prohibitions against take.

The U.S. Fish and Wildlife Service's (Service) responsibilities include administering the Act, including sections 7, 9, and 10. Section 9 of the Act, prohibits the take of animal species that are federally listed as endangered or threatened. Section 3(18) of the Act defines "take" to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Service regulations (50 CFR 17.3) define "harm" to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. "Harassment" is defined by the Service as an intentional or negligent action that creates the likelihood of injury to listed species by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.

The U.S. Fish and Wildlife Service's (Service) responsibilities

A4-1

Fw: Response for Arana

include administering the Act, including sections 7, 9, and 10. Section 9 of the Act, prohibits the take of animal species that are federally listed as endangered or threatened. Section 3(18) of the Act defines "take" to mean "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." Service regulations (50 CFR 17.3) define "harm" to include significant habitat modification or degradation which actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering. "Harassment" is defined by the Service as an intentional or negligent action that creates the likelihood of injury to listed species by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. Exemptions to the prohibitions against take may be obtained through coordination with the Service in two ways: through interagency consultation for projects with federal involvement (i.e., funded, authorized, or carried out by a Federal agency) pursuant to section 7 or through the issuance of an incidental take permit under section 10(a)(1)(B) of the Act. The Act or its implementing regulations do not prohibit take for listed plant species. However, federal agencies cannot undertake activities that would jeopardize the continued existence of a threatened or endangered plant species (this is also true for listed animal species.) In addition, the removal of threatened or endangered plants may be a violation of the Act under certain circumstances if the action is not in compliance with state law.

A4-1

Additionally, the tidewater goby recovery plan was finalized on December 7, 2005, so any reference cited from the draft plan should be verified and

A4-2

Fw: Response for Arana

quoted from final.

Thanks for accepting our comments at this late date, Julie

~~~~~  
Julie Niceswanger  
Fish & Wildlife Biologist  
US Fish and Wildlife Service, Ventura Field Office  
2493 Portola Road, Suite B  
Ventura, CA 93003  
(805) 644-1766 extension 290  
~~~~~

----- Forwarded by Julie Niceswanger/VFWO/R1/FWS/DOI on 05/01/2006  
10:46 AM  
-----

Connie

Rutherford/VFWO/R

1/FWS/DOI

To

Julie

04/28/2006 04:39

Niceswanger/VFWO/R1/FWS/DOI@FWS  
PM

cc

Subject

Fw: Response for Arana

**LETTER A4****U.S. Fish and Wildlife Service (No. 2)**

Response A4-1: Refer to Response A3-2.

Response A4-2: The text on page 4.2-22, first paragraph has been changed to reflect the final recovery for the tidewater goby as follows:

"...from the recent federal ~~draft~~ final recovery plan for the TWG (USFWS, 2004~~2005~~g)."

Refer to Response A3-3 regarding a change to the references.